

OPERATION GREER E14/0362

PUBLIC INQUIRY BRIEF

Supreme Court Transcripts

VOLUME 1

HEARING BRIEF



Operation Greer - E14/0362

Supreme Court Transcripts

Vol.	Page	Name	Date	Trim
1	3	TRANSCRIPT Supreme Court proceedings - Gundar S	2015-02-02	D10377594
1	71	TRANSCRIPT Supreme Court proceedings - SING A and WING D	2015-02-03	D10377595
1	157	TRANSCRIPT Supreme Court proceedings - PERKINS C and CRONAN C	2015-02-04	D10377596
2	3	TRANSCRIPT Supreme Court proceedings - Cronan C and Johnson M	2015-02-05	D10377597
2	91	TRANSCRIPT Supreme Court proceedings - Johnson M	2015-02-06	D10377598

IN THE SUPREME COURT
OF NEW SOUTH WALES
EQUITY DIVISION

5 SENIOR DEPUTY REGISTRAR BELLACH

MONDAY 2 FEBRUARY 2015

10 **2014/00261609 - IN THE MATTER OF GANDANGARA MANAGEMENT
SERVICES LIMITED**

EXAMINATION

Mr Baird for the Liquidator
15 Examinee Gundar appeared in person

20 DEPUTY REGISTRAR: Mr Baird, you're appearing?

BAIRD: My name is Baird registrar. I appear for the receiver of Gandangara Management Services Limited, receiver appointed. Registrar, there are examinations pursuant to sections 596A and 596B of the Corporations Act. My client, the receiver, being a duly appointed person by the Corporate Affairs Commission, to give it its old title - ASIC to give it its current abbreviation. We have a total of six witnesses listed for this week, registrar. These persons are in court. What I propose to do, was to confirm the order of the witnesses. My instructing solicitor has some orders for production he wishes to call on and then those persons who are not required for today can then be excused and come back at the appropriate time. That might minimise their inconvenience registrar.

DEPUTY REGISTRAR: Thank you.

35 BAIRD: The first witness to be called is Mr Shalesh Gundar and we hope to be able to finish his examination today and for the next witness this afternoon, to be Mr Alfred Sing. I could indicate to the Court that it's unlikely that Mr Sing, his examination, would commence before 3pm at the earliest. So subject to that production, Mr Sing could then be excused until 3pm this afternoon.

40 DEPUTY REGISTRAR: Is Mr Sing present in the courtroom now? Please come forward. Please come forward Mr Sing. I understand you've been served with an order for production to produce documents to the Court. Do you have those documents to produce? Do you have them with you?

45 EXAMINEE SING: Yes your Honour.

DEPUTY REGISTRAR: Okay, what you need to do is you need to take them to the registry on level 4 of this building. The registry will formally receive those documents. Give you a receipt and then they will put them in a packet

.02/02/15

1

for access to the receiver at some point in time. Do you have any objections to them being granted general access to those documents?

EXAMINEE SING: Not at all your Honour.

5

BAIRD: Registrar, in view of the time provisions, could I possibly seek your indulgence to abbreviate that procedure somewhat. I mean it's very common for the documents to be produced to the Court and access to be granted to the receiver on the run, as it were, and simply be marked as an MFI at this stage.

10

DEPUTY REGISTRAR: I was surely going to get to that but I was going to deal with that at the end of all the matters, of all the documents that are going to be produced in the next 5 to 10 minutes.

15 BAIRD: I'm just concerned, if it goes down to the registry, that might be the last we see of them for a few days.

DEPUTY REGISTRAR: Mr Sing, do you want to put those documents on the bar table for me.

20

EXAMINEE SING: Sorry, your Honour?

DEPUTY REGISTRAR: Put them on one side for a moment. I'll formally note that you have produced documents today for the record and those documents have been produced in regards to the order for production you have been served with. So thank you for producing those documents. Mr Baird, is Mr Sing's attendance required any further today?

25

BAIRD: Not before 3pm registrar if it is convenient to come back at 3 o'clock?

30

EXAMINE SING: That's fine.

BAIRD: Thank you.

35 DEPUTY REGISTRAR: Mr Sing, we'll see you at 3 o'clock.

BAIRD: I was just going to say if in case Mr Gundar's examination continues longer, is there a number we can contact Mr Sing on - just in case, we can let him know.

40

DEPUTY REGISTRAR: You don't need to announce it for the record and I will encourage you not to do so but please provide it Mr Lim(as said) and he will contact you should the time change in any way shape or form.

45 BAIRD: I'm conscious that Mr Sing is in employment and this is time away from his work and I seek to minimise the inconvenience to him.

DEPUTY REGISTRAR: Thank you, Mr Baird. So the next order for production that you're calling upon, Mr Baird.

50

BAIRD: That will be Mr Gundar. Mr Gundar is going to be the first witness, so I'll deal with him when he gets to the witness box, registrar. Next is Ms Cronan. Ms Cronan, do you have documents to produce?

5 EXAMINEE CRONAN: Yes.

BAIRD: Thank you. If Ms Cronan could come forward, please registrar.

10 DEPUTY REGISTRAR: Thank you Ms Cronan. So you have that CD and on that CD is documents you want to produce?

EXAMINEE CRONAN: I actually made two copies of the same CD.

15 DEPUTY REGISTRAR: Are they the documents you are producing to the Court in relation to the order for production?

EXAMINEE CRONAN: That's correct.

20 DEPUTY REGISTRAR: Thank you very much, Ms Cronan.

BAIRD: Now the position with Ms Cronan, as you can see registrar, Ms Cronan has a medical procedure scheduled for this Friday and is unavailable this Friday. She also has to see the doctor tomorrow and is unavailable tomorrow afternoon as well. If it were convenient to Ms Cronan and this Court, I'm content for her examination to be stood down till 11am on Wednesday if that's convenient.

EXAMINEE CRONAN: Yes.

30 BAIRD: So not before 11am on Wednesday and she be excused until then registrar.

DEPUTY REGISTRAR: Ms Cronan, is that date and time suitable to you?

35 EXAMINEE CRONAN: Yes.

DEPUTY REGISTRAR: Thank you. We will see you again at 11 o'clock on Wednesday.

40 BAIRD: Thank you registrar. Now the next production is addressed to Mr David Winyer(as said). He is an interstate witness registrar, and is flying down by arrangement tomorrow and will not be arriving here before 12pm tomorrow and I wasn't going to call on his order for production until he arrived, until 12. So possibly, we could note from Mr Wing--

45 DEPUTY REGISTRAR: I'll stand his order for production over until 11 o'clock on Tuesday.

50 BAIRD: 12 I think. His plane gets in late I'm afraid, I think. Some arrangement like that. That's Mr Wing. Mr Perkins is in a similar position. He

is also an interstate witness. Arrangements have been made for him to fly down on Thursday. So Mr Perkins' will be not before 11am on Thursday, 4 February.

5 DEPUTY REGISTRAR: We have two on Wednesday now, Ms Cronan and Mr Perkins.

BAIRD: Sorry Wednesday. I stand corrected. I'm grateful for that registrar. Mr Perkins will be 11am on Wednesday, 4 February.

10

DEPUTY REGISTRAR: What about Ms Cronan? Isn't Ms Cronan at 11 o'clock?

15 BAIRD: Yeah, we'll just have to deal with them both. Mr Perkins is flying down. I think he's going to be fairly short and we'll just have to liaise with the two witnesses and which goes first on that day, depending their personal conveniences but Mr Perkins is on a plane. We might contact Ms Cronan and see if she can have 2 o'clock on the Wednesday and avoid the double-up there registrar. Just been a little bit of rescheduling on the run because of
20 Ms Cronan's medical condition.

DEPUTY REGISTRAR: Okay.

25 BAIRD: And the very last witness in the last order of production, registrar, is Mr Mark Johnson, who is in court and it's anticipated that his examination would be stood down till Thursday, not before 11am on Thursday, and I think Mr Johnson is in court and he may have some documents.

30 DEPUTY REGISTRAR: Mr Johnson, are you present - please come forward. I understand you have documents to produce in regards to an order for production. Is that them on the CD?

EXAMINEE JOHNSON: Yes registrar.

35 DEPUTY REGISTRAR: Thank you. Please come forward and put that on the bar table for me and I'll formally acknowledge those as documents that you have produced today in response to that order for production.

40 EXAMINEE JOHNSON: Thank you.

BAIRD: Mr Johnson, through the registrar, might I enquire, is it convenient for you, for your examination to be adjourned - stood down till 11am on Thursday, 5 February?

45 EXAMINEE JOHNSON: Yes.

DEPUTY REGISTRAR: Thank you. I'll stand your examination over till then. You may be excused.

50 BAIRD: Thank you registrar. I'm grateful for those housekeeping matters,

registrar. Might I or my instructing solicitor have access to the three sets of documents produced which I've labelled with each witness' tab, that are on the bar table?

- 5 DEPUTY REGISTRAR: You may have access. You can take them away with you now but at some point during the lunch adjournment, they'll have to be taken to the registry on level 4, for them to be officially be received by the registry.

- 10 BAIRD: My instructing solicitors will take care of that.

DEPUTY REGISTRAR: And I formally make all the documents general access.

- 15 BAIRD: I'm grateful registrar.

DEPUTY REGISTRAR: Your instructing solicitor can confirm that with the registry, that I've made those orders today and if the registry staff need any further clarification, they can come and see me directly.

20

BAIRD: Thank you registrar.

DEPUTY REGISTRAR: Just in regards to that timetable, I note no one's listed on Friday.

25

BAIRD: Mr Johnson is for two days.

DEPUTY REGISTRAR: Okay.

- 30 BAIRD: Depending on how the other witnesses go.

DEPUTY REGISTRAR: The duration of his examination, fine. I just noted that. I just thought I had an extra day off.

- 35 BAIRD: Thank you, registrar. Might I call the first witness, Mr Saleshe Gundar.

<EXAMINEE GUNDAR, (SWORN)(12:27PM)

DEPUTY REGISTRAR: Mr Sing(as said), please state your full name, address and occupation for the court record.

5

EXAMINEE GUNDAR: Mr name is Shalesh Gundar.

DEPUTY REGISTRAR: I'm sorry Mr Gundar, sorry, and your full name, address and occupation.

10

EXAMINEE GUNDAR: I'm self employed. My address is [REDACTED], [REDACTED].

DEPUTY REGISTRAR: Thank you. Please listen carefully to what I am about to tell you. This examination is being conducted under the Corporations Act 2001. It is an unusual court proceeding in that you are required to answer the questions that are put to you even if your answer may be incriminating or make you liable for a penalty. However, the answers you give to the Court today cannot be used against you in a criminal proceeding or in any proceeding imposing a penalty if you clearly state the word, "Privilege", before answering the question. Please note that if you give a false answer or if you refuse to answer a question that is put to you, you may be liable for perjury or contempt of court. Do you understand?

15

20

25

EXAMINEE GUNDAR: Yes I do.

DEPUTY REGISTRAR: Furthermore, everything that is said in this courtroom is being recorded which means you must articulate a response to the questions that are put to you. That may require you to repeat an answer or spell out a name for clarification. Do you also understand that?

30

EXAMINEE GUNDAR: I do.

DEPUTY REGISTRAR: The Supreme Court is a court of record and as such a transcript for all Corporations Act examinations are being prepared. Are orders being sought under section 597(13)?

35

BAIRD: They are registrar.

DEPUTY REGISTRAR: I order that the questions put to the examinee and the answers given by him be recorded in writing. Thank you, Mr Baird.

40

<EXAMINATION BY MR BAIRD

Q. Mr Gundar, you effectively commenced employment with the Gandagara Management Services Limited on about 14 March 2011. Is that correct?
A. Correct.

45

Q. When I say, effectively commenced employment, that was through your consultancy company, was it not?

50

A. Correct.

Q. That is a company called, Epands Pty Ltd?

A. Correct.

5

Q. You're a director of that company?

A. Correct.

Q. Are you the sole director of that company?

10 A. No.

Q. Who's the other director?

A. My wife.

15 Q. Are you the sole shareholder of that company?

A. No.

Q. Is your wife the other shareholder?

A. Correct.

20

Q. You and your wife are the only shareholders and directors of that company. Right?

A. Correct.

25 Q. It's your family company?

A. Correct.

Q. Do you recollect signing a service agreement on behalf of Epands with Gandangara Management Services Ltd, in March 2011?

30 A. There was no service agreement.

Q. Do you recollect that your service was terminated in about April 2014?

A. Correct.

35 Q. That was terminated by the administrator of the Gandangara Local Aboriginal Land Council, a Mr Peter Hillig, was it not?

A. That is correct.

Q. If I use the contraction, GLALC, for the Gandangara Local Aboriginal Land Council, that's a contraction you're familiar with?

40

A. That's right.

Q. How do you normally refer to Gandangara Management Services - do you normally call that GMS?

45

A. Correct.

Q. Do you recall that at an earlier stage in proceedings, involving GLALC and GMS, you swore an affidavit in the Supreme Court on 23 April 2014?

A. Yes I do.

50

Q. In that affidavit, you referred to your service agreement being terminated by Mr Hillig on 2 April 2014. To what service agreement were you referring there?

5 A. Before I started with Gandangara, I wrote an email to the CEO referring all my services, my company services, to Gandangara I would be providing. That's the agreement, the only agreement I had.

Q. So you sent an email sometime in about March 2011, to the CEO of GLALC?

10 A. Correct yes.

Q. Was that Mr Johnson?

A. Mr Johnson yes.

15 Q. And that email contained the terms on which you were prepared to commence employment?

A. Correct yes.

Q. And Mr Johnson accepted the terms in your email?

20 A. Correct yes.

Q. Did he do that orally?

A. Correct.

25 Q. Did he send you an email confirming receipt?

A. No.

Q. In short, from your perspective, the terms of your service agreement are those contained in your email to Mr Johnson?

30 A. That's correct yes.

Q. You had a number of responsibilities with GLALC did you not?

A. Correct.

35 Q. GMAS was a wholly-owned subsidiary of GLALC wasn't it?

A. Correct yes.

Q. Would it be correct to describe your title as that of Chief Financial Officer?

A. Finance Manager.

40

Q. Finance Manager?

A. Yes.

Q. Were you the Chief Finance Manager or were you just called Finance Manager?

45

A. Finance Manager.

Q. Can you tell me what your role as Finance Manager involved?

50 A. Basically, looking after all the functions - the financial functions of the whole organisation.

Q. What was the whole organisation?

A. GLALC including all the subsidiaries.

Q. How many subsidiaries did it have?

5 A. From my memory, about four, I think.

Q. And was one of your functions the preparation of consolidated accounts for the group?

A. That is correct yes.

10

Q. And of accounts for each of the individual members of the group?

A. Not my responsibility no, that was the company basically was auditing the company, Lawler Partners. They did all the final consolidation for the company after the audit and produced to the members.

15

Q. We may be somewhat at cross-purposes Mr Gundar, if your job involved the preparation of accounts for the consolidated group, including the parent entity, did it not also include the preparation of separate accounts for each of these subsidiaries?

20 A. Management accounts only.

Q. Management accounts?

A. Yes that's correct.

25 Q. And I take it from your previous answer, that there was a procedure at the end of each financial year that involved the finalisation and ultimately approval of accounts for each of these subsidiaries and the group. Correct?

A. Correct yes.

30 Q. What was the role of Lawler Partners in that?

A. They are the auditors. Also they were the basically completed for the financial reports the audited financials for the group.

35 Q. GLALC, being an Aboriginal Land Council, it was a requirement was it not that its accounts be audited?

A. Correct, yes.

40 Q. Can I take it that at the end of each financial year there was a great deal of interaction between you and Lawler Partners in the auditing and approval of accounts process?

A. Correct.

Q. When did the financial year end, was it 30 June each year?

A. Correct.

45

Q. It wasn't 31 December?

A. No.

50 Q. Putting to one side the end of year accounts what was your role in the preparation of management accounts and were these prepared monthly?

A. It was prepared monthly, however, the board were required to meet every bi-monthly, every second month, so the reports, management reports were produced to the board at the monthly or every second month, whenever they met.

5

Q. Tell me a little bit more about that process, what sort of software were the management accounts maintained?

A. MYOB.

10 Q. And how were entries made and who had the responsibility for the creation of entries on the MYOB accounts?

A. I had two or three staff who mainly did the data entry and prepared, you know, basically all those functions.

15 Q. You had one accountant and two finance officers reporting to you, is that right?

A. Yes.

20 Q. So I take it from that that data entry was not something that you personally undertook except on rare occasions perhaps?

A. Except on rare occasions, yeah.

Q. And was there a procedure whereby you approved the creation of the data entries?

25 A. There was a procedure, yes.

Q. What was that?

A. Well they have to follow the process of entering and checking, approving which account to be put in correctly, the accountant I was working with he used to check all the accounts where the codings went, so.

30

Q. Who was the name, what was the name of that accountant?

A. Tony Sevidon(?).

35 Q. And was he with you from March 2011 right through to April 2014?

A. No.

Q. At some stage did he leave?

A. No, he started from my memory 2012, towards the end of 2012.

40

Q. Prior to him who fulfilled that role?

A. There was another lady, Susan White, she was there temporary.

Q. And these people reported to you?

45

A. Correct, yes.

Q. And you had a procedure or an arrangement for approving of their sign offs shall we say?

A. Correct, yes.

50

Q. In relation to board meetings you'd mentioned that GLALC had board meetings bi-monthly, every second month, that's right?

A. Correct, yes.

5 Q. What was your role in the preparation of board papers for these bi-monthly board meetings?

A. You prepare the papers, all the financials including GLALC and the subsidies and produced it to the board.

10 Q. All right.

A. Produced - well, my role was to produce the papers and provide it to the CEO who would reveal those financials with me and they will be sent off to the board as well as later they had a finance sub-committee so the board reports will be produced to the sub-committee first and if there were any questions or
15 whatever the discussion will be done on that subcommittee meeting prior to the board meeting, probably five days prior to the board meeting or a few days before and then once the sub-committee approves it they will be producing those reports to the board, to the other board members.

20 Q. Let me just start at the beginning of that process in a little more detail, what was the actual document or documents that you produced called?

A. Profit and loss and balance sheet most of the time.

Q. So the monthly or bi-monthly report had firstly a profit and loss statement?

25 A. Mm-hmm.

Q. Secondly, a balance sheet?

A. Correct, yes.

30 Q. Did they contain comparatives to any prior year period?

A. No, it was compared to the current year's budgets.

Q. So the comparison was to the budget for that year?

A. Correct, yes.

35

Q. And was there a written commentary prepared by you as part of this report?

A. Basically there was no written comments but there was line by line discussion on the comparison with the finance sub-committee.

40

Q. What, were there notes or comments on the comparison?

A. If there's any variations, yeah, from the budgets they will comment on that.

Q. Did you ever attend the board meetings?

45 A. Correct, yes, I did.

Q. What was the normal procedure when you attended a board meeting, were you present for the whole of the meeting or for part only?

A. Just the part of the financial reporting, that's it.

50

Q. That was a process which would culminate in the adoption or approval of the management account for that meeting, right?

A. That is correct, yes.

5 Q. If the meetings were bi-monthly is it correct to assume there was something of the order of six or so meetings of GLALC per financial year?

A. Yeah, that is correct, yes, that's--

Q. Starting from--

10 A. That had to be, yes.

Q. Starting from March 2011 when you commenced?

A. Yep.

15 Q. So on that assumption in that three year period you've probably attended of the order of about 18 GLALC board meetings, would that be right?

A. Most likely, yes, yes.

20 Q. In general terms was it usual for there to be much discussion at board level about the management accounts presented and the management and the accounting report presented to the board meeting?

A. As I mentioned the management accounts were produced to the subcommittee first, finance subcommittee.

25 Q. About when did the subcommittee usually start?

A. Sort of from memory it would be 2012, late 2012 or so.

Q. Thank you, carry on?

30 A. Yeah, yeah, prior to that was all the board - the financial were produced directly to all the board members for discussion and reason the finance subcommittee was implemented was that the board meetings went for too long on the discussion on the financials. So to cut that time was everything was nitted down to the subcommittee level, the finance subcommittee level and then it went to the board for the final approval.

35

Q. Who are the members of the finance subcommittee from 2012 onwards?

A. From memory I can remember Cindy Cronan, John--

Q. Starting with her, she was the chairperson was she not?

40 A. Yes, that's correct, yes. John Dixon.

Q. John Dixon?

A. Yeah and--

45 Q. He's a consultant is he not?

A. No, he's not. He was a director.

Q. He's a director, I apologise, thank you.

A. You're right, and George Belford.

50

Q. Was Mr Johnson the CEO also on the finance subcommittee?

A. Yes, he used to sit on the subcommittee as well, and myself.

Q. And that was ex officio I take it, he sat on all subcommittees?

5 A. That is correct.

Q. Because he was CEO?

A. Yeah. And myself and my accountant sat on it too

10 Q. The accounting standards that you had to comply with in the preparation of management reports and annual reports what were they?

A. They're normal accounting standard, yeah.

15 Q. Were there any particular or exceptional accounting standards that applied simply because the entity was an Aboriginal Land Council?

A. No.

Q. Were there any other special reporting requirements required under the Act?

20 A. Not that I can remember.

Q. And when I say, the Act, you know that I'm referring to the Aboriginal Land Rights Act of 1983 don't you?

25 A. There was no - from my memory I can't remember any special requirement.

Q. But you're familiar with the Aboriginal Land Rights Act are you not in general terms?

A. In general terms, yes.

30 Q. You knew that the Land Council was constituted under that Act?

A. That's correct, yes.

35 Q. What was the procedure at the conclusion of each financial year to finalise the annual report for that year insofar as you and the finance department were concerned? Let me help you.

A. Yeah, sorry.

Q. I presume at the end of the financial year you prepared some draft accounts, shall we say, or financial statements for that financial year, correct?

40 A. No, I didn't. The management accounts I prepared.

Q. Yes.

45 A. The financial, completed financial accounts where a draft when were produced and prepared by Lawler Partners.

Q. Does the MYOB system enable you to prepare a draft financial statement at the end of any particular accounting period?

A. That is correct but that was passed to the Lawler Partners as to--

50 Q. I see.

A. If there is any variation, you know, corrections or whatever so they--

Q. So all the MYOB files were made available to Lawlers, is that right?

A. Correct, yes.

5

Q. And I take it that you then incorporated with an assisted Lawler Partners in their preparation of the financial statements for that year?

A. Correct, every year.

10 Q. And that was particularly the 2011 financial year?

A. Yes.

Q. That occurred only some three months after you had commenced employment?

15 A. Correct.

Q. Then of course they would have 2012 and 2013?

A. Correct.

20 Q. Because you were there for the entire year and then 2014 you had left before the end of that financial year, correct?

A. That's correct, yes.

25 Q. So you had no part at all in the preparation of the 2014 annual report or financial statements?

A. Correct.

Q. Who at Lawler Partners did you deal with?

A. Mostly the staff they had there for that year, you know.

30

Q. Who was the senior partner who signed off or was responsible?

A. I believe Hickey(?) was the senior partner, he was the senior auditor as well. There was a Scott, there was a guy called Scott Tam - Talbert?

35 Q. Did you deal mostly with Mr Hickey or with Scott?

A. Both, basically both, yeah, yeah. Scott was more on ground basically doing the work, doing the audit.

40 Q. And it was a little bit of an issue with the 2011 statements was it not, didn't they require to be restated at some stage?

A. Not that I can recall 2011.

45 Q. One of the things I take it that you would have done when you commenced employment was to have made yourself familiar with the financial position of GLALC and its subsidiaries at that time, right?

A. That is correct, yes.

Q. Did you for instance have occasion to look at prior year annual reports for GLALC?

50 A. That is correct, yes.

Q. Doing the best you can now recall what years would you have looked at when you started employment in March 2011?

A. Probably one or two years back, from my memory.

5 Q. So you probably would have looked at the 2010 annual return?

A. Yeah.

Q. And maybe even the 2009?

A. Yeah.

10

Q. Possibly the 2008?

A. Not that I can recall that far back, not necessary(as said).

15 Q. Would you also have looked at the Gandangara community land and business plan and that was approved in 2008, was that a document with which you would have made yourself familiar?

A. No.

20 BAIRD: Might the witness be taken to some of the documents. I will go firstly, Registrar, to the folder which is marked (I) A.

DEPUTY REGISTRAR: Have you got a tray there, I'll give you the--

25 BAIRD: My instructing solicitor--

DEPUTY REGISTRAR: Have you got?

30 BAIRD: There's a copy for you, Registrar, up there on the top, I think they're arranged in order.

DEPUTY REGISTRAR: Do you want to try there for when - I'll give your instructing solicitors leave to approach the witness to provide them with a copy of that folder.

35 BAIRD: Now is a convenient time to enquire of you, Registrar, which was the preferred procedure. One possible way to do it is for all of the 14 folders to be marked--

DEPUTY REGISTRAR: 1 to 14 as MFIs?

40

BAIRD: --as they are marked on their spine. For instance, the first volume is split itself into two volumes, so (I), (II). It might be convenient if I - because that's how I'm going to refer to the volumes, for instance, it'll be (I), A and then by tab and then by page, and for each volume then to be marked as an MFI with a number that corresponds to the numbering that is already on the spine.

45

DEPUTY REGISTRAR: The only issue is (I) B.

50 BAIRD: When we get to volume 9 - they're arranged in that order because they deal with certain topics, like the financial statements take two volumes, so

- that's why it's (I) A and (I) B, and then the correspondence at the end, for instance, is volume 9 rather than (IX), and that falls into four volumes. It's been done that way for a reason, if I could keep with that numbering it might be more convenient. And then if I could just do a collective tender of all of the
- 5 14 volumes now and they be marked respectively as they bear, if that's a convenient course for you, Registrar.

- DEPUTY REGISTRAR: I just can't mark one folder as (I) A and one as (I) B has that been picked up? I can't mark an MFI as (I) A or an MFI (I) B. The
- 10 only way you would apply such a process would be if you ran out of letters. So once you got to Z you would then go to (I) A, (I) B, et cetera. I know it might cause some confusion if someone's reviewing the file at a later stage, might not expect there'd be that many MFIs when they're clearly not.

- 15 BAIRD: The other possibility was to mark the 14 volumes collectively as MFI 1 and then I'll refer to them by their sub-folder designation.

- DEPUTY REGISTRAR: I can do that. I'll mark all 14 volumes as MFI 1 but note - note within what comprises MFI 1 are volumes (I) A, (I) B, volume (II),
- 20 volume (III), volume (IV), volume (V), volume (VI), volume (VII), volume (VIII), volume 9A, volume 9B, volume 9C, volume 9D. Mr Baird can you help me out?

- BAIRD: I think there should be a volume (X) as well. Roman numeral X, yes,
- 25 volume (X). That's it, I think, Registrar.

DEPUTY REGISTRAR: I have a further one named Reference Folder Summonses and Orders.

- 30 BAIRD: That's not part of the MFI.

DEPUTY REGISTRAR: That will not be marked as an MFI.

- BAIRD: No, Registrar, that's for convenience
- 35

DEPUTY REGISTRAR: MFI ends at volume (X).

BAIRD: Thank you, Registrar, that's most helpful.

- 40 DEPUTY REGISTRAR: I give you leave to approach the examinee and provide him with a copy of the folder bearing volume (I) A.

BAIRD: Thank you, Registrar.

- 45 Q. In that volume before you, Mr Gundar, could you turn please to tab 4 page 115? The document is entitled "Gandagara Local Aboriginal Land Council, Community Land and Business Plan 2008 to 2011". If you turn over the page you will see an index of its contents and the document has a total of some 50 pages. I want to refer you to a couple of pages in it, but my first question, is
- 50 that document, the 2008 to 2011 community land and business plan,

something with which you became familiar in the course of your duties?

A. I've seen the documents, yes.

5 Q. Could I direct your attention firstly to the page that's number 124 in the bottom right hand corner, the internal numbering is page 10. If you have page 124 you'll see the heading towards the top of the page at paragraph 7.1.3 "Development of Land and other Assets", do you see that?

A. That is correct, yes.

10 Q. Do you have a recollection of reading or being familiar with the contents of that paragraph at any time?

A. No, this is - reading the first time, this thing.

15 Q. Look at the second paragraph there, it says,

"Where any form of lease, transfer or disposal of land is envisaged then division 4 of ALRA shall be rigorously applied",

do you see that?

20 A. Yes.

Q. Do you know what division 4 of ALRA was?

A. No.

25 Q. Then follows a table which has a strategy and a designation of responsibility and a timeline, do you see that?

A. That is correct, yes.

30 Q. And then follow two paragraph towards the foot of that page. The first one is in order to ensure clear delineated accountability and transparency, GLALC shall establish a wholly-owned corporate entity to act as the development manager for each development undertaken, do you see that?

A. Yes.

35 Q. "Here is an example, stage 2 of Gundagara estate will have as the development manager the wholly-owned subsidiary of GLALC", et cetera?

A. Mm-hmm.

Q. Was that something with which you were familiar?

40 A. No, no, this was done prior to me so, no, I'm not familiar with this thing.

Q. Did you understand that it was proposed that for each separate development there be a separate entity, a single-purpose vehicle?

A. I understood that, yes.

45

Q. Because that impacted of course on the accounts that you were maintaining and preparing?

A. Correct, yes.

50 Q. And the final paragraph,

5 “None of the wholly owned corporate entities will have administration or finance capabilities, as all the financial and administrative functions will be performed at commercial rates by GLALC, thus ensuring full transparency, accountability and separate file retention”,

do you see that?

A. Yes, that's correct.

10 Q. That was something you understood, wasn't it?

A. That's right.

Q. If you turn over to page 132, paragraph 8.1, you can again see reference under the heading,

15 “Corporatisation of GLALC Organisational Structure to a Process of Incorporating Single Purpose or Special Purpose Vehicles for each Separate Business Undertaking”,

20 do you see that?

A. That's correct, yes.

Q. That was something you did know something about, wasn't it?

A. That is correct, yes, but not from the community land and business plan.

25 Q. When a special purpose vehicle was incorporated, did you have any role in the incorporation of that entity?

A. Maybe one, one of the corporations.

30 Q. Which one?

A. Maybe one of the corporations.

Q. You weren't normally company secretary of any of the entities, were you?

A. Not initially, no. When they're reformed now.

35 Q. The process of corporatisation was something that would normally be undertaken by the company secretary, wouldn't it?

A. Correct, yes.

40 Q. Could you turn to page 154, please, Mr Gundar? You'll see there is a heading, "Organisational Structure". I won't read that, but you can see under the bullet points various programs that are headed by GLALC?

A. Mm-hmm.

45 Q. Then over the page at 155 there's an organisational structure?

A. Mm-hmm.

Q. Does that structure accord with your understanding for the time that you were finance manager for GLALC?

50 A. Correct, yes.

Q. Turn over to tab 5. That document is headed, "Gandagara Local Aboriginal Land Council Annual Report for 2008-2009", do you see that?

A. Yes.

5 Q. I won't take you to it in any detail, but if you go also to tab 7 you'll see the equivalent annual report for the 2010 year, do you see that?

A. Correct.

10 Q. You've mentioned before that you made yourself familiar with the accounts when you arrived in March 2011, is it likely that you saw either or both of the documents at tabs 5 and 7 in the period March to June 2011?

A. Just the financial reports, that's it.

Q. Just the financial report section?

15 A. Correct, yes, nothing else.

Q. If you turn to tab 6, please, Mr Gundar, you'll see that's headed "Management Letter and Secondary Report for the Year Ended 30 June 2009" and it's been prepared by Lawler Partners, do you see that?

20 A. Yes.

Q. Do you think that was a document that you also saw in the last quarter of the 2011 financial year?

A. (No verbal reply)

25

Q. If you can't remember, Mr Gundar, just say that you can't remember?

A. Look, I can't remember this looking at the management letter for that period.

30 Q. I'll take you to another one more recently?

A. Mm-hmm.

Q. If you can't remember we won't waste time on it. Can I take your attention to tab 11, this is the 2011 annual report for GLALC?

35 A. Mm-hmm.

40 Q. I'm going to ask you a number of questions about this document - and I see the time, Registrar - but could I open up the topic by asking you, Mr Gundar, what was the extent of your involvement in the preparation of, overall, the annual report and in particular the financial statements that start at page 315?

A. Sorry, which tab were you looking at?

Q. I'm in tab 9?

45 A. Right.

Q. So we're looking at the 2011 annual report. I want to ask some general questions about that document. Firstly, is that a document that you've seen before?

50 A. Annual report, yes. I may have seen this before, yes.

Q. Because you had commenced employment in March 2011 and from your earlier answer I take it you had some part in the preparation of at least part of this document?

A. That's correct, yes.

5

Q. So directing your attention particularly to the financial statements that start at page 318, and go through to and including page 345, do you see that?

A. Yes.

10 Q. Page 318 is headed "Financial Statement for the Year Ended 30 June 2011"?

A. Mm-hmm.

15 Q. There's an index over the page starting at 319, then there's a board members report?

A. Yes.

Q. I take it that you had no part in the board members report?

A. Correct.

20

Q. Then at page 323 we start with a document headed, "Statement of Comprehensive Income"?

A. Mm-hmm.

25 Q. The following page, 324, there's a statement of financial position?

A. Mm-hmm.

Q. Is that the new term for balance sheet, Mr Gundar, to assist old-fashioned people like me?

30 A. That is correct, yes.

Q. If I happen to refer to it as a balance sheet, please forgive me, you would understand, would you not? And then all of page 326 we have a statement of cash flows?

35 A. Mm-hmm.

Q. Then starting at page 327 and going through to page 345 are the notes to the financial statements, right?

A. Correct, yes.

40

Q. In general terms, before I take you to any specific questions, what was your part in the preparation of the documents starting from page 323 and going through to page 345?

45 A. Photocopy the annual - the financial statement and attach it to this annual report.

Q. Sorry, you'll have to repeat that, I didn't fully understand that?

A. Photocopy the financial report, which was prepared by Lawler Partners, and attach to this report.

50

Q. In general terms, you've said a moment ago, your department had responsibility for the MYOB accounts?

A. Correct.

5 Q. You made the MYOB accounts available to Lawlers?

A. Correct, yes.

Q. You did not yourself prepare a draft statement of comprehensive income, did you, that was done by Lawler Partners, do I understand correctly?

10 A. That is correct. This is prepared after they have reviewed the MYOB after correcting if there was any corrections to be done, and they prepared these audited financials.

Q. They review the MYOB accounts, any enquiries they come to you, you answer their enquiries as best you can?

15 A. Yes.

Q. They produce this document at page 323, for instance, as a draft?

20 A. Correct, yes.

Q. They invite any further comment from you on the draft, or is that something that's simply produced by them?

25 A. Yeah, they give us a draft for review. If there is any corrections or if there is any disagreement with the figures or anything which I thought is not right or, you know, any enquiry, and then if there was any corrections to be done, correct it or not correct it, and then the documents were, you know, finally prepared for the directors to sign off.

Q. So there's a process of consultation, a review of the draft and ultimately a final version produced which contains all your input, such as it was?

30 A. Mm-hmm.

Q. And when the final document was produced it then went to the board?

35 A. Mm-hmm.

Q. Were you present when the board approved these financial statement?

A. No, the Lawler Partner comes in, Clayton, he normally comes and produces these documents to the board, majority of the time, yeah.

40 BAIRD: Registrar, I want to move into this annual report in a little more detail. Having regard to the time, would that be a convenient time?

45 DEPUTY REGISTRAR: Will be. We'll reconvene at 2 o'clock and try and save some of the time that we've lost so far today. So we'll adjourn now and promptly reconvene at 2 o'clock, please stand.

BAIRD: Registrar, just before you rise--

DEPUTY REGISTRAR: Yes?

50

BAIRD: I think I've got an hour or two with this witness, I'm worried whether I should be asking Mr Sing to come back at 3.30 and I don't want to impose on the Court on the first day, but I'm trying to get through witnesses. Is 4 o'clock the deadline, this afternoon?

5

DEPUTY REGISTRAR: Unfortunately it is, today. Other days I'm more than happy to try and accommodate you, it's just today I have commitments outside of work. I'd be more than happy normally to accommodate, I just cannot today, that's all.

10

BAIRD: We may talk with Mr Sing, and if we've got to finish at 4, I might ask Mr Sing to come--

15

DEPUTY REGISTRAR: It may not be practical for him to come here for half an hour, and we'll see what we can do.

LUNCHEON ADJOURNMENT

20

DEPUTY REGISTRAR: Mr Baird, I was just informing your instructing solicitor that the Court may be able to afford you some further time on Wednesday morning--

BAIRD: I would be grateful.

25

DEPUTY REGISTRAR: --because I know that that's the time that we have Ms Cronan and someone else doubled up both at 11 o'clock so I suggested to Mr Lim that he contacted Ms Cronan to find out what time she is available. Obviously the earliest the Court can start is 9 o'clock. If it has to start then I will do my best to try and see if we have a courtroom so that just might make it easier.

30

BAIRD: It would be of considerable assistance, Registrar, I would be grateful.

35

DEPUTY REGISTRAR: I just cannot do this afternoon. I tried to do during the lunch adjournment to see what assistance I can do this afternoon and I just cannot do this afternoon.

BAIRD: I understand and I am grateful, Registrar, very grateful.

40

DEPUTY REGISTRAR: It may be 10 o'clock. 10 o'clock might be the earliest. I can try and see if 9 o'clock is suitable but it may only be like 10 o'clock. At least an hour is better than nothing at all.

BAIRD: Yes, Registrar, quite so.

45

DEPUTY REGISTRAR: Mr Gundar please come forward again, please take a seat where you were sitting before and I remind you once more that you are still under oath. Thank you, please take a seat.

50

BAIRD

Q. Mr Gundar, you mentioned in one of your answers before the luncheon adjournment that you had had some part in the preparation of budgets for the GLALC, is that right?

A. That is correct, yes.

5

Q. If you would turn to page 310 behind tab 9 in the folder before you, that is MFI 1 volume 1A, do you see tab 9, the document we were looking at before which was the 2011 annual report at page 310. Do you see that document is entitled Budget For 2010/2011? Do you see that?

10 A. Yes.

Q. I take it because of your arrival in March 2011 that you actually had no part in the preparation of that document, would that be right?

A. That is correct, yes.

15

Q. However, when you arrived in March 2011, I take it that that is a document that you would have seen?

A. Not in that format.

20 Q. In what format would you have seen the budget for 2011?

A. There were more in detailed format. It's not--

Q. If you look over the page, that document seems to extend for two pages only, is that right?

25 A. That is correct, yes.

Q. That's appendix A and then appendix B starting at page 313, there's another budget which goes for three pages. It seems to go through to page 315, do you see that?

30 A. Yes.

Q. Again, the document that starts at page 313, is that a document that you saw when you first came to GLALC?

A. Not in this format but yeah, I've seen similar, yeah.

35

Q. That may be a summary of a budget, is that right?

A. Maybe yes. Yes, maybe it's a summary.

40 Q. Dealing with it at a higher level, one of the responsibilities you would have undertaken when you arrived was to make yourself familiar with the budget for that financial year, right?

A. That is correct, yes.

45 Q. For instance, for the 2011/2012 year, I take it you would have had some role in the preparation of the budget for that year?

A. Correct. No.

Q. No?

A. No. The budgets for 2011/12 were already done when I arrived.

50

Q. They were already done for that year when you arrived, right?

A. Correct, yes.

5 Q. For the 2012 budgets, would you have familiarised yourself with them when you arrived?

A. 2012 year I prepared it.

10 Q. Because for all the management accounts for each of the bi monthly meetings during the 2012 financial year, you had to make comparisons between the actuals and the budget projections, correct?

A. Correct, yes.

15 Q. So the 2012 budget, even though you didn't prepare it was something with which you would have become quite familiar during 2012, correct?

A. Correct.

20 Q. For the 2013 financial year, did you have some part in the preparation of the budget for that year?

A. That is correct.

Q. Who had the major responsibility for that, yourself or Lawler Partners?

A. Myself.

25 Q. And was there a process of approval of the budget?

A. That is correct.

Q. What was that process?

A. Well, again it goes to the finance committee.

30 Q. And then?

A. And then for the discussion and if there's any corrections or amendments to be done and once that is done it was, the budget was presented to the board for approval and--

35 Q. So at the finance committee level Mr Johnson would have seen the budget for 2013, correct?

A. That is correct, yes.

40 Q. Along with the other members of the finance subcommittee?

A. Yeah.

Q. And then it went to the board for final approval?

A. Correct, yes.

45 Q. About what time in the year was the 2014, correction, 2013 budget approved, before or after 30 January?

A. Around about February that year.

50 Q. As early as four months before the end of the financial year the budget for the next year was drafted and approved?

A. That is correct because GLALC, because it's all linked with the GLALC budget and the GLALC budget has to be with the New South Wales Aboriginal Land Council before 20 April, 20 or 25 April from memory.

- 5 Q. I see, thank you for your assistance there. Just leave that document open in front of you where it is but I want to show you another document because we've been talking about it and it will assist your recollection. In the next volume which is volume IB, could you go to tab 14 please and at tab 14 you will see the GLALC 2012/2013 annual report. Do you see that?

10 A. Mm-hmm.

Q. And if you turn through to appendix A in that document which starts at page 482, following page 482--

A. Sorry, you're too quick. Tab 14?

15

Q. Tab 14, appendix A starts at page 482. Do you see page 482 at the foot of the page?

A. Yeah, just give me the page numbers. Yeah.

- 20 Q. And that's headed Appendix A Budget For 2013-2014, do you see that?

A. That is correct, yes.

Q. And if you look over the page, if you want to take a moment to look at pages 483 through to 484--

25 A. Yes.

Q. --is that a document that you had a hand in preparing?

A. Correct.

- 30 Q. That's the budget for the 2014 year that you mentioned in your answer earlier that had to be approved by the board in February, right?

A. Correct, yes.

- 35 Q. In order to go to the New South Wales - what did you say New South Wales?

A. New South Wales Aboriginal Land Council.

Q. Aboriginal Land Council. That budget had to go to it for approval by a certain date in April you mentioned, was that right?

40 A. That is correct, yes.

- 45 Q. You can put that document to one side. I just wanted to show you a document that might have assisted your recollection in relation to your previous answers. We will return to the document that we were looking at which is tab 11, the 2012 annual report in volume IA. The first part of the report starting at page 360, I know you had no part in the preparation of it but was that a document that you saw at or about that time?

A. Mm-hmm.

- 50 Q. Sorry, you do have to say "yes" or "no" I'm afraid for the sake of the

transcript, Mr Gundar?

A. Sorry, which page are we looking at, 360?

Q. Starting from 360 yes?

5 A. Yes.

Q. And in general terms was that a document you saw at about the time of the issue of that annual report?

A. Just the financial parts of it.

10

Q. For instance, were you familiar with section 3 on page 360, the functions of the Aboriginal Land Rights Act?

A. I haven't seen it but--

15 Q. Particularly section 52, if you see that on page 360?

A. Yeah, that's correct, yes.

Q. Yes, in general terms that was something you were familiar with generally?

A. Yeah, in general terms, yeah

20

Q. You will see on page 364 paragraph 8 is the budget that we've just referred to?

A. Yeah.

25 Q. If you turn over to page 366, you will see there's a list of consultants and I want to ask you questions about two of those consultants. Do you see the first one, Dixon Capital?

A. Mm-hmm.

30 Q. Do you know who controls that entity?

A. The person I dealt with was David Wing.

Q. That's right and if you go to the second last one, EMC, what do the initials EMC stand for to your understanding?

35 A. (No verbal reply).

Q. It's Essential Media Communications, isn't it?

A. Correct, yes, yes, that's correct.

40 Q. And do you know the person associated with that?

A. (No verbal reply)

Q. Does the name Mr Perkins ring a bell?

A. Chris Perkins, yeah, Chris Perkins.

45

Q. Perkins is a fairly famous name in the world of Aboriginal affairs is it not?

A. As I recall.

Q. Do you know if Mr Christopher Perkins is any relation to Mr Charles Perkins?

50

A. No idea, no, I don't know.

Q. Over the page at page 367, Mr Gundar, paragraph 20, you will see there's a reference there to land disposal?

5 A. Yep.

Q. And it says that "land disposal continues to be progress", presumably that should read progressed "along with land acquisition in line with the GLALC members CL and BP. Do you know what the CL and BP is?

10 A. Yeah, community land and business plan.

Q. That's right "and current resolutions by the members and that this process continues to be progressed in accordance with the Act and the Land Council", do you see that?

15 A. Yes.

Q. To your knowledge in the year ending 30 June 2012 - sorry, I withdraw that - the year ending 30 June 2011. We will come to 2012 in a moment. In the year ending 30 June 2011, were there land disposals in progress by GLALC?

20 A. When I joined the organisation yes.

Q. And do you recollect what those proposed disposals were?

A. They were not proposed but they were - when I joined the organisation, the land were already disposed, deposits were already taken, they were at the final stage of final payment. There was, I can't remember, there was about, quite a bit, final payments coming through around about that time.

25

Q. So it was past the proposal stage, it was into the realm of actuality you say?

30 A. That's right, the ownership were changing.

Q. And contracts had been exchanged?

A. That's correct.

35 Q. And the sale process was nearing completion?

A. Correct, yes.

Q. And there were two particular properties that were in the process of being sold at that time were there not? One was called the stage two development, do you remember that?

40

A. Yes, stage two, yes, that was, yeah, coming to the final stage of - or transfers were happening.

Q. And the second one was lot 101 Barden Ridge, right?

45

A. From my memory, then again I just feel it's back, the Barden Ridge was already completed from my memory and stage two were getting completed when I joined the organisation.

Q. I want to ask you some more questions in relation to the recording in the finances and the financial statements of GLALC and its subsidiaries of the

50

proceeds of sale of these two properties. Were you familiar firstly with the process of approval for the sale of properties owned by GLALC?

A. Vaguely. Vaguely I can, I was never involved in it but vaguely I would remember. It depends upon the question.

5

Q. Can I ask you to go to tab 9 in volume 1A before you and to turn to page 310. That is the first page behind appendix A which is the budget for 2011? I appreciate that's not a document that you prepared but you have said that you did have some familiarity with the budget with that year upon your arrival?

10

A. Mm-hmm.

Q. Can you look at the third entry from the top of the page under the heading Income. The second entry below that says, "development stage two sales", do you see that?

15

A. Yes.

Q. And in the third column from the right is the heading Gandangara Estate Stage Two Development, do you see that?

20

A. Correct, yes.

Q. And the total amount there is \$15.431 million?

A. Mm-hmm.

25

Q. Can I take it from that that what is budgeted for the 2011 year at some 15.4 odd million dollars would be received by the Land Council from the sale of the - sorry, I will correct that to development and sale of stage two, right?

A. Yes.

30

Q. When we talk about stage two, where is this property physically located?

A. In boundaries of Gandangara I suppose.

Q. Whereabouts is that?

A. Sutherland Shire area.

35

Q. It's next to Barden Ridge isn't it?

A. Yeah, in the Sutherland Shire region.

40

Q. And what did you colloquially refer to it at? Did you call it stage two or did you call it by a suburb name?

A. No, stage two, I always knew it as stage two.

Q. And that's on Old Illawarra Road, Barden Ridge, isn't it?

45

A. I've never been to the actual location but I, you know, I know the - by looking at the map.

Q. Can I ask you to turn over to page 320. Just as we work our way down the page you will see a heading Board Members and there's the list of the persons who are members of the board of GLALC during that financial year?

50

A. Mm-hmm.

Q. In particular you will see Ms Cronan. She's the chairperson, correct?

A. Yes.

5 Q. And you will see at about point 6 on the page under the heading Principal Activities, there is the paragraph that commences "During the year there were three subsidiary companies registered" and you see them listed?

A. Mm-hmm.

10 Q. That was something that you became aware of when you joined, did you not, the subsidiaries?

A. Yes, that's correct, yes.

Q. Because you would have had responsibility for the maintenance of their accounts, correct?

15 A. Mm-hmm.

Q. Then the heading Operating Results, the net surplus of the Land Council amounted to \$5,051,232, do you see that?

A. Yes.

20

Q. And under the review of operations, it says "The Land Council earned an operating surplus of \$5,264,297", right?

A. Yes.

25 Q. And that came from the proceeds of sale of the stage two development and lot 101 Barden Ridge, correct?

A. Not necessarily.

30 Q. Let me assist you. Turn please to page 323. Do you see that document is entitled Statement of Comprehensive Income for the year ended 30 June 2011?

A. Mm-hmm.

35 Q. The eleventh item down that page is entitled Net Gain on Sale of Property, Plant and Equipment and there's a note 3 beside it and the figure for 2011 is \$5,214,460, do you see that?

A. Yes.

40 Q. So I take it that one should turn to note 3 for some assistance on how that figure of \$5.214 million is derived?

A. Mm hmm.

Q. Note 3 you will find on page 337, could you turn to that, please, Mr Gundar?

45 A. Yes.

Q. The heading for note 3, Gain on Sale of Property, Plant and Equipment, and the very first entry Proceeds from Sale of Land Assets, Stage 2 Development \$14,023,182, do you see that?

50 A. Mm hmm.

Q. And then immediately beneath it 101 Bardon Ridge \$2,500,000 exactly?
A. Yes.

5 Q. And it takes away cost of sales?
A. Mm hmm.

10 Q. Of \$11.308 million and derives a total there of \$5,214,460, do you see that?
A. Yes.

Q. And that's the figure on page 337 that appears at the eleventh entry that I took you to on page 323, is it not?
A. Mm hmm.

15 Q. It's also the amount that was referred to in the budget on page 310, \$15.431 million as being the gross sales?
A. Yep.

20 Q. And if you go back to note 3 you can see that in fact gross sales amounted to some \$16.5 odd million in actuality whereas they'd been budgeted to produce only \$15.4 million a year earlier, correct?
A. If I can correct you?

25 Q. Yes, please?
A. That is for stage 2. If you look at the heading on the budget it's stage 2, it didn't mention Bardon Ridge.

30 Q. Alright, thank you for that correction and if you'd turn to page 320, the figure at about .9 on the page that I took you to for the operating surplus of \$5.264 million?
A. Which page was it?

35 Q,. Page 320?
A. Yep.

40 Q. That operating surplus is in large measure made up from the net gain on the sale of a property which appears on page 323, does it not?
A. That is not correct if you look at it. The majority was but not the whole, the bottom figure, because it was consolidated figures there.

45 Q. Alright, let us deal with it item by item which is relevant to the next topic we're going to come to. Look at page 323. At .8 on the page is the figure Surplus or Deficit before Income Tax and the amount \$5,051,232, do you see that?
A. Correct.

50 Q. That is the figure that appears on page 320 under the heading Operating Results, right?
A. Correct, yes.

Q. So the net surplus is \$5.051 million?

A. Mm hmm.

5 Q. But the operating surplus which follows from the immediately succeeding line on page 320, the operating surplus is \$5.264 million, correct?

A. Yes.

Q. That's what it says, isn't it?

A. Yeah, that is correct, yes.

10

Q. And that is recorded in a document, the report to the board, which underwent the process you described to us before lunch of being recorded firstly in the MYOB accounts and then going to the auditor and finally a financial statement being produced which had your input?

15

A. Mm hmm.

Q. Now the operating surplus is a very important figure, is it not?

A. Correct, yes.

20

Q. Because apart from the requirements of the Act and of the council itself it also relates to the payment of bonuses to certain members of staff, does it not?

A. That is correct, yes.

25

Q. Particularly the chief executive officer, Mr Johnson, right?

A. Correct, yes.

30

Q. I will take you to specific documents in a moment but is it not the operating surplus which is the relevant figure for use in determining Mr Johnson's bonus?

A. That is incorrect.

Q. It's a different amount, is it?

A. It's a different calculation.

35

Q. What calculation is it to which you refer?

A. I can't recall from my memory but from his contract the calculation method used in the prior year was different than what you're trying to get here as net surplus and the bonus calculation.

40

Q. Alright, I'll take you to some specific documents in a moment. For the payment of bonuses it's the group consolidated figures that are used, are they not, not the figures for the individual GLALC, correct?

A. That is correct, yes, from memory, as I remember.

45

Q. So one needs to know also what the subsidiaries involved are before one can actually determine a group figure, correct?

A. Mm hmm.

50

Q. And I've taken you to the documents in tab 4 before lunch which deal with

the structure in general terms and there's a listing of the subsidiaries also, is there not, in the annual report at page 344, if you could turn to page 344 to satisfy yourself that that's the case and you'll see under note 22 Controlled Entities, there's reference there to three subsidiaries?

5 A. At that time, yes.

Q. At that time?

A. Mm hmm.

10 Q. And in subsequent years the process of incorporating subsidiaries continued, some subsidiaries were retired, for want of a better word, and others replaced them and new ones were brought into existence, right?

A. Yes.

15 Q. And those details are contained in subsequent years annual reports, right?

A. Mm hmm.

Q. So it's the group figure that one needs to have regard to in terms of calculating bonuses, correct?

20 A. Yes.

Q. Could I also, while we're in this document, direct your attention to page 338 and the notes 8 and 10 which relate back to the figures on page 324. So if you look at note 8 you'll see the heading is Trade and Other Receivables?

25 A. Mm hmm.

Q. And the third entry under the heading Current is Moneys held in Trust by Solicitors and there's an amount there of \$7,896,117?

A. Yes.

30

Q. And that represents part of the proceeds of sale from the stage 2 development, does it not?

A. Correct, yes.

35 Q. In other words there was a sale in process and it either had been partially or completely completed by 30 June 2011 but the moneys were still being held by the solicitors and hadn't yet been remitted to the council?

A. Correct, yes.

40 Q. And there's also under the heading Non-current a loan receivable from DLALC of some \$422,000, do you see that?

A. Yes.

45 Q. Do you know what that's about, note 8? If you need to look at page 324 under the heading Non-current Assets to assist your recollection please do so. I'm wondering whether you can explain to me why there is a non-current loan recorded as some \$422,000 described as loan receivable from DLALC in the accounts of GLALC?

A. Right.

50

Q. Does D stand for Deerubbin, to assist your mind?

A. Deerubbin Local Aboriginal Land Council engaged with Gandangara for their land development.

5 Q. Right?

A. Right, Gandangara assisted and remitted the invoices paid on behalf of DLALC creditors related mainly to land development, invoices were paid on behalf of DLALC by Gandangara, by GLALC.

10 Q. Stopping there a moment, you said GLALC assisted, how did it assist, what did it do to assist?

15 A. Because GLALC had experience in land development, right, so Bardon Ridge stage 2 and all, so forth. So DLALC approached GLALC to help them for land development and only reason is GLALC knew how. They had consultants who worked and they were familiar with the system of land development of the Aboriginal Land Councils so we knew how to avoid extra cost of development. They engaged with Gandangara to develop their land and once their land is sold, right, the surplus from the sale they will pay the loan back to Gandangara, when I'm saying they Deerubbin will pay the loan back to Gandangara and that was the deal. That was my understanding.

20 Q. Where did your understanding of the deal, as you call it, derive from?

A. From the CEO.

25 Q. Mr Johnson?

A. Mr Johnson and the board.

Q. What about Mr Sing, did he tell you about it?

30 A. No, when I joined the organisation Mr Sing left the GLALC at that time. He wasn't working for GLALC.

Q. About when did he leave?

A. October 2010, October/November 2010.

35 Q. So prior to your arrival?

A. Yeah, this is correct, yes.

Q. What about Mr Wing, did he have some involvement in this?

40 A. Mr Wing was the - what was he, consultant in between the project manager, he was basically a project manager for all the land development so until - he had the final say of approval once it went through the development when the payments were to be made to the land development creditors and all that.

45 Q. But Mr Wing was from Dixon Capital?

A. Correct, yes.

Q. He was a consultant to GLALC, correct?

A. Correct, yes.

50

Q. Now in terms of the deal, as you called it, the arrangement, as you understood it from Mr Johnson and others GLALC was to provide services to Deerubbin, DLALC?

A. Correct, yes.

5

Q. And for those services it was entitled to charge an amount?

A. That is correct, yes.

Q. And was the amount for those services ever recorded in an invoice?

10 A. That is correct, yes.

Q. So there was an invoice at one stage from GLALC to DLALC?

A. That is correct, yes.

15 Q. And that is the amount which appears on page 324 of \$422,973 as at 30 June 2011?

A. There was one invoice prepared at the end of the contract but however these figures were derived from multiple invoices which Gandangara remitted on behalf of Deerubbin Land Council including the service invoices so financial
20 services, consulting for land development services.

Q. But do I have it correctly that GLALC also paid amounts out on behalf of DLALC?

25 A. That is correct, on their invoices. So the creditor will invoice Deerubbin, just to clarify. Deerubbin had no finance to pay, right, GLALC will pay on behalf of Deerubbin and charge it as a loan amount. So there was no fund transferred to DLALC's bank account to pay, DLALC to pay the creditor, GLALC was paying those invoices on behalf of DLALC.

30 Q. So that is why on your explanation at page 338, note 8, the figure is recorded as loan receivable from DLALC?

A. Correct, yes.

Q. And that represents moneys paid out by GLALC on behalf of DLALC?

35 A. Correct.

Q. Which GLALC is entitled to recover from DLALC upon the sale of DLALC's property, right?

A. That is correct, yes, including the service invoices.

40

Q. And in addition to recovering moneys paid out on behalf of DLALC GLALC is entitled to render invoices for its services provided, correct?

A. That is correct, yes.

45 Q. And it's entitled to recover both amounts from DLALC?

A. Correct, yes.

Q. That's your understanding?

A. Yes including interest.

50

Q. And interest?

A. Including interest.

Q. Now, was this arrangement recorded in a document which you saw?

5 A. There was no documents.

Q. There was no documents?

A. No. There was an arrangement only.

10 Q. Okay, on your understanding and please me tell me how you derived your understanding between whom on behalf of GLALC and whom on behalf of DLALC was this arrangement entered into?

A. My understanding was between the GLALC board and the DLALC board.

15 Q. Right, who in particular?

A. Sorry?

Q. Who in particular, was it Mr Johnson or was it someone else at GLALC?

20 A. Well, liaising with the board Mr Johnson was the CEO so he - you know, it flew from - flowed to me, the information from there.

Q. I'm going to be a little bit more precise than that, please, Mr Gundar, you told me earlier that it was Mr Johnson and also other members of the board that told you about the arrangements with DLALC?

25 A. No, the board had the understanding. It was Mr Johnson who I reported to laid the agreement to me verbally.

Q. So Mr Johnson told you about the agreement?

A. Correct, yes.

30

Q. Did he tell you that he was the person on behalf of GLALC who had negotiated this agreement?

A. I'm not aware of that, yes.

35 Q. Did somebody else at GLALC tell you that it was Mr Johnson on behalf of GLALC who had negotiated this agreement with DLALC?

A. I'm not aware of that, no.

40 Q. When you mentioned the other board members a moment ago to whom in particular were you referring?

A. All the board members, they had an understanding there's a deal between - the land development deal was between GLALC and DLALC.

45 Q. You appreciate my difficulty, Mr Gundar, you can only give the Court evidence of what your understanding is?

A. That is correct.

Q. And your understanding has to be based on either documents but you say there's no document on this occasion?

50 A. Correct, yes.

Q. Or it's based on what someone else has told you, right?

A. That is correct, yes.

5 Q. I'm merely enquiring of you who were these other people who told you this information?

A. Nobody told me.

Q. Nobody told you?

10 A. Apart from the CEO.

Q. Apart from Mr Johnson?

15 A. Yep. Mr Johnson - as I reported to Mr Johnson and he explained to me this is the deal. All right, and it's been agreed between the boards and since I reported to Mr Johnson he said, "this is the deal and this is how you - the arrangement has been made and this is how the bills had to be paid on behalf of DLALC and once the development is completed then DLALC, once the agreement is done or the development is done, that's the deal, was that development has to be completed right. Once the land development is completed and the land is sold then the funds will be remitted back to GLALC.

20 The surplus of funds will be refunded to GLALC with interest.

Q. So your entire understanding of this arrangement ordeal is based upon information that was provided to you verbally by Mr Johnson?

25 A. Correct yes.

Q. Did you yourself directly deal with anyone from DLALC?

A. Only in the level of approving those invoices for payment.

Q. Well can you assist and explain that to me please?

30 A. The CEO I dealt with the CEO and they had a accounts person there. Those are the two people I dealt with.

Q. What are their names?

35 A. Kevin Cavanagh was the CEO. The accounts person's name was Alfredo, I can't recall his surname. His name was Alfredo.

Q. And you provided some assistance to DLALC in making sure that the invoices that were issued by GLALC were properly receipted and recorded by DLALC, is that right?

40 A. That is correct yes. The invoices, before we paid the invoices were approved for payment by DLALC by the CEO. He approved DLALC's the accounts clerk, you may call, took the invoices to the CEO to approve. And then he used to then email or fax or whichever form, hand delivered, to DLALC to make those payments on behalf of them.

45 Q. So they've summarised that there is in your mind no doubt that as at the 30 June 2011 when you were Finance Manager at GLALC that DLALC owed GLALC \$422,973.00?

50 A. Correct yes.

Q. And that is why that amount is recorded both in note 8 on page 338 and under the heading Non-Current Assets Trade and other Receivables on page 324?

A. Uh-huh.

5

Q. Is that right?

A. That is correct.

10 Q. Now reverting to the - thank you for that explanation Mr Gundar, reverting to the sales of property plant and equipment can you turn to page 326. This is the cash flows statement, do you see that heading at the top of the page, Statement of Cash Flows for the year ended 30 June 2011, on page 326. Do you have that?

A. Yes.

15

Q. The second entry there is payment to suppliers and employees, and the amount for 20/11 is an amount of \$3,129,326.00, do you see that?

A. Yes.

20 Q. Now do you know to whom those payments were made?

A. No idea, from my recall what's written here is to other suppliers. Whoever were the suppliers and employees at that time of GLALC, all the suppliers.

25 Q. Would it assist you if you went to the note 14A which is the note that relates to the summary of the cash from operating activities on page 326. If you go to note 14(a) on page 340 it gives you the breakdown of the total figure for that column of \$1.541198million, do you see that?

A. Yes.

30 Q. Now if you're looking at the figure for \$1.541198million that brings to account the debit of \$3.129326 million on page 326 and the credit of the receipts from tenants, government grants, interest received and NSW ALC allocation recorded in that column on page 326 does it not?

A. Yeah that's correct yes.

35

Q. That's under the heading Cash from Operating Facilities?

A. Mm-hmm.

40 Q. And if you look at note 14A it informs one does it not that there is a net income for the period of \$5.051million?

A. Uh-huh.

Q. Against which four lines below is to be set off again on fixed assets and there's a debit amount of \$5.214460 million?

45 A. Correct.

Q. Do you see that?

A. Yes.

50 Q. And that results in a net movement of funds of \$1.541198 million?

A. Yes.

5 Q. So if one wants to know what were the payments to employees being part of the amount of \$3.129326 on page 326 where should one turn in the accounts to obtain that information?

A. You're asking me.

10 Q. Mm. If it's of any assistance you might like to direct your attention to page 341. If you look at page 341 Mr Gundar, note 15, "Key management personnel compensation". Do you see that?

A. Uh-huh.

15 Q. It identifies at sub-paragraph A who are the key management personnel. The first person listed there is Mr Mark Johnson as Chief Executive Officer?

A. Yes.

Q. The second person identified is Cinderella Cronan as chairperson?

A. Yes.

20 Q. And towards the end of that column of names on that page you are mentioned by name as financial controller appointed on 14 March 2011, do you see that?

A. Yes.

25 Q. And also Mr Sing is mentioned as a property manager?

A. Yes.

Q. And a number of other people including Karen Maltby, your predecessor, correct?

30 A. Yes.

Q. So these are the people we know who received payments as employees, right?

35 A. Incorrect. They're the directors of the - they're volunteer directors, they don't receive payments. So that is incorrect.

Q. Let me rephrase that. These are the only personnel who could have received compensation to be part of that figure of \$3.129326 million on page 326?

40 A. Incorrect. May I take you to page 323 it clearly says "employee costs salary staff is \$863,761. That's the - it looks like that's the wages and salaries paid to the staff.

45 Q. So what you're saying is that the figure of \$3.129326 on page 326 includes the amount that you've just identified of \$863,761 for employee costs, salaried staff?

A. That's right yes.

Q. And one derives that from note 5 is that right?

50 A. Note 5 yeah will be - I haven't looked at note 5 yet.

Q. Note 5 on page 377 gives you the breakdown of the \$863,000. About point 7 on the page?

A. Yep, yes that's correct yes.

5 Q. So let's take that figure of \$863,761 and put it to one side for the moment?

A. Uh-huh.

Q. That's one part of this figure on page 326 of 3.129 that I want to ask about?

A. Uh-huh.

10

Q. A second constituent is the amount shown as key management personnel compensation on page 341 of some \$415,663, do you see that?

A. Yeah that's correct yes.

15 Q. So that's also part of that figure?

A. Probably not, I can't recall what's the breakdown of that but probably not. Key personnels maybe, maybe. You know--

Q. Where else would the figure--

20

A. Look keep - my understanding key personnel, management personnels would be myself, Mark Johnson right. For that period maybe Alfred Sing, Karen Maltby and Carol Anne Flanagan. Those would be the one, two, three, four, five from my understanding would be - that it would make up to 415 key personnel.

25

Q. What about Ms Cronin would she have received an amount that would have been included in that figure?

A. Ms Cronin was employed by one of the entities at that time. She may have. She may have received some - yeah she may have received as wages at that time. She wasn't employed by the Land Council right but she was employed by one of the entities. I can't recall which entity but she was employed by one of the entities.

30

Q. If one then goes on page 341 to the foot of the page, sub-paragraph (c) related party transactions, you'll see there's reference to a payment by the Land Council to a company called Waawidji, spelt W-A-A-W-I-D-J-I Pty Ltd of some \$142,875?

35

A. Yes.

40 Q. And the note continues that Waawidji Pty Ltd is a related company of Mark Johnson?

A. That is correct yes.

Q. The CEO Mr Johnson?

45

A. Yes.

Q. Now the related party transaction the \$142,000 would that have been included in the \$415,000 or would it be on top of that?

A. Look I can't recall the breakdown of that, maybe included maybe not. I'm not 100 per cent certain until I see the breakdown of it. Because this was

50

prepared by Lawler Partners.

Q. I understand. But you had some familiarity with the completed article did you not?

5 A. At that time yeah. You're talking about three, four years ago.

Q. I'm not expecting you to carry these sort of figures in your head at this stage Mr Gundar but can I assume that somewhere there is a working paper, or a note, or a record, which would enable one to know with specificity how or what the constituent elements of the item on page 326 for payments to suppliers and employees of \$3,129,326 for 2011 year would--

10 A. Sorry which page are you saying again. Page?

Q. Directing your attention to page 326, we've been asking a number of questions about the payments to suppliers and employees of \$3,129,326 and how it was made up?

15 A. Right mm-hmm.

Q. You've identified for me it includes wages and salaries to employees and I understand that. And you've also agreed with me that it's most likely that the figure on page 341 of some \$415,663 would form part of the amount on page 325 of \$3,129 million correct?

20 A. That is correct yes.

Q. The other elements of that figure are not immediately discernible from these papers and figures before us are they?

25 A. Yes.

Q. One just can't tell with certainty?

30 A. That's right, yep.

Q. Just by looking at the face of the document. However would it be correct to your knowledge that there would be a working paper or a supporting document that would enable one to know with specificity all the constituent elements of that figure of \$3,129 million on page 326?

35 A. That is correct, there will be all working papers there.

Q. And that would be with Lawler's?

40 A. No it's still with the - in control of the liquidator administrator at the moment.

Q. It's with the GLALC still?

45 A. Yeah with GLALC they will have all the paperwork. What's that made of. Also Lawler Partners should be able to provide all the paperwork because they completed all the audits and went through the detail preparing this cash flow statement.

Q. Could I explain my predicament to you Mr Gundar. The receiver Mr Hillig has been through all the papers of GLALC and cannot find a working paper or supporting document that identifies with specificity all of the elements that go to make up the figure of \$3.129 million on page 326. Now where do you

suggest that he should look in the papers of GLALC to find such a document?\

A. All the payment vouchers.

Q. In the payment vouchers?

5 A. All the payment vouchers - of my suggestion is all the payment vouchers from 2010 onwards. So wherever they're filed or where they're kept at the moment you will have all those documents there.

Q. Would there be a journal for these payments?

10 A. No there wouldn't be a journal. There will be in MYOB for a start.

Q. Would there be a ledger?

15 A. MYOB will have the ledger right so from the MYOB you can go back to the hard copies of all these payments. And Lawler Partners should be able to substantiate that amount what their breakdown is made up of.

Q. Because that's a figure that would have been substantiated and verified at the time?

20 A. Correct. Because they did the audit so they've prepared the financials, audited financials.

Q. Now just on that point and I'm grateful for you reminding me Mr Gundar, you had some documents to be produced yourself in answer to an order for production that you've taken with you into the witness box have you not?

25 A. Yes yes it's here.

Q. Are you in a position to produce those documents to the court now please?

A. Yes.

30 Q. Thank you very much. Mr Gundar I hand those documents to the Registrar. Registrar could I in relation to Mr Gundar's production ask for the same procedure to apply.

35 DEPUTY REGISTRAR: I'll do that shortly once I've had a small inspection of the documents.

BAIRD: Yes thank you Registrar.

40 DEPUTY REGISTRAR: And I'll formally make those orders. Thank you I'll return these to your instructing solicitor.

BAIRD: Thank you Registrar.

45 DEPUTY REGISTRAR: Mr Gundar I note you've produced to me documents in response to an order for production that's made returnable today, I'll make those documents general access and provide access to the liquidator, sorry the ..(not transcribable).. to receive it now. Again those documents Mr Baird will have to be taken down to the registry for formal receipt today at some point in time. As do the documents they were earlier produced by the other

50 producing parties. Am I clear on that point?

BAIRD: You are Registrar and if I can just check but I think that may have already have occurred. I'm instructed that my instructing solicitor has already attended the Registry and carried out your orders Registrar in relation to the previous production.

5

DEPUTY REGISTRAR: And I will confirm that those documents as well as the documents that have already been produced have uplift access and immediate access forthwith.

10 BAIRD: I'm grateful, Registrar.

Q. Just before I take you further on this topic, Mr Gundar, there was in fact a service agreement entered into at some stage was there not between GLALC on the one hand and GMS then Gandangara Management Service Ltd on the other, correct?

15

A. For the service agreement, yes, yes.

Q. I'll take you to the document if you need to but if it's of any assistance do you recollect that the agreement between GLALC on the one hand and GMS on the other came into effect about 1 July 2012?

20

A. Correct, yes.

Q. For its services, GMS was entitled to be paid management fees by GLALC of \$80,000 a year?

25

A. That is correct, yes - from memory I can remember, yes.

Q. From your memory?

A. Yes.

30 Q. I don't propose to ask you any detailed questions about the document if you do need to see it I can take you to it and identify it for the record as in volume 8 tab 1 page 1932 but at this stage I don't need to ask you any documents about the contents of that document?

A. All right.

35

Q. Mr Johnson's position in relation to payments to him, his remuneration and his bonuses that was a matter upon which you had an involvement during the 2012 financial year, was it not?

A. That is correct, yes.

40

Q. What was Mr Johnson's role overall so far as you were concerned in GLALC and its subsidiaries?

A. He was the CEO of the organisation.

45 Q. What did that entail? Was he responsible for everything?

A. He was responsible for everything according to the - whatever the board has approved him there was a list of authority board gave Mr Johnson to do there was a list which was approved by the board and reviewed once a year.

50 Q. Were you present at any of these board meetings where Mr Johnson's

duties and his scope of responsibilities were discussed?

A. No.

Q. Were you familiar with Mr Johnson's employment contracts?

5 A. Yes.

Q. When you joined GLALC in March April 2011, did you become familiar with the terms of an employment contract between Mr Johnson and GLALC operating as from 1 May 2010?

10 A. Correct, yes.

Q. Can the witness be taken to volume ii, I don't propose to take you through all the documents in this volume in great detail but if you would look please in the volume in MFI 1 which is (II), volume (II), and at tab 1 in that volume, do you have tab 1 page 751?

15 A. Yes.

Q. You'll see the document is headed it's an agreement between Mark Julius Johnson and Gandangara Local Aboriginal Land Council, do you see that?

20 A. Yes.

Q. It's made on the date set out in schedule 1, if you turn to schedule 1 on page 762?

A. Yes.

25

Q. About the middle of the page there's a heading Part 4 and then Commencement (effective) Date 1 May 2010, do you see that?

A. Yes, it is correct, yes.

30 Q. That's a document that you've seen before?

A. Yes.

Q. That's a document that you have paid attention to in conducting calculations as to bonus payments to Mr Johnson, correct?

35 A. Correct, yes.

Q. If I could turn to page 754 in that document, you will see there's a heading Remuneration, do you see that?

A. Yes.

40

Q. There's an annual remuneration package set out in Part 6 of schedule 1. That comprises a salary component?

A. Yes.

45 Q. There's a review procedure in accordance with clause 15, that's referred to in clause 6.2?

A. Mm-hmm.

Q. Next paragraph 7 there's a heading Additional Benefits, that's page 755, paragraph 7, do you see that?

50

A. Yes.

Q. That's reference to reimbursing amounts to Waawidji, correct?

A. Yes.

5

Q. Then on page 758, paragraph 9, there's a heading Superannuation, do you see that?

A. Which page was it, 5-8, yes.

10 Q. Lastly on page 9, there's a heading Performance Reviews, that's at paragraph 15, do you see that?

A. Yes.

15 Q. Those are all matters which you became informed of when you were calculating the bonus entitlements of Mr Johnson, is that right?

A. Correct, yes.

20 Q. For the sake of completeness, if you look at page 777 you will see the execution page and you see that it has been signed firstly on behalf of the GLALC by Ms Cronan, do you see that, page 777?

A. Yes.

Q. Are you familiar with Ms Cronan's signature?

A. Yes.

25

Q. Do you recognise that to be her signature?

A. Yes.

Q. You'll see her signature has been witnessed by Mr Sing?

30

A. Yes.

Q. Do you see that?

A. Yes.

35 Q. Are you familiar with Mr Sing's signature?

A. Yes.

Q. Do you recognise that to be his signature?

A. Correct, yes.

40

Q. Further down the page there's a space for a signature by Mr Johnson, do you see a signature there?

A. Yes.

45 Q. Are you familiar with Mr Johnson's signature?

A. Yes.

Q. Do you recognise that to be his signature?

A. Yes.

50

Q. You will see immediately beneath that Mr Sing has apparently witnessed Mr Johnson's signature again?

A. Correct.

5 Q. If you turn over to page 762 please?

A. Yes.

Q. Towards the foot of the page Part 7, there's a heading there Annual Remuneration?

10 A. Yes.

Q. Mr Johnson was entitled to be paid a salary of \$80,000 a year?

A. Yes.

15 Q. Superannuation of \$7,200 a year?

A. Mm-hmm.

Q. That was a total of \$87,200?

A. Mm-hmm.

20

Q. That amount was separate from and in addition to any amounts paid to Mr Johnson's company while Warwigi, was it not?

A. Correct.

25 Q. Over the page at page 14, there's a heading Performance Assessment and then there's reference to two different types of bonuses, one under s 1 and one under s 2, do you see that?

A. Yes.

30 Q. Can you describe to the Court how the bonus arrangements for Mr Johnson worked?

A. First of all, Mr Johnson get assessed by the two board members, independent board members. They have list of questions on, based on the KPIs and the behaviour.

35

Q. Yes?

A. They assess him on those two, assessed by the two board members.

Q. Yes?

40 A. And after he, there's a calculation involved on the basis of the points he gets on each category is calculated and if it's below the total whatever on each performance, overall performance, he doesn't get any bonus. If it's above if he has achieved above the total amount or total threshold, whatever it's called, then he gets a percentage of bonuses.

45

Q. He was in fact entitled to be paid two separate amounts, correct?

A. I, I can't recall but he's entitled, yes, he was entitled for an amount.

50 Q. One is called a performance allowance. I won't read it out in detail but that's the process that's described in section 1, correct?

A. Yes.

Q. Then in section 2 is what you might call a results bonus?

A. Yes, that is correct, yes.

5

Q. That's the word that's used under the heading Section 2?

A. Yes.

10 Q. In March 2013 you prepared and supplied to Baker & Mackenzie some calculations in relation to Mr Johnson's bonus, did you not?

A. I might have. I can't recall. I might have, yes.

Q. Can you close, just put that volume ii to one side?

A. Yes.

15

Q. My instructing solicitor is going to hand to you volume 9C. In volume 9C I want to take you to page 2875. Page 2875 identified for the record is an email from Jennifer Hughes at Baker & Mackenzie to Tony Young at BDO. The first sentence opens, "Enclosed are some documents that I received from Shalesh at GLALC this afternoon in relation to the calculation of Jack's bonus". Just

20

stopping there. Shalesh is yourself I take it?

A. Yes, that's correct, yes.

Q. If you would take a moment to look over the page at page 2876?

25

A. Yes.

Q. There's some following pages, copies of invoices and things but is the page at 2876 the document that's referred to on page 2875, namely, the one that you gave to Jennifer Hughes on 26 March 2013?

30

A. Yes, that's correct, yes.

Q. The document at page 2876 is a document that you prepared?

A. Yes.

35

Q. The reference in your email to Jack is a reference to Mr Johnson, correct?

A. That's correct, yes.

Q. Do you know who Jennifer Hughes at Baker & Mackenzie is?

A. Yes, I know.

40

Q. What was her role?

A. I think she was, I'm not sure she was a senior partner or not but--

Q. She's a solicitor at Baker & Mackenzie, isn't she?

45

A. Yes, solicitor at Baker & Mackenzie, yes.

Q. Baker & Mackenzie were the solicitors for GLALC at the time in March 2013, were they not?

A. That's correct, yes.

50

Q. Tony Young at BDO, what was BDO's role?

5 A. BDO's role was to assess the audit management letter which was prepared by Lawler Partners to review the management letter and consult on that to as I say independent consultant to review the auditors audit and the management letter and supply their independent view to the solicitors.

Q. So they were retained by GLALC independently of Lawler Partners, right?

A. That is correct, yes.

10 Q. You were co-operating with BDO and Baker & Mackenzie in the process of that review you've just described?

A. That's correct, yes.

15 Q. Have you ever seen before the email from Ms Hughes to Mr Young on 26 March 2013 which appears at page 2875?

A. I might have seen. I can't recall.

20 Q. If you start from the second paragraph, please read it to yourself, the second paragraph that starts, "I have two concerns" and then under the paragraphs firstly and secondly Ms Hughes sets out the nature of her concerns. Do you recollect reading those paragraphs before?

A. No, no, I haven't.

Q. Just reading to yourself?

25 A. I can't, I can't recall. I can't recall. It's been you know--

Q. Just reading to yourself, did you have any conversation with Ms Hughes or Mr Young at about that time, that's 26 March 2013, in relation to the two concerns of Ms Hughes stated there?

30 A. Which page are you looking at? 2875?

Q. 2875, the paragraph is headed Firstly and then the next one headed Secondly?

35 DEPUTY REGISTRAR: Do you want to just take a moment to read that page to yourself and let us know when you've finished. That might assist in answering the question?

EXAMINEE GUNDAR: Yes, sure.

40

BAIRD

Q. I appreciate that when I asked you earlier about whether you had seen this email or not your answer was that you may have but you weren't sure?

45 A. That's right.

Q. Now having had the opportunity to have read it more closely do you have a recollection of having read this email before or not?

50 A. No, I don't. I don't. I can remember there was a discussion around it, okay.

Q. You will see in the second last paragraph of that email it reads, "Shalesh has an interview with the investigator at 10am tomorrow"?

A. Yes.

5 Q. Which investigator?

A. The investigator NSWALC has appointed.

Q. That was the investigator appointed by the land council, was it?

A. That is, not the land council. New South Wales Aboriginal Land Council.

10

Q. His name is Mr Kenney, is that right?

A. That is correct, yes.

Q. He was reporting as investigator to the Minister for Citizenship and

15 Communities and the Minister for Aboriginal Affairs, right?

A. That is correct, yes.

Q. Who at that time in April 2013 was the Honourable Victor Dominello MP, correct?

20 A. That is correct, yes.

Q. You in fact did have an interview with Mr Kenney on 27 March 2013, did you not?

A. Yes, I did.

25

Q. At 10 o'clock?

A. Yes, Jennifer's office.

Q. In Ms Hughes' office at Baker & Mackenzie?

30 A. Yes, in the boardroom.

Q. You recollect that meeting?

A. Yes, yes.

35 Q. You had a discussion with Mr Kenney on, if nothing else, at least the two matters that are recorded in Ms Hughes' email, correct?

A. Yes, yes, about the bonuses.

Q. That's right about Mr Johnson's bonuses. Doing the best that you can to recall now, what was the substance of those discussions?

40

A. Basically the calculation of the bonus. The method which was used in the calculation of the bonus.

Q. So one of the matters discussed at that meeting, I take it, was the page that you had prepared which appears at 2876, correct?

45

A. That is correct, yes, yes.

Q. At this meeting with Mr Kenney on 27 March 2013, both he and you and for that matter Ms Hughes as well, I take it, each had before you a copy of the document which is at page 2876, right?

50

A. Yes, might have at that time. I can't remember if I had the documents in front of me or not at that time, yes.

5 Q. You had sufficient documents before you at that time to be able to explain to the investigator appointed by the Minister how Mr Johnson's bonus was calculated?

A. Correct, yes.

10 Q. The calculation on page 286 derives a terminal figure of \$287,944.01, do you see that?

A. 286 or 2876?

Q. 287, on page 2876 the final figure the one headed commission calculated at 3% is 287,944.01 right?

15 A. That is correct yeah.

Q. And it's derived in the manner that you had set out above?

A. Correct yes.

20 Q. Dealing with it in fairly simple terms the first exercise is to bring to account the sales of stage two which was settled on 2 June 2011?

A. Mm mm.

Q. Do you see that at the top of the page?

25 A. Yep.

Q. Some 13.7 odd million dollars, one takes away from that expenses of 8.3 million dollars correct?

A. Yes.

30

Q. And there's a profit recorded of 5.332 million dollars?

A. Mm mm.

Q. That's for stage 2 so it's settled on 2 June?

35 A. Yes.

Q. And similarly in relation to lot 101 we've been talking about, that settled on 10 June 2011 did it not?

A. Yeah.

40

Q. According to this document?

A. Yeah.

Q. Which is your document?

45 A. Yeah that's correct yeah.

Q. And the amount there was 2.5 million dollars exactly less expenses of \$977,000 to derive a profit of 1.522 million dollars correct?

A. Yes.

50

Q. And if you add those two amounts with the profit there the total profit that you record is some 6.854 million dollars. Looking at that document does that assist you to recall that both the stage 2 sales and lot 101 Barden Ridge both settled in the 2011 financial year?

5 A. 101 wasn't Barden Ridge it was called 101--

Q. Was it called 101 Woolworths?

10 A. Yeah we sold it to Woolworths but it was called - mainly known as 101 that was commercial property sold to Woolworths. Lot 101 it was called, I can't remember if it was ever called Barden Ridge or not. There wasn't a property called Barden Ridge.

15 Q. Can I then direct your attention to the following heading in the middle of page 2876 entitled future fund working as at 29 June '11 and the first entry there is 80% of stage 2 and 101 Woolworths profit to future funds do you see that?

A. Yes.

20 Q. Why would those amounts be brought to account in calculating Mr Johnson's bonus Mr Gundar?

A. What was the question again, sorry I missed that.

25 Q. I've directed your attention to the figure of 5.483 million dollars being the first entry under the heading future fund working as at 29 June do you see that?

A. Yes.

30 Q. And it's opposite a description 80% of stage 2 and 101 WW which I presume means Woolworths profit to future funds do you see that?

A. Yes.

35 Q. My question is why would that figure of 5.483 million dollars going to future funds be relevant to the calculation of Mr Johnson's bonus for the 2011 financial year?

40 A. From my memory that goes back to Mr Johnson's contract of the 80% of the total profit for the calculation that's how it was calculated in the previous prior to me joining Gandagara that was the same principle used previously. So I followed the same method what was then prior to this bonus was paid for the stage 1 sales.

45 Q. Just stopping there a moment, I previously took you to the actual schedule which set out Mr Johnson's bonus entitlements and I think you still have open in front of you volume (II) starting at page 763?

A. Yeah.

Q. Could you look at those two pages 763 and 764 and by reference to those two pages tell me how you derive the figure of 5.483 million dollars which appears in volume 9, page 2876?

50 A. If you see on page on the 764 of this contract the example--

Q. On the example 2 calculation the CEO scores 80% do you see that?

A. That's right and that's where the 80% has come from.

5 Q. So what you are telling me is that in order to derive the figure of 5.483 million dollars on page 2876 you had reference to the performance ratings of the CEO under the performance assessment procedure set out on the first half of page 763?

A. Yeah that's correct yes.

10 Q. Because 763 the performance assessment shows how one rates firstly behavioural competence on a scale of 1 to 5?

A. Yes, yep.

Q. And then a KPI on a scale of 0 to 3?

15 A. That is correct yes.

Q. And the example, example 2 that appears on page 764 shows how one averages those performance assessments by the parties who conducted the performance assessments of the CEO correct?

20 A. That is correct yes.

Q. As you utilised the figure of 80% on page 2876 can I take it that you looked at the performance reviews of Mr Johnson for the 2011 financial year?

A. Yes.

25

Q. Do you know who conducted those performance reviews?

A. No idea, there was - yeah at that time the performance reviews were done and provided to me, it was conducted by--

30 Q. If it's of any assistance please look at page 2887 which is part of the attachments to your--

A. 2887?

35 Q. 2887 part of the attachments forming behind page 2876 there's a heading CEO's review and there's a reference there somebody has put in handwriting Rowan Tossler?

A. Tobbler.

Q. Tobbler sorry thank you, is that your handwriting?

40 A. That's my handwriting yes.

Q. Does that assist you that the documents at page 2887 through to page 2898 form part of the performance assessment of Mr Tobbler to which you had regard in calculating the CEO's performance bonus?

45 A. No this one is for different year. Rowan Tobbler did this is a different year.

Q. Why would it--

A. This is for '13 for initial year.

50 Q. Is it?

A. Yes.

Q. Where does one derive that from?

5 A. Because I - this is my writing I provided these forms to Rowan and from memory I can recall--

Q. Look at page 2899 was it Mr Burnfield?

A. Bloomfield yes.

10 Q. So you gave them to Mr Tobbler and Mr Bloomfield, yes when?

15 A. No I didn't give this forms to them and I had to do the review at that time when his review was done I was overseas at that time. 11/12 financial year in October, September/October his review was done at that time I was overseas on leave for three weeks and this review was completed and given to me and a year after I was involved in the 12/13 financial year I was informed that review which I handed over to do that, just to complete the review. Prior to that I was overseas, the review was completed and was sitting on my table ready for his balance to be done.

20 Q. If you look at page 2887 of the page the last bullet point is leave envelope on board table and it will be stored in Cheletta's office for his return do you see that?

A. Which page are you looking at.

25 Q. Page 2887?

A. 2887 yes.

Q. I'll just read out to you do you see the last bullet point?

30 A. Yes these envelopes were sitting on my table that's correct.

Q. So does that instruction accord with the evidence that you have just given about the manner in which you received this what did you call it KPI?

A. Yes.

35 Q. What in that documents enables you to say that this is the KPI for 2012 instead of the KPI for an earlier period, namely 2012?

A. Let me--

40 Q. Take a moment to look at the document but what I'm putting to you is that this document does in fact relate to the 2012 year?

A. That is correct.

Q. So your previous answer--

45 A. There was two different directors were involved sorry yeah.

Q. Your previous answer was incorrect?

A. Sorry incorrect yes.

50 Q. Can I now take it now that you've had the opportunity to review that, that in having regard to the figure of 80% which appears on page 2876 that's the one

we're discussing, you had reference to two KPI's namely Mr Tobblers at page 2887 and Mr Bloomfields at page 2899?

A. Yes.

- 5 Q. And you conducted a process of looking at the ratings that each of those persons had given in their KPI correct?

A. Yes.

Q. And from that you derived an average of 80% is that right?

- 10 A. That is correct yes.

Q. The following figures you will see reference to a loan as to G Lowk from FF for development on page 2876 do you see that?

A. Yes.

15

Q. And a loan to G Lowk from FF, FF stands for future fund doesn't it?

A. Yes.

- 20 Q. And the figures beneath that why are those figures relevant to the calculation of Mr Johnson's bonus for the 2011 year?

A. As mentioned to you before I followed the same principle of calculation what was done in the previous year by Karen Wrightby(?) the same principle was followed from that year.

- 25 Q. You also have in front of you still open in the other folder pages 763 and 764 do you not?

A. Yes.

- 30 Q. There's nothing in pages 763 and 764 which refers to the future fund at all correct?

A. Correct.

- 35 Q. There's nothing in pages 763 and 764 which dictate how the CEO's bonus is to be calculated which refers to the process that you have undertaken there of bringing to account through the future fund loans to G Lowk, loans from GMS and loans to other LC's is there?

A. That is correct yes.

- 40 Q. There's not reference at all in pages 763 and 764 to a figure for total future funds being brought to account?

A. That is correct, yes. Not in his contract yes.

Q. So at page 2876, the figure in bold opposite the entry "total future funds" of 13,385,661.90, do you see that?

- 45 A. Yes.

Q. From which one deducts commission paid from future funds from last year of \$3,787,528 million, do you see that?

A. Yes.

50

Q. Did it arrive a total of \$9.598,133 million?

A. Yes.

5 Q. That process is simply not mandated at all by the procedure that is dictated at paragraph 763 and 764 of volume (II), correct?

A. That is correct, yes.

Q. That was the very matter that Mr Kenny and Ms Hughes wanted to discuss with you on 27 March 2013, was it not?

10 A. Basically clarify, yeah, the calculation, yes.

Q. Can I ask you to turn back to page 2875 that you looked at and read a moment ago.

A. Yep, yep.

15

Q. The paragraph immediately after the words "I have two concerns". "Firstly" Ms Hughes said, "Jack's contract states that part of the bonus is calculated as a percentage of the surplus but the bonus calculation appears to be based on the value of future fund, not the annual surplus", do you see those words?

20 A. Correct, yes.

Q. That was the concern that she made known to you on 27 March 2013, correct?

A. Yes.

25

Q. And that you discussed with her and Mr Kenny on that date, correct?

A. That is correct.

Q. What was your answer to allay her concern, was she correct in her concern or not?

30

A. Correct but the understanding of "future fund" wasn't clarified.

Q. But it was true to say that the calculations that you had done, which appear at page 2876, were based on the value of the future fund, not the annual surplus, correct?

35

A. That is correct, yes.

Q. That now, with the benefit of the review of pages 763 and 764 that I've taken you to, that calculation would be in error in that respect, would it not?

40

A. Not necessarily, let me explain, yep.

Q. Well I'm putting to you that it's not in accordance with the procure mandated at pages 763 and 764.

A. Yeah--

45

Q. It's a different calculation, isn't it, Mr Gundar?

A. It is different calculation but the understanding of the future fund was different. Right? That--

50 DEPUTY REGISTRAR: Mr Gundar, you were going to have to provide some

clarification, now is your opportunity to do that.

- EXAMINEE GUNDAR: Yes, can I clarify the - yeah, the map that was used for future fund, what their understanding of future fund, when Mr Johnson's contract was designed or done, his understanding of "future fund" was the proceed of sale of land less the cost of sale of land. Cost of sale of land, right? Not any other administration costs or anything, just purely costs of sale of land, right? So for example land sold for million dollars less paid to the contracted related direct cost of sale of land. The surplus from there, that was called as "future fund" which was put into the trust account as surplus from the sale of land.

BAIRD

- 15 Q. I understand that, Mr Gundar.
A. That was the understanding initially when this contract was designed, right? There was my understanding as purely on the sale of land and the surplus from the sale of land and Mr Johnson's--
- 20 Q. Can I just stop you there, Mr Gundar?
A. Yes.
- Q. As at 1 May 2010, was the future fund in existence?
A. Say it again, sorry?
- 25 Q. At the 1 May 2010 was the future fund in existence?
A. I can't recall 2010 was existed or not.
- Q. As at February 2007, was the future fund in existence?
30 A. No, can't remember that time but the - yeah, I--
- Q. Because if you look at page 763, Mr Gundar, you'll see that performance assessment date is February 2007, do you see that? Right at the top of the page.
35 A. Which page are you looking at?
- Q. Page 763.
A. 763, yes.
- 40 Q. Part 7, "performance assessment" date and it says "February 2007".
A. Yes.
- Q. Is it fair to assume from that, that those pages, 763 and 764 were taken from Mr Johnson's previous employment contract.
45 A. Yes.
- Q. Not his employment contract as at 1 May 2010, and had actually just been copied over to it, is that a fair assumption?
A. Yeah, fair assumption, yes.

50

Q. The future fund wasn't in existence in February 2007, was it?

A. Not that I recall, yes.

5 Q. In terms of the future fund there's proceeds of the sale of stage 2 development and lot 101 Baird and Ridge(?) were the first major contributions to the future fund that were occurring by GLALC, were they not?

A. That is correct, yes.

10 Q. There's no reference whatsoever, we've established in pages 763 and 764, to future fund, correct?

A. That is correct, yes.

Q. The word that is used for the calculation of bonus is "surplus" right?

15 A. That's correct, yes.

Q. It occurs twice does it not?

A. Yes.

20 Q. In section 2 the fourth bullet point about point 8 on the page is, "a minimum surplus" - the word "surplus" is used - "of \$250,000 being generated", do you see that?

A. That is correct, yes.

Q. That's where one word "surplus" appears?

25 A. Mm-hmm.

Q. Over the page, on page 764, the word "surplus" appears a number of times.

30 A. Yes.

Q. After paragraph 4 under the heading "bonus" there's reference to "surplus of greater than 250,000 or surplus of less than 250,000, you see that?

A. Yes.

35 Q. If the surplus was less than 250,000, the bonus was nil, correct?

A. Correct.

Q. If the surplus was greater than \$250,000 then the amount paid was 1.5% of the first \$250,000, then 3% of all amounts above \$250,000, right?

40 A. That is correct, yes.

Q. If you look at the calculation at page 2876, Mr Gundar, can you tell me where you have applied in the calculation of the bonus the scale of 1.5% of the first \$250,000 and then 3% of all amounts above \$250,000?

45 A. It hasn't here.

Q. It's not there, is it.

A. No.

50 Q. Commission is--

A. Straight 3%.

Q. Straight 3%. The final line on page 2876 is "commission calculated at 3%".

A. Yep.

5

Q. There's no allowance for 1.5% of the first \$250,000 and then 3% of amounts above \$250,000, correct?

A. Correct, yes.

10 Q. The calculation is in error in that respect alone, is it not?

A. Well if you read it properly, the section 1 and 2, what my understanding was either/or. Either section end in page 763, if you look at the bonus method being used, "either". So it's not both it's either, that was my understanding. So it's either the first one or the second one. If it's above that threshold then use this second one that was my understanding.

15

Q. On page 763, Mr Gundar, the heading section 2.

A. Yes.

20 Q. That deals with the results bonus, right?

A. Correct, yes.

Q. Prior to being eligible for consideration there has to be a performance assessment that is equivalent to a satisfactory and achieved, right?

25

A. Yes.

Q. That was in fact achieved you say.

A. Yes.

30 Q. Because you calculated that the KPIs, as you call them, came out at a figure of 80%.

A. That's right, yeah.

35 Q. Second precondition, there was no substantive audit qualification in the GLALC annual financial reports?

A. Yep.

Q. That condition was satisfied, was it not?

A. Correct, yes.

40

Q. There were no serious or repeated concerns in the auditor's management letter? That condition was satisfied was it not?

A. It was satisfied, yes.

45 Q. And there had to be a minimum surplus of \$250,000 being generated subject to the exclusions below, correct?

A. Yes.

Q. That condition was satisfied?

50

A. Yep.

Q. So that deals with sub paragraph (a) correct?

A. Mm-hmm.

Q. Then sub paragraph (b) is a set of exclusions, right?

5 A. Yep.

Q. And they go over the page under the heading "bonus" there are four paragraphs?

A. Mm-hmm.

10

Q. And those four matters are matters that are to be excluded from the calculation of surplus for the purposes of calculating the bonus, right?

A. (No verbal reply)

15 Q. These were matters that were not to be taken into account, correct?

A. Yep. Yes.

Q. And in fact looking at your calculation at page 2876 you'll notice that's deductions, right?

20 A. Mm-hmm.

Q. Then one is told how to do the calculation.

A. Yes.

25 Q. It says if the surplus is less than \$250,000 it's nil, the bonus.

A. Yep.

Q. We're agreement on that?

A. Mm-hmm.

30

Q. Then it says if the surplus is more than \$250,000 one gets a bonus of 1.5% of the first \$250,000 then 3% of all amounts above \$250,000, right?

A. Correct, yes.

35 Q. That's crystal clear, isn't it, Mr Gundar.

A. Yep, correct.

Q. So there is no room whatsoever for your construction that there is an alternative method of calculation. There's only one calculation, isn't there?

40 A. Correct.

Q. That requires that the first 250,000 gets a bonus at only 1.5%.

A. Correct.

45 Q. And only above \$250,000 do you get the bonus of 3%.

A. Correct.

Q. So in that respect you would agree with me that the figure on page 2876 of \$287,944.01, which is commission calculated at a flat 3%, is inaccurate.

50 A. That is correct.

Q. Now--

A. Can I explain that? This was question by the auditor as well as the BDL. In the scheme of things overall there was no much difference so the auditor approved their bonus payment. It is recorded in the emails and an auditor's management report. The bonus was not qualified.

Q. The fact remains, Mr Gundar, is that it was incorrectly calculated and is inaccurate, is it not?

A. Overall the 1.5 wasn't used below 250,000, yes.

Q. Thank you, Mr Gundar.

A,. First 250,000.

Q. Secondly Ms Hughes' concerns expressed at page 2875 under the paragraph starting "secondly" about double-counting the value of future fund, that was another matter you discussed with Mr Kenny and Ms Hughes on 27 March 2013 was it not?

A. Yes.

Q. Those concerns were made known to you, correct?

A. Yes.

Q. You discussed that issue with those persons on that date.

A. Yes.

Q. Were Ms Hughes' concerns validly grounded? Was she right? Was there double-counting in the value of the future fund or not?

A. No.

Q. You reject her complaint?

A. That's correct, yes.

Q. Did the auditor agree with you or Ms Hughes?

A. The auditor agreed with me.

Q. You mentioned before that you were familiar with in general terms the provisions of the Aboriginal Land Act, correct?

A. Yes.

Q. Are you familiar with section 52D of the Aboriginal Land Rights Act 1983?

A. If - can I have a copy of that so I can - please?

Q. Of course.

BAIRD: This document's not in the folder, Registrar. When the witness has answered these questions I'll have it separately marked if I might.

Q. Would you take a moment, please, to turn to section 52 of the Aboriginal Land Rights Act 1983 which I'll hear after call "the Act"?

A. Yes.

Q. You see section 52D?

A. Yes.

Q. Subsection (1):

5

“A local Aboriginal land council must ensure that no part of the income or property of the council is transferred directly or indirectly by way of dividend or bonus or otherwise by way of profit to members of the council, board members or any member of staff of or consultant to the council”, do you see that?

10

A. Yes.

Q. Subsection (2), “there’s nothing that prevents the division of a benefit in good faith to a council member, board member, member of staff or consultant in accordance with this Act”, do you see that?

15

A. Yes.

Q. And, “nothing prevents the payment in good faith of remuneration to any such member, board member, member of staff or consultant”, do you see that?

20

A. Yes.

Q. When you were calculating Mr Johnson’s bonus, Mr Gundar, were you aware of the provisions of s 52D of the Act?

A. Not in great detail; the translation and interpretation of the Act.

25

Q. Would you agree with me now, with that section in front of you, that that section directly prohibits the payment of a bonus to Mr Johnson, which bonus is payable out of the income or property of the council?

A. That is correct, yes.

30

Q. Had you known about section 52D on 26 and 27 March 2013, would you have brought that to the attention of Ms Hughes or Mr Kenny?

A. I would have, yes.

35

Q. Would you have told them that by reason of that section Mr Johnson was not entitled to be paid any bonus whatsoever in relation to the sales of the stage 2 and lot 101 which had occurred during the year ended 30 June 2011?

A. I would have, yes.

40

Q. Did Mr Johnson make known to you that when GLALC sold some of the land under its control he would get a bonus out of the surplus, did he tell you that?

A. No.

45

Q. When GLALC sold the stage 2 development and lot 101, which occurred during the 2012 financial years, so the 2011 financial year as we’ve discussed, it paid real estate agent’s commission, did it not?

A. Yes, yes.

50

Q. It paid solicitors?

A. Yes.

Q. It paid all the normal expenses that would be payable to professionals and other person who were actively involved in the sale?

5 A. Correct, yes.

Q. Mr Johnson was being paid a salary as CEO of GLALC, correct?

A. Yes.

10 Q. And his company, Waawidji, was being paid an amount from GMS in respect of the services that that company provided?

A. Mm-hmm.

15 Q. And the word "surplus" which is used in Mr Johnson's employment contract at page 14, that is a surplus calculated by reference as you said a moment ago to amounts realised on the sale of GLALC's land, correct?

A. Correct.

20 Q. In fact, correct me if I'm wrong, the explanation you gave the Registrar a moment ago was that the surplus related to the gross proceeds of sale less only certain specified expenses. Did I capture that accurately or can you re-explain that--

A. Direct expenses related to sale of land.

25 Q. So to calculate surplus only gross proceeds of sale less direct expenses of sale should be taken into account, correct?

A. Yes.

30 Q. Why is it, Mr Gundar, in your opinion, that the CEO of an Aboriginal Land Council should be entitled to be paid commission at the rate specified, on top of agent's commission and other expenses, for selling the very land that he is - that the Land Council of which he's CEO is entrusted to hold for the benefit of its members?

35 A. I wasn't involved in doing his contract, right? So go back to his contract and how it was negotiated with the board. And then there will be a legal advice on that to the board how and why there was a split of his contract was done. So you may ask Mr Johnson that question; what was the reason and what legal advice was given to the board and what legal advice the board got to--

40

Q. But you're not aware of any reason?

A. I wasn't involved in that, yes.

45 Q. And it was not your job as you say to be involved in the negotiation of his contract.

A. Correct, yes.

50 Q. But looking at it today, had you been aware of the matters that I've brought to your attention today, you would have reached an entirely different conclusion, would you not?

A. Definitely I would have legal advice in front of me before I would have paid him.

Q. And Mr Johnson also had a process of being reimbursed for his expenses?

5 A. Correct, yes.

Q. He was reimbursed some expenses on a monthly basis, was he not?

A. Correct, yes.

10 Q. I won't take you through all of these calculations in detail Mr Gundar but the expenses reimbursement clause I have already drawn your attention to in the contract which was at pages 754 and 755 in particular contained the reimbursement did it not?

A. Correct.

15

Q. Did you receive from Mr Johnson invoices on a regular basis which claimed reimbursement of expenses?

A. Yes my staff did, yes I did look at it.

20

Q. Were they ones that you regularly reviewed yourself?

A. Basically my staff prepared it, yes and reviewed before it came to me.

Q. I'm going to show you a document. Could the witness have volume (III) which is headed Waawidji invoices. It's been opened at a tab there

25 Mr Gundar, what tab is it opened at again please and the page?

A. Tab 15.

Q. And the page?

A. Nine six three.

30

Q. There are a number of such invoices from Waawidji which appear behind tab 15 of volume (II)?

A. Mm-hmm.

35

Q. I've directed your attention to page 963 and you'll see there's a reference there on 27 July 2011 just described "Reimbursement of expenses incurred for and on behalf of GTS during the period July 08 to July 2011 in an amount of \$29,000 do you see that?

A. Yes.

40

Q. And there's no detail given in that invoice of what those expenses were, correct?

A. Yes, yeah. I don't think these are expenses. There's no reimbursement. There's an error in his invoice. These are not reimbursement, no.

45

Q. They're not expenses at all are they?

A. No, no.

Q. That's part of his bonus isn't it?

50

A. Yeah, could be.

Q. And if you turn over the page to page 964 the same heading "Reimbursement expenses"?

A. Yes.

5 Q. That's not expenses at all is it?

A. No, no, no that's an error, no. His expenses were never that large, no.

Q. That's a mis-description. No, it's part of the expenses isn't it?

A. Yes sir, part of his bonus.

10

Q. Can you go back to page 943 in that tab please?

A. Yeah.

15 Q. I appreciate that's January 2010 where there's reference to reimbursement of expenses and disbursements of \$5800 odd, do you see that?

A. 943 did you say?

Q. Yeah, 943 correct?

A. Yep, yep.

20

Q. And that's an invoice dated 25 January 2010?

A. Yes.

25 Q. And you'll see that at page 945 that same amount 5871.05 appears on 8 March 2010 and again at page 946 and again at 947?

A. Yep.

Q. That's quite remarkable, isn't it, that three months - the exact amount of expenses should--

30 A. No that isn't correct. There's a - from my memory, right, from my experience there's an error reimbursement. The word "reimbursement" it shouldn't be there, "reimbursement of expenses", that is part of his salary.

Q. That's his salary, okay, thank you for that assistance.

35 A. Yeah, part of a monthly consulting invoice for Waawidji.

Q. If you turn over to page 948, we're in the next financial year which is the one that relates to your period?

A. Yep.

40

Q. 30 July 2010, you'll see the amount is now 9166.66 do you see that?

A. Yes.

Q. And that amount continues through all the way through to page 960?

45 A. Yeah.

Q. And that's his salary you say?

A. Correct, yes.

50 Q. Now there were a number of subsidiaries of GLALC in the 2013 year were

they not?

A. There were, yes.

5 Q. And was Mr Johnson paid a salary in relation to each of those separate entities? That's apart from GLALC and GMS?

A. It was repaid yes from different entities.

10 Q. Why was Mr Johnson entitled to be paid separate salaries from each of the subsidiaries of GLALC when he was CEO of GLALC?
A. No he was also CEO of all the subsidiaries as well.

15 Q. I've taken you to, you might recall, earlier in the day I took you to the plan and you might recall Mr Gundar that in the plan in the process of incorporation of subsidiaries and single purpose vehicles I took you to page 124 and said "None of the wholly owned corporate entities will have had administration or finance capabilities as all financial and administrative functions will be performed at commercial rates by GLALC". Having regard to that, why was Mr Johnson being paid a salary by subsidiaries of GLALC other than GMS in addition to his salary from GLALC?

20 A. There may be another contract, there's another contract.

Q. There were other contracts, I can take you to them.

A. There was a correction to those contracts, yes.

25 Q. But why is he entitled, having regard to the plan, to enter into a number of contracts with a number of subsidiaries and to be paid a salary by each of those subsidiaries in addition to his salary from GLALC?

30 A. You should ask Mr Johnson on that one because he - according to my assessment there was no variation in amounts, right, overall the amounts were the same amount whatever the board approved for that year but overall he was the CEO of all the other subsidiaries and as payee's contract he was entitled to be paid you know from the other companies, that was my understanding as well.

35 Q. What I'm putting to you Mr Gundar, to put it very bluntly and in colloquial language, that Mr Johnson was double dipping?

A. No he was not.

40 Q. He had been paid a salary by GLALC from 2007 until 2010?

A. Yes.

Q. And in 2012 new subsidiaries were incorporated, one, correct?

A. No these subsidiaries were incorporated from 2011 onwards.

45 Q. Yes. For 2012 financial year these new subsidiaries were incorporated?

A. No they were existing companies, they were not--

Q. 2011?

A. Yeah they were existing from here--

50

Q. And Mr Johnson was paid a salary by each of those new incorporated entities, correct?

A. That is correct, yes.

5 Q. In addition to his GLALC salary?

A. That is correct because my understanding was he always had one fixed figure from GLALC which was \$80,000. Every year when there was an increase in salary or whatever the board has agreed to pay him after that, after from his initial agreement his company - the increase went to his company. So
10 he wasn't double dipping as such. Overall figure was correct, like was the - for example say \$200,000 overall, 80,000 will be paid always from GLALC, anything difference will be paid from his company. So there was no double dipping.

15 Q. Thank you for that, Mr Gundar, I'm looking at the time. Could I just ask you two topics very briefly just to conclude and see if we can get this finished today, Registrar. I've asked you questions about Deerubbin, which was LALC. There was also Walgett Land Council, correct?

A. Yes.

20

Q. Without showing you documents and just doing that as a high level, were the arrangements in relation to provision of services by GLALC to Walgett LALC of a similar nature to those provided to Deerubbin?

A. That is correct.

25

Q. And was there similarly an arrangement or a procedure whereby services provided by GLALC to Walgett were to be reimbursed by Walgett to GLALC?

A. On the completion of the land development.

30 Q. On the completion of the land development?

A. Only on the completion of the land development the full amount will be repaid with interest by Walgett Land Council or Deerubbin Land Council back to--

35 Q. In relation to Walgett, has that land development been completed to your knowledge?

A. No. From my knowledge, no.

40 Q. In relation to Deerubbin, has that land development been completed to your knowledge?

A. Not all of them, there was portions of where it completed, but there was not enough funds to pay it back to GLALC.

45 Q. Did you play any part in the retention of Dixon Capital as a consultant to GLALC?

A. Can it clarify that question?

Q. Were you involved in the process of selecting Dixon Capital as a consultant to GLALC?

50 A. Incorrect, no.

Q. Did you play any part in the retention of essential media communications as a consultant to GLALC?

A. No.

- 5 BAIRD: Could I approach it this way, Registrar, there are some procedural matters which involve matters of calculation I really don't want to take the Court's time up with if I could, particularly with regard to the indulgence the Court has granted me today already. I'll be seeking the usual order in relation to Mr Gundar, but it would be of assistance if my instructing solicitors could talk
10 with Mr Gundar directly, not in the witness box, just to take him through invoices and to check the procedures in relation to payment of invoices, and it's not really a matter I want to do and occupy the Court's time with. Could I ask Mr Gundar this, would you be prepared to meet with my instructing solicitors in relation to payment of invoices for reimbursement of expenses to
15 Mr Johnson and assist where you can with such information as you have to the manner of submission and payment of those invoices?

A. Yeah, absolutely, there's no issue.

Q. I would be very grateful because then we can--

20 A. Is it now?

Q. At a time that is mutually convenient to you both, not necessarily now and not in this Court at this moment--

25 A. Yeah, that's fine. Yeah, and if you want to do it now, after the Court and--

Q. I would be very grateful.

A. No worries.

30 DEPUTY REGISTRAR: Thank you for your assistance in that regard. The only option is to call you back again in Court for those, to take place in Court under oath.

EXAMINEE GUNDAR: Yep, sure.

35 DEPUTY REGISTRAR: So it's a matter then for you as to what you want to do, but yes, if it can be done in informal setting, saving the Court's time, that would be obviously acceptable to the Court.

EXAMINEE GUNDAR: Thank you.

40

BAIRD: I'm grateful for that, Registrar, and to Mr Gundar.

EXAMINEE GUNDAR: Can I say something--

45 DEPUTY REGISTRAR: Yes.

EXAMINEE GUNDAR: --on the bonus calculations of this. Under the calculation done by BDO, right, on this calculation--

50 DEPUTY REGISTRAR: Sorry, which page are you referring to?

- EXAMINEE GUNDAR: Okay, page 2876, there was another calculation done and provided to Jennifer Hughes and the investigators. The calculation based on his assessment, right, his method of calculation, there was not much variation. That's where the auditor was satisfied basically with the method of calculation. He didn't qualify the audit, that's what I'm saying.

BAIRD

- Q. And that is a letter dated 29 October 2012 that you refer to, which appears at page 2914 in volume 9C. If you just want to identify, that's part of it, is it not, that's Mr Johnson's explanation?

- A. Yeah, but there's no - hang on. Yeah, there's no calculation. There would be a letter from - of the whole review of the audit and his bonus calculation from BDO. There will be a - yeah, from Tony Young, there will be a letter and the method calculation of his bonus.

Q. And that follows from page 2920 and onwards does it not, Mr Gundar?

A. Which page was it?

- Q. 2920.

A. 2920.

Q. There's emails between you and Mr Fowle and there's some attachments to that at page 2922 that have your calculations on them, do they not?

- A. Yeah, but there's no calculation. I can't see any calculation there.

Q. I think we have those documents--

A. Yeah.

- Q. --and thank you, and again for those matters of calculation my instructing solicitor, Mr Lim, can take with you, just proposing not to take the Court's time unduly with matters of that kind of detail.

A. Yep, all right.

- DEPUTY REGISTRAR: Mr Gundar, I'll stand your examination over generally with liberty for it to be restored upon giving you 14 days' notice. If it is not restored within the next six months, it is deemed concluded. Do you understand?

- EXAMINEE GUNDAR: Correct, thanks.

- DEPUTY REGISTRAR: At the start of your examination today I made an order for you to sign a copy of the Court's transcript. Once it has been prepared an officer of the Court will contact you and arrange a time and a place for you to come and sign that document, and you must do so in accordance with the orders I have made today. Do you understand that as well?

EXAMINEE GUNDAR: Thank you.

- DEPUTY REGISTRAR: Thank you for your attendance, you are excused.

EXAMINEE GUNDAR: Thank you.

DEPUTY REGISTRAR: Mr Baird, you wanted me to mark a further document as an MFI, did you not?

5

BAIRD: It was only the Act given, it's the Act itself and I read it onto the transcript. I don't think I need to--

DEPUTY REGISTRAR: I don't think so either, but I'll just give you the option now before we both forget.

10

BAIRD: No, I read out s 52D to avoid that necessity. I'm grateful, Registrar.

DEPUTY REGISTRAR: That's fine. I'll leave the MFIs for your calculation or your instructing solicitor's collection. We will not be in this courtroom tomorrow, that's the reason why. My understanding, and I preface this by saying that everyone needs to check the court list of the Coram, I think we'll be in court 1A, which is in the basement, tomorrow. I dare say I think we are there for the rest of the week.

15

20

BAIRD: I see, thank you.

DEPUTY REGISTRAR: We were in here today because I had..(not transcribable)..list and there was no way I was going to make it down there in time.

25

BAIRD: Understood.

DEPUTY REGISTRAR: Okay, so that's where I think we will be so, as I said, I will leave with the MFIs with you. You're excused, thank you for attendance.

30

<THE WITNESS WITHDREW

DEPUTY REGISTRAR: In regards to housekeeping, has your instructing solicitor contacted Ms Cronan about her early availabilities? I'll leave that with you to raise tomorrow then.

35

BAIRD: Thank you, will do.

DEPUTY REGISTRAR: Other than that I will dispense all formalities, everyone is excused, everyone can have an early night.

40

STOOD OVER GENERALLY

IN THE SUPREME COURT
OF NEW SOUTH WALES
EQUITY DIVISION

5 ACTING SENIOR DEPUTY REGISTRAR BELLACH

TUESDAY 3 FEBRUARY 2015

10 **2014/00261609 - IN THE MATTER OF GANDANGARA MANAGEMENT
SERVICES LIMITED**

Mr J Baird for the Liquidator
Examinee Sing appeared in Person
Mr T Unsworth for Examinee Wing

15

<EXAMINEE SING, SWORN(11.05AM)

20 DEPUTY REGISTRAR: For the Court record please state your full name,
address, and occupation.

EXAMINEE SING: Okay. My full name is Alfred Lindsay Sing, I live at
25 [REDACTED] My current occupation, I work for Lend Lease
and I'm an Indigenous Engagement Co-ordinator.

DEPUTY REGISTRAR: Thank you. Please listen carefully to what I'm about
to tell you. This examination is being conducted under the Corporations Act
2001. It is an unusual corporate proceeding in that you are required to answer
30 the questions that are put to you even if your answer may be incriminating or
make you liable for a penalty. However, the answers you give to the Court
today cannot be used against you in a criminal proceeding or in any
proceeding imposing a penalty if you clearly state the word "privilege" before
answering the question. You must do this for each answer which you are
35 claiming privilege. Please note though that if you give a false answer or refuse
to answer a question that is put to you, you may be liable for perjury or
contempt of court. Do you understand that?

EXAMINEE SING: I understand that.

40

DEPUTY REGISTRAR: Furthermore, everything that is said in this Courtroom
is being recorded, which means you must articulate a response to the
questions that are being put to you. That may require you to repeat an answer
or spell out a name for clarification. Do you also understand that?

45

EXAMINEE SING: I do.

DEPUTY REGISTRAR: The Supreme Court is a court of record and as such a
transcript of all Corporations Act examinations is being prepared. Are orders
50 being sought under s 597(13)?

.03/02/15

1

BAIRD: They are, Registrar.

DEPUTY REGISTRAR: I direct that the questions put to the examinee and the answers given by him be recorded in writing and I direct the examinee is to
5 sign a copy of that transcript once it has been prepared by this Court.

BAIRD: Mr Sing, just in terms of arrangements for the day, I understand you are employed in the Sydney Metropolitan Region, is that right?

10 EXAMINEE SING: Yes.

BAIRD: Approximately how far away from the Court is that, ten minutes, half an hour, an hour?

15 EXAMINEE SING: Depends whether I walk or catch a train. About half an hour's probably reasonable. Half an hour, 40 minutes.

BAIRD: What suburb?

20 EXAMINEE SING: Good question. Millers Point.

BAIRD: I see, thank you. The reason I ask that is because we have a witness flying down from Brisbane today who can't get here before 12 o'clock and I was seeking to interpose that witness at 12 o'clock and I was hoping to
25 conclude his examination by about 3 o'clock, but unfortunately the Court has to rise at 3.30 this afternoon. There are two possibilities. I have no alternative but to interpose this witness, we're flying him especially for the day, we have to deal with that, and you reside in Sydney. One is to go as fast as I can and try to conclude your examination by 12 o'clock, but if not, if I couldn't, instead of
30 coming back for half an hour this afternoon would it be more convenient for you to come back at say 9.30 tomorrow morning? Which is more convenient to you?

EXAMINEE SING: Look, this afternoon would be better. The reason is just
35 that I've already been away from work for two days and I've told my bosses that, you know, today's going to be--

BAIRD: I understand that, thank you. Could we work on this arrangement, my instructing solicitor has your telephone number, when we interpose Mr Wing
40 could I ask you to be prepared to return at about 3 o'clock this afternoon please?

EXAMINEE SING: I'm fine with that.

45 BAIRD: We'll review that as it happens, but thank you for that indication of your availability.

<EXAMINATION BY MR BAIRD

50 Q. Mr Sing, could I get you tell me something about your experience with

Gandangara, G-A-N-D-A-N-G-A-R-A Aboriginal Land Council and which I will refer to as GLALC, if you're happy with that acronym, thank you, in particular how you first started with GLALC and what your position was and what roles you performed?

- 5 A. You're testing my memory. I initially came down from Queensland, I applied for a position at Gandangara, I think the housing, property, and I was housing manager - actually no, I was - yeah, housing manager. No, it wasn't housing manager, I was - I looked after the housing program.

- 10 Q. What year are we talking about?
A. 07, I did that for a number of years

Q. And then at some stage did you become promoted to a more senior position within GLALC?

- 15 A. Yeah, I applied for the manager's positions, and manager's position became available and I applied for it.

Q. So what was the title?

- 20 A. Manager, Housing Manager.

Q. Manager Housing or Housing Managing?

- 25 A. Probably Manager or Housing Manager I think. It just - at the time Gandangara had 51 or 52 houses, it was combination of houses that Gandangara owned and houses that it managed on behalf of the Department of Housing and the Aboriginal Housing Office. So, so I looked after those and I reported to those various bodies. They had to provide reports.

Q. So approximately when did you attain this more senior position?

- 30 A. I think about 08.

Q. So sometime in 2008?

A. Yeah, I applied for it. It was advertised in the Koori Mail and I can't remember the other paper about the time.

- 35 Q. Who was the Chief Executive Officer of GLALC at that time?
A. Mark Jack Johnson.

Q. Did you refer to Mr Johnson as Mark or Jack?

- 40 A. Jack is - yeah, he would have - everyone knows him as Jack.

Q. Now you mentioned reporting. To whom, when you were manager in 2008 and subsequently, to whom did you report?

- 45 A. Well a number of different - I'd report to Jack, I'd give him reports about the rental arrears, who we were taking to the Tribunal, and that would be provided to the Board eventually. Also reported to Aboriginal Housing Office.

Q. Through Mr Johnson or directly?

- 50 A. No, directly to the Aboriginal Housing Office. That was the requirement. You had - because the houses were given to Gandangara and Land Councils generally as - including other Aboriginal organisations, so you had to provide

reports in terms of, gosh, your rental. You know, basically your rental program in as, you know like you'd be - at the time they were funded. Gandangara--

Q. I might just stop you there.

5 A. Sorry.

Q. In general terms, that's who you reported to? You had a line of reporting to Mr Johnson?

A. Yes.

10

Q. And he in turn reported to the Board of - to the Council, right?

A. Yes.

15 Q. And you had direct lines of reporting to various other authorities that were charged with the responsibility for administering the various houses and other land projects, right?

A. Mm-hmm. Sorry, yes.

Q. And that included rental and sale as well?

20 A. No. Now - no, it's a quirk - no, no such.

Q. No such. Just rental?

A. Just rental.

25 Q. Before I move on to some of the developments that I want to ask you about, at that stage in 2008 when you became the manager did you know who the members of the board were?

A. I'm testing my memory. Yes, I did, I did. I'm a member of the Land Council.

30

Q. And did you have dealings in particular with any of those board members?

A. Sorry, what sort of dealings?

35 Q. Well, when you reporting in the course of your duties were there some members of the board that you dealt with more frequently than others?

A. No.

Q. So it was as occasioned required you would speak with a member of the Council?

40 A. As a member I would speak, speak to them but as a staff member, no.

Q. Was Ms Cronan, Cinderealla Cronan the chairperson in 2008?

A. No, she was not.

45 Q. Who was chairman or chairperson in 2008?

A. I think it was initially - it was a changeover, so 07 there was a changeover. Initially there was - it was the old system. It was chairperson, secretary and treasurer and at that time it was I think - she's passed away now so I can't really say her name, but--

50

Q. About when did Ms Cronan become chairperson?

A. I think 09, 10 maybe. I'm, I really - hang on, so 07, two year term to 09. I think she came on in about 09, 10 but she wasn't chairperson.

5 Q. The Land Council had a major or two major developments in the 2010, 2011 period, did it not, and I'm referring particularly to the development firstly called the Stage Two development?

A. Yes.

10 Q. And secondly the other one called Lot 101 Barden Ridge?

A. Yes.

Q. Those were the names by which you knew them at that time?

A. Yes, everyone knew them by that and those names.

15

Q. Could you tell me a little bit more about firstly what was involved in the project called the Stage Two development and at the same time what your involvement in that process was?

20 A. The first part, nil, I had no involvement. What I knew of it was as a member because we were told as members in the members meetings, that I think Stage Two was a subdivision which created - I can't exactly remember the number of houses, not houses but just lots, which were open, I think were going to be sold to the general public.

25 Q. Whereabouts is this property?

A. Barden Ridge I think.

Q. So they were both in the Barden Ridge area?

30 A. Yeah. So you got, yeah Barden Ridge, so you got Barden Ridge, I think New Illawarra Road. Don't ask me if they're accurate. So yeah, that's where Stage Two, and I think--

Q. What would be the nearest major suburb or town to Barden Ridge?

35 A. Menai, you've got--

Q. So in the Menai region?

40 A. Yeah, so Menai's on the other side, so you've got, you've got Heathcote Road, which is Menai, and then you've got on the other side your New Illawarra Road. I think you've got the - what's the nuclear facility?

Q. Menai Ridge. Hang on, Lucas Height?

A. That's it. Yeah, so that's down the road from where the development is, yeah.

45 Q. Thank you. So that's in general terms. So as an overview it's correct to say that there was a large area of land, attractive land owned by the GLALC, correct, and there was a long term proposal to develop that land by dividing it into - by subdividing it and selling those lots?

A. Yeah.

50

Q. Now were those lots available for sale to members of the public generally or were they restricted to members of the indigenous community?

A. No, it was open to anyone. It was - yeah, it was advertised openly, so members of the Land Council could buy it and, and the general community.

5

Q. So this was an ordinary commercial profit making project?

A. Yeah, yes.

Q. And your involvement in the process of the development you said was zero?

10

A. I had nothing to do with it, no.

Q. The second project I mentioned to you, Lot 101 Barden Ridge - and I gather that's another property close by but with a different lot number?

15

A. Yeah, it's diagonally across. So you've got Stage Two and it's kind of like diagonally across. So you've got Stage Two and now the new golf course, sports stadium and it's kind of directly across from it. And it was to be, from memory, a shopping precinct that the members would get a chance to retain and they would be able to rent out the commercial shops et cetera and they would, they would get the rents from it.

20

Q. Was that the property that ultimately wound up being leased or sold to Woolworths?

25

A. I - honestly, I know Woolworths was mooted to buy it but I don't know whether it, if actually ended up buying it.

Q. And again, was your involvement in this process of development and sale minimal?

30

A. No, I had nothing to do with it other than as a member. So we voted on whether the members wanted that to happen or not, that was my, my involvement.

Q. There's been a number of documents that have been marked for identification in this examination - and I'm going to show you one or more of them in a moment - but I wanted just in general terms to ask you as to your understanding of the GLALC Community Land and Business Plan for 2008 to 2011. In general terms was that something that you had some knowledge of?

35

A. As a member. Like, all members were given a copy and we had to vote on it. I'm not sure which one you're talking about, if it's the first or second one but all the members had to vote and that's what the Land Rights Act requires. So I think - I'm not sure if I've still got a copy but I--

40

Q. I'll show you a document now.

45 BAIRD: Registrar, I'm showing the witness MFI 1, the folder marked (I) A.

Q. Mr Sing, could you turn to tab four, page 115 in that folder please?

A. Tab four?

50 Q. Tab four?

A. Yeah, that's been done, yep.

Q. And it's at page 115?

A. Yep.

5

Q. And you'll see a document there titled GLALC Community Land and Business Plan and beneath that is the heading 2008 to 2011. Do you see that?

A. Yeah, yes.

10

Q. Was that a document that you saw in about 2008?

A. Roughly, yeah. It's a long time ago but yeah, that's I think because the Land Rights Act changed and it required all Land Councils to provide a CLVP.

15 Q. Could you, just for my information, fill me in a little bit more in your role as a member as opposed to your role as an employee of GLALC?

A. Yep.

20 Q. When you say a member, how is it that you are a member and what is it that you are a member of?

A. Okay. Under the Land Rights Act you're entitled to become a member of the Land Council if you satisfy the statutory requirements. So you have to be Aboriginal, so you identify as Aboriginal - testing my memory, your Honour - so you have to identify as an Aboriginal, I think be recognised in the Aboriginal community in which you live and be accepted as an Aboriginal person. And what you do is you then submit to the general members meeting and they ask you a number of questions and you verify your Aboriginality and they either accept you or they don't accept you as a member. So you become a member-

25

30 Q. And then when you're accepted you're a member of the Council?

A. Correct.

Q. About how members of GLALC would there be?

A. Now? I could not--

35

Q. Fair enough. In 2008?

A. 2008, really don't know.

Q. Are we talking about 50 or 1,000 or--

40 A. No, there wasn't. It wasn't, it was in the hundreds I think roughly because the Land Rights Act requires the Land Councils to grow membership I think by 3% a year. I think at the time probably - and I'm guessing - about 200 to 300.

Q. Stopping at that point, the GLALC had a board that managed its affairs, right?

45

A. Initially it didn't but then it did, yes.

Q. So looking at the document that's in front of you starting from page 115, I wanted to show you a couple of pages from that and ask whether you had any familiarity or understanding about them. Firstly, could you turn to page 120

50

and you'll see there's reference under the heading Background to a community planning process which started in 2002, and in the next paragraph it refers to GLALC focusing primarily on the provision of an economic basis for the support of its member's needs, particularly through land developments. Do you see that?

A. Yes.

Q. And then they refer to a number of developments that have been completed?

A. Yes.

Q. One at Alford's Point, another at Menai. And then there's reference to Barden Ridge, which is Gandangara Estate Stage One, Menai?

A. Yeah.

Q. See that?

A. Yes.

Q. So when I've referred to Stage Two that's obviously the next succeeding stage of the Barden Ridge Gandangara Estate that's referred to there?

A. Yes, yes.

Q. You'll see at the comment,

"It's clear that poor accounting systems, a lack of transparency in reports to members and an over reliance on costly external consultants has meant that GLALC itself is yet to realise the benefits of earnings from these projects."

Q. Was that a sentiment that you shared in about 2008?

A. Absolutely.

Q. Also in that document - and I won't take you through the whole of it - but you'll see on page 119 there's reference to vision, "GLALC committed to the advancement, protection and information of Aboriginal people, heritage and culture"?

A. Yes.

Q. And paragraph 4, commitment, "Commitment to maintain a strong and stable organisation to serve Aboriginal people and the broader community"?

A. Yes.

Q. All of those matters I take it you were in agreement with?

A. Yes.

Q. As a member of the Council at that time?

A. Yes.

Q. At paragraph 5 there's a values statement and in paragraph 7 on page 121 there's reference to cultural objectives?

A. Yes.

5 Q. They are all of those matters that you were in general terms familiar with 2008, 2009 and onwards as you took your role as Manager, Housing, through 2010 through to the period say 2013?

A. I wasn't continually through at Gandangara. I left Gandangara and came back and left and came back.

10 Q. It might be an appropriate point to clarify that now. When did you leave GLALC - sorry, Gandangara and when did you return?

A. Roughly I left August 11 and didn't come back until March 2013.

Q. If you turn on to page 123 there's reference to a land management procedure--

15 A. Sorry--

Q. Page 123.

A. Okay.

20 Q. Paragraph 7.1.2?

A. Yep.

Q. Land management to ensure that all cultural sites are protected and preserved?

25 A. Yep.

Q. And that all GLALC owned lands are managed in the interests or for the benefit of members under the Act?

30 A. Yep.

Q. And the Act I'm referring to is the Aboriginal Land Rights Act is it?

A. Yes.

35 Q. With which again you were in general terms familiar while you were employed. Now more importantly, coming to page 124 there's the heading 7.1.3 Development of Land and Other Assets. It says that, "Subject to the approval of members the Board and the CEO are directed to develop claimed land or land acquired for further development in a manner that maximises benefits to the members" and importantly that the division four of the Act will be rigorously applied?

40 A. Yes.

Q. And thereafter follows a process, a strategy with defined responsibilities and a timeline, do you see that?

45 A. Mm-hmm.

Q. And then there's reference about point eight on the page to GLALC establishing a wholly owned corporate entity. Do you see about three-quarters of the way down the page beneath the table?

50 A. For 124.

Q. On 124, the passage that commences, "In order to ensure clear delineated accountability"?

A. Yes, yes.

5 Q. And there's reference there to incorporation of special purpose or single purpose vehicles for each stage of the development?

A. Yes.

Q. Was that the process in general terms that you were familiar with in 2010?

10 A. Yes.

Q. And it says at that bottom that, "None of the wholly owned corporate entities will have administration or finance capabilities as all financial administrative functions will be performed at commercial rates by GLALC." Do you see that?

15

A. Sorry?

Q. The last paragraph, do you see that one that I just read that? The one that starts, "None of the wholly owned corporate entities"?

20

A. Yes.

Q. Did you understand that to mean that only GLALC would be charging for provision of administrative and financial functions?

A. Yes.

25

Q. I take that you were never on the board of the Council at any stage?

A. No.

Q. Did you have any knowledge of the terms upon which Mr Johnson was retained as CEO by GLALC?

30

A. No.

Q. Did you ever see a copy of Mr Johnson's employment contract or contracts?

35

A. Then? No.

Q. Did you have any knowledge in the period that you were employed at GLALC as to the terms of any bonus arrangements that related to Mr Johnson's employment?

40

A. No.

Q. So you have no understanding whatsoever of how many entities in the GLALC organisation paid him a salary?

A. No.

45

Q. Whether or not he was paid a bonus by any of those entities?

A. My understanding is - and that came before the members - that where the CEO would provide income back into the, I think it was called the Members Fund, that a bonus scheme would be applied. That's my understanding.

50

Q. Could you assist me a little bit more with your understanding that you've just mentioned. This is an understanding you derived as a member of the Council itself? Not as a board member but as an ordinary member, as you might say?

5 A. Yes.

Q. Where did you derive that understanding from? Who told you or what document was shown to you about that?

10 A. Members were provided - like you get a presentation up on the board and what would happen is, I think the members were provided - so you had an 80/20 rule where 80% of the general development - I think profit it was back then - so 20% would be kept for administration, so to run the Land Council et cetera and then 80% of whatever income - sorry, whatever profit after costs would be provided - would be saved into a--

15

Q. Into the Future Fund?

20 A. Future Fund, that's what it's called, yes. So - and members would then be provided services and I think the CEO and the Board explained that the CEO, as normal corporations, they'd be paid a bonus. If he produced then he'd be paid. So that's what the members were told. And this was about 08, 09, so.

Q. It was your understanding that that bonus would be paid out of the proceeds of sale of properties that were developed and sold for a profit?

25 A. I think - so not a - after the sales less I think costs. I think that's how it was explained to us, so.

Q. So firstly there's a sale process?

A. Yep.

30 Q. Then there's deduction of direct costs involved in its sale?

A. Yes.

Q. And that produces a surplus?

A. Yes.

35

Q. And that surplus is roughly equivalent to the accounting concept of gross profit, correct?

A. Yes.

40 Q. And it's your understanding from about 2008 that the CEO was entitled to be paid a bonus in respect of that surplus?

A. Yes.

Q. And is the word "surplus" correct?

45 A. Yes.

Q. That understanding you obtained from a presentation that was made to members of the Council?

A. Yes.

50

Q. Do you remember who made that presentation?

5 A. I think the lady that passed away, who was the chairperson that time and I think the deputy chair was there at the time as well. So the whole board was there and the members would ask questions about how it all worked and they'd be answered. So you had, I think, upwards of 40 odd people because you have to have 10% quorum of the total membership, so all members would have an opportunity to ask questions.

Q. Who was the deputy chair at that time?

10 A. I think it was George Bloomfield.

Q. Mr Bloomfield?

A. I think so. Because that changed subsequently.

15 Q. At this particular meeting that you're referring to that you have a recollection of, whereabouts did it take place?

20 A. Very good question. Because we had only two locations, so we had one at a TAFE college and I think one at the Gandangara Land Council itself downstairs. We had a meeting room. I'm not sure if it occurred there. I think it occurred at the TAFE college because it's bigger, because the entire room down at Gandangara.

Q. Was it a daytime meeting or a night-time meeting?

25 A. Night-time, members can't make, so I think generally it would happen on a Wednesday night so members would be given notice you know to come along and they would just come along.

Q. About what time, 6 o'clock, 7 o'clock?

30 A. Usually at 6, 6.30 that's what the usual time was.

Q. At that time do you have any recollection of the members of the council being advised of the provisions of the Aboriginal Land Rights Act 1983 and in particular s 52D, do you remember that being discussed?

35 A. The members were quite aware of the Land Rights Act, there had been - members are quite active so they're pretty familiar, I couldn't tell you what they knew of s 52D.

Q. I will show you a copy of s 52D of the Aboriginal Land Rights.

40 REGISTRAR: I will just give your instructing solicitor leave to approach.

BAIRD: And there's a copy for the Registrar as well.

45 Q. Registrar I am showing the witness a printout of s 52D of the Act, just giving you a moment to read it, in particular, well there's only two subsections, subs 1 and subs 2 and subs 1 deals with a prohibition on payment of any part of the income or property from being transferred directly or indirectly by way of dividend or bonus or otherwise by way of profit to members of the council, board members or any other member of staff or consultant to the council do you see that?

50 A. Aha.

Q. But subs 2 to be fair says nothing in that section prevents the provision of a benefit in good faith to a council member, board member, member of staff or consultant in accordance with this Act, do you see that?

A. Yes.

5

Q. Or the payment of in good faith remuneration?

A. Yes.

10 Q. At this meeting of the council in which you attended at which the topic of the payment of a bonus to Mr Johnson was discussed, do you recollect any discussion about the application of s 52D to his proposed base?

A. Look I don't recall that, but I understand the section. I don't recall that at that particular meeting.

15 Q. This meeting you think occurred was it in about 2008 or 2009 or less you can recall?

20 A. I'm trying to think so the first election of the Board occurred about '07, '08 because he had a two year term just I'm trying to work back. So the first election occurred I think '08 because an election didn't occur in '07 because the Land Rights Act had just changed and I think it still had chairperson, secretary and treasurer in place and I don't think the Board were elected until the following year around September which is generally when the annual report and the member's meeting to elect a new Board, I think, so I think it was about '08 Septemberish.

25

Q. If it's of any assistance to you Mr Johnson first commenced as CEO GLALC in 2007 do you recollect that?

30 A. I think January, February I think because I started in June, I think I started in June and he was there well before me. I think January or February of '07 yes.

35 Q. And at some stage his employment contract was renewed and if you need to see a document I can show you but take it from me that in May of 2010 his employment contract was renewed and again there were additional contracts in 2012. What I was asking about was this meeting of the council which you are referring do you think it occurred in the 2007 period or the 2008 period or the 2009 period?

40 A. Honestly though I couldn't recall because we've had so many member's meetings in - I honestly couldn't recall.

40

Q. Let me assist you this way, when did you become a member of the council itself, do you remember?

A. I remember I became a member I think because I started in June and I think I became a member later that year.

45

Q. So you were an employee first before you became a member of council?

A. Correct.

50 Q. So by deduction this meeting to which you refer had to have occurred after you became an employee of DLALC?

A. Yes.

Q. And after you became a member of the council of DLALC?

A. Yes.

5

Q. Which means that at the very earliest it could have been on your timeline was mid 2007 but more probably 2008 is that your best recollection?

A. My best - yeah best recollection is probably it would be after I became a member. I think I became a member in about August, I honestly couldn't tell you outside that, August so it would be at least after August 2007.

10

Q. So this meeting of the council, one of the objects of this meeting was to ratify Mr Johnson's employment contract right?

A. Yes.

15

Q. And included in that contract of employment was his bonus arrangements?

A. I think so yes, I can't recall.

20

Q. And there was as you've said some discussion about his entitlement to a bonus under that contract?

A. Yes.

25

Q. Were there persons present who were opposed to Mr Johnson being paid a bonus out of the proceeds of sale of council land?

A. Wouldn't say opposed but a lot of people asked questions about how it all was going to be structured and how it would work.

30

Q. Did it strike you as right that Mr Johnson should be receiving a bonus commission by way of a percentage of the proceeds of sale of council land?

35

A. I have no issue with people being paid based on productivity. If they produce, I have no issue with them being paid. So I know previously Gandangara had very little services. I know Jack when we first started we developed a number of programs and a little later on we acquired transport, we divulged a medical service. We provided education programs, we were trying to develop a dental service and become a member of the AHMRC which is excuse my recollections the Aboriginal Health and Medical Research Council which would entitle the service to apply for funds to develop a dental service because at the time there was only three services, one in Mt Druitt, one in Campbelltown and one in Redfern and if you're not a member of that area you're not entitled to go there as an Aboriginal person. So what we were trying to do was to develop services so Jack developed those services and I have no issue with him being paid for bringing those services there.

40

Q. Let me ask you this, when you commenced employment with GLALC were you interviewed by somebody?

45

A. Yes.

Q. Who was that interviewer?

A. The Board, members of the Board I had--

50

Q. Did that include Mr Johnson?

A. No, it was a person Tracey Onterveros(?).

Q. Thank you've answered my question, it didn't include Mr Johnson?

5 A. No, okay.

Q. So Mr Johnson is paid a salary as CEO and that salary payment process was presumably an arm's length negotiation between Mr Johnson on the one hand, the members of the Board on the second and it was subject to approval or ratification by members of council?

10

A. The contract is not ratified, I think the Board is responsible for that the members are just told I think just to keep them informed because previously members weren't told of anything and I think that was one of the gripes the members had, they were never kept informed.

15

Q. Well on this occasion members were informed but the CEO has a large range of duties that you've just listed and he's remunerated by way of salary?

A. Mm mm.

20 Q. As we've discussed at that time, this the 2008 through to 2011 period there's major developments occurring in the Barden Ridge area and I can take you to the contracts for sale if you need to see them, but if I put to you that the gross proceeds of sale were something in the order of \$14 million for those two pieces of land or possibly more, does that accord with your general understanding?

25

A. I think yeah.

Q. Whatever the exact figure was it was a substantial development was it not?

A. Yeah absolutely because when I first stated no developments had happened, had occurred for - I think the last development occurred in about '05 and even then--

30

Q. Can I just stop you there and bear with my questioning, I appreciate your frankness but time--

35

A. Yep, yep.

Q. So DLALC is developing and selling two major pieces of property which are going to produce surpluses in excess of \$10 million possibly \$15 million or more, do you think it is right that out of the proceeds, that is the surplus after direct costs of the sale development and sale of these two properties that the CEO in addition to his salary should be paid a commission representing a percentage of those proceeds?

40

A. Short answer yes.

45 Q. And you as a member of council were content to approve that course of conduct by the Board members in entering into that contract?

A. I have no issue with that and the reason if I may is because of the Sutherland Shire Council and how difficult they are to deal with.

50 Q. Notwithstanding the provisions of s 52D of the Act?

5 A. I have no issue with that at all because Jack was able to get those developments up and running where no-one else had done so for the last three or four years prior to that and members of the Land Council had no income. So for him to be able to come in and develop income for the Land Council to provide services to the Aboriginal people of Liverpool, Bankstown, Fairfield et cetera I have no issue because he was able to provide that for the Aboriginal people.

10 Q. But isn't that what he was contracted to do, that's what he was paid a salary for?

15 A. He was paid a salary to - believe me the politics of the Land Council it does not, the salary you get paid you don't get paid enough to deal with the politics of the Aboriginal people on top of dealing with people like Sutherland Shire Council. I had no issue with it being paid productivity, if he was able to produce those things and he provided a lot of services, I have no issue with it. I have no issue of it.

20 Q. But is there not a direct prohibition under s 52D on a member of staff which Mr Johnson was, being paid a bonus out of the income or property of DLALC?

25 A. But it also says under s 2 sub B, says a payment of good faith or remuneration to any such member of the Board or member of staff. He's in a pay a salary but why shouldn't he be entitled, he's able to provide services to the Aboriginal community why shouldn't he be able to provide paid bonuses. I don't understand how because under the Land Rights Act you're paid a pittance to deal with any number of people, Steven Wright the registrar, NSWALC and that's a separate issue entirely--

30 Q. Could I just stop you there--

A. --they're dealing with Sutherland Shire Councils and Local Councils it's a difficult time.

35 Q. If I can just stop you there, I don't want to debate with you about the construction of the member that's not--

A. But it's not fair to say it's taken completely out of context, it's really not fair to take it out of context and say he's paid a bonus you have to look at it in the context, it's unfair.

40 Q. What I wanted to ask is what discussion took place at that meeting about the impact or otherwise of s 52D was it discussed at that meeting?

A. Members are regularly told, members are very well aware of the Land Rights Act and particular provisions about because previously CEO's--

45 Q. Thank you, understand that, secondly at that meeting was there reference made to any legal advice having been obtained as to this matter?

A. I couldn't recall whether legal advice had been mentioned.

50 Q. You don't know when were the best stage?

A. I couldn't recall, honestly couldn't recall.

Q. Could I turn to a slightly different topic and in the 15 minutes that remain. The retention of Mr Wing, that's Mr David Wing is it not?

A. Yes.

5 Q. And he's associated with a company called Dixon Capital is he not?

A. Yes.

Q. He's the principal of that company?

A. I think so yes.

10

Q. In your role as manager housing did you have anything to do in your day to day duties with Mr Wing?

A. Not in relation to housing, I got to know David but not in relation to housing.

15 Q. Did you have some understanding as to what the nature of his duties and his involvement with GLALC was?

A. Just generally I think his role was to help with the negotiations with NSWALC, the registrar I think at the time and Sutherland Shire Council.

20 Q. So he was involved in the development of Barden Ridge?

A. Yeah.

Q. And as you've said before that was not a matter that you had any great personal involvement to those you employed was concerned?

25 A. No.

Q. So I take it from that that in terms of whatever it was that Mr Wing and/or Dixon Capital were doing for GLALC that was not a matter that impacted on your day to day duties and responsibilities?

30 A. Not in relation to rental no.

Q. Did you have knowledge as to the terms upon which Mr Wing/Dixon Capital were retained as a consultant by GLALC?

A. No.

35

Q. Was the Dixon Capital retainer ever referred to members of council for either explanation or approval?

A. They don't have to be.

40 Q. But as a member of council were his remuneration agreements related to you or described to you?

A. No consultant's contracts were taken to the members.

Q. Do you also know a Mr Perkins, sorry I should make it clearer a Mr Christopher Perkins?

45

A. Yes.

Q. Mr Christopher Perkins was associated with a company called Essential Media Communications was he not?

50

A. Yes.

Q. And Essential Media Communications through Mr Perkins was also a consultant to GLALC was it not?

A. Yes.

5 Q. Firstly in your day to day duties at GLALC did your responsibilities include dealing with Mr Perkins or Essential Media Communications?

A. No.

10 Q. So again whatever it was that they did at GLALC it was not something that you came across in your day to day duties?

A. No they're entirely different to rental and housing rental.

15 Q. Can I then also take it from that answer I will ask you to open - did you have any involvement in a contract whereby Essential Media Communications and Mr Perkins were retained as a consultant by GLALC?

A. No.

Q. Did you have any knowledge of the terms on which they were retained?

20 A. No.

Q. Did you have any involvement in the process of approval of their remuneration?

A. No.

25 Q. These matters were dealt with by the Board I take it and not referred to members of council?

A. No.

30 Q. Now forgive me asking but the name Perkins is a very famous name in indigenous affairs?

A. Yeah.

Q. Does Mr Christopher Perkins have any relationship to Mr Charles Perkins?

35 A. Honestly I don't think so, one is indigenous one is non indigenous but you would have to ask him.

Q. It was just a matter of curiosity?

A. I don't think so.

40 Q. Do you have any knowledge of the rendering of invoices by Essential Media Communications to GLALC?

A. No.

45 Q. And did you ever have any involvement in the process of payment of those invoices?

A. No.

50 Q. Now the final matter that I wanted to deal with is your involvement in other Aboriginal Land Councils. Now you mentioned in your answer earlier that at one stage in 2011 you went away from GLALC?

A. Yes.

Q. That was in about August 2011 you said was it?

A. Right yeah.

5

Q. Do you remember a Mr Gundar joining GLALC in about March of 2011 as finance officer?

10 A. I think, I remember him but I think Karen was the - Karen Moltley(?) was the finance manager at the time. My dealings with - other than just meeting him in the office and meeting for the first time, I had very little dealings with him but I recall him.

Q. At the time when you, this is August 2011 when you first left GLALC what was your understanding of the setup of the future fund?

15 A. I think I've already mentioned it, yeah how the members were told is that 20%, 80% rule, so 20% would be use of all inner surplus would be retained to run the Land Council and all the services and 80% would be retained in the future fund to provide services for the members of the Council.

20 Q. Did you have any personal involvement in the administration of the future fund?

A. No.

25 Q. As manager of housing that was not a matter that was impacted by the setting up of the future fund?

A. No, the housing itself, I use that loosely, the income that you get from rent is meant to cover the costs of the housing programs so the Land Rights Act describes that so the Land Council didn't prop it up for want of a better way so it had to fend for itself.

30

Q. But you didn't have anything to do with the future fund directly in your day to day?

A. Not at all.

35 Q. As a member of the Council was the investments and operations of the future fund ever referred to the Council for information or approval purposes?

40 A. No I think members were told and it never had to be approved by the members that I can recall. So other than the first communal and the business plan I think that's when it was mentioned and that was approved by the members. I think so, loosely yes the members approved it under the first communal business plan and I think subsequently. So sorry for saying that.

Q. So in August of 2011 you then moved to Walgett?

45 A. No I didn't not to Walgett to another Land Council.

Q. Deerubbin?

A. Deerubbin yes.

Q. So you had nothing to do with the Walgett Land Council?

50 A. No not that I know.

Q. It was only Deerubbin?

A. Yes.

Q. And for how long were you involved with Deerubbin?

5 A. I think I left, when did I start, sorry I'm just trying to work back because I applied for another job.

Q. You said you returned to GLALC in 2013?

10 A. Yeah I know but I had another job before that so 2011 to 2012 I think around September because I applied for another job back in the Territory. From Deerubbin I left to go back to the Territory so and then from the Territory I came back to New South Wales.

15 Q. When you were at Deerubbin Land Council were you also providing any services to GLALC?

A. No.

Q. They were entirely separate activities, firstly GLALC then Deerubbin--

20 A. Again I was the housing rental manager.

Q. But there was no question at any stage when you were either at GLALC or Deerubbin of you providing services to both Land Councils at the same time?

A. No.

25 Q. It was simply a process of consequential employment?

A. Yes.

Q. Did you have any knowledge as to the involvement of Mr Wing with Deerubbin Land Council in the period that you were at Deerubbin?

30 A. No.

Q. Do you know whether he was providing services for the benefit of Deerubbin?

35 A. Yeah I think so, I recall but I had nothing to do with it. I think Kevin Kavanagh.

Q. I take it that from what you said that your employment with Deerubbin Land Council was in a similar role of that of GLALC mainly managing housing?

40 A. Yes.

Q. Was it just housing for rental or was it housing development as well?

45 A. No only for rental under Land Rights you can't sell houses, we were trying to develop a rent buy program where members could buy the houses, I'm not sure if we have time to go to that schemes, we were trying to develop a program where members could buy their own houses but we had to get approval from NSWALC to do that.

Q. When abouts did you return to GLALC?

50 A. March or April of 2013 I came back to New South Wales and my old position.

Q. And at that stage or shortly thereafter I understand that there was a civil conflict at Board and member level is that right?

A. What do you mean by conflict sorry.

5 Q. Shortly thereafter an investigator was appointed?

A. I know there was a conflict with NSWALC but not at the Board.

Q. To be fair there was conflict between GLALC on the one hand and what was that acronym you used?

10 A. Sorry New South Wales Aboriginal Land Council which is the State regulatory body. Steven Wright which is the registrar I know there was a conflict between what Gandangara was trying to do and what NSWALC wanted land councils to do. I think NSWALC wanted land councils to just remain subservient, whereas in a land council we are trying to be self sufficient
15 and develop programs so that members could benefit. NSWALC didn't want that, NSWALC just wanted you to be able to use the \$130,000 odd that it gave it to just report to it and not develop any services. That was the conflict between NSWALC, sorry New South Wales Aboriginal Land Council, the Registrar Steven Wright and Gandangara Land Council.

20

Q. And as a member of the council you had a general understanding of that conflict?

A. I had more than a general understanding.

25 Q. And that conflict came to a head with the appointment of an investigator by the Registrar is that correct?

A. I think no it came to a head when there was a 221A investigation and then I think Dan, I can't remember, he was known as OCM which I think is O'Connor Marsden and then I think yeah that's my understanding of the--

30

Q. Subsequent to that there was an administrator appointed to the council correct?

A. Yeah about August of 2013.

35 Q. That was Mr Lombe?

A. Lombe yeah.

Q. And Mr Lombe has in turn been replaced by Mr Hillig?

A. Yes.

40

Q. Lastly did you have any involvement at all in the preparation of the accounts for GLALC while you were employed there?

A. No.

45 Q. Did you have any involvement in the process of approval of the annual report that was produced by the external accountants each year?

A. The financial reports.

Q. Yes?

50

A. No.

Q. As manager of housing I presume you had to report to some officer as to the outcome of the financial process that you were managing?

5 A. Yes absolutely I provided reports to Jack and Jack would direct me to provide the reports to I think Shalesh at the time, sorry Shalesh Gundar was the finance manager I would provide all the reports. You had to anyway because we had a program a housing program we would provide reports in terms of income and costs, so we had to provide reports regularly for that.

10 Q. And so far as you were aware were the financial outcome of the matters you managed recorded in the books of GLALC?

A. Absolutely members would be really upset if they weren't. Housing is a really sensitive issue in land councils generally.

Q. And GLALC used the MYOB system of recording did it not?

15 A. Yes.

Q. And was the process that you would make your reports to Mr Gundar and he would cause the entries to be entered and recorded?

20 A. I think Shalesh and he had a number of assistants, Tony Sevidon and I think he had two assistants--

Q. But leaving that aside you yourself did not directly make entries in the MYOB system did you?

25 A. No.

Q. One supplementary question if I might please Mr Sing, that meeting of the council that we were referring to which according to your best recollection was about 2008 the one where the CEO's contract was discussed including the issue of his bonus. Do you remember if that was an annual
30 general meeting or was it an extraordinary general meeting of the council?

A. We used to have - sorry, I have to provide context. We had two. We would have an annual general meeting and an extraordinary meeting, so I couldn't
35 tell you whether it was both, and the reason for that is, one, members - in order to be eligible to vote, members had to have attended two meetings in the prior 12 months, so what we tried to do is provide members an opportunity to attend two meetings and then we would have the, I think - so I think the EM would be first and then the AGM, cause then, you know, if members had only attended
40 one meeting in the prior 12 months, that they would get their second meeting in the extraordinary meeting and then you would go to the AGM, which would entitle them to vote, yeah. So, yeah, that's how we used to structure it because members very rarely came in the 12 months and they all left it at the last minute.

45

Q. Might the witness be shown a volume please, I'm going to refer to it as volume 9C and the page number is 2995, that's being brought to you, Mr Sing.

A. Okay.

50 Q. The document at page 2995 of volume 9C, Mr Sing, that I'm referring to is

an email from yourself to Mr David Wing, dated 7 May 2013. Do you see that?
A. Mm-hmm, yes.

5 Q. Do you see at the foot of the page your name and beneath that your title
"Acting CEO, Walgett Local Aboriginal Land Council". Do you see that?
A. Yeah.

10 Q. Did I misunderstand, I thought in an earlier answer you said that you had
nothing to do with Walgett LALC?
A. No, no, I was acting CEO. When I came back I became the acting because
they didn't have a CEO, so I became the acting and helped them out and I got
appointed as the CEO in about August. So you asked me whether in 2007
and 2008 did I have anything to do with Walgett and I said no.

15 Q. No, I thought my question was--
A. No, I--

20 Q. --related to the period after you had left GLALC in August 2011 and as I
understood your answer you went to another employment for a while and then
you went to Deerubbin. Is that correct?
A. Yeah, Deerubbin in 11 - 2011. Sorry, 2011 to 2012. Left there to go to the
Northern Territory, worked up there. Came back, then I - with Walgett Land
Council.

25 Q. And then after Walgett you also returned to GLALC. Correct?
A. Yeah, I was working for Gandangara Employment Training Ltd and then I
went to acting CEO of Walgett Land Council.

30 Q. As acting CEO of Walgett Land Council in May 2013, did you have any
knowledge of loans between GLALC and Walgett LALC?
A. What loans?

35 Q. That's my question to you, do you have any knowledge of there being any
loans between those two entities?
A. No, no.

40 Q. Are you aware that in the accounts of GLALC is recorded a loan to Walgett
LALC?
A. That's my understanding, yes.

Q. And that loan relates to services provided by GLALC to--
A. No, there was a dispute about that, so--

45 Q. What was your understanding of that dispute, Mr Sing?
A. My understanding is sketchy because I asked, I think, Martin his name is,
from - sorry, Hillig's firm. I can't remember his last name. I asked him for
documents to verify the loan. Ivan Simon, who was the acting CEO of
Gandangara Land Council, I asked him as well for loan documents. I said
there was no loan. Unless they could provide me documents there's no loans,
50 so they couldn't provide me with documents.

Q. When did you first commence the role as acting CEO of Walgett LALC?

A. Beg your pardon?

Q. When did you first commence as acting CEO?

5 A. I think cause they didn't have a - I was at Gandangara Employment Training Ltd and I became aware that Walgett didn't have a CEO about April, I think, April 13. I--

Q. Let me assist you this way, Mr Gundar has given evidence yesterday that there was an arrangement whereby GLALC would provide services to Walgett in relation to the development of its property. Those--

A. Sorry, Walgett's property?

Q. "Its" being Walgett's development projects, and that in return for the provision of those services, at the conclusion of the development and out of any profits of that development Walgett would reimburse or pay to GLALC some amounts. Do you have any knowledge of such an arrangement?

15 A. I know of it, but that's hearsay. I don't know of - I haven't seen the documents so I can't say that, yes, there was. I know of and I asked for
20 documents to verify that because no developments had ever occurred at Walgett. I know that because I started those developments or tried to get them up and running. I got approval from NSWALC so I did that as the acting CEO. So there was no-one else that did that.

25 Q. About when did you do that?

A. I think I applied to NSWALC - because you had to do a land dealing process. You put all your documents in about - probably about after May you submit, and I think NSWALC gave our land dealing approval in about August, so--

30

Q. Of 2013?

A. Yeah.

Q. And did Mr Wing have any involvement in that process?

35 A. No, I put all the documents together myself.

Q. Is it your evidence that you yourself did not, on behalf of Walgett, enter into any agreement with GLALC for payment of any amounts to GLALC out of the Walgett land developments?

40 A. Not I, no.

Q. So if there was any such arrangement it preceded your involvement as acting CEO?

A. Correct.

45

Q. And from what you've said is it also the case that you personally did not send any document in writing to support there being such an arrangement or agreement?

A. Yes.

50

Q. I just want to show you one document just so it's quite clear of the substance of what you said.

A. Yep.

5 Q. In volume (VI), the reference is tab 5 page 1447, I'm just showing you an invoice.

A. Yes.

Q. It's an invoice from GLALC to Walgett LALC?

10 A. Yes.

Q. It's dated 1 October 2013?

A. Yep.

15 Q. As at 1 October 2013 I take it you were still acting CEO at Walgett LALC?

A. I think I was appointed by then, yes.

Q. So you were actually CEO by then?

A. Yes.

20

Q. Firstly, did you see that document at or about that time, 1 October 2013?

A. Yes.

Q. You will see that there are two amounts that are included in that invoice?

25 A. Mm-hmm.

Q. The first one is described as "Management fees, Walgett - NSWALC portion" and the amount is some \$2,395 odd. Do you see that?

A. Yep.

30

Q. And there's a second one, "Management fees, Walgett - operating portion" and it's for an amount of about \$3,437.84?

A. Yep.

35 Q. Beneath that is an entry, "Accounting services, CEO costs, Steve's costs and development consultancy fees \$5,833 per month plus GST". Do you see that?

A. Yes.

40 Q. Are you able to tell the Court anything about the services that are referred to in this invoice?

A. Yes, Gandangara managed a housing program for Walgett and also provided services in relation to accounting, providing reports to the board and to NSWALC. So they prepared all of the reports, financial reports, because
45 under the Land Rights Act you have to provide meeting reports, financial reports to the board every month, so that's the services they provided.

Q. So do you have any issue with the amounts that are claimed to be due in that invoice?

50 A. Not at all because every month all those reports were provided to the board

and the board would sign off on it.

Q. If you turn over the page to page 1448 you will see another invoice from GLALC to Walgett on 1 October?

5 A. Yes.

Q. It says, "Fee for the management of all aspects of housing at Walgett at 30,000 per annum, plus GST, for October 2013"?

A. Yes, yes.

10

Q. Is that one of the fees that you referred to a moment ago which you were satisfied with?

A. Yes, yes.

15 Q. Do you have any knowledge of the - if I direct your attention to page 1441, there's an amount there of \$10,000 on 1 July 2013, with the description "Management fees, Walgett". Is that of the same nature as the one that we saw at page 1447?

A. It might have been, yes.

20

Q. The preceding page at 1440 there's an interest charged. Both at 1439 and 1440 there are interest charges on 30 June 2013 from GLALC to Walgett. Do you know what they're about?

A. I couldn't tell you, sorry.

25

Q. Do you know if these invoices for management services that were provided were being paid as and when those invoices fell due?

A. My understanding we had to under the Land Rights Act.

30 Q. Would it be an explanation for the interest charged that they had not been paid?

A. Say again, sorry?

35 Q. If one looks at the interest charge on page 1438, is it possible that the reason why GLALC was issuing Walgett an invoice for interest was because Walgett hadn't been paying its management fees?

A. I couldn't tell you that, sorry.

40 Q. Could you also turn in volume (VI) to tab 6, page 1536, please. I just want to ask you a question about the document there which is a tax invoice, dated 5 May 2013, by Dixon Capital Trust. That's Mr Wing to Gandangara Management Services - that's GMS. Do you see that?

A. Yes.

45 Q. And it's \$12,000 per month, monthly retainer fee, fee for the provision of provisional services to Gandangara Management Services in April 2013. Do you see that?

A. Yes.

50 Q. Do you know anything about the proportionality of that invoice between

GLALC and Walgett?

A. No.

5 Q. If you look at the handwriting in the bottom left-hand corner do you see that there has been an attempt by someone to apportion that amount of \$13,200, which includes GST, between the various land councils. Do you see that?

A. Yes.

10 Q. With Walgett being ascribed a certain percentage, namely \$600, plus GST out of \$12,000?

A. Mm-hmm.

Q. In other words 5%. Do you see that?

A. Yes.

15

Q. When you were acting CEO of Walgett, did you know anything about Mr Wing/Dixon Capital Trust apportioning the fees for its services between GLALC and Walgett?

A. No.

20

Q. And you didn't discuss that matter with Mr Sing?

A. I haven't seen this invoice before so I don't know.

Q. With Mr Wing, sorry.

25 A. Sorry, no. I - in terms of Walgett there were no developments done, so those were done by myself. Well, started by myself and never finished.

Q. So in conclusion so far as you representing Walgett are concerned, you did not regard Walgett as liable for any part of any fees claimed by Mr Wing on behalf of Dixon?

30

A. In relation to this invoice I don't, no.

35 BAIRD: Thank you, Registrar, I actually have no further questions for this witness. We've been able to conclude them, so I will not ask for Mr Sing to be required to return this afternoon or tomorrow. If I could just have the usual order, Registrar, I would be grateful.

40 DEPUTY REGISTRAR: Yes. Mr Sing, I will stand your examination over generally, with liberty for it to be restored upon giving you 14 days' notice. If it is not restored within the next six months it is deemed concluded. Do you understand?

EXAMINEE SING: I do.

45 DEPUTY REGISTRAR: At the start of your examination this morning I made an order for you to sign a copy of the Court's transcript. Once it has been prepared an officer of the Court will contact you to arrange a time and a place for you to come and sign that document, and you must do so in accordance with the orders I have made today. Do you understand that?

50

EXAMINEE SING: I do.

DEPUTY REGISTRAR: Thank you for your attendance, you are not required this afternoon.

5

EXAMINEE SING: Okay, thank you.

<THE WITNESS WITHDREW

10 STOOD OVER GENERALLY

BAIRD: The next witness is Mr Wing, and he is apparently outside. That leaves us the rest of the day for Mr Wing, which should be more than adequate. In fact, I'm very confident we will be able to finish by 3.30 this afternoon, Registrar.

15

DEPUTY REGISTRAR: Again my apologies for that, it's only just come to my attention.

20 BAIRD: We'll make sure we do that. Could we possibly just have a five minute adjournment?

DEPUTY REGISTRAR: Of course, we'll just go off record. I'll dispense with all formalities, that's fine.

25

SHORT ADJOURNMENT

DEPUTY REGISTRAR: The Court reconvenes in regards to the matter of Gandangara Management Services Pty Ltd.

5 BAIRD: Thank you, Registrar. The next witness is Mr David Wing. Mr Wing has already entered the witness box, Registrar.

DEPUTY REGISTRAR: Mr Unsworth, I understand you're appearing for Mr Wing?

10 UNSWORTH: Yes I am.

<DAVID CHARLES WING, SWORN(12.25PM)

15 DEPUTY REGISTRAR: For the court record please state your full name, address and occupation.

EXAMINEE WING: David Charles Wing, address, [REDACTED]
[REDACTED] Occupation, consultant.

20 DEPUTY REGISTRAR: Please listen carefully to what I'm about to tell you. This examination is being conducted under the Corporations Act 2001. It is an unusual Court proceeding in that you are required to answer the questions that are put to you even if your answer may be incriminating or make you liable for a penalty. However, the answers you give to the Court today cannot be used
25 against you in any criminal proceedings or in any proceedings imposing a penalty if you clearly state the word "privilege" before answering the question. You must do that for each answer for which you are claiming privilege. Please note, though, that if you give a false answer or refuse to answer a question that is put to you, you may be liable for perjury or contempt of court. Do you
30 understand?

EXAMINEE WING: Yes, I do.

35 DEPUTY REGISTRAR: Everything that is said in this courtroom is being recorded, which means you must articulate a response to the questions that are put to you. That may require you to repeat an answer or spell out a name for clarification. Do you also understand that?

40 EXAMINEE WING: I do.

DEPUTY REGISTRAR: Are orders being sought under s 597(13)?

BAIRD: They are, thank you, Registrar.

45 DEPUTY REGISTRAR: Are there any objections?

UNSWORTH: No.

50 DEPUTY REGISTRAR: I order the questions put to the examinee and the answers given by him be recorded in writing, and I direct the examinee to sign

a copy of that transcript once it has been prepared by this Court. Thank you, Mr Baird.

<EXAMINATION BY MR BAIRD

5

Q. Mr Wing, as you are aware this is an examination in relation to the affairs of Gandangara Land Aboriginal Council, otherwise known as GLALC. If I use that acronym or contraction are you comfortable with that?

A. Yes.

10

Q. And also its subsidiary Gandangara Management Services Ltd, which we usually use the acronym GMS, if you're comfortable with that too?

A. I am, thank you.

15

Q. Can you tell us, Mr Wing, how you or your company first came to be involved with GLALC?

A. I came to be involved with GLALC in approximately early 2007 through an association I had with the then CEO, Mr Jack Johnson. I had known him in Queensland and he had taken the position as CEO of GLALC, and I visited

20

him when I was in Sydney on other business just as a social visit. He then explained what the Land Council did, as I was unaware of that at the time, and he then asked me what I did professionally because my association with him was socially and I explained to him my background, and he then asked me to put a proposal forward to assist Gandangara in relation to potential land

25

development activities.

Q. Your company is a company called Dixon Capital. Is that correct?

A. That is correct.

30

Q. What is the corporate structure of that? Are you a director of it?

A. I am not a director.

Q. What's the full name of the company?

A. It's Dixon Capital Pty Ltd and it is the trustee of the Dixon Capital Trust.

35

Q. Are you a member of the Dixon Capital Trust?

A. I am a potential beneficiary.

Q. Potential beneficiary?

40

A. Yes.

Q. Who are the directors of Dixon Capital Pty Ltd?

A. My partner, Angela Lynch, L-Y-N-C-H.

45

Q. And anybody else or was she a sole director?

A. Sole director.

Q. Is she also the sole shareholder?

A. Yes, that is correct.

50

Q. Was that the position throughout the period 2007 to 2013?

A. That is correct.

5 Q. You state that in Queensland you had known Mr Johnson in the period 2007 or shortly before then. You know that in 2007 Mr Johnson took the position as CEO of GLALC, right?

A. Yes, that's correct.

10 Q. What was your involvement with Mr Johnson prior to that time?

A. Another client--

Q. And if it was purely personal just say it was purely personal.

A. Sorry, it was purely personal, yes.

15 Q. I don't want to pry into personal affairs.

A. Yes, I mean I met - sorry, could I expand just to clarify that for you?

Q. Of course.

A. I met him through another client.

20

Q. At that stage, and we're talking early 2007, what professional services did Dixon Capital and yourself provide to clients?

A. To clients generally?

25 Q. Yes.

A. A range of services, predominantly advisory services relating to real estate and infrastructure, so that ranged from strategic advice and planning, strategic planning, not town planning, development advice, assisting clients with bids for projects, arranging project financing and associated structures.

30

Q. So as an overview or generalisation property development services across a wide number of aspects?

A. Yes, that's correct.

35 Q. How long had Dixon Capital been involved in that activity prior to 2007?

A. Since its inception in approximately 2001.

Q. Prior to that where had you been?

40 A. Prior to 2001 I had been in partnership with another gentleman in a firm called Corporate Capital Partners in Queensland and that business had been operating since approximately 1996 or 1997.

45 Q. In 2007 when you had those discussions with Mr Johnson to which you referred, did he make known to you that GLALC had some land that it was wishing to develop?

A. He made known to me that GLALC had some land which it owned or was entitled to own, and at that stage I was learning about the land claim process so as it transpired there were properties for which land claims had been granted but for which titles had not issued, and there were other parcels of
50 land which Mr Johnson believed were subject to land claims that would or

ought to be successful, and that was the state of my knowledge in 2007.

Q. Did he refer to any particular projects by name?

5 A. He referred to a map showing the location with some Post-it notes stuck on it and those locations were not familiar to me at that point in time.

Q. Did those locations include properties at Bardens Ridge or Barden Ridge?

A. Yes, they did.

10 Q. At some stage did you become aware of the community land and business plan for GLALC in 2008?

A. I can't recall, but I could possibly have become aware of it at that point in time.

15 Q. Were you aware that GLALC did in fact have a community land and business plan?

A. I was aware that it was required to have one. I can't say - I can't recall whether I was aware at that time that it did have one, but I was aware that it was obliged to have one.

20

Q. Was that a document with which you were shown or became familiar with?

A. No, not at that point in time.

25 Q. Can you tell me, moving into the 2008 period, so after your initial discussions with Mr Johnson, what was the state of your knowledge or your developing knowledge in 2008 as to the Barden Ridge properties?

A. I was aware that - I can't say precisely when I became aware that GLALC had a parcel of land adjoining a development that had been previously undertaken, which was referred to as Gandangara Estate, stage 1, and there was land adjoining that which I was aware of at that point in time.

30

BAIRD: Could I show the witness a document starting with MFI 1 volume (I) A.

Q. And as that volume is brought up to you, Mr Wing, could you--

35

DEPUTY REGISTRAR: Mr Baird, have you got a copy for Mr Unsworth as well?

BAIRD: Yes we have, tab 4, starting at page 115.

40

Q. I just want to ask you some general questions about that document relating to the answers that you've just given, but firstly to identify that document, that's the community land and business plan for GLALC for 2008 to 2011 that I referred to a moment ago?

45 A. Yes, I see that.

Q. Do you think you've seen that document before at any stage?

A. I can't recall. I presume that I would have seen it if not at this point in time, at a later point in time.

50

Q. I take it, Mr Wing, that you are not a member of the council yourself?

A. No, I am not.

5 Q. Could I take you to page 120, paragraph number 6 headed "Background", and then draw your attention to the final paragraph on the page.

A. Mm-hmm.

Q. Where there is reference to developments being undertaken by GLALC and there are some specific names being mentioned.

10 A. Yes.

Q. There's reference to developments having been completed at Alford's Point, Menai and Barden Ridge, also described as Gandangara Estate, stage 1, Menai. Do you see that?

15 A. Yes, yes I do.

Q. Is that the project that you particularly discussed with Mr Johnson in the 2007, 2008 period?

20 A. It would have been the land adjacent to Gandangara Estate, stage 1, yes.

Q. I take it that the second stage of that was in fact not surprisingly called stage 2?

A. Correct.

25 Q. And that was often simply referred to by that name, development stage 2?

A. Yes, correct.

Q. Was there a nearby piece of land called Lot 101 Barden Ridge?

30 A. Yes, there was.

Q. That was also how it was frequently referred to?

A. That is correct.

35 Q. I take it that you had only involvement with GLALC as a consultant. Is that right?

A. That is correct.

Q. And you had no involvement in its internal affairs or administration?

40 A. No, I did not.

BAIRD: Could I ask the witness to be shown volume (II) to take Mr Wing to the contracts with Dixon Capital. In volume (II), Registrar, I'm showing the witness documents starting at tab 7, which is page 871.

45 DEPUTY REGISTRAR: Yes.

BAIRD

50 Q. Just take a quick moment to look at that. I'm not asking you to read the totality of it, but I just want you to identify and be satisfied that that is a copy of

a letter that Dixon Capital wrote to Mr Johnson as CEO of GLALC on 15 May 2007?

A. Yes, that's correct.

- 5 Q. That copy does not in fact have a signature. If you turn to page 877 being the seventh page of that document, do you see there's space there for a signature?

A. Yes.

- 10 Q. There's a space for yourself?

A. Yes.

Q. There's a space for Mr Johnson to sign?

A. Yes.

15

Q. Do you recollect at this stage whether a signed copy of this agreement, sorry, letter ever came into existence?

A. I believe so.

- 20 Q. Turning back to 871 there is reference to your earlier discussions. I take it that those discussions are the ones you've already referred to in your evidence?

A. Yes, that's correct.

- 25 Q. There's reference to the background of GLALC seeking assistance with identifications of projects and matters like that under the heading Background?

A. That is correct.

Q. You give some detail there of your expertise in those areas?

- 30 A. That is correct.

Q. On page 872, this is in effect a tender letter, is it not?

A. In a sense, yes. It's in effect a proposal respecting the clients' discussions with me.

35

Q. In that sense the words under the heading The Role on page 872, that's information you've derived from Mr Johnson?

A. That is correct.

- 40 Q. You've set out, so that I don't have to read it onto the record, as best you can your understanding of GLALC's proposed developments were at that time firstly?

A. Yes, that is correct.

- 45 Q. Secondly what you and your company and those associated with you what services they could provide to GLALC?

A. That is correct.

- 50 Q. What were the remuneration arrangements if your tender or proposal was accepted?

A. They're set out on page 5 of that letter, page, sorry, 875.

Q. There's reference to a monthly retainer of 5,000?

A. That's correct so that was \$5,000 per calendar month.

5

Q. There was reference to a success fee as well?

A. That is correct.

10 Q. That success fee, I take it, was only payable obviously on the conclusion of the development?

A. That is correct and it was only payable I believe once Gandangara had received the actual proceeds of any development.

15 Q. There's reference on page 876 to the success fee being capped at \$300,000 in any one year?

A. That is correct.

Q. Was there a timeframe on this remuneration, this retainer I should say? There doesn't appear to be a termination clause?

20 A. No, I think it's a termination at will. I think in the second last paragraph on page 876, page 6 of the document. It says, "Of course you may terminate this engagement at any time".

Q. So it's initially proposed to be a 12 month period and thereafter renewable?

25 A. Yes, correct.

Q. Did you ever have any discussions with Mr Johnson or anyone else on behalf of GLALC as to the renewal of this retainer?

A. Yes.

30

Q. In what context did they occur and when?

A. As best I recall, sometime in 2008 probably after the anniversary of this letter I recall having some discussions with Mr Johnson about whether he wanted to continue and he indicated he did.

35

Q. You, in your evidence a moment ago, stated that you believed that a signed copy of this letter did come into existence, are you aware of the process of approval for Mr Johnson to enter into or to accept this proposal and to enter into an agreement with you?

40 A. At the time of this document, no.

Q. Do you know whether or not he was required to obtain council approval?

A. At that point in time, no.

45 Q. Did you know whether or not he was required to obtain approval from the members of the board on the council?

A. No, I was not at the time.

50 Q. Did Mr Johnson tell you in May 2007 that his authority as CEO enabled him to enter into this agreement with you and accept your proposal without

approval from any other person or entity?

A. I don't believe Mr Johnson would have been that specific but I do recall actually meeting the board around this time, sorry, May 2007, in relation to this and the board asked me a number of questions about this document that
5 you've taken me to now.

Q. As best you can recall, where did this meeting with members of the board of the council take place?

A. At the office of DLALC at Moore Street, Liverpool.
10

Q. Was that a day meeting or a night meeting?

A. It was an evening meeting and the board asked me a range of questions particularly in relation to my experience, whether I'd had any previous experience in acting for Indigenous organisations, which I had not.
15

Q. You're not Indigenous yourself, I take it?

A. No, I am not and in particular one of the board members, I can't recall who, or one of the board members asked me very specifically about why the fees were in that person's view lower than they had, I don't think they used the word
20 "experience in the past" but that's - I got - that was the way I interpreted it and there were questions about the fee structure and there were questions about my capacity to do that work based in Brisbane.

Q. Do you remember who that board member who was asking you those questions was?
25

A. I don't recall, no.

Q. Do you remember who the chairman or chairperson of that meeting was?

A. I remember that the chair at the time was a gentleman.
30

Q. Mr Bloomfield(?), perhaps, or was it someone else?

A. I think it may have been, yes.

Q. To the best of your recollection, was there a resolution past at that meeting approving or accepting the terms of your proposal?
35

A. I believe there was but I was not present when that, if that resolution was passed.

Q. You were present for part only of that meeting?

A. I was asked to come in to answer specific questions and then asked to absent myself from the rest of the meeting.
40

Q. Was that meeting a normal bimonthly meeting of the council or was it a special meeting convened specifically for this purpose?

A. I believe it was a regular meeting. I certainly was not informed that it was a particular meeting for this purpose.
45

Q. Between May 2007 and June 2009 what services did you provide to GLALC of the kind foreshadowed in the document at page 871?

A. I provided a range of those services. In particular, the focus at that point in
50

time in 2007 and possibly, you know, half of 2008, maybe the whole of 2008, was really in relation to the item on page 872 on page 2 of the document, the first dot point. It was really the identification of opportunities. There was a need to actually to try to gather information and to identify what land claims had been made, what land claims might have been successful, what land DLALC might have been entitled to, was entitled to, did in fact own, so all of those investigations - there were no records of any substance to base any project making decision on at that point in time.

10 Q. During this two year period, that's from May 2007 to June 2009 were you rendering monthly invoices to DLALC?

A. Yes, I was.

Q. At the rate \$5,000 per calendar month recorded on page 875?

15 A. Yes, I would have done, yes.

Q. They were being paid?

A. Yes, they were.

20 Q. Were you providing reports on a regular basis to Mr Johnson?

A. Yes, I was.

Q. How often was that?

25 A. In the early phases, as I said, because of this investigation we were, there were a number of other consultants engage and we were holding meetings I believe monthly or very close to that regularity. Mr Johnson was invited to attend those meetings. I can't say at this point in time that he attended all of those meetings but he would attended a number of those meetings and he would have received updates from not only myself but other consultants at those meetings.

Q. Were you in the habit of providing written reports for presentation to the board?

35 A. I was - I would have prepared written reports or presentations upon request but that was not necessarily required unless requested.

Q. I'm going to show the witness one document from one folder. If the witness could have volume (I) B just as more of an aide memoir than anything else. The documents behind tab 17 are copies of minutes of the GLALC board meetings and I want you to go to page 574 behind tab 17?

40 A. Yes.

Q. You will see that's the minutes of the GLALC board meeting held on 27 October 2007, do you see that?

45 A. Yes, I do.

Q. Apart from those in attendance there is recorded visitors David Wing, that's you, is it not?

A. Yes, that is correct.

50

Q. I accept at this stage you may not specifically remember whether it was 22 October 2007 that you actually attended but does it accord with your recollection and the events you've previously given that on occasion you attended board meetings of the council?

5 A. Yes, that is correct.

Q. If you turn over the page to page 575, the foot of the page Motion 8?

A. Yes.

10 Q. That motion refers to you, does it not?

A. Yes, it does.

Q. "Mr David Wing and other consultants be utilised within the DCG", what's the DCG?

15 A. That stands for Development Control Group.

Q. Who or what was the Development Control Group?

A. That was this group of consultants who at that point in time were investigating potential projects investigating the development capacity of land that was owned by GLALC.

20

Q. Who were its members?

A. There was myself.

25 Q. Mr Johnson?

A. As I said, Mr Johnson was invited obviously as the client.

Q. The chairman?

A. The chair of GLALC?

30

Q. Yes?

A. No, no. There was a firm of town planning consultants I think who have changed their name. At that stage they were known as PMM. There may have been a project management firm I think Arben Management were engaged at that point in time as well and there may have been one or two other consultants.

35

Q. Was Mr Perkins involved in that? Mr Chris Perkins?

A. I don't believe at that point in time he was.

40

Q. If you go further up the page on page 575 is the heading Motion 5?

A. Yes.

Q. It states that a report "Regarding Gandangara estate stage 2 as tabled and presented by Mr David Wing be accepted and the administration continue to proceed with the development plans". Do you see that?

45

A. Yes, I do.

Q. For your assistance, that's the first minute that we can find that refers to you submitting a report to the council, do you have any recollection of

50

submitting a written report to council any earlier than 22 October 2007?

A. I don't have any recollection, no.

5 Q. Would it be a reasonable assumption that this was the first report that you had delivered to council?

A. It would be a reasonable assumption, yes.

Q. Do you have a copy of that report?

10 A. That report I believe would have been a PowerPoint presentation and it ought to have been in the bundle of documents that I've provided earlier.

Q. Could I ask this of you through the Court, if possible, as I recollect it you produced a large number of documents?

15 A. Yes, that's correct.

Q. Was it on a CD, is that right?

A. A number of memory sticks, I believe.

20 Q. Memory sticks, thank you. Would you be able to assist my instructing solicitor at a later stage, I don't want to occupy the Court's time, just in locating and identifying that PowerPoint presentation if it's on the memory stick that you provided?

25 A. Certain, it would be in a folder with a heading so, yes, I'm happy to do that at the luncheon adjournment if that suits you.

Q. Thank you. In that case I won't spend any more time on that particular document. Could I ask you in that tab to turn to page 578 and that's the second page of the minutes of the GLALC board on 19 November 2007?

30 A. Yes.

Q. You see there's reference again to your name being present as a visitor?

A. Yes.

Q. If you turn to the second page, page 578, Motion 5?

35 A. Yes.

40 Q. There is a motion which appears to have been carried whereby the board delegated the authority to the CEO, Mr Johnson, for him to proceed with future finance and development of the following projects with the aim of future sale and/or lease and a reporting back procedure, do you see that?

A. Yes, I do.

Q. Were you present when that motion was passed?

45 A. I don't believe so. It was the usual practice at the board meetings that I attended for me to only be present for the actual presentation that I was delivering or a part of delivering and then I was asked to leave.

50 Q. You will see immediately above that there's the heading Development Report from David Wing and then there's a motion to accept your report, do you see that?

A. Yes, I do.

Q. Is that again a report in similar format to the report that we looked at a moment ago for 22 October?

5 A. Yes, it would have been a PowerPoint presentation. That was the preferred methodology of delivering those reports.

Q. Under the heading Motion 5, there are three specific properties referred to there?

10 A. Yes, that's correct.

Q. Gandangara estate stage 2 being lot 42, lot 101 retail and Sproule Road?

A. Yes, that's right.

15 Q. I take it that those three properties were the three properties referred to in your report?

A. Yes, they would have been.

20 Q. What happened in relation to Sproule Road? Did that development proceed?

A. No, that development did not proceed and subsequently I think the Gandangara Local Aboriginal Council sold that parcel of land.

Q. Were you involved in the sale of that land at all?

25 A. Yes, I was. I was involved in that. In fact, I recall, I think, that the sale of that parcel of land took place perhaps in 2013 or 2014 when the firm of Deloitte's I think was acting as the administrator and I was assisting Deloitte's to consummate that.

30 Q. Looking at the other two properties Gandangara estate stage 2, that was a major development, was it not?

A. That was.

35 Q. Moving to the conclusion that sale actually, sorry, that subdivision and sale was actually concluded towards about the end of June 2011, was it not?

A. That seems to be correct, yes.

Q. You were actively involved in practically every stage of that development?

40 A. Yes, I was.

Q. Similarly lot 101 retail that's the Barden Ridge lot 101, is it not?

A. Yes, that's correct.

Q. Was that also subdivided or was that simply sold as it?

45 A. That was ultimately sold as is.

Q. Was it sold to Woolworths?

A. Yes, it was.

50 Q. Were you involved actively in every stage of that sale?

A. Yes, I was.

5 Q. In respect of each of those sales were you or Dixon Capital paid a commission, a success fee in accordance with the retainer that we've already looked at?

A. Yes, I believe so, yes, sorry, not for Sproule Road.

Q. Not for Sproule, just Gandangara estate stage 2 and lot 101 Barden Ridge?

10 A. Yes.

Q. Barden Ridge also completed in about June 2011, did it not?

A. The lot 101?

15 Q. Yes, lot 101?

A. I believe so. I can't recall dates.

Q. I'll take you to some accounts if you need to in that respect?

A. Sure, thank you.

20

Q. I put that folder aside. I don't want to occupy the limited time that we have in going through each and every minute of a board meeting at which you attended but can I take it that the two that I've shown you establish a procedure along the lines that we've discussed whereby you would attend a meeting of members of the board of the council. You would be present for part of the meeting only. I'll do it sequentially and you can answer yes or no to each stage?

25

A. Yes.

30 Q. Is that correct?

A. Yes.

Q. You would make your presentation whether by way of PowerPoint or written report?

35 A. Traditionally PowerPoint.

Q. Was anyone else from Dixon Capital present on your behalf at this presentation?

A. No.

40

Q. Was a copy of the PowerPoint left with GLALC?

A. Yes, it was emailed generally prior to the meeting and retained by them.

Q. Did you email it to Mr Johnson?

45 A. Yes, or his secretary or assistant.

Q. At the end of the presentation you would normally leave the meeting?

A. Yes, I would.

50 Q. If I understand you correctly you were not normally present at any but to

accept or otherwise reject any report that you made, is that correct?

A. I may have been present for the acceptance of the report that I made on occasion. It would very much depend on the mood of the board whether they wanted time to talk amongst themselves without me present.

5

Q. Was there opportunity at these meetings for board members to ask questions of you?

A. Yes, there was.

10 Q. Did that happen?

A. Yes, quite frequently.

Q. Could I revert to the folder I previously had which may still be open or near you which is volume (II)?

15 A. Yes.

Q. You were looking previously at tab 7 which is the first of your retainer letters. Could I ask you to turn to tab 8? It's 17 June 2009. I'm referring to these as retainer letters if you're happy with that?

20 A. Yes, I am.

Q. Then there does not appear to be any signature if you look at page 879. Can you assist the Court in relation to the process whereby 17 June retainer letter came to be issued and accepted? Firstly, you will recall that the previous letter was for a period of, that's the one of 15 May 2007, was for a 12 month period and then there was a review process?

25

A. Yes.

Q. I think from an earlier answer you said that you had some discussions with Mr Johnson after the initial 12 month period about continuing your services?

30

A. As best I can recall, yes.

Q. What was the subject of those or the tenor of those discussions?

A. The tenor of those discussions was whether Mr Johnson was satisfied with the firstly the work I had been performing or undertaking, whether the board were happy and whether the, for want of a better description, the desired outcomes were being achieved or progress being made towards achieving those. That's the usual conversation I'd have with any client about an extension to a retainer arrangement.

35

40

Q. If you look at page 878, take a moment if you need to to refresh your memory, it's not a very long letter?

A. No, thank you.

45 Q. There's reference to some two years having passed since the initial retainer?

A. Yes.

Q. There's been, to use your phrase, much water has passed under the bridge?

50

A. That's correct.

Q. GLALC was about to embark on the next stage which was stage 2 of Gandangara estate?

5 A. Yes.

Q. Onto a smaller residential subdivision at Sproule Road, Illawong?

A. Yes.

10 Q. You wished in paragraph 3 to extend your original retainer?

A. Yes.

Q. You sought to confirm the terms of the pre-existing mandate?

A. Yes.

15

Q. With one exception and you wished to vary the weight of your mandate?

A. That is correct.

20 Q. Am I correct that you sought to increase your retainer to \$14,000 per month?

A. Could I just take a moment to read?

Q. Yes, second last paragraph?

25 A. Yes, thank you. No, I was not asking for an increase in the fee to \$14,000 a month. That reference in that second sentence of the second last paragraph on page 878 was an estimate of the time, the value of the time that I had been spending on Gandangara, sorry, GLALC matters. What I was seeking in terms of the re-confirmation or confirmation and amendment was in the paragraph above which was the third last paragraph which was that the retainer fees no longer be rebatable being deductible from any success fees. I was not
30 seeking an increase in the amount of the retainer on a monthly basis. I was simply seeking not to have to rebate or deduct the amount of retainer fees from any success fee.

35 Q. Thank you for that clarification. Mr Unsworth has asked me to clarify one matter with you?

A. Sure.

Q. The document at pages 878 and 879 does bear the watermark Draft on it?

40 A. Yes.

Q. And it does come from your discovery?

A. Yes, it does.

45 Q. Do you have a recollection whether a final version of this letter was issued and if so whether it was in fact signed by you and Mr Johnson?

A. I don't recall. It was quite often the case with correspondence with Mr Johnson that you would be asked to send letters or drafts. Sometimes with amendments and you would get back a confirmation either by email or from
50 sometimes from, I think, the then financial controller or accountant, Ms Maltby

saying that she has paid Mr Johnson and it was approved so the paper trail was somewhat hard to control, if I can put it that way.

5 Q. Could I break that question down into two parts? Do you believe that you did in fact issue at about 17 June 2009 a final letter in terms of the draft which is at page 878 and 879 to GLALC?

A. I can't recall. It may well have been the case that this draft was sent and an email or some correspondence was received saying that it was approved. The terms of it were approved.

10

Q. On that hypothesis, what is your recollection? Do you believe that you did receive some form of communication whether by email or otherwise from GLALC confirming acceptance of the terms set out in this draft letter?

A. Yes, I do believe I would have received that.

15

Q. But you no longer appear to have a copy of that email approving the terms of this proposal, is that correct?

A. It could well be in the emails on the memory stick.

20

Q. Could I again leave that matter with you and my instructing solicitor--

A. Sure, I'm happy to look through the folder. They would be labelled so if I have something it should be easy.

25

Q. Thank you. Could you then please turn to page 870 which is behind tab 9 and I don't want to go through each and every retainer letter but it is important to notice some of the changes that are occurring in relation to your retainer arrangements?

REGISTRAR: Do you mean 870 or 880?

30

BAIRD: Sorry, 880, tab 9 page 880.

Q. In that letter which is only a month later, it's not even a month later, a day later?

35

A. That's correct.

Q. There's reference to the retainer, do you see that?

A. Yes, this was for a particular project, yes, that's correct.

40

Q. That was a separate project?

A. Yes.

Q. Which project is that? That's the sale of Menai, is that right?

45

A. It was the planning for the development of a large parcel of land or parcels of land at Menai separate to the other projects that you've referred to and it was then later on subsequently known as Heathcote Bridge.

Q. Could I then ask you to turn over to tab 10?

A. Yes.

50

Q. We're now up to 8 August 2010 on page 881?

A. Yes.

Q. This is a continuation of the same retainer process?

5 A. Yes.

Q. I take it that 12 months had elapsed since the previous retainer?

A. It would appear so, yes, that's correct.

10 Q. If you look at page 882 in which you refer to your original retainer?

A. Yes.

Q. There's a new proposed fee structure referred to at the foot of page 18 and then a retainer increases to \$12,000 per month at the top of page 883, do you see that?

15

A. That's correct.

Q. Again, as previously the copy that's been provided does not bear a signature?

20

A. That's correct.

Q. If you can look at page 885?

A. Yes.

25 Q. Now what's your best recollection in relation to the acceptance of the terms of this proposal? What can you tell the Court as to whether or not it was accepted and if so, how?

A. It's certainly my recollection that it was accepted. I believe it would have been accepted either by some email correspondence or a conversation with Mr Johnson, the subsequent rendering of an invoice and it being paid.

30

Q. Well could I firstly ask do you recollect to the signing a copy of the letter of 8 August 2010?

A. Most of these letters would have been transmitted by email so in most cases unsigned.

35

Q. Would have been no difficulty in signing a copy and sending it by PDF would there not?

A. Yes except that I probably didn't at that point in time have a civil scanning technology to do so.

40

Q. And what's your best recollection of how this proposal - how it's acceptance was notified to you?

A. My best recollection is that - sorry I can't recall whether it was notified to me by email or was oral. If it was email I - there should be an email in the records.

45

Q. It's a fairly substantial increase in your monthly retainer, is it not, from \$5,000 per month to \$12,000 per month?

A. Yes it was.

50

Q. --at me go back half a step. The services that you had been providing to that date had all been the subject of a monthly invoicing procedure, correct?

A. That is correct.

5 Q. And those invoices had been approved and paid in the ordinary course?

A. Yes that's correct.

Q. What discussion took place in August of 2010 between you and Mr Johnson in relation to an increase of some 140% in your monthly retainer?

10 A. There would have been, as far as I recall, quite considerable discussion about that. In particular I believe this arrangement, looking at it was to encapsulate both the \$5,000 fee and the \$3,000 fee for the Menai project. It was to combine those two. So that instead of paying \$8,000 the fee went to \$12,000 and that was reflected at that point in time of the prospect of or the
15 work that had been undertaken and the prospect of work that was yet to be undertaken particularly in relation to the Menai project.

Q. I've already directed you to the minutes of the council whereby the CEO was authorised to enter into consultancy agreements. Do you recollect that?

20 A. The minute that you showed me, yes I do.

Q. And do you have any knowledge as to whether or not Mr Johnson obtained approval for the acceptance of your proposal from the members of the board of the council?

25 A. I do not have any knowledge of that.

Q. Did he tell you whether he had obtained board approval?

A. I can't recall whether he was - would have made mention of that or not.

30 Q. Was the matter of your retainer ever the subject of discussion after 8 August 2010 at any meeting of the council that you attended?

A. Not to my recollection, no.

Q. And members of the council never asked about your retainer of \$12,000 per month, never asked a single question of you about it?

35 A. Of me directly?

Q. Yes?

A. No.

40

Q. Did they ever ask a question about your success fee?

A. Yes they did.

Q. Particularly in about August of 2010, at that stage the stage 2 development is proceeding at pace, correct?

45 A. Yes that's correct.

Q. And it's budgeted for the 2010/2011 year to conclude by the end of that year, right?

50 A. I believe so yes.

Q. As is the lot 101 Barden Ridge sale?

A. I believe so.

LUNCHEON ADJOURNMENT

5

DEPUTY REGISTRAR: Again this is the matter of Gandangara Management Services. Mr Wing can I remind you, you're still under oath.

WITNESS: Thank you.

10

BAIRD

Q. Mr Wing just before the luncheon interval I was asking you some questions in relation to your retainers?

15

A. Yes.

Q. And in particular we were referring to the retainer agreement - I'll use that term as I might, appearing at page 881 tab 10?

A. Yes.

20

Q. That's the one dated 8 August 2010?

A. Yes.

Q. Now Mr Wing at that stage or that time, what stage were the stage 2 Gandangara development and lot 1 Barden Ridge proposals up to? This is August 2010.

25

A. Yes sorry I'm just referring to that retainer letter to see if that can fade my memory to answer your question more precisely.

Q. Well in general terms?

30

A. In general terms if that's a sufficient answer, I believe we would have been, you know, well underway with the development process, the entire development process for Gandangara Estate Stage 2.

Q. We'll just stop there and break it down a little bit?

35

A. Sorry.

Q. The entire process that you referred to, what was involved in that?

A. That would have been obtaining development consent from the Sutherland Shire Council.

40

Q. For what?

A. For the subdivision of that parcel of land into residential allotments.

Q. How many? More than 50?

45

A. I think at the time it was about 39, I think was the final approval. I think we may have sought approval for more and we had protracted negotiations with the Sutherland Shire Council about that.

Q. Because your success fee had a sliding scale, did it not?

50

A. That is correct, yes.

Q. Up to 20 lots and then 21 to 50 and then 51 to 100?

A. Yes that's correct.

5

Q. So it was important to know how many lots you were likely to get?

A. It was certainly - it was certainly in the 21 to 50 range, yes. It was not more than 50.

10 Q. And as at August 2010 was that number or that approximate number known?

A. We would have had a, as I said, a plan that we would have been proposing to Sutherland Shire Council or I've submitted or been proposing in discussions with them and I believe we started off seeking approval for - at 42 or 43 lots, something like that.

15

Q. So the process involved the preparation of a plan involving the drawing of a deposited plan or draft deposited plan?

20 A. It involved putting together a development application which included a statement of environmental effects, reports into bush fire, traffic, services, cultural heritage, acoustics. A whole range of expert reports were required.

Q. But particularly as regards the land?

A. Yes.

25

Q. The actual proposed subdivision of the land was a matter that would have been documented?

A. Absolutely yes correct.

30 Q. And that document would have formed part of the proposed deposited plan I suspect?

A. Yes that's correct. Ultimately that's what it would have led to.

35 Q. And that proposed DP would have been submitted to Sutherland Shire Council at some stage?

A. That's correct.

Q. And do you think by August 2010 that had occurred?

40 A. I can't be precise about what had occurred at August 2010 like I just can't recall I'm sorry.

Q. I meant, for instance, could the draft DP have been submitted as early as a year earlier?

A. I'm sorry I can't recall those dates.

45

Q. Or possibly six months later?

A. It could have been on either of those yes.

50 Q. Let me assist you another way. About how long before the completion of the sale do you think it was before you got approval from Sutherland Shire

Council to the proposed development and to the number of lots in the development?

A. It would have been approximately somewhere between nine to 12 months prior to the settlement of those allotments.

5

Q. So at this stage August 2010 we're in fact, ten months or so away from the completion date?

A. Yes.

10 Q. And what was the state of your activity vis-à-vis Sutherland Shire Council at that time?

A. We had protracted negotiations with Sutherland Shire Council to gain the development consent for this particular project.

15 Q. When you say "protracted negotiations" what do you mean by that?

A. Well many discussions and negotiations seeking to obtain without the need to go to the Land and Environment Court. Ultimately proceedings were commenced, I think, in the Land and Environment Court and ultimately those proceedings - I'm not sure whether settled is the right word, but ultimately a resolution was reached but only after commencement of those proceedings.

20

Q. Can I take it from that that the initial attitude of Sutherland Shire Council was not very cooperative?

25 A. Their attitude was that the land was capable of development, was zoned correctly and the central argument was really about the size of the public open space and the scale of that.

Q. Was that the issue that went to the Land and Environment Court?

30 A. Principally that was the issue at the Land and Environment Court, yes.

Q. Who were the solicitors who were retained in relation to that aspect?

A. I believe that was Baker and McKenzie.

35 Q. And did you liaise with Baker and McKenzie in relation to that litigation?

A. Yes I did.

Q. And was that part of the services for which you were paid your monthly retainer?

40 A. Yes it was.

Q. What other difficulties did you experience in the 2009/2010 period in the lead-up to the final sale?

A. Of that particular project?

45 Q. Of that project?

A. We also had to obtain finance from the National Australia Bank and that was a very difficult process as well because it was unclear as to whether the - again - well GLALC had the capacity to borrow and the National Australia Bank was very concerned about whether it had the capacity to borrow and so there were numerous meetings with lawyers and I think even barristers' opinions

50

obtained. We also had to seek the approval of the New South Wales Aboriginal Land Council to - to the ultimate sale of those proposed allotments.

5 Q. Could I refer you on p 881 behind tab 10 of volume (II) to the third last paragraph, third from the bottom. You refer in that paragraph to the intransigence of the Sutherland Shire Council, do you see that?

A. Yes I do.

Q. Was that a view you held at the time?

10 A. It certainly was.

Q. You refer to the bureaucracy of the NSWALC?

A. Yes.

15 Q. That was your language - your views at the time I take it?

A. It certainly was yes.

Q. And you refer also to excessive cautiousness of the National Australia Bank?

20 A. Yes.

Q. "To name just a few of the counterparties with whom we have experienced such frustrating delays"?

A. That's correct.

25

Q. Nevertheless over the page at 882 you refer to your current arrangements of a fixed monthly amount of \$5,000 per calendar month?

A. Yes.

30 Q. And then you refer, as I think I took you before lunch, to a change in the proposed fee structure starting from the foot of page 82(as said) and going over the page to 883?

A. That's correct.

35 Q. At this stage August of 2010 the finishing line's just about in sight, isn't it?

A. I wouldn't characterise at that. The development consent - I'd again referring to the timetable you've alluded to would have been perhaps in sight but then is the actual development process. There's the construction process. There's the drawdown of the loan facility. There's the obtaining of the various
40 consents required from the New South Wales Aboriginal Land Council. The actual development process itself was about to start.

Q. Was that a more labour intensive, from your firm's perspective, aspect from the work that you had previously been performing?

45 A. It was probably as labour intensive as what had been performed up until that point in time.

Q. What I was putting to you was that the work for the period after August 2010 through to June 2011 was no greater in scope or magnitude than that
50 that you had previously been performing. Would you agree with that?

A. I wouldn't agree with that in whole. I would say that the scope of the work was largely the same but it had elements to it that required more work at periods of time.

5 Q. What discussions did you have with Mr Johnson in about early August 2010 as to the increase in your monthly retainer to the amount of \$12,000 per month?

A. I don't recall the precise conversations but I certainly would have discussed with him the fact that I felt that there was an increase in the amount of work
10 and the value of the retainer commensurate with what was set out in the letter.

Q. And what did he say to you? Did he object?

A. I don't recall what he said to me at the time but my broad view is that he did not object to that and as I said the increase included the fee that was then
15 being paid in relation to the Heathcote Ridge project for which there was a considerable amount of work in Prospect.

Q. So what you're saying is in effect in August of 2010 your monthly retainer was increasing from a combined amount of \$8,000 under the two previous
20 retainer letters to a total amount of \$12,000 under this retainer letter?

A. That is correct.

Q. Plus GST of course?

A. That's correct.
25

Q. Now sir that's an increase of only 50%?

A. That is correct.

Q. Rather than the number that I put to you before lunch?

30 A. That is correct.

Q. Nevertheless the amount of work that you were doing per month was after August of 2010 no greater, I put to you, than the amount that you were doing immediately prior to August 2010. Would you agree with that?

35 A. No I do not agree with that.

Q. Did Mr Johnson when you raised with him as you've said the subject of increasing your monthly retainer, did he simply say, "Yes that's fine" or did he have a more detailed discussion with you as to how that amount was
40 calculated by you?

A. I can't recall the precise details of any conversation I had with him or I can only refer to this correspondence as being representative of the broad discussions I would have had with him.

45 Q. Well did he object to it or did he simply green light it?

A. I - my view is he agreed with it.

Q. If you look further down the page on page 883 Mr Wing you see the success fees. If you need to go back to tab 7 which is the--

50 A. Yes.

Q. --initial retainer letter of 15 May 2007 and page 875--

A. Mm-hmm.

Q. --to contrast?

5 A. Yes.

Q. You'll see that there's an increase in the success fee under the August 2010 retainer letter as well, is there not?

A. That is correct.

10

Q. At page 875 the success fee for developments up to 50 lots was \$2,500 per lot?

A. Yes.

15 Q. And at page 883, three years later that success fee had increased for 21 to 50 lots to \$3,500 per lot, correct?

A. That is correct.

20 Q. I think from your evidence a moment ago the most likely size of the development was always in the range of 20 to 50 lots. Is that right?

A. That is correct.

25 Q. So in real terms ignoring the other sub-paragraphs, the correct figures to be comparing are 2,500 per lot on page 875 as opposed to 3,500 per lot on page 883?

A. That's correct.

30 Q. And secondly in relation to the success fee, the other change was that the monthly retainer amount was not to be deducted from the success fee?

A. That's correct.

35 Q. If I am correct in my calculations for - did you say, was it 32 lots that were finally improved?

A. I believe it was 39.

35

Q. 39 my apologies. Let's use 40 as a round figure then. If one were to talk of 40 lots at 3,500 per lot that's a success fee of - is that \$140,000, is it not, if my arithmetic in my head's correct?

A. Guess.

40

Q. Now that is an increase of \$1,000 per lot, something of the order of 39 to \$40,000 from the success fee that had previously been the subject of the 2007 retainer, correct?

A. That's correct.

45

Q. What discussion did you have with Mr Johnson in August of 2010 about not only increasing the monthly retainer but increasing the success fee?

50 A. Once again I'm - I can't recall the precise conversation that I had with Mr Johnson at the time. I can only refer to this correspondence which makes it clear that there is an increase.

Q. Well did you tell him that you were proposing to increase your success fee?

5 A. I would presume I would have discussed that with him in some detail. It was certainly my view at the time that there - had been a lot more work done over a much longer period of time.

Q. Is that your justification in your mind for the increase from 2,500 to \$3,500 per lot success fee?

10 A. Partly and would also partly reflect the potentially greater profitability that we had been able to or we were hoping to achieve for GLALC out of the project.

Q. What kind of profitability were you estimating back in 2007? Can you recall?

15 A. I can't recall I'm sorry.

Q. What kind of profitability were you estimating or contemplating in August of 2010?

20 A. I can't recall the precise numbers but I do know that there was a - an increase in the prospective returns from the inception of the project to - to you know around this point in time.

25 Q. I accept that you can't recall precise figures at this stage but can you give the Court some indication of the magnitude of the increase that you've just referred to?

A. I'm sorry I couldn't without referring to other notes or documents.

30 Q. In simple terms Mr Wing do you think an increase in the success fee was justified as at 8 August 2010 when the estimated completion time was less than 12 months away?

A. Yes I do.

35 Q. Are you aware of any approval that Mr Johnson obtained from the council for the new retainer arrangements including the success fee in the August 2010 letter?

A. No I can't recall.

Q. Are you aware of what arrangements Mr Johnson had himself in relation to bonus payments to himself?

40 A. At that - this point in time?

Q. Yes?

A. No I was not.

45 Q. Do you have an understanding of the total amount that was paid to Dixon Capital over the period of this project, that is in relation to development of stage 2 and Barden Ridge?

A. In relation to just this particular project or the retainer arrangements in--

50 Q. Both. Both the success fee and the retainer across the period 2007 to

2011, early 12.

A. I would have to add up the number of months by the retainer amounts and add the success fee.

5 Q. If I put it to you that that was an amount between approximately \$1.2 million and \$1.4 million, would that accord with your recollection?

A. No I don't believe so. Sorry can - could you repeat the period again.

Q. Well from the inception which we've established was 2007?

10 A. 2007 yes to--

Q. Through to the stage of sale of Barden Ridge which is mid 2011 or thereabouts? And I put to you and I'm asking you to do the best you can, would you agree that the total payments to Dixon Capital were of the order of
15 between 1.2 and \$1.4 million for this period?

A. No I don't believe that would be mathematically correct.

Q. That's including the success fee?

A. Yes.

20

Q. Now did you have any involvement at any stage in relation to the payment of bonuses to Mr Johnson?

A. No.

25 Q. Could the witness be taken to a new volume. You can put that one to one side?

A. Sure.

30 Q. Volume 9C please. In volume 9C could the witness please turn to page 2824? If you work from the bottom of the page?

A. Yes.

Q. As emails run when one prints them out. One actually has to start at the foot of the following page which is 2925 and work one way back to 2924?

35 A. Yes.

Q. At 2925 you can see that there's an email on 26 March 2013 from Jennifer Hughes at Baker and McKenzie?

A. Mm-hmm.

40

Q. To Tony Young and copied to yourself?

A. Yes.

Q. Do you see that?

45 A. Yes I do.

Q. And the heading is GLALC CEO Bonus?

A. Yes.

50 Q. Do you know who Tony Young was?

A. Yes he's a partner at BDO.

Q. That's right. So Ms Hughes is writing to Mr Young with a copy to you--

A. Yes.

5

Q. --referring to some documents that she received from Shalesh and that's Mr Gundar isn't it?

A. Yes that's correct.

10 Q. That afternoon. "In relation to the calculation of Jack's bonus", do you see that?

A. Yes I do.

15 Q. And beneath that, without reading it out, she says she has two concerns and expresses the nature of her concerns?

A. Yes.

Q. Firstly do you recall receiving that email at about 26 March 2013?

A. I don't recall but I would have received that email. It's been copied to me.

20

Q. And why was it, do you think, that you were sent a copy of that email?

A. I believe that at about this time there were matters that had arisen as a result of an investigator being appointed to the affairs of GLALC and one of those matters was in relation to - clearly to the CEO's bonus arrangements. It may have come up as part of a response to the financial audit because it was, I think, a matter raised in the financial audit for GLALC.

25

Q. I understand that and thank you for that but more specifically what was your involvement in that process?

30 A. We as a group of consultants had been asked to look into various of the matters that had been raised by the auditor and the investigator and to help prepare on behalf of GLALC a response and I had referred GLALC to BDO to seek assistance in relation to that particular matter or that - sorry the investigation and the response to the audit.

35

Q. Was that as part of that development subgroup that we referred to before lunch?

A. No it was a group of consultants, myself, Chris Perkins from EMC, Jennifer Hughes from Baker and McKenzie, Andrew Beattie(?) who I'm not sure whether he had left Baker and McKenzie at that point in time or was still with Baker and McKenzie. So it was a small group of consultants who were ask to assist Gandangara in response to matters raised in the audit and/or investigation.

40

45 Q. Who asked the consultants to form this group?

A. Mr Johnson.

Q. About when did this occur?

A. It would have occurred around the time that the audit report - I'm sorry I don't have the dates but the audit reports or such other documentation was

50

being presented or discussed.

Q. Well could I assist you? The investigation report was dated 11 April 2013?

A. Yes.

5

Q. And if you need to verify that please look to page 2933 which is just a few pages on in that bundle?

A. Yes.

10 Q. And you'll see that's the date that that report bears?

A. Yeah see that, yes.

Q. And was that a report that you've seen before?

A. Yes I have seen that report before.

15

Q. And I don't propose to take you to the detail of it in any great detail but just that establishes a time line?

A. Yes.

20 Q. If the investigator's report is delivered on 11 April 2013 and a mere three weeks - less than three weeks before that date you are in correspondence with Jennifer Hughes from Baker McKenzie, Tony Young from BDO and if you look at the top of page 2924 Chris Perkins, you're all cc'd in on this email chain?

A. Yes.

25

Q. Does that accord approximately with your recollection?

A. Yes it does.

Q. About when did Mr Johnson ask this special sub-committee to be formed?

30 I mean was it shortly prior to that, or some months prior to that?

A. Look it could have been some months prior to that in response, as I said, to matters raised in the audit.

Q. Was one of the matters raised the matter of the CEO bonus?

35 A. Yes, I believe so.

Q. Again if you look now at page 2924 you'll see the second email in that chain is from Tony Young to Jennifer Hughes on 26 March 2013 with a copy to yourself, do you see that?

40 A. Yes I do.

Q. You would have received that in the ordinary course, would you have not?

A. I believe so, yes.

45 Q. And read it?

A. Yes.

Q. At the top of the page you'll see you yourself some one hour later on the same day, 26 March, have forwarded that email to Mr Chris Perkins?

50 A. Yes, that's correct.

Q. And you've now explained the reason for that, namely that Mr Perkins was also a member of this ad hoc committee that had been put together at the request of Mr Johnson, right?

A. Yes, that's correct.

5

Q. What discussions did you have with Mr Perkins that you can recall in relation to this email?

A. I'm sorry, I couldn't recall any specific conversation around this particular email, but around the matter generally one of the reasons for the referral to Mr Young was that I didn't feel it was appropriate for myself, for example, to be involved in looking at the CEO's bonus, or the questions that had been raised regarding it.

Q. Why was that?

A. It was not really a matter that I'd ever had any involvement with, and I didn't feel it was appropriate given that Mr Johnson was the person instructing me.

Q. So there were two elements to it, if I understand your answer correctly, firstly that you yourself didn't think you had any particular expertise in the calculation of CEO's bonuses, as a general matter, is that right?

A. I had no prior knowledge of the bonus arrangements, or if I had had prior knowledge it wasn't very much, before this email.

Q. And secondly, I take, it, that throughout this development process you had had a close working relationship with Mr Johnson?

A. Yes, he was the party - the client with whom I dealt probably most.

Q. And, if I understood your answer correctly, you didn't think it was appropriate that you should be sitting in review, as it were, on Mr Johnson's bonus arrangements?

A. That's correct.

Q. Does that clarify the answer that you gave earlier when I asked you about what was your involvement in Mr Johnson's bonus, does that assist you now?

A. Yes, I think you asked me the question was I involved in the payment, I think you said payment of Mr Johnson--

Q. Approval?

A. Approval - sorry - and I was never involved in the approval of Mr Johnson's bonus.

Q. Well as a result of these emails what happened insofar as you were concerned?

A. In relation to these emails here?

45

Q. Yes?

A. Mr Young did some considerable work, I think, in trying to ascertain the correct calculation of the CEO's bonus. There was various emails backwards and forwards, to which myself and Mr Perkins would have no doubt been copied, or would have been cc'd in on, and I know that Mr Young - I believe

50

Mr Young, I should say - I believe Mr Young spoke directly to Mr Johnson about various qualifications, et cetera.

Q. Did you yourself make any substantive contribution to the debate?

5 A. I can't recall, I'm sorry.

Q. Did you express an opinion one way or the other on whether the bonus had been correctly calculated?

10 A. I can't recall, I'm sorry.

Q. Did you agree or disagree with any conclusion finally reached by Mr Young, can you recall?

A. I can't recall. I would have no doubt relied on Mr Young's expertise in that regard.

15

Q. Did anyone at that time, in your capacity as a member of this ad hoc committee, make reference to section 52D of the Aboriginal Land Rights Act (1983)?

20

A. I can't recall precisely.

Q. Could I draw the witness' assistance, and show the witness a copy of section 52D - Registrar, do you still have the copy?

DEPUTY REGISTRAR: I still have a copy at present.

25

BAIRD

Q. Just take a moment to read that - it's a fairly short section, only two sub-sections?

30 A. Thank you.

Q. I merely ask that at the time that I'm referring you to, which is this March/April 2013 period, was this section, section 52D, of the Act brought to your attention?

35 A. It could well have been.

Q. Can you recall any discussion about the effect of this section on Mr Johnson's bonus at this time?

40 A. I can't recall - no, I'm sorry.

Q. At this time were you provided with copies of Mr Johnson's employment contract with GLALC?

45 A. I may have been, I can't recall precisely, I may have been as part of the process that I just described before, a lot of emails and I may well have been copied in on documents, or forwarded copies of documents. I can't recall precisely whether I was or wasn't.

Q. Can I take it, and please correct me if I'm wrong in over-generalising, from the nature of your answers this matter of Mr Johnson's bonus in March 2013 was not a matter with which you particularly concerned yourself but you left it

50

to others, is that a fair summary?

A. Yes, I was trying to do that, yes, correct.

5 Q. Did you - prior to March 2013 - receive any monies from Mr Johnson, or his entity Waawidji, W-A-A-W-I-D-J-I, Pty Ltd, yourself?

A. In relation to one matter I did, yes.

Q. What matter was that?

10 A. It was some work performed for Deerubbin Local Aboriginal Land Council.

Q. Did you know that Waawidji Pty Ltd was Mr Johnson's private company?

A. Yes, I was aware of that.

15 Q. What was your involvement, in connection with Mr Johnson, with Deerubbin, D-E-E-R-U-B-B-I-N, LALC in July of 2011?

A. I'm not sure of the precise dates, but if I might assume that the date that you're talking about is the transaction I'm referring to.

Q. Yes?

20 A. Deerubbin Local Aboriginal Land Council had some land - I can't recall the precise name of the suburb now, I'm sorry - but had some land which Mr Johnson, I think, had been discussing with the CEO of Deerubbin about assisting Deerubbin to dispose of in order to provide funds for the Deerubbin Land Council.

25

Q. Yes?

A. And Mr Johnson then discussed with me, or myself and other of the consultants who had been acting for Gandangara - sorry, for GLALC - to assist Deerubbin Local Aboriginal Land Council in relation to that land.

30

Q. Yes?

A. And Mr Johnson expressed - and this is a broad description - that the arrangement would be that Deerubbin would enter into a contract with Waawidji, and Waawidji would sub-contract to Dixon Capital insofar as my services were concerned.

35

Q. Let me make sure if I've got that right. Deerubbin would utilise your services firstly, correct?

A. No, would engage Waawidji.

40

Q. Waawidji - all right, sorry?

A. And Waawidji would sub-contract my services to undertake the particular work.

45 Q. That work was of a similar nature to that which you were performing for GLALC?

A. In a broad sense, yes, that's correct.

Q. Namely development of land owned by the Deerubbin Land Council?

50

A. Yes, that's correct.

Q. And the payment arrangement was, firstly, not that Deerubbin would pay you directly, correct?

A. That's correct.

5 Q. Instead GLALC would pay Waawidji ?

A. No. Deerubbin - sorry - would pay Waawidji. That was my understanding.

Q. That was your understanding that you would receive payment from Waawidji?

10 A. That is correct.

Q. And Waawidji in turn receiving payment from Deerubbin?

A. That is correct.

15 Q. If I put to you that in practice the arrangement was that GLALC paid Waawidji would you be able to agree or disagree with that proposition?

A. I wouldn't be able to agree or disagree.

Q. You wouldn't know one way or the other?

20 A. No. No, I would not.

Q. Okay, seeing as we've arrived at that point, somewhat out of the order in which I was going to do it, but I'll happily do that, could the witness be shown volume (X) please? You can put that volume to one side and we'll come back to it?

25 A. To one side.

Q. Volume (X), and the page is at tab 20, page 3942--

A. Sorry, I'll just have to - some pages have come out - can you assist?

30 That's okay, it's all right, thank you - sorry. Page reference again, I'm sorry?

Q. 3942 at tab 20?

A. 20, yes, 3926.

35 Q. 3942?

A. Sorry, 42, thank you.

Q. Behind tab 20?

A. Yes.

40

Q. You'll see that that's a letter from Dixon Capital?

A. Yes.

Q. Again that's you, is it not?

45 A. That is correct.

Q. And it's to Deerubbin LALC?

A. Yes.

50 Q. And it's dated 7 December 2009?

A. Yes.

5 Q. That's a proposal for Dixon Capital to submit a proposal for its services in connection with a preliminary feasibility study for sand extraction at a place called Maroota, M-A-R-O-O-T-A, right?

A. That's correct .

10 Q. That's the retainer letter. Is that the same project that you were referring to a moment ago in conjunction with Waawidji?
A. No, that's a different project.

Q. It's a different project?

A. Yes.

15 Q. What was the project in conjunction with Waawidji that you were referring to?

20 A. It was some land - I'm sorry, I'm trying to remember the suburb. No, I'm sorry, I can't remember the suburb, but it was parcels of land that required some servicing and surveying, and other services, in order to make them saleable as individual residential allotments.

Q. What was the delineation of work to be performed by you, on the one hand, and that to be performed by Waawidji on the other? Who was responsible for what?

25 A. Well my understanding was that Mr Johnson was really responsible for what might be broadly described as the client management. So negotiations and discussions, and the reporting to the client, and really the rest of the work, which was work that I would ordinarily perform, would be undertaken by Dixon Capital and by other consultants as required.

30 Q. And you didn't think that there was any particular conflict of interest between your position in relation to this retainer for Deerubbin, as opposed to your position with GLAC?

35 A. In relation to this Maroota retainer?

Q. Yes?

40 A. No, this Maroota retainer had been discussed very specifically with the then CEO of Deerubbin because this was part of a funding application on behalf of Deerubbin to undertake this feasibility study for sand extraction.

Q. If you look at page 3943 you'll see again the retainer amount of \$5,000 per month plus GST?

A. Yes, that's correct.

45 Q. Was this retainer letter accepted?

A. It formed part of a submission which was ultimately approved for funding by I think it was - the acronym was DEEWR - so it's Department of Employment, Education and Workplace Relations, or something like that.

50 Q. You see at page 3944 the execution by yourself and Mr Cavanagh on

behalf of Deerubbin LALC is left blank?

A. Yes, that's correct.

5 Q. But are you telling the court that at some stage the proposal and this retainer was accepted by Deerubbin LALC?

A. My understanding is that it was accepted, along with a group of other consultants, and that we put together a submission for funding and all of the funds to undertake this work were paid by DEEWR.

10 Q. Did you ultimately submit invoices for payment pursuant to this retainer arrangement?

A. Yes I would have.

15 Q. Did you have any difficulty yourself in completing your duties under this retainer in addition to your duties to GLALC under your retainer arrangements with it?

A. Difficulties, no.

20 Q. You were able to do both projects at the same time?

A. Yes.

Q. And you felt there was no conflict of interest on your part in acting for both land councils at the same time?

25 A. Well Mr Johnson and Mr Cavanagh at that stage were both attending project meetings with the view that the same group of consultants who were acting for Gandangara would be able to assist Deerubbin.

30 Q. It was - well I don't want to put words in your mouth - but was it thought that the expertise that you'd gained in acting for GLALC would be of assistance to Deerubbin also?

A. I believe that was the view that Mr Johnson certainly held, and it was a view that I think we, as consultants, held that that experience would be of assistance.

35 Q. And the retainer arrangement with Waawidji that we were talking about earlier, which you were sub-contracting, what was that project?

A. That was the sale of these residential allotments - I'm sorry - at the suburb I can't recall the name of, but it was a very short run project, as was the Maroota project, they were very short.

40

Q. So nothing at all to do with the role that's described at the foot of 3942 and over the page on 3943, is that right?

A. The payments from Waawidji for that other project?

45 Q. No, the projects - it was a totally different--

A. It's completely separate projects, yes.

50 Q. If you turn over to page 3945 you'll see that you've sent an email yourself on 31 January to Mr Andrew Beattie - that's Mr Beattie we've mentioned earlier at Baker McKenzie, correct?

A. That is correct.

Q. And you're talking there about the GLALC corporate structure?

A. Yes.

5

Q. Do you see that?

A. Yes.

10 Q. It refers to a proposed meeting you were going to have with him on 3 February 2010 dealing with the GLALC corporate structure, and then diagrams secondly relating to the Deerubbin LALC?

A. Yes.

15 Q. And the third one is a sharing of services in relation to the latter's landholdings, do you see that? The four bullet points under the heading, "As discussed"?

A. Yes I do - sorry.

20 Q. And over the page at 3946 is a document which seems to be some kind of tree, is that a document you prepared?

A. No, that's not a document I prepared.

Q. Is that a document that's attached to your email?

A. I believe so - if I could just refer back? Yes, I believe that's correct yes.

25

Q. And who prepared that document, or those documents?

A. The corporate tree, if I can describe it in that way, I believe was prepared by Mr Johnson.

30 Q. Was the advice that you refer to in the following paragraphs 1, 2 and 3 ultimately accepted?

A. Sorry.

35 Q. If you read to yourself the second half of the email on page 3945 please, when you refer to "advice required", and then you make a suggestion?

A. Yes, I've read that now.

Q. In general terms was your suggestion accepted by Mr Beattie?

A. I believe so.

40

Q. We might put that to one side, I don't need to examine that. Can I go back to where I was, please, in volume 9A?

DEPUTY REGISTRAR: I think you had--

45

BAIRD: Did the witness have 9A? I thought so. That's where I was before I interrupted myself.

DEPUTY REGISTRAR: 9C, I think it was.

50

WITNESS: 9C, is that the one?

BAIRD

5 Q. No, I was in 9A at page 2475 and 2375, is where I was at according to my notes?

A. Sorry, I don't have that volume - apologies - I've got volume 9C.

Q. 9A please?

10

DEPUTY REGISTRAR: What page, Mr Baird?

15 BAIRD: I'm coming to page 2475 at the end of the volume, but there's one other matter I wanted to look at first on the way through just to lead into it, but in that same volume. I thought I was actually at that point in the examination before I was led astray - sorry if I wasn't.

DEPUTY REGISTRAR: I don't think you were, I have open folder 9C.

20 BAIRD: That's where I thought I was - obviously I haven't quite got there.

DEPUTY REGISTRAR: Are you sure you haven't left anything out of folder 9C while it's open?

25 BAIRD: I think I need to clarify these matters on the way, as it were, Registrar, arising from some of the witness' earlier answers, and I don't want the topic to go incomplete before we leave it otherwise it gets confusing.

Q. In volume 9A at page 2375 please, Mr Wing?

30

A. Yes.

Q. You see that's an email from yourself to Mr Johnson on 18 February 2010, it's a copy to Ms Maltby?

A. Yes.

35

Q. And the heading is, "EMC Tax Invoice for January 2010"?

A. Yes.

Q. And you can see that?

40

A. Yes, I do.

Q. This is just simply picking up from some of your earlier evidence. You attach your EMC invoice for the month of January 2010. You go on to state:

45 "Whilst I appreciate that GLALC have not yet formally renewed EMC's contractual arrangements they have continued in good faith to work on the various communication projects. I accordingly now submit this tax invoice and certify that it is in order for payment by GLALC."

50

And over the page at 2376 there is a reconciliation attached, do you see that?
A. Yes, I do.

Q. Was that a reconciliation prepared by you?
5 A. No, I do not believe so.

Q. It's dated 29 January 2015, is that a reconciliation that was brought to your attention at or shortly after 29 January 2015?
10 A. It may well have been.

DEPUTY REGISTRAR: Mr Baird, is that not the date it's printed?

BAIRD: It is the date that it's printed - I apologise.

15 Q. Let me ask you this, have you seen this document before?
A. This reconciliation?

Q. Yes?
A. I may have, I can't recall. I certainly wasn't involved in the preparation of it,
20 I may have seen it. It does appear to be a document in a format similar to something that would have been prepared by Mrs Maltby.

Q. I'm instructed - and please correct me if I'm wrong - but this document is a printout, hence the date that it bears, from documents that were produced by you, are you able to agree or disagree with that, does it accord with your recollection?
25 A. I've produced a lot of documents, I didn't look at each and every one of them. If Mr Lim says that it was in the bundle, it was in bundle, I accept that that was in the bundle.

30 Q. On that assumption then does that seem to you, from your earlier answer, to be a document similar in kind to documents prepared by Ms Maltby, is that the gist of what you were saying?

A. I believe so. Look, I may have assisted Mrs Maltby in putting together a reconciliation. It was quite often the case I would be asked to assist in the reconciliation in various consultant accounts for reporting purposes by her to the board, or by her to Mr Johnson, and she would seek my confirmation, or we would work together to make sure that the amounts were correct, and corresponded to the relevant activities.
35

40 Q. Those two documents are 2375 and 2376, are they consistent with the answers that you gave earlier that there was a procedure whereby you submitted tax invoices monthly in accordance with your retainer letters, and they were paid monthly on a regular basis?

45 A. Yes, but this was not in relation to an invoice from Dixon Capital, this was an invoice from EMC.

Q. Why is it you were submitting a tax invoice from EMC?

50 A. Mr Johnson wanted the various consultants' invoices to come via myself so that I could check that the invoices are correct, and also to ensure that the

work that had been claimed to be done had been done, and to give him some assurance about that.

5 Q. So there was a process whereby you vetted, as it were, invoices from other consultants?

A. In a broad sense, yes.

10 Q. I'll come back to the topic of Mr Perkins' remuneration in a moment - it's Mr Perkins who was associated with EMC, correct?

A. That's correct.

Q. But that, I take it, referring to an answer you gave before lunch today, meant that you did have some understanding or involvement in the work that Mr Perkins and EMC were doing for GLALC?

15 A. I certainly had some understanding, yes. I think your question before lunch might have been slightly narrower than that, but I certainly had some understanding - if I've led you astray I apologise for--

20 Q. Well we'll come back to that topic, I just want to clarify these other points on the way through, as I said to the Registrar. Could you turn to page 2475 please? Working from the foot of the page, that's a copy of a payment advice to you dated 26 July 2011. It's a receipt for a payment of \$5,000, do you see that?

25 A. Yes I do.

Q. And the transferor is Waawidji Pty Ltd?

A. That's correct.

30 Q. And at the top of the page you say in an email to Mr Johnson:

"Howdy Jack, Many thanks for the payment, it is greatly appreciated. However I don't expect you to pay until Waawidji has been paid. Cheers, David"?

35 A. That's correct.

Q. Now I was asking you some questions a little earlier about your remuneration arrangements with Waawidji?

40 A. Yes.

Q. Is this the invoice pursuant to that arrangement that you had with Waawidji of which you gave evidence earlier?

A. Yes, that's correct.

45 Q. And this is for work you and Waawidji performed separately for Deerubbin LALC, correct?

A. Yes, separately to the Maroota project, yes, that's correct.

50 Q. And separately also from the work that you were performing for GLALC?

A. That's correct.

Q. And you felt there was no conflict of interest in you doing this work for Waawidji in addition to the works that you were undertaking for GLALC?

A. No I didn't, because Mr Cavanagh was aware of that arrangement.

5 Q. As was Mr Johnson, I take it?

A. Yes.

Q. You state there that you didn't expect to be paid until Waawidji had been paid?

10 A. Yes.

Q. Did you have any knowledge as to whether or not Waawidji was paid by Deerubbin?

15 A. No I did not have any knowledge as to whether they had or had not been paid. I think I was just making it clear that my sub-contractor arrangements were payment when Waawidji had been paid.

Q. For how long did this arrangement with Waawidgi continue?

20 A. To the best of my recollection I think there were five - four or five payments, it was a very short run project.

Q. Could you turn to page 2479 in that volume please, and this is really for clarification purposes only?

25 A. Yes.

Q. You mentioned in your evidence earlier a company called Arben A-r-b-e-n, could you tell the court please who or what is Arben and what do they do?

30 A. Arben is a firm of project managers who provided project management services for both GLALC and Deerubbin Land Councils in relation to various property transactions.

Q. Were they sub-contracting to you or were they contracting directly with GLALC?

35 A. They were contracting directly with GLALC, they were not sub-contracting to me, no.

Q. Because again working from the foot of the page you'll see that a Ms Jackson from EMC sends to Mr Perkins at EMC an email attaching the Arben September invoice?

40 A. Yes.

Q. And says that October is to follow November is with you for approval?

A. Mm-hmm.

45 Q. That email is referred by - sent onwards by Mr Perkins to you on the same date it would appear, it's not dated and Mr Perkins says to you "Hi David Arben September invoice email is requested, I will approve November's tomorrow". Why was it that Mr Perkins was sending Arben invoices to you?

50 A. No perhaps there's some confusion, the reference there to the Arben invoice was in relation to invoices from EMC to Arben, so was a shorthand way

of describing that because that particular invoice I believe referred to in Ms Jackson's email was for services provided by EMC in relation to the Heathcote Ridge project and it was Stakeholder Communications work and website and a whole range of other services for that particular project and as they were project specific the arrangement was that EMC would invoice Arben as the project manager as would all the other consultants, traffic engineers, town planners et cetera. Arben would then submit all of those invoices to me with a reconciliation and I would then send that on to GLALC once I had discussed that with Mr Waters of Arben.

10

Q. Why was Arben sending these to you?

A. Well this didn't come from Arben to me, it came from Mr Perkins.

Q. No, just on the arrangement you just described?

15

A. Sorry.

Q. You said that the arrangement was that Arben would collect or collate all the invoices and would send them on to you?

A. Yes.

20

Q. Why?

A. Again Mr Johnson wanted somebody to vet those invoices as you described earlier.

25

Q. So there was a secondary review process?

A. Yes, that's correct.

Q. In a de facto or ad hoc sense that was in place as well, was there?

A. Yes, that's correct.

30

Q. So it was not because you had any involvement in doing any of this work yourself or through Dixon, it was because you were assisting Mr Johnson in reviewing the quantum of fees. Is that--

35

A. No, my role was both in reviewing the quantum of fees as you've described and managing those arrangements but it was in managing the overall development processing team and supervising the work that was being - supervising in a very high level sense the work that was being done and being involved in the various meetings with the consultants et cetera.

40

Q. In that volume could you turn to page 2339, page 2339?

A. Yes.

Q. You will see effectively a recommendation to proceed to stage 2 in the Gandangara development and lot 101?

45

A. Yes.

Q. Just take a moment just to familiarise yourself with the emails, I want to deal with them at a high level if I could, these are on 4 September 2007 from yourself to Mr Johnson and from Mr Johnson to you. Do you see that?

50

A. Yes I do.

Q. On 4 September you're telling Mr Johnson, this is 2007, fairly early in your retainer?

A. Yes.

5 Q. That you are reviewing fee proposals for PMM?

A. Yes.

Q. Who's PMM?

10 A. They were the firm of town planners that I referred to earlier in my evidence.

Q. The response from Mr Johnson at the top of the page is to thank you for your comprehensive recommendation and then for approval, right?

A. That's correct, yes.

15

Q. Was this process part of the lead up to the board minute that we looked at before lunch whereby the proposals to proceed with the development were approved by the council?

A. Yes, it would have been I imagine, yes.

20

Q. Briefly look at page 2477 back at the end of that folder, I think that's the final step in this process that in September of 2011 you're corresponding with Mr Gundar about approving the EMC tax invoice for July of 2011. Do you see that?

25 A. Yes.

Q. You can follow the email train for yourself from the foot of the page up but is that, without going into the detail, part of this process that you've described of having a review role for approval of EMC invoices?

30 A. Yes, that's correct, yes.

Q. Put that folder away. Volume (IV) please. In that volume (VI) please Mr Wing at tab 6 page 1511. Now in general terms the topic that I just wanted to ask you a few questions about in the time that remains to us concern the apportionment of the cost of your services where you are providing services to not only GLALC but other land councils at the same time?

35 A. Yes.

Q. What arrangements you knew existed in relation to payment of yourself firstly and the apportionment and recovery of that apportionment from the other land councils secondly, so that's the general topic?

40 A. Sure.

Q. We've just selected one invoice only, the one at page 1511 which is an invoice dated 3 January from Dixon Capital Trust to GMS?

45 A. Yes.

Q. That refers to the monthly retainer fee of \$12,000, do you see that?

A. Yes I do.

50

Q. Then there's some handwriting about two thirds of the way down the page, both on the left hand side and on the right hand side of the stamp that appears there. Do you recognise that writing and is it yours?

A. Firstly it is not mine, it would appear to be perhaps Mr Gundar's writing.

5

Q. Is Mr Gundar's handwriting something that you're familiar with?

A. I've seen Mr Gundar's handwriting before, it's very precise.

Q. Let's look at the handwriting on the left hand side about 6.7 on the page, as I read it it says "As per attached" and then 95% GMS, 5% to LAPA?

10

A. Yes.

Q. Do you know what that's a contraction for?

A. La Perouse Aboriginal Land Council.

15

Q. And 0% to WAL is WAL a contraction for Walgett?

A. Yes.

Q. So can I assume from that that in January 2013 you were not only providing services to GLALC or GMS on behalf of GLALC but you were also providing some services to La Perouse Aboriginal Land Council, is that right?

20

A. Via GMS yes.

Q. At that particular time you were also providing services as we've discussed to Walgett even though in December 2012 you do not appear to have provided any such services?

25

A. That would appear to be correct although that's not my handwriting.

Q. Now I understand that it's not your handwriting but looking at that now would it be fair to surmise from that that Mr Gundar has made an enquiry of you as to how to split up, to use the vernacular, your bill for January 2013, you've given him some information in reply?

30

A. That could have been the case but it was also the case that Mr Gundar often did those things without reference to me for example.

35

Q. Can I put it to you that Mr Gundar being a very careful man he would never have purported to apportion your invoice without first discussing it with you?

A. You could put that to me, my view is that Mr Gundar sometimes needed to make apportionments he would then perhaps check them with me afterwards or get confirmation or seek to adjust them you know at some later point in time so that it accorded with the work that was actually done.

40

Q. I'll come back to that page but to avoid this hypothetical difficulty let's look at another page which may be a little clearer and turn in the same tab please to page 1522. Now email working from the bottom of the page up again is from yourself, it's dated 4 March 2013, it's to Mr Johnson with a copy to Mr Gundar. Do you see that?

45

A. Yes I do.

Q. It refers to tax invoice for Dixon Capital for January and February 2013?

50

A. Yes that's correct.

Q. You attach your tax invoices for January and February 2013 as per the revised agreement and then you give a breakdown in percentages?

5 A. Yes, that's correct.

Q. Gandangara 85%, La Perouse 5%, Walgett 10%?

A. That's correct.

10 Q. Let me deal with La Perouse firstly. What arrangements to your knowledge existed for you to invoice Gandangara for work performed by you for La Perouse LALC?

15 A. My understanding was that Gandangara Management Services had entered into a - or had some contractual arrangement with La Perouse Local Aboriginal Land Council to provide a range of services, some of which were provided by me in effect as a sub-contractor.

Q. Who conveyed this information to you?

20 A. That would have been conveyed to me through meetings with Mr Johnson and the CEO, the then CEO of La Perouse Local Aboriginal Land Council.

Q. Who was that?

A. Mr Ingrey.

25 Q. How do you spell that name?

A. I-N-G-R-E-Y, Chris Ingrey.

Q. This arrangement was something that you would have confirmed at both ends as it were, both with GLALC and with La Perouse?

30 A. There were meetings at which Mr Ingrey was present with Mr Johnson when these arrangements - the assistance that Mr Ingrey was seeking was discussed both with--

Q. In your presence?

35 A. In my presence yes. Both Mr Ingrey and the chair of the board were present at some of those meetings. The chair of the board sorry of La Perouse.

Q. Who was that?

40 A. I think at that stage it was Mrs Marsh Ella Duncan or her sister, I'm not sure which one was chair I'm sorry.

Q. About what time did these meetings, what period did these meetings occur?

45 A. I would assume from the date of this email and the correspondence you've taken me to before they would have occurred at some stage in 2012 at the inception of the work that we were asked to do for La Perouse.

Q. About when do you think this arrangement commenced in 2012 or 2013?

50 A. I would have thought looking at these invoices and the dates it would have

been at least 2012. I can't say precisely, I'd have to look at more correspondence I'm sorry.

Q. For about how long to your knowledge did this arrangement continue?

5 A. It continued for - from inception whatever date that might have been 2012 or perhaps earlier through until when I close to the time I ceased being retained by Gandangara Local Aboriginal Land Council or GMS.

Q. When was that?

10 A. When the administrator sorry the gentleman from Deloitte who was the administrator wrote to me. I think that was - I think that letter might have been January 2014.

Q. Was there some conditionality attached to this arrangement?

15 A. Sorry I'm not quite sure I follow conditionality.

Q. I'll do it in two steps then. Was the arrangement that in the first instance GMS would pay you the total amount of your invoice?

A. Yes, that's correct.

20

Q. Secondly you either on your own or in conjunction with Mr Gundar would, to the extent necessary, apportion that invoice between work you had done for GLALC and work you had done for La Perouse?

A. That's correct, I was asked to provide an indication of the proportion of work yes.

25

Q. That proportion would vary from month to month depending on--

A. Yes, depending on activities, yes correct.

30 Q. Then in turn the next step would be GLALC would invoice La Perouse for the work that you had apportioned to it?

A. My understanding is that GMS would yes invoice.

Q. GMS would invoice La Perouse?

35 A. That's my understanding, yes.

Q. Was there some condition attached to your knowledge to La Perouse paying that invoice?

A. Not to my knowledge, no.

40

Q. For instance was it conditional upon the successful completion of the project on which you were doing the work for La Perouse?

A. Not to my knowledge, no.

45 Q. Can I ask you secondly with reference to page 1522 about Walgett which on 5 March you've attributed 10% to?

A. Mm-hmm.

Q. Is it fair to say as an overview that the arrangements in relation to Walgett LALC were along the same lines as those in relation to La Perouse?

50

A. Yes, that's correct.

Q. So again some work that you were doing was for the benefit of Walgett?

A. That's correct.

5

Q. Who were you dealing with at Walgett?

A. I met a number of gentlemen from the board, I'm sorry I can't recall their names and Mr Sing who was the main liaison if I can refer to him, liaison with Walgett Local Aboriginal Land Council.

10

Q. In March of 2013 Mr Sing was the acting CEO for Walgett?

A. Yes, that's correct yeah.

15 Q. Was he the person with whom you principally dealt at that time in relation to the work that Walgett wanted you to do?

A. Yes.

Q. How did you yourself work out the apportionment between on page 1522, the three entities that you did?

20 A. Would have been based on you know the work that was performed in those particular months, I would go back and you know consider the number of hours I may have spent on telephone calls or emails or whether you know I'd had to prepare material or review material.

25 Q. For instance did you keep time sheets?

A. No, I did not.

30 Q. So you didn't have a contemporaneous record that enabled you to determine with precision exactly what amount of time you'd spent on work for each of the respective Land Councils?

A. I used - I would have used my diary, my electronic diary and my emails and documentation.

35 Q. Was Mr Johnson ever present at any meetings you had with Mr Sing in relation to the work that you were doing for Walgett?

A. Yes he was.

Q. Did you ever obtain any approval in writing from Walgett LALC or Mr Sing for the work that you were doing for it?

40 A. No because the retainer arrangement was with Gandangara Management Services and my understanding was that they had an arrangement in turn with Walgett.

45 Q. Was that retainer arrangement that you're talking about ever to your knowledge approved by Mr Sing in your presence?

A. He didn't specifically approve it but he certainly was well aware of it.

Q. When you say he was well aware of it, how do you know that?

50 A. Well he would have been aware of the retainer arrangement and the costs of a range of various consultants because of the nature of the work.

Q. Let me break that down step by step, you were doing work for Walgett, correct?

A. Yes.

5 Q. Mr Sing knew in March 2013 that you were doing work for the benefit of Walgett?

A. Yes.

10 Q. You were invoicing GMS for that work as part of your monthly \$12,000 retainer?

A. Yes.

15 Q. You were providing to Mr Gundar on behalf of GMS a split, for want of a better term, as to how that 12,000 for those months of January and February 2013 should be divided up?

A. Yes.

20 Q. That split was provided by you for the purpose of assisting GMS to invoice in this case Walgett for the services provided by you?

A. Yes.

Q. Did you ever see any invoice from GMS to Walgett in respect of that proportion of your services?

25 A. Not at that point in time, no.

Q. Do you know whether or not Walgett ever paid those invoices?

A. No I don't.

30 Q. Was there any condition attached to your knowledge to Walgett reimbursing GMS for that proportion of your services?

A. Not to my knowledge although there had been discussions about Walgett's ability to pay being dependant on you know it undertaking projects but I wasn't aware of the precise arrangements entered into between GMS and Walgett.

35 Q. You say you weren't aware of the precise arrangements but you also said earlier that you were sure that Mr Sing knew what those arrangements were. I know I've asked that question but could you provide some greater elucidation as to how you got your understanding of Mr Sing's awareness of this reimbursement arrangement?

40 A. Well because I was dealing with Mr Sing he was aware that I was performing work, he was aware that I was rendering invoices to GMS.

Q. He knew that you were rendering invoices to GMS?

45 A. I believe so, yes.

Q. In respect of the work you were doing for Walgett?

A. Yes, that's right.

50 Q. Did he know, to your knowledge, that at some stage or other GMS would expect to be reimbursed by Walgett for the work that you were doing?

A. I would have assumed he would have understood that yes.

Q. Did he ever acknowledge that to you?

A. I don't believe we ever probably had a precise conversation about that.

5

Q. I mean is it feasible that Mr Sing might have expected you to be doing that work for Walgett for nothing?

A. Well I was certainly wasn't invoicing Walgett, I was invoicing GMS.

10 Q. That's not what I asked Mr Wing?

A. Sorry.

Q. What I was looking at is this arrangement whereby you're doing work pursuant to a retainer arrangement with GMS and/or GLALC whereby some of the work that you were doing each month is for the benefit of another Aboriginal Council?

15

A. That's correct.

Q. You are being paid by GMS?

20

A. Yes.

Q. Your total monthly retainer?

A. That's correct.

25 Q. But not all the work you're doing is for the benefit of GMS, some of it is for the benefit of Walgett?

A. Yes.

Q. In the months of January and February 2013 you have estimated that 10% of the work you did in those two months was for Walgett?

30

A. Yes.

Q. You are clearly a person who has taken care from the documents that we've seen today in your retainer arrangements with GLALC and GMS correct?

35

A. Yes.

Q. There are a number of details, quite careful retainer letters there?

A. Yes.

40

Q. And yet we have here an ad hoc arrangement where there is no document recording Walgett's liability to either pay you directly or reimburse GMS for the services you provide to Walgett, is that correct?

A. I'm not aware of that my--

45

Q. To your knowledge?

A. To my knowledge no.

Q. You're not aware of any document that records that arrangement?

50

A. No I'm not.

Q. Isn't that a somewhat unusual situation Mr Wing?

A. Yes, although Mr Johnson had a view that Aboriginal Land Councils who were better off, if I can use that shorthand phrase, should help those who were not so well off and--

5

Q. But that didn't extend to providing services to them for free did it?

A. I wouldn't have thought so, I would have thought there was an expectation that at some point GMS would be repaid or reimbursed.

10 Q. Did Mr Sing for instance ever say to you Walgett will reimburse GMS when the Walgett proposal or development reaches fruition, did he ever say anything like that to you?

A. I can't recall him saying anything like that to me no.

15 Q. You weren't aware of any conditionality to Walgett's reimbursement of GMS?

A. No, but my personal expectation was that they would need to complete that project in order to have sufficient funds to pay because I was aware that GMS was providing other services, administration services and things like that.

20

Q. So the reality was that irrespective of what the contractual position may have been Walgett simply didn't have the money to pay you directly at that time, is that right to your knowledge?

A. That's my understanding, yes.

25

Q. For that reason you would invoice GMS that did have funds, correct?

A. Correct.

Q. You would be paid for the work that you did?

30

A. Yes.

Q. And GMS would take the risk on reimbursement from Walgett?

A. That is correct.

35 Q. Just for completeness in that same bundle can you turn to page 1536 which I think when one looks at it is in very similar nature to the page that we've looked at at page 1511 and there are other examples also?

A. Yes.

40 Q. I'm directing your attention to the handwriting, it's the monthly invoice for April 2013 invoiced on 5 May 2013 for \$12,000 plus GST?

A. Mm mm.

45 Q. In the left hand side is some handwriting which I take it you identify that handwriting as Mr Gundar's, is that correct?

A. It's certainly not my handwriting so it's either Mr Gundar's or some other employee of GMS.

50 Q. It's very similar handwriting to, if not identical, handwriting at page 1511 is it not?

A. Yes, it appears to be to me I would assume it's Mr Gundar's writing.

Q. There's an apportionment there again which seems to have 90% to GMS?

A. Yes.

5

Q. And then there's 5% to, what I presume to be, La Pouse but it may not be--

A. I think your assumption is correct.

10 Q. And then beneath that there's 5% to Walgett?

A. Yes that's correct.

Q. If you turn back please to page 1500 you will see the same handwriting, would you agree?

15 A. Yes.

Q. And one apportionment has been crossed out and another inserted in the same handwriting?

A. Yes.

20

Q. And that's in relation to November 2012?

A. Yes.

Q. Do you see that?

25 A. Yes I do.

Q. Are you able, at this stage, to give any explanation as to why that apportionment appears to have been varied?

30 A. This was what I referred to earlier in my comments. I was not asked to provide an apportionment at the date of this invoice, I don't believe. It's my recollection that I wasn't asked to provide an apportionment until after the event and I can only assume that somebody at GMS had made the initial apportionment and when they clarified it with me they were given the apportionment that's been written there.

35

Q. Thank you Mr Wing. Could you give me one moment please?

DEPUTY REGISTRAR: Mr Baird just before you take that moment, if you want to proceed to 4 o'clock we can. I understand the examinee has come a distance to be here so it would be unfortunate if we can't deal with him today.

40

BAIRD: Certainly Registrar. I was actually as you can possibly see hoping to finish by 3.30 to meet the Court's convenience, I'm still trying to do that.

45 DEPUTY REGISTRAR: If it's going to affect how it proceeds--

BAIRD: Can I just check with my instructing solicitor a moment and see how much more we've got left to cover.

50 SHORT ADJOURNMENT

BAIRD: Thank you Registrar.

5 Q. Could I just terminate that topic of proportionality with you please Mr Wing?
In terms of moneys had and received you were performing work for the benefit
of, firstly Walgett LALC correct?

A. Yes.

10 Q. And secondly La Perouse LALC?

A. Yes.

15 Q. For which GMS was paying, correct?

A. Correct.

20 Q. Are you aware of any reason why firstly Walgett should not reimburse GMS
for that proportion of your services that you did work for Walgett?

A. Personally I'm not aware of any sort of reason.

25 Q. And secondly in relation to La Perouse are you aware of any reason why
La Perouse should not reimburse GMS for that proportion of your services
which you provided to it for which GMS paid?

A. No I'm not aware of any circumstance.

30 Q. Could the witness be taken, and this is the final topic Registrar so I'll be
brief, to volume 9C. The first page in that volume is page 2846 and I think that
is another example of that same process we were looking at?

A. Yes that's correct.

35 Q. In the foot of the page on 1 February you send your tax invoice for
December 2012?

A. Yes.

40 Q. Mr Gundar writes back on 1 February saying "Please provide us a
breakdown for your work on this invoice"?

A. Yes.

45 Q. And wants it split between Gandangara, La Perouse and Walgett, correct?

A. That's correct.

50 Q. And then on 3 February you provide him with some percentages, 85%, 5%
and 10% for Gandangara, La Perouse and Walgett respectively?

A. That's correct.

Q. And that's consistent with the discussions we were having just before the
break?

45 A. Yes that's correct.

Q. Now I want to direct your attention in this bundle to page 2924 please.

One moment I have a feeling I may already have asked you about page 2924?

50 A. I think you may have, yes.

Q. I need volume 9A to the witness. This should be the final volume Mr Wing thank you. In that volume can you turn please to page 2346. Now I want to ask some questions in relation to Mr Perkins. You've got 2346?

A. 2346, yes I have.

5

Q. And I'll follow it through. Can I deal with it at a high level firstly?

A. Sure.

10 Q. You were involved in the recommendation of Mr Perkins and EMC for Mr Johnson back in 2007 were you not?

A. Not in 2007, I don't believe EMC were engaged at that date, I think they were engaged--

Q. Sorry, I correct that, 2009?

15 A. Yes correct, 2009, yes.

Q. If you look at page 2348 for instance?

A. Yes.

20 Q. I think that's what the number should have been. Page 2348 is the EMC Strategic Communications and Media proposal for GLALC, right?

A. That is correct.

Q. And it's dated 22 May 2009?

25 A. Yes.

Q. Did you see that document at about that time?

A. Yes I did.

30 Q. It's a document created or submitted by Mr Chris Perkins?

A. Yes.

Q. See that at the foot of the page and it's submitted to Mr Jack Johnson CEO of GLALC right?

35 A. Yes, correct.

Q. Firstly, you said that you saw that document at or about that time?

A. Yes.

40 Q. What was your involvement in the process leading up to the submission of that document?

45 A. Mr Johnson, as best as I can recall, Mr Johnson and I had been discussing the activities that GLALC was undertaking and Mr Johnson felt that there was a need for assistance with communications, stakeholder engagement, being both external and internal, communicating with the GLALC members and also communicating with external parties, government, local councils, et cetera about the activities that were proposed and the work that was actually being undertaken by GLALC.

50 Q. Prior to May 2009 did you know Mr Chris Perkins?

A. No I met Mr Perkins probably shortly before that period I believe.

Q. How did you come to meet him?

5 A. Another client of mine had used - or sorry had been part of an association which had retained Mr Perkins' services and he, when I was discussing with him whether he knew of anybody in this field, he said to me that he had retained Mr Perkins and EMC and they had done a very good job and that I should meet him.

10 Q. Did Mr Perkins know Mr Johnson prior to this arrangement or sorry proposal in April/May of 2009?

A. No.

Q. Did you introduce Mr Perkins to Mr Johnson?

15 A. Yes I did.

Q. If you turn to page 2349 there's a description there of the services provided by EMC and it describes Mr Chris Perkins as a formal journalist, Senior Public Affairs professional with ministerial and executive lower level government experience also Queensland Secretary of the Journalists Union, do you see that?

20 A. Yes I do.

Q. Was that information true to your knowledge?

25 A. Yes.

Q. Does that assist you to answer the question I asked earlier as to whether or not Mr Perkins was Indigenous or not?

30 A. I don't believe you asked me that question earlier but if you did I don't believe Mr Perkins is Indigenous.

Q. Please turn to page 2351?

A. Yes.

35 Q. There's some reference there to some additional value provided by EMC?

A. Yes.

Q. And that's in addition to the amounts that are referred to on page 2350 which is a media package relations?

40 A. Yes.

Q. Of some \$2000 per month, do you see that?

A. 2350?

45 Q. Yes?

A. Yes.

Q. And then there are newsletters at \$1000 per month?

50 A. Yes.

Q. And then there's separate charges for video production and ancillary amounts?

A. Yes.

5 Q. These services were to be provided principally in relation to GLALC Stage 2 Development and Lot 101 Barden Ridge were they not?

10 A. No they were intended to be provided at, what I might describe as, at a corporate level. So they were intended to be provided at GLALC about all of its activities not just projects or property projects and very specifically not just property projects.

Q. How much, to your knowledge, of the work being done by EMC related to the Gandangara Stage 2 and Lot 101 Barden Ridge projects?

15 A. I couldn't give you an apportionment, I couldn't do that but they were involved in communications generally, be that media or internal communications about all of GLALC's activities and that would have included the property projects but it would have also included non-property projects as well.

20 Q. Turn to page 2352 and you'll see there's an email from yourself to Mr Perkins on 28 June 2009 which refers to the acceptance of EMC's proposal and its appointment as outlined presumably in the retainer letter?

A. Yes.

25 Q. Why were you sending that email Mr Wing?

A. Mr Johnson must have asked me to communicate that to Mr Perkins.

Q. Because it says "On behalf of GLALC" do you see that?

30 A. Yes that's correct.

Q. Was that something you normally did, assume approval roles on behalf of GLALC?

35 A. If I was specifically asked to communicate with somebody by my client, yes.

Q. But EMC was not subcontracting to Dixon was it?

A. No, that's correct and that's why the sentence starts "On behalf of GLALC".

40 Q. Now if you turn through to page 2359 you will see there's another email from yourself to Mr Johnson, 7 February 2010?

A. Yes.

Q. And it's a recommendation for the reappointment of EMC?

45 A. Yes.

Q. A further proposal for the period 1 January to 31 December 2010?

A. Yes.

50 Q. Did you have some understanding of the total amount of fees that EMC was being paid during this period?

A. As set out in the retainer agreements, yes I would have.

Q. Did you have an opinion at this time as to the value of the services being provided by EMC for GLALC?

5 A. My anecdotal investigations indicated that they were at market rates and that was the, you know, the usual or you know, slightly less or slightly more for different bits of the work than what other like providers charged in the industry.

Q. Because you were involved in reviewing EMC's fees were you not?

10 A. I was involved in discussing with Mr Johnson the work that they were performing for the fees that they were proposing.

Q. And outside of this project did you have a close working relationship with Mr Perkins?

15 A. As a result of this appointment I developed a close working relationship with Mr Perkins but I had not previously known Mr Perkins before my initial referral to him.

Q. So is it fair to say that your relationship with Mr Perkins was purely professional?

20 A. Yes.

Q. And you didn't have a personal relationship outside work?

25 A. It developed into a personal relationship over time, yes.

Q. Who is Mr Leon Firewood?

A. Mr Leon Firewood was an employee of GLALC at the time.

30 Q. Can you turn to page 2364 please and you'll see that's the continuation of the email chain that we were looking at page 2359?

A. Yes.

35 Q. The email of 7 February 2010 at page 2359 is reproduced at the foot of page 2364 and above it there's an email from Mr Johnson to Mr Firewood with a copy to you asking Leon

40 "To come up to speed with the history of our relationship with EMC, assess past and present performance and critically analyse this agreement in order for you to provide advice directly to me including a recommendation as to where we go. Please talk to all concerned and ensure that you are fully informed".

Did Mr Firewood speak with you about EMC's performance at this time?

45 A. Yes I recall talking to Mr Firewood about EMC, yes.

Q. And did he ask you as to whether or not you were satisfied with the level of services provided by EMC?

A. He did.

50 Q. And what did you tell him?

5 A. I told him that I was broadly satisfied, that there were matters that they could obviously improve on as we can all improve but that some of that criticism was really largely due to their inability to have regular access or get instructions at an appropriate speed from GLALC and in particular Mr Johnson on occasions.

Q. Did you indicate any view to Mr Firewood as to whether or not EMC was providing value for its services?

10 A. If I was asked I probably would have provided a view. I can't recall whether Mr Firewood asked me that directly or not.

Q. What was your view?

15 A. My view was that they were providing reasonable value but that GLALC could get more value if it engaged with and managed the relationship better from their perspective.

Q. Do you see the second last line in the email of 7 February at page 2364, it says "DW" that's you I presume?

20 A. Yes I presume.

Q. "Has to be instrumental and vocal to all discussions with EMC", what did you understand that to mean?

25 A. Again I think what it meant to me was much like the actual property projects where Mr Johnson expected me to be in a supervisory capacity, if you like, as well as you know involved in some aspects of them in much more detail. He expected me to do likewise in relation to the work that EMC was performing although - yeah that's my assumption from reading that sentence and certainly how I interpreted it.

30 Q. That's a widening of your role from the specific roles to the 101 Barden Ridge and Stage 2 Development Projects is it not?

A. Yes my retainer was quite broad, it wasn't only limited to those projects.

35 Q. Well your retainer had nothing to do with supervising the media communications advisor did it?

A. No but clients often ask you to do things that are beyond the scope.

Q. So Mr Johnson was relying upon you, according to this email to supervise Mr Perkins, is that correct?

40 A. I wouldn't say--

Q. Sorry, I withdraw supervise, that's not fair. He was relying upon you to review the past and present performance of EMC and critically analyse its role?

45 A. I think he was asking Mr Firewood to do that and for Mr Firewood to talk to me about my views perhaps about those things or about Mr Firewood's - the formation of Mr Firewood's views or Mr Firewood's assessments.

50 Q. If you turn through to page 2369 please because I don't want to ambush you and have a quick look at that email, that's from you to Mr Firewood on

24 February 2010. I think the email is self-explanatory is it not about what in fact you did and didn't do?

- 5 A. Yes. Yep. Sorry, yes that's correct. And you'll see there, again as I referred to a moment ago I say "There was not full engagement by GLALC in the process". I rated the value for money aspect at 7 to seven and a half. I made some criticisms of EMC in that process as well and put forward some steps to address those issues.

- 10 Q. The document speaks for itself though. Can you turn to page 2409 please and we're up to November of 2010 and this email records your ongoing involvement in the supervision, I think I can use it, or at least critical analysis of EMC's retainer and role, do you see that?

A. Yes.

- 15 Q. Working from the foot of the page there's a proposal by Mr Perkins on 3 November 2010, an updated all in proposal and on 12 November you forward that to Mr Johnson, that's 12 November 2010 with some comments?

A. Yes.

- 20 Q. What's the current financial position of the Dixon Capital Trust please Mr--

DEPUTY REGISTRAR: Mr Unsworth you're announcing an objection please?

- 25 UNSWORTH: Well given the time and the temperature of the room, this is an investigation into the affairs of GLALC not into the company that's being now the subject of questioning.

- 30 DEPUTY REGISTRAR: Yes I understand that but often what falls within the examinable affairs is any potential recovery that those that instruct Mr Baird might make and whether the company that they should choose to make a claim against be able to meet such a claim if they were successful in obtaining judgment and on that basis I'll allow the question.

BAIRD

35

Q. To the best of your understanding Mr Wing, what is the current financial position of the Dixon Capital Trust?

- 40 A. To the best of my understanding the Dixon Capital Trust currently has cash at bank of approximately \$50,000, some liabilities in the form of a motor vehicle lease, I couldn't - sorry it would be around maybe \$25,000 and some credit card liabilities probably in the amount of about \$50,000 and it probably has some, you know, other loans owing to it from you know minor loans owing to it from other entities.

- 45 Q. Does it own any real property?

A. No it does not.

Q. Can I assume that its function is to receive and distribute income in the year of receipt?

- 50 A. Yes.

Q. And the income that it receives each year is fully distributed to the beneficiaries?

A. Yes that's correct.

5 Q. And does it operate as the trustee of a discretionary trust?

A. Yes it does.

Q. It's not a unit trust?

A. No it is not.

10

Q. And I think you indicated earlier, you're one of the range of potential beneficiaries of that discretionary trust?

A. Yes I am.

15 Q. And was it, I apologise, was it your wife or your partner?

A. Partner.

Q. Is another potential beneficiary?

A. Yes that's correct.

20

Q. And who are the other potential beneficiaries?

A. I presume it's the usual wide class of beneficiaries, children, you know any other family members et cetera.

25 Q. There are, therefore, other adults potential beneficiaries, is that correct?

A. There are other adult potential beneficiaries, yes.

Q. And you, yourself, what's your present personal financial position? Do you have any real property in your own name?

30 A. No I do not.

Registrar I have no further questions for this witness and I'm grateful for the witness coming down for today. I thank him and--

35 DEPUTY REGISTRAR: Mr Unsworth do you have any questions for the examinee.

UNSWORTH: No Registrar.

40 DEPUTY REGISTRAR: Mr Wing I'll stand your examination over generally with liberty for it to be restored upon giving you 14 days' notice. If it is not restored within the next six months it is deemed concluded. At the start of your examination today I made an order for you to sign a copy of the Court's transcript of your examination. Once it has been prepared an officer of this
45 Court will contact you to arrange a time and a place for you to come and sign that document and you must do so in accordance with the orders I made today, do you understand that?

EXAMINEE WING: I do, thank you Registrar.

50

DEPUTY REGISTRAR: Thank you, you may be excused.

STOOD OVER GENERALLY

5 <THE WITNESS WITHDREW

BAIRD: I'm grateful for that Registrar. Can I just check with my instructing solicitor, as I understand it we've got Ms Cronin tomorrow morning and we have--

10

DEPUTY REGISTRAR: Sorry what was that Mr Baird?

BAIRD: Sorry, just checking, Ms Cronin tomorrow?

15 DEPUTY REGISTRAR: Is available at 9.30.

BAIRD: And we have Mr Perkins at 11 o'clock.

20

DEPUTY REGISTRAR: In light of that I will confirm that this matter is now listed at 9.30 tomorrow morning most likely in this courtroom and we again should be in this courtroom for the rest of the week but again I encourage all participants to check the list beforehand. In light of us potentially and most likely being in here, the folders can stay in this courtroom, you don't need to take them away with you in that regard.

25

ADJOURNED TO WEDNESDAY 4 FEBRUARY 2015 AT 9.30AM

RSB:SND

150367

IN THE SUPREME COURT
OF NEW SOUTH WALES
EQUITY DIVISION

5 ACTING DEPUTY REGISTRAR BELLACH

WEDNESDAY 4 FEBRUARY 2015

10 **2014/00261609 - IN THE MATTER OF GANDANGARA MANAGEMENT
SERVICES LIMITED**

EXAMINATION

Mr J Baird for the Receiver
15 Mr Unsworth for the Examinee Perkins

20 BAIRD: May it please the Court. In this matter I appear again for the receiver,
Registrar. The first examinee today is Ms Cronan. We also have a Mr Perkins
who is flying down from Queensland for the day and as I indicated on Monday
we proposed, with the consent of Ms Cronan, to interpose Mr Perkins at 11am.
I'm not quite sure whether we would finish Mr Perkins in time for Ms Cronan's
25 examination to be renewed today or possibly might have to go over till
tomorrow when I understand Ms Cronan is also available. I think we'll just
have that as a fluid situation, Registrar, and see how it goes.

DEPUTY REGISTRAR: That's fine, we'll just start now and see how far we
30 get.

BAIRD: But for the benefit of Ms Cronan we do intend to adjourn her
examination this morning at 11am.

DEPUTY REGISTRAR: Thank you. Ms Cronan, can you please come
35 forward for me.

<EXAMINEE CRONAN, SWORN

DEPUTY REGISTRAR: For the court record can you please state your full
40 name, address and occupation.

EXAMINEE CRONAN: My name is Cinderella Ann Cronan. I live at
[REDACTED] And I am a client service officer Aboriginal
45 with Housing NSW.

DEPUTY REGISTRAR: Thank you. Please listen carefully to what I am about
to tell you. This examination is being conducted under the Corporations Act
2001. It is an unusual court proceeding in that you are required to answer the
questions that are put to you even if your answer may be incriminating or make
50 you liable for a penalty. However, the answer you give to the Court today

.04/02/15

1

- cannot be used against you in a criminal proceeding or in any proceeding imposing a penalty if you clearly state the word "privilege" before answering the question. You must do this for each answer of which you are claiming privilege. Please note, though, that if you give a false answer or refuse to answer a question that is put to you, you may be liable for perjury or contempt of court. Do you understand?

EXAMINEE CRONAN: Yeah.

- 10 DEPUTY REGISTRAR: Everything that is said in this courtroom is being recorded, which means you must articulate a response to the questions that are being put to you. That may require you to repeat an answer or spell out a name for clarification. Do you also understand that?

- 15 EXAMINEE CRONAN: Okay.

DEPUTY REGISTRAR: Mr Baird, are orders being sought under section 597(13)?

- 20 BAIRD: They are, Registrar.

- DEPUTY REGISTRAR: I order the questions put to the examinee and the answers given by her be recorded in writing. I also direct the examinee to sign a copy of transcript once it has been prepared by this Court. Thank you, Mr Baird.

BAIRD: Thank you, Registrar.

<EXAMINATION BY MR BAIRD

- 30 Q. Ms Cronan, I understand that you are a member of the Gandangara Aboriginal Land Council, is that the correct way describe it?
A. Yeah.

- 35 Q. My pronunciation may not be correct, is it okay with you if I use the contraction GLALC so I don't have to get the pronunciation wrong, is that okay? '
A. Yeah.

- 40 Q. When did you first become a member of the GLALC council?
A. Around about 1994-95.

Q. And when did you first take a position on the board of the Council?
A. About 96.

- 45 Q. Starting from then, what positions and what responsibilities did you have on the board from 1996 through to about 2006?
A. Probably I need to clarify that. I wasn't on there for that whole period of time because there are regular elections, so I was on it for a large part of that
50 time but not for all of that time. And before the changes to the Land Rights Act

came in and there was no secretary any more I was the secretary.

Q. Let's just take the period shall we say 2004 onwards.

A. Mm-hmm.

5

Q. Were you a member of the board in 2004?

A. In 2004 I was secretary land council. In 2007 the amendments came in.

Q. Did you become chairperson of the board of the Council at some stage?

10 A. In 2009.

Q. In 2009? Thank you. Who was chairman or chairperson in 2006?

A. In 2006? I believe Mark Donohue was.

15 Q. Mr Johnson was appointed chief executive officer at some stage in 2006, was he not?

A. I'm not certain of the exact year, it's 2006, 2007 perhaps.

20 Q. Did you have any involvement in the process whereby the chief executive officer was selected and then his contract--

A. Only as a member of the land council, nothing else. I was not on the board at that stage.

Q. You were not on the--

25 A. I was not on the board at that stage. When Mr Johnson became CEO of the land council I was not a board member.

Q. About how long after Mr Johnson became CEO did you become on the board of the Council?

30 A. I think you'll find it was in excess of 12 months.

Q. As a member of the Council what is your understanding of the process whereby Mr Johnson was selected as CEO and then appointed or employed?

35 A. My understanding was he went through an interview process, like most people do when they go for a position, he was one of two successful candidates and it was put to the members as to the recommendations from the interview panel.

40 Q. So a short list - after an initial process that was reduced to a short list of two?

A. Mm-hmm.

45 Q. And did the final decision as to which of these two candidates would be successful, was that made by the members of the Council itself or by the board?

A. It was, and it was a highly contentious vote.

Q. Put it this way, was the vote close?

50 A. No, I wouldn't say it was close by, you know, even a handful of members but it was highly contentious, it was well debated.

Q. What were the issues that were causing the greatest contention?

A. One that Mr Johnson was a relative outsider coming from Queensland as opposed to the local favourite is probably the best way to describe it.

5 Q. I understand. Was there any particular debate at that time amongst the members of the Council, to your knowledge, about the terms of employment of the CEO?

A. I don't remember that clearly but I know that it did go to the membership, because the membership would not have approved it without that sort of
10 information, they're not naïve in that sort of information. They'd been previously, with previous CEOs, been given that sort of information in lengthy detail.

Q. Excuse me standing like this.

15 A. No, it's okay.

Q. What I was really putting to you was that from your recollection was there anything unusual in terms of employment of the CEO or were they, as best you recall, orthodox?

20 A. They were orthodox.

Q. Do you know whether a draft contract was prepared for each of the two candidates or was there only one contract for the successful candidate?

A. I think you'll find there was no contract until there'd been a decision made
25 in regards to who was going to be the successful candidate.

Q. As best as you can now recall once the decision had been made that Mr Johnson should be the successful candidate for the CEO position, about how long did it take before a contract of employment was submitted to the
30 members for their approval?

A. I think you'll find that it took quite some time because of the debating backwards and forwards and the - yeah, about the details.

Q. What sort of details were they?

35 A. That would have been to do with remuneration and whatnot.

Q. Do you have any--

A. The usual stuff.

40 Q. When you say the usual stuff, in relation to remuneration one possibility might be that the remuneration that he was asking for was fairly high or that there were other unusual terms. Do you remember any debate at that time about that sort of thing?

A. Money is not easier to come by when you're a black fellow, so we don't like
45 parting with it very easily either. So it's always been a contention regardless of the amount.

Q. Did you have a view yourself then as a member of the Council as to the adequacy or otherwise of Mr Johnson's remuneration?

50 A. No. No, I thought it was adequate.

Q. Did you think it was too high perhaps?

A. No.

5 Q. Did you at that stage have any knowledge of whether his remuneration package included such things as firstly superannuation?

A. I would expect that that's a given.

Q. And secondly expenses reimbursement?

10 A. That would also be a given, you wouldn't expect somebody to pay out of their own pocket for something that they're doing for the organisation.

Q. And thirdly bonuses?

A. Yeah. If that's a productivity bonus you're talking about,--

15 Q. Yes.

A. --yes. Yes.

Q. Do you actually recollect there was some discussion about that as opposed to a sense that this is normal?

20 A. Yes.

Q. Doing the best you can now recall what were the discussions that you were involved in about Mr Johnson's remuneration package including his bonuses, productivity bonuses?

25 A. That they would be there in the event that we did some developments because that would be - a KPI of that productivity would be that he had accomplished and achieved the completed development and he would receive those bonuses based off the surplus at the end of that--

30 Q. That was your understanding in general terms of the arrangement?

A. Yeah, yeah, in really basic terms.

Q. And did you regard that as normal at the time?

35 A. Yeah. Productivity bonuses are done all over Australia, why should it be any different in this position, in this particular scenario.

Q. At that time GLALC was in the process of or at least considering some major land developments, was it not?

40 A. Not to the extent it does today because some of them weren't achieved at that point.

Q. Understood. You're familiar with the development known as Gandangara Estate Stage 2 development?

A. Yeah.

45

Q. And also lot 101 Barden Ridge?

A. Yeah.

Q. Were those projects in contemplation as far back as 2006 or did they--

50 A. Those projects were in contemplation long before 2006 I might add, yeah,

that's one of the pitfalls of being Aboriginal and in the Sutherland Shire because they're not partial to our developments.

5 Q. Were those proposed developments seen as somewhat difficult back in 2006?

A. Oh yeah, without a shadow of a doubt.

Q. And was it that one of Mr Johnson's shall we say pluses was perhaps his ability to progress those proposed developments?

10 A. That was one of the key performance indicators for him was that he needed to do that. Regardless of whether he thought he was capable of doing it that was the requirement, he needed to do that.

Q. And was it your view at that time that he had that skill and that expertise?

15 A. I believed at that time, as a member of the land council not on the board, that he had the better expertise in order to pull it off than his counterpart, the other delegate, the other--

Q. Candidate.

20 A. Yeah, thank you.

Q. I want to take you forward through to 2008. If I understood your previous answer correctly you became a member of the board again 2007, is that right?

Q. Yes.

25

Q. Or was it 2008?

A. It might have been 2008 actually because - yeah, there was an interval between 2004 - actually September 2004 through to that period when I got back on the board, and I wasn't chaired immediately either, I was just a board member for a while.

30

Q. Could I ask this general question, when people came onto the board did they have specific and separate areas of responsibility or were all matters for the board generally?

35 A. They were all matters for the board generally. The only deviation from that is the chair and the deputy chair and for the most part everything is discussed with the full board in any case. If there is anything in between meetings it's generally brought straight to the very next board meeting.

40 Q. In 2008 there came into existence a community land and business plan for GLALC, did it not?

A. Yep.

Q. And in general terms that business plan is something that you were familiar with as a member of the board in 2008 and onwards?

45

A. Yeah.

BAIRD: Might the witness be shown MFI 1, volume (I) A, please Registrar.

50 DEPUTY REGISTRAR: I'll give you leave to approach.

BAIRD: Thank you.

Q. Could I ask you in volume (I) A to turn to tab 4, please, page 115.

A. Yeah.

5

Q. And you'll see at page 115 is a document entitled "Gandangara" - is that the correct way to pronounce it?

A. Gandangara, if you break it up into three letter syllables it's easier to pronounce, it's Gandangara.

10

Q. Gandangara.

A. Yeah.

15

Q. Thank you. Local Aboriginal Land Council community land and business plan 2008 to 2011, do you see that?

A. Mm-hmm.

20

Q. That was the document I was referring you to a moment ago, was it not?

A. Mm-hmm.

25

Q. What can you tell me about your understanding of how this document came into existence?

A. It came into existence after the 2007 Aboriginal Land Rights Act amendments where they decided, the powers to be, that every land council should have a community land and business plan. So every land council was forced to produce one or otherwise they were cut from funding and all the rests of it. And most of them weren't equipped either, you know, with the right skills in order to produce them, so a lot of them had to contract it out and all the rest of it and, yeah, it was quite ugly.

30

Q. And were you on the board at the time of the preparation of this business plan?

A. No.

35

Q. Do you know who was involved in its preparation?

A. Members, and I was as a member at that time involved in producing it, the workshops that were held to put this all together.

40

Q. Was it the CEO who had the principal responsibility for combining all the various elements in putting the plan together or was it--

A. I believe it was.

45

Q. But that was a consultative process you were saying?

A. Yeah, yeah.

Q. And the members of the Council had input into the plan?

A. Yeah, yeah.

50

Q. The board of course had input into the plan?

A. Yeah.

Q. Were there any other people who had input into the plan?

A. I can't say that I remember, to be quite honest.

5 Q. And at the terminal stage of the plan when there is a document in existence is there a document that is submitted to the Council for members approval?

A. Yes.

10 Q. And to your recollection is there a meeting at some stage or other that was held--

A. Yes.

Q. --to approve this plan?

15 A. Yeah, there had to be in order for it to be accepted by NSWALC.

Q. And there'd be a minute of that meeting at some stage?

A. Yeah.

20 Q. In the plan itself, I won't take you through it all, but could you turn, please to page 120 and at the foot of the page there's the heading "six background".

A. Yeah.

Q. Do you see that?

25 A. Yeah.

Q. And there is reference in the second paragraph, the last paragraph on the page, to GLALC focusing primarily on the provision of an economic basis to support its members' needs particularly through land developments and there is reference to completing developments at Alfords Point, Menai and Barden

30 Ridge--

A. Mm-hmm.

Q. --which is the Gandangara estate stage 1?

35 A. Mm-hmm.

Q. Those were projects with which you were familiar at that time?

A. Mm-hmm.

40 Q. And the observation is made that poor accounting systems, lack of transparency and reports to members and an overreliance on costly external consultant has meant that GLALC itself is yet to realise the benefits of earnings from those projects, do you see that?

A. Mm-hmm.

45 Q. Was that an observation with which you agreed at the time--

A. No.

Q. --2008?

50 A. No, it wasn't, but anyway.

Q. What was your view in relation to those matters at that time?

A. That's from a previous board and a previous administration, so why is it relevant to these proceedings.

5 Q. I was merely asking what was your view in relation to the development of those projects and I'm taking it from that that you disagreed with the comment there reported that poor accounting systems and lack of transparency and an overreliance on costly external consultants was detrimental to the realisation of those projects, is that right?

10 A. Yeah. But I'm just one member, just remember, at the time when this was being done.

Q. Ms Cronan, this is simply an examination, your views are entirely relevant and this is not a cross-examination of a witness, you're free to say whatever it is that you honestly believe and say and I'm certain the Registrar would support--

15

DEPUTY REGISTRAR: Ms Cronan, if it's any assistance to you the purpose of these examinations are to enable the people who instruct Mr Baird to gain further insight and explore what happened to the organisation through a prolonged period of time, okay, and hence that why you're one of many people to come before the Court to be examined as to what took place. Obviously they weren't there at that point in time and the only way they're going to get that information is by asking questions in court of people like yourself to give them that information to move forward and work out what might happen next.

20

25

EXAMINEE CRONAN: Thank you, Registrar.

DEPUTY REGISTRAR: So your assistance in that regard is greatly appreciated.

30

EXAMINEE CRONAN: Thank you, Registrar. I was there for both of those - both this round and that previous round, so I have the benefit of hindsight and experience from both of those situation. So yeah, that's why I disagree with it, because I was part of that process and--

35

DEPUTY REGISTRAR: I understand, Ms Cronan. This is an information gathering exercise. Obviously you were present, they were not, and simply they're just trying to get that information from you the best way they can.

40

EXAMINEE CRONAN: Yeah.

BAIRD

45 Q. Please feel free as the Registrar says, if you express your honest views, if you disagree with someone else simply say that you disagree and why. There is no rights or wrongs in this process.

A. Yeah.

50 Q. Could you turn to page 124, please Ms Cronan, and there is a little more

detailed reference to the development of land process.

A. Mm-hmm.

5 Q. I won't read it all out to you but I take it that you had an understanding at least in general terms of those matters at that time?

A. Mm-hmm.

10 Q. At the foot of the page, the last two paragraphs, there is reference to the introduction of a new procedure, do you see, that GLALC would establish a wholly owned corporate entity to act as the development manager for each development undertaken?

A. Mm-hmm.

15 Q. In other words what you might call a special purpose vehicle for each development?

A. Yeah.

Q. Was that a proposal with which you agreed at that time?

20 A. Not at that particular time I didn't, I didn't understand it very well at that point.

Q. Did you at some later time come to have an understanding of that proposition?

25 A. At a later time I did, after much debating backwards and forwards, yeah, much debating.

Q. What was the - tell me about the nature of the debate, please, that was held--

30 A. Because it took me a long time to see the difference between Darkinjung and Metro and all the rest of it and how this was working and whether it breached those two, and yeah, it took a long time to convince me.

35 Q. The final paragraph also stated that none of the wholly owned corporate entities would have administration or finance capabilities and that all financial and administrative functions would be performed at commercial rates by GLALC--

A. Mm-hmm.

40 Q. --thus ensuring full transparency, accountability and separate file retention. Do you see that?

A. Yep.

45 Q. Was your understanding that in relation to these single purpose or special purpose vehicles that although they would be separate companies they would not incur any separate administration or finance charges and that all administration would be conducted by GLALC itself, is that right?

A. Can I get you to repeat that?

50 Q. Certainly. Was it your understanding in relation to these special purpose vehicles that they would not separately incur any administration or finance

liabilities, that instead all financial and administrative functions would be performed by GLALC?

A. Yes.

5 Q. So GLALC would do all of the administration not only for itself but for these wholly owned special purpose vehicles, right?

A. At the stage when this was written yes, because there wasn't any management services at that stage.

10 Q. By that are you referring to the subsequent incorporation of Gandangara Management Services?

A. Yeah.

15 Q. And at some later stage there was in fact a service agreement between GLALC and GMS. Do you mind if I call Gandangara Management Services GMS?

A. Yeah, that--

20 Q. At some later stage there was a service agreement between those two entities, was there not?

A. Yeah.

Q. And that was about July 2012, is that what you recollect?

25 A. I think it may go back a little bit further than that but I'm not a hundred per cent certain.

Q. I'll take you to that document shortly if it's of assistance.

A. Okay.

30 Q. Leaving aside GMS, if there were any other special purpose vehicle they were not, is this correct as to your understanding, they were not to incur separate administration or finance liabilities?

A. Can you define what you're saying? The liabilities and stuff, what--

35 Q. I'm referring to that second paragraph and I'm trying to ascertain your understanding of the meaning of those three lines and I've put some possibilities to you for you to agree or disagree with. I'm trying to enquire of you as to your understanding of the words "none of the wholly owned corporate entities will have administration or finance capabilities". Do you see that?

40 A. Yeah.

Q. Is it correct to assume from that that firstly GLALC would perform all its administration and finance capabilities?

45 A. Yeah, and later or management services, yeah.

Q. That's right, that's what it says. And is it that it also followed from that the converse, namely that the special purpose vehicles would not incur administration or finance liabilities?

50 A. Yeah.

Q. That might have been partly my fault for not making the questions clearer, Ms Cronan.

A. No, that's okay.

5 Q. Do you mind if I address you as Ms Cronan or do you have some other preferred method of address?

A. Just call me Cindy.

10 Q. That matter, the corporatisation, is deal with in a little more detail at page 132. If you wouldn't mind turning to that please, Ms Cronan, paragraph 8.1, and in the first paragraph under the heading 8.1 there is reference to GLALC endorsing the concept of corporatisation whereby each corporate entity becomes a special purpose vehicle and that all seems fairly straightforward in accordance with the matters that we just discussed, right?

15 A. Mm-hmm.

Q. And over the page at the top of 19 is reference to the same matter that we just discussed?

A. Mm-hmm.

20

Q. Could I lastly in that document, please Ms Cronan, refer you to page 154, it's headed paragraph 24 "organisational structure". I won't read that out but if you could just read that briefly to yourself and also look at the corporate trees that appear over the page.

25 A. Yeah.

Q. In general terms that's a summary of the activities of GLALC at that time, is it not?

A. Pretty much, it was not doing a lot of anything.

30

Q. And also there's reference to what its proposed plans were?

A. Yeah.

35 Q. Moving forward, and I'll be fairly brief if I can in this area. Into 2009 at some stage or - certainly by 2009 you were a member of the board, correct?

A. Mm.

Q. And I think you said it was about 2009 or possibly a little later that you became Chairperson?

40 A. Yep.

Q. Do you remember whenabouts in 2009?

45 A. I don't remember the exact date because - yeah, we had - I was the third Chairperson at that particular Board because it started off with George Bloomfield and then it was Sandra Williamson and then myself.

Q. For how long was it Mr Williamson?

A. Sandra.

50 Q. Ms Williamson, for how long was Ms Williamson a chairperson?

A. I think about 9 months if I remember correctly and she was very, very ill though.

Q. I beg your pardon?

5 A. She was very, very ill though, she has since passed away.

Q. Thank you, I'm sorry about that. The topic I just want to refer to in general terms is the process of approving the annual report that's produced at the end of each financial year. I'll show you some documents but only in general terms for your assistance. For instance if you turn over the page to tab 5, you will see the GLALC Annual Report for the 2008 - 2009 year?

A. Mm-hmm - yep.

Q. And there is the annual report for 2010 and following?

15 A. Okay.

Q. Now I just want to ask general questions about your involvement as either a board member or as chairperson in the process of producing the annual reports from 2009 onwards?

20 A. Mm-hmm.

Q. Firstly what was the - in general terms, the process of producing the annual report?

25 A. It was presented at the AGM.

Q. That was the terminal point, how did it start?

A. How did it start, well it usually starts with your audit doesn't it.

Q. That's right so at some stage after 30 June in the relevant financial year, this being 2009, I presume the accounts of GMAL would have been made available to the auditor?

30 A. Mm-hmm.

Q. Was that a matter that you handled or was that left to the CEO and the finance officer?

35 A. It was left up to finance.

Q. At some stage after that in accordance with the Act, the auditor would have completed his review of the account and produced some draft accounts, is that right?

40 A. Yes.

Q. Who were the auditors at that stage, mid-2009?

45 A. I think it was Lawler's.

Q. Do you remember in particular which person at Lawler's?

A. Clayton I think, Clayton Hickey.

Q. Mr Hickey?

50 A. I believe so.

Q. And in addition to the actual accounts themselves, there is a report that precedes the accountant's?

A. Yes.

5 Q. If you for instance turn to page 167 behind tab 5?

A. Tab 5, yep.

Q. You will see the heading there Annual Report and there is a number of pages with various summaries of - in reference to various matters?

10 A. Mm-hmm.

Q. And it continues through to page 176. This particular report, would I be right in assuming this was a report by the Chairperson or was that produced by the CEO?

15 A. It was produced by the CEO.

Q. It is submitted to CEOs before is it?

A. Yes.

20 Q. In its preparation, did the CEO consult with the chairperson?

A. Yep.

Q. Did you have some involvement or input into the contents of the report from pages 167 to 175 and 176?

25 A. Is 167 the first page - no it's not.

Q. I think that's the first page of the annual report, is there a title page and then there's an index and then the report itself starts at page 167 and goes all the way through to page 176?

30 A. It's all pretty basic stuff though, you do realise that NSWALC gives us a template and says here fill this in.

Q. That's exactly the question I was asking Ms Cronan, how did this document - please tell me more about that, how did this document come to be created?

35 A. Yeah, so it is pretty much written for you, you just fill in the boxes where applicable and present it to your membership.

Q. The process of presenting the annual report to the members, what was your involvement in that?

40 A. Just proof reading it at the end basically because I mean I expected the CEO would know his business and be able to present a decent report. It's just a matter of me making sure that he hasn't forgotten anything that was audited.

45 Q. In general terms there would be a meeting of GLALC members to approve the annual report, is that correct?

A. Yep.

Q. And that would occur if not within six months of the end of the financial year, correct?

50

A. That's correct.

Q. Is there firstly a board meeting to approve the annual report before it's submitted to members of the Council?

5 A. No, I don't think we would because for the simple reason, we would do the audit report of course, but not necessarily this written report which is a template in any case.

10 Q. Right. The reason I ask that is because we have the board minutes of the GLALC board meetings between 30 June 2009 and 31 December 2009 and there is not actually reference to the approval at the annual report of the board meeting. Is the reason for that, that the annual report was submitted to the full membership to members rather than - the members of the Council that is, rather than just to the board?

15 A. So there is no financial reports in there?

Q. No?

A. Of any kind?

20 Q. The minutes - and I'll take you to them in a moment if you like, do not contain a resolution approving the annual report, that's the board minutes. Is the reason for that, that the annual report was submitted for approval to the members of the Council?

25 A. I think you will find that it goes to the board as well, I think you'll find that it was accepted as part of the financial report containing all aspects of finance.

DEPUTY REGISTRAR

Q. Ms Cronan, do you want to be taken to those minutes?

30 A. Yes, is it in this folder.

DEPUTY REGISTRAR: Mr Baird, I'm sorry for intruding but I think that would be prudent to do so.

35 BAIRD: I was going to do it in a different aspect but I'm happy to go there now Registrar and might the witness be shown volume (I) B.

Q. If you just put that volume to one side for a moment please Ms Cronan?

40 A. Yes.

Q. I will actually take you to the minutes of the board meetings of GLALC, that is volume (I) B and the 2009 year starts at tab 19?

A. Yes.

45 Q. At page 621 Ms Cronan there is reference to a board meeting held on 29 June 2009. Now obviously the 30 June annual report could not be in existence by 29 June 2009, so the next set of minutes appears at page 624 and starts on 7 September?

50 A. Clearly has finance motion to the board accepts the report as presented by the finance manager.

Q. Well seeing as we're dealing with that, I'll ask you some questions about that topic. In relation to the board meetings, there was a system, was there not, whereby the finance manager would present the bi-monthly accounts to the board, correct?

5 A. Yep.

Q. And the finance manager in September 2009 was - is that--

A. Karen Maltby.

10 Q. That was Karen Maltby was it not. They are what you might call management accounts, right?

A. Mm hm.

15 Q. So the reference in motion 2, to the finance report, is not a reference to the annual report, correct?

A. It would have contained anything financial that we had been discussing.

Q. Would you turn also to page 628?

A. Mm-hmm.

20

Q. That is the minutes to the board meeting on 12 October?

A. Mm-hmm.

25 Q. There is no reference that I can see in those minutes to any finance report or annual report?

A. No because that would have been the first meeting after the AGM where the election of the chair - the members at the board level.

30 Q. That's right and just for the sake of completeness at page 632, the next minutes of the GLALC board on 14 December on page 632 and adjunct to there is reference to the finance manager's report and a separate reference to the annual report, correct?

A. Yes.

35 Q. So the process - I'm suggesting to you, is that the annual general meeting would have had before it the annual report, correct?

A. Yes, yes, regardless of whether it went to a board meeting or not.

Q. Yes that is all I was pointing to you Mr Cronan?

40 A. Okay.

Q. All I was trying to do was to establish the process that the annual report does not appear to have gone firstly to the board for its approval, it seems to have gone directly to the AGM?

45 A. It would have gone to the board for approval as well.

Q. Well the minutes don't seem to record that?

A. No.

50 Q. I'm happy if your recollection is--

A. My recollection is that it went to the board and that it was part of the financials that went up to that board meeting and that's why it's a cumulative under that finance motion that says we will accept the finance report.

5 Q. Thank you for that Ms Cronan. The annual general meeting has all the members of the Council present, does it not?

A. It has, all the members who have been notified and attended because they all get a notification, they don't necessarily all attend.

10 Q. I accept your correction. It has all, obviously, all members of the Council are entitled to attend?

A. Yes.

15 Q. Those that do attend and are entitled to vote can vote as to the acceptance or otherwise of their annual report?

A. That's correct.

20 Q. And is it your recollection that for the annual general meeting for the 2009 year, firstly that it occurred at some stage between 30 June 2009 and 31 December 2009?

A. I think those minutes actually narrowed it down a little bit more than that, from September to October, yes.

25 Q. Secondly that the annual general meeting approved the adoption of the 2009 annual report?

A. Yes.

Q. I take it that the same procedure applied in relation to the 2010 year?

30 A. Yes. The AGM is generally held in the last one or two weeks of September.

Q. Thank you Ms Cronan, if you need to refresh your memory as I think I've indicated before, the 2010 annual report is at tab 7 page 234?

35 A. Which one am I on now, I have lost it.

Q. Sorry, put volume (I) B back to one side, back to volume (I) A where we were before?

A. And tab 7 you said.

40 Q. Tab 7 was the 2010 annual report?

A. Yes.

Q. To save me repeating all those questions that I just asked you about 2009, as a roll up, is it fair to assume that the 2010--

45 A. The same process.

Q. The same process applied as to its preparation and approval?

A. Yep.

50 Q. In volume (I) A, at tab 6, there is a document there that I am going to ask

you some questions about. That is a separate document in relation to the 30 June 2009 year?

A. Mm-hmm.

- 5 Q. That is entitled 'The Management Letter and Secondary Report' and that is from Lawler Partners, do you see that?

A. Yes.

Q. Now is that a document that you saw at some stage?

- 10 A. Yes.

Q. In connection with the adoption of the 2009 annual report?

A. Yep.

- 15 Q. If you turn to page 233, it is dated 16 September 2009?

A. Yep.

Q. And it appears to be the signature of Mr Clayton Hickey?

A. Mm-hmm.

20

Q. Could that, in general terms, be referred to as the auditor's report?

A. This is referred to as the management report which forms part of the auditor's opinions.

- 25 Q. If you turn to page 212, there is the letter from Mr Hickey, refers to the office bearers of the Council, that includes you does it not?

A. Mm-hmm.

Q. And states that their audit was planned and performed to obtain a reasonable assurance as to whether appropriate internal control exists to prevent material in the statement caused by error or other irregularities?

30

A. Mm-hmm.

Q. Then there are some matters that were included in putting it on?

35

A. Mm-hmm.

Q. Now is that the letter that you saw at the time?

A. Mm-hmm.

- 40 Q. And the contents of the report you read and I presume noted at the time?

A. Yes.

Q. Were there any matters arising from that report that caused you any particular concern?

45

A. Not that I can remember because Ms Maltby was pretty much on top of everything and was able to give good reason for whatever and had quality remedied the situations.

Q. And particularly at page 10 under the heading 'Point 7 Misappropriation'.

50

The auditors state that in the conduct of their audit work, they had not noted

any evidence of misappropriation of funds, do you see that?

A. Yes.

5 Q. So in general terms that was a clean auditor's report shall we say to use the vernacular. Similarly in relation to in the 2010 year, if you could turn to tab 8, there is the auditor's report for the year ended 30 June 2010 and again from that report, would you agree that there did not seem to be any major issues arising?

A. No.

10

Q. That was your recollection was it not, at the time?

A. Yes it was, sorry.

15 Q. The next document is at tab 9 and that is the annual report for the financial year ended 30 June 2011?

A. Yep.

Q. Again I take it Ms Cronan that with the annual report starting at page 299, at this time you were chairperson, correct?

20 A. 299 did you say?

Q. No, 299 is where the annual report starts?

A. Sorry, I just skipped ahead too far.

25 Q. Now as at this time, you're the chairperson, correct?

A. Yep.

Q. And as in the previous years that we've looked at, that annual report goes through to and including page 308, do you see that?

30 A. Yep.

Q. Again that was a report that as chairperson, you approved, correct?

A. Mm hm, yep.

35 Q. And I assume from your previous evidence that a similar process was undertaken for the 2011 year as in the 2009 and 2010 years?

A. Yes.

Q. Was this document prepared largely from a template?

40 A. It always is.

Q. There is reference on page 17 to the consultants--

A. 17?

45 Q. Sorry, paragraph 17 page 305?

A. Yes.

Q. Page 17 headed 'Consultants'?

A. Yes.

50

Q. The first one Dixon Capital?

A. Yes.

Q. Do you know who was the principal of Dixon Capital?

5 A. Yeah, David.

Q. David, who?

A. Wing, sorry, it's been a little while.

10 Q. And what was the role or involvement of Dixon Capital as a consultant to GLALC?

A. Predominantly, project management.

Q. Which project or projects?

15 A. The developments.

Q. Which developments. All of them or just one or two?

A. I think it was all of them actually.

20 Q. If I put to you principally at that time, the developments were Gandangara estate stage 2, is that one of them?

A. Yes.

Q. And Lot 101 Barden Ridge?

25 A. Lot 101 wasn't developed.

Q. Was that a project in respect of which Dixon Capital had some involvement?

30 A. I'm not sure, to be quite honest, I'm not sure. I'm not 100% sure because that one was a sale but there was some DA application to Sutherland Shire Council before we ended up selling it because it was just - it was just a burden in the end. Two lots of administration, two lots of different boards from the 2004 era through to modern day had struggled to try and get something happening with that lot and it just became a burden, yes.

35

Q. Tell me more about that sale, do you recollect about when that sale completed?

A. I can't remember the exact time but it was to Woolworths or one of their companies.

40

Q. It was to Woolworths?

A. Yes.

45 Q. And if I put to you that the sale was completed in about June 2011, would that accord with your recollection?

A. It's possible.

Q. I'll take you to some documents about that in a moment?

A. Okay.

50

Q. Were there any other development projects in which Dixon Capital was consulting to GLALC?

A. Sproule Road.

5 Q. Sproule Road?

A. Yes, we were trying to do something with that.

Q. Sorry?

10 A. Trying to do something with that because that had great potential but it also had great setbacks as well in the fact that it was in a fire zone and all that sort of stuff. What do they call those zones where fire actually races through a section.

Q. A corridor?

15 A. A corridor yes that's it, thank you. Yes so we've had all sorts of issues like that and so looking at different ways of possibly developing it and yes, just employing as many methods of fire reduction and all that sort of stuff as possible to try and do something with it because it did have very good potential, but yeah.

20

Q. In terms of the day to day process of development, did you particularly involve yourself in that process or was it a matter that you left largely to the CEO and the consultants?

25 A. I am pretty full on and yeah, often got taunted by CEO because I liked to know the ins and outs of pretty much everything, yeah.

Q. Just in general terms what's your view as to the role of the chairperson of GLALC when you occupied that position?

30 A. My role as chairperson was to know - to chair the meetings, to represent the organisation and in order to do that one must know what they're talking about and so, yeah, that's why I like to know the ins and outs.

Q. You would expect the CEO to keep you fully informed?

35 A. Essentially, yes.

Q. Would the finance manager report to you directly as well, or only to the CEO?

A. To the CEO, yeah, but don't worry I used to drill them too.

40 Q. What about the consultants like Mr Wing, would you deal with him directly or only through the CEO?

A. Generally through the CEO but there were occasions when he had presented to the board and yeah, in true keeping, I would deal with him also.

45 Q. Because that was the practice, was it not, that in relation to the Gandangara estate, stage 2, there would be frequent reports by the consultant Mr Wing from Dixon to the board on that process, would there not be?

A. Yes. Yes they weren't always face to face but they were reports.

50 Q. If you need to, and I'm happy to assist, you've still got volume (I) B next to

you, if for instance you go to tab 21, behind tab 21 there is for instance, at page 657 reference to dealing with the proceeds from the sale of the properties on stage 2, do you see that?

A. Yes.

5

Q. At various meetings, not necessarily all of them, Mr Wing would attend and present reports to the meeting would he not?

A. Mm hm.

10 Q. And they were often by way of PowerPoint presentations, were they not?

A. Everything we did was PowerPoint on a smart board.

15 Q. I will give you a simple example is at tab 18, if you go back to tab 18 at page 607, that is page 607, foot of the page the heading 'Development Motion 5' the minute reads "The board accepts the report presented by Mr David Wing and authorises the CEO to continue the process to develop the three sites of Gandangara Estates Stage 2, Sproule Road and Lot 101", do you see that?

A. Mm hm.

20 Q. That was part of the minutes of the meeting held on 10 November 2008?

A. Mm-hmm.

Q. But that process continued through 2009 - 2010 and 2011 did it not?

A. Yep.

25

Q. The process of Mr Wing reporting to the board on the development of those three projects?

A. Yes.

30 Q. And was it your practice at those meetings to enquire of Mr Wing as to matters in which you have interest or were of concern to you?

A. Yep.

Q. And did you always receive satisfactory answers?

35 A. Yep.

Q. It was your practice I take it to ensure that until you had received a satisfactory answer, you wouldn't let the issue lie, is that correct?

A. That's true.

40

Q. Did Mr Johnson have much input into the reports of Mr Wing?

A. I'm not sure what you're trying to say.

45 Q. Was it a joint report or was it effectively just Mr Wing's report. What was Mr Johnson's involvement in keeping the board informed as to the developments?

A. Probably more clarifying things. David's a professional and talks in professional terms and that's not always good for our board members. Some of them aren't as highly educated as some and that is by no means derogatory of any of the board members but some words are just too complex, they need

50

to be broken down to simpler terms for some. So probably that way, yes.

Q. Was that your understanding at that time that Mr Johnson was closely involved in the development process with Dixon Capital?

5 A. Yes. Jack was all over it.

Q. While we are in volume (I) B, if you would just go back one tab to tab 17 please?

A. Yep.

10

Q. That should be one tab back from where you are. At page 577--

A. Yep.

Q. --appear the minutes of the board meeting held on 19 November 2007, do you see that?

15

A. Yep, that's when Tracey was on the board.

Q. You were present at that meeting?

A. Yep.

20

Q. Sorry, you are recorded as being present at that meeting?

A. Yep, I've missed three meetings in 20 years.

Q. And Mr Wing is a visitor at that meeting?

25

A. Yep.

Q. And if you turn over the page to page 578, motion 5 at the foot of the page it says:

30

"Pending the approval of members of the extraordinary meeting on 21 November 2007, the board delegates the authority to the CEO to proceed with the future finance and development of the following projects with the aim of future sale and/or lease and continues to report back to the board at each meeting."

35

And then there is reference to those three projects, do you see that?

A. Yep, yep.

Q. Do you recollect that motion being put to the board on 19 November 2007?

40

A. Yep.

Q. Was that a resolution that you voted in favour of?

A. Yep.

45 Q. You see it is moved by Mr Taylor--

A. I think it was.

Q. --and seconded by Ms Beale and it is recorded as then being carried?

A. Yeah, well it says it was carried, so I would have voted.

50

Q. Did you approve of that process?

A. Yes I did. If I voted for it, yes I did.

Q. What did you understand of authority to the CEO to encompass?

5 A. In line with that motion?

Q. Yes?

A. Which motion was it again sorry, I've just lost it?

10 Q. Motion 5 at the foot of page 578?

A. Yes, I've got it now. Okay. So it was for him to pursue the finding and start the project, because you don't have time to just stand around, muck around with stuff and to consult with the Board and in particular the Chair.

15 Q. Now I appreciate that you weren't the chairperson back in 2007?

A. Yep.

Q. But did that delegation of authority continue through 2008, 09, 10 and 11?

20 A. Jack's delegations were addressed at the first Board meeting after the AGM every year, so those delegations were challenged at that time. That was--

Q. Those delegations, I misheard, which were--

25 A. Those delegations, if they were going to be challenged were challenged at that time.

Q. But they were not challenged according to your evidence, is that right? I was asking whether this--

30 A. That particular one?

Q. Sorry, I will rephrase the question for you?

A. Okay.

35 Q. I'm asking whether this delegation of authority continued from this date in 2007 through at least until the sale of Stage 2 and Lot 101 towards the end of the 2012 financial year?

A. No, that would have been applicable to that particular set of circumstances given in that motion.

40 Q. How did the delegations change?

A. I don't understand the question, I'm sorry. It - he was given that delegation at that particular time to do that particular task--

Q. That's right--

45 A. After that task has been carried out then it's - it's done, it's finished.

Q. I am enquiring about the period of the delegation of authority to Mr Johnson?

A. Yeah.

50

Q. This is a meeting on 19 November 2007?

A. Yeah.

5 Q. And it has a delegation of authority which is unlimited in time. It says, "Subject to approval of the members at the extraordinary meeting to be held on 21 November 2007," then there's a delegation by the Board to the CEO's authority, do you see that?

A. Mm-hmm.

10 Q. I want to know for how long that delegation of authority continued? My question to you was did it--

A. Actually it had achieved the object of the motion.

15 Q. Thank you, and I put to you that that delegation of authority continued through 2008, through 2009, through 2010, through 2011 and up to the point in 2012 where at least Gandangara Estate Stage 2 and Lot 101 Barden Ridge were sold, would that be correct?

A. Stage 2 was sold long before 2012. Stage - Lot 101 I think you will find - didn't you tell me 2011 earlier.

20

Q. Yes?

A. And Sproule Road - Sproule Road was - ended up being put on ice because it - as I said before, it just became such a burden.

25 Q. I will go back one year then. Did that delegation of authority continue through the 2011 financial year?

A. Yes. Yeah, it's quite possible that it did, because if that's what it took for him to reach the end of that motion then yeah.

30 Q. My question was what was the extent of the authority of the CEO under that delegation?

A. He was to pursue the finances, to do the development of the following projects.

35 Q. So he basically had cart blanche to do as he chose in relation to those developments, is that correct?

A. No, because he still couldn't sign a contract without the rest of us.

Q. Well that's not what it says is it Ms Cronan?

40 A. Well--

Q. He has all the powers of the Board to deal with the future finance and development of the projects, that's what it says isn't it?

A. It says for him to pursue it. That's how I read it.

45

Q. And I am enquiring as to the extent of the delegation of his authority?

A. Yep.

50 Q. And I want to know exactly what he could and could not do, and I want to know what process--

A. He could go and find finance--

Q. Can I finish, and I want to know what process of review or supervision there was by the Board of the CEO? The first aspect is to understand what the CEO could or could not do under this delegation? So now we've established that in terms of its written words it's an authority that the CEO to proceed with future finance and development of the specified projects with the aim of their sale and lease. So why don't you give me an example, what could the CEO in your opinion not do under that delegated authority?

10 A. He could sign a contract to enter into a loan without the Board.

Q. So it was necessary firstly for any finance contracts or agreements to be approved by the Board?

A. Yep. Yeah.

15

Q. What about a sale agreement?

A. It also has to be signed by the Board. It had to be signed by the Chair.

Q. So the delegation of authority was not so great as to permit him to sign those kinds of agreements?

A. Yep.

Q. What about sale agreements?

A. Sale agreements?

25

Q. An agreement to sell part or all of those properties?

A. That was signed by me as well.

Q. Did he have authority to sell them?

30 A. He did.

Q. Sorry, I withdraw that, because that was confusing. Did he have authority to negotiate the sale?

A. Yes.

35

Q. But he did not have authority to sign the final contract, is that what you are saying?

A. That's correct. So it's in his best interest to convey the information along the line in order to get it signed at the end of the day.

40

Q. I'm just trying to understand what the limits of the CEO's authority were firstly?

A. Okay.

45 Q. And what he could do and what he couldn't do?

A. Mm-hmm.

Q. What sort of matters did you, as chairperson, in 2011 expect the CEO to report back to you on?

50 A. Everything in relation to the organisation and its financial affairs, any

contracts or anything that were due, any funding agreements, anything that related to the Land Council, everything, yeah.

5 Q. What about payments to consultants, was that a matter that you expected the CEO to report to you on?

A. I expected that to be in our financials.

10 Q. Separately from being in a finance report, did you expect the CEO to keep you informed as to the level of payments to outside consultants?

A. Yeah.

Q. That in particular was Mr Wing from Dixon Capital who was very largely involved in the Gandangara Estate Stage 2 development?

15 A. Yep, but he wasn't our only consultant either.

Q. Pardon?

A. He wasn't our only consultant either.

20 Q. I appreciate that, but the particular I put to you was Mr Wing was it not?

A. Yeah.

Q. Because the fees and commissions that were being charged by Dixon Management were quite sizeable were they not?

25 A. They are, but we also expected a great deal too.

Q. Well we will come to the level in a moment, but as a general question I wanted to know whether that matter was one that you would ordinarily have expected the CEO to have kept you informed of?

30 A. Yep.

Q. In the list of consultants that I showed you a moment ago - you can put volume (I) B to one side if you like, Ms Cronan - going back to where we were in volume (I) A, which was at tab 9, the 2011 annual report?

35 A. Yep.

Q. We were looking through paragraph 17, the list of consultants?

A. Yep.

40 Q. And I am turning over the page. On page 306 you will see the second last entry there is "EMC"?

A. Yep.

Q. What does the contraction "EMC" stand for?

45 A. Essential Media Communications I think was last one.

Q. Who was the principal of that company?

A. I'm trying to think of his name, I can see his face, sorry.

50 Q. Can I assist was it Mr Chris Perkins?

A. That's him, yeah.

Q. Was he from Queensland or New South Wales?

A. Queensland I think.

Q. Whereabouts was Mr Wing from?

5 A. Queensland.

Q. Also. So Mr Johnson was from Queensland, Mr Wing was from Queensland, Mr Perkins was from Queensland?

A. Mm.

10

Q. Again, as with the position with Dixon Capital, was it the case that you expected the CEO to keep you fully informed as to payments to - of consultancy fees to EMC?

A. Yep.

15

Q. Both as to firstly their contracts?

A. Mm-hmm.

Q. And their levels of remuneration?

20

A. Mm-hmm.

Q. Any increases in the level of their remuneration?

A. Mm-hmm.

25

Q. I am sorry for the sake of the record you do actually have to say yes or no?

A. Sorry, sorry, yes. Yes to all the above.

Q. Thank you, and any bonuses that might have been payable in relation to - or under those contracts?

30

A. Yep.

Q. If a consultant wished to renew a contract, was that a process that you expected the CEO to keep you fully informed of?

A. Yep.

35

Q. Let me hypothesise, if, for instance, a contract of a consultant was for a limited period, say 12 months--

A. Yep.

40

Q. --and had either a renewal option or there was a process for it to be renewed, would you expect the CEO to keep you informed of that renewal process?

A. Yeah, but not in the graphic detail, yeah.

45

Q. But if the level of remuneration changed from one year to the next and a fresh agreement was entered into, would you not expect the CEO to inform you of the change in remuneration?

A. Yes.

50

Q. And if at some stage Mr Wing's remuneration increased by - from one

contract to the next by as much as 50% was that something that you would expect the CEO to tell you about?

A. Yes.

- 5 Q. And if the level of Mr Wing's bonuses increased by an amount of 40% was that something else that you would expect him to tell you about?

A. Yes.

- 10 Q. And if the services to be provided by Mr Perkins for Essential Media Communications increased dramatically from - sorry, that remuneration for the services to be provided by EMC, Mr Perkins, increased dramatically from one to the next you would expect you to be notified of that also?

A. Yes.

- 15 Q. Did you at any stage in relation to the services of Dixon Capital have a view as to the adequacy or otherwise of those services between 2009 and 2011?

A. Can you repeat that question?

- 20 Q. For the period 2000 and when you became chairperson--

A. Yeah.

Q. --which is from 2009 through to 2011--

A. Yep.

25

Q. --did you have a view as to the adequacy of the services being provided by Dixon Capital or Mr Wing?

A. Not so - not with Mr Wing, no. Mr Wing was always, yeah, up to par.

- 30 Q. So you thought he was doing a reasonable job?

A. Yes.

Q. That's all I wanted to understand. In relation to EMC and Mr Perkins in that period what was your view as to the adequacy or otherwise of his performance?

35

A. Inasmuch as what he provided to Gandangara, okay, I had voiced some concerns at some stage along the way, and so had Mr Johnson to myself as well, so we both had issue and take it up directly.

- 40 Q. What was the nature of the concerns or issues that you had?

A. More about performance than anything else.

Q. When you say "about performance" what in particular are you thinking of?

- 45 A. I'm trying to recall, and I'm having difficulty with it, but I do remember a time when actually I had quite a heated discussion in regards to Mr Perkins, but I can't remember exactly what it was about, so I don't want to go saying something that may not be correct.

- 50 Q. I am asking for your best recollection. I will put it in general terms and you can provide more detail if you like. Were there occasions where you were

dissatisfied with Mr Perkins' performance?

A. There was on occasion when I was dissatisfied, yes.

Q. Can you remember the cause of your dissatisfaction?

5 A. No, I can't remember the cause of it at this stage. It will probably come to me later.

Q. Can I put to you that one of the causes or possible causes of dissatisfaction might have been the level of fees that Mr Perkins was charging?

10 A. No, it was more performance based.

Q. In volume (I) A at tab 9, the first appendix is a budget--

15 A. What did you just direct me to?

Q. Sorry, we are still back in the volume before you, volume (I) A tab 9, and immediately after the annual report to which we've just referred--

A. Yep.

20 Q. --there's a budget that starts at page 310 under the heading "Appendix A", do you see that?

A. Yep.

Q. Did you have any involvement in the preparation of that budget?

25 A. No. Finance needs to get it together and bring it to the Board. This is 2010/11. It was before we had a finance committee set up.

Q. And at some stage or other was that budget submitted to the Board for its approval?

30 A. Yep.

Q. Under Appendix B starting at - I apologise, that's Appendix C starting at page 317 there's a heading "Audited Financial Statements 2010-2011". Then there's another heading at page 318, do you see that?

35 A. Yep.

Q. And after the index at 319 starts the actual financial statements?

A. Yep.

40 Q. Starting at page 320?

A. Yeah.

Q. Firstly, you are recorded as the chairperson of the Board at that time, do you see that?

45 A. Yep.

Q. There's reference at that point to the operating surplus of the Land Council?

A. Mm-hmm.

50

Q. Being some - firstly, do you see the heading "Operating Results"?

A. Mm-hmm.

Q. A net surplus being an amount of \$5.05 odd million?

5 A. Yep.

Q. There's an operating surplus of some \$5.264 million, do you see that?

A. Yep.

10 Q. Now behind those financial statements there are details of how that net surplus and operating surplus were derived, and I'm happy to take them to you if you like, but possibly you could look at page 232, and about point 4 on the page, 10 or 11 lines down, there's the entry "Net gain on sale of property, plant and equipment" and the amount is \$5.214,460, do you see that?

15 A. Mm-hmm.

Q. That approximates pretty closely to the operating surplus that I've just referred you to?

A. Mm-hmm.

20

Q. There's a reference there to Note 3, and Note 3 appears on page 337?

A. 337 you said?

25 Q. 337, and if you look at the description under the heading "Note 3" entitled "Gain on Sale of Property, Plant and Equipment" the first entry is "Proceeds from sale of land assets, stage 2 development is \$14.023 million," do you see that?

A. Mm.

30 Q. And the second one is "101 Barden Ridge, the amount \$2.5 million"?

A. Mm-hmm.

35 Q. And less the costs of sales \$11.3 million and there's a net surplus of \$5.214, 460, which is the amount that appears at page 323 that I've just shown you to?

A. Mm-hmm.

40 Q. So in general terms, having given you that background, is it fair to say that nearly all of the operating surplus of GLALC for that year was derived from the sale of two land projects that were completed in that year, being the stage 2 and Lot 101 Barden Ridge sales?

A. Yep.

45 Q. As an overview, as a generalisation that's the substantial position is it not?

A. Yep.

Q. What was your involvement in the approval of Mr Johnson's contracts of employment in the period 2009, 2010 and 2011 when you were chairperson?

A. My involvement in his contracts?

50

Q. Yes?

5 A. Okay. His - his contract that he was already on before I got on the Board had expired, and I think it was 2010, and it was up for renewal, and I presented a PowerPoint presentation to the Board in relation to his contract and - and - and remuneration and all the rest of it, so - and a full copy of the contract was tabled for each Board member to go through and - and - and scrutinise.

Q. Might I assist you here. Would you close that volume and put it to one side - and I will ask the witness to be taken to volume (II) please--

10 A. So it's a different book on the matter?

Q. My solicitor will assist you with that. Now in volume (II) tab 1--

A. Yep.

15 Q. --there's a document there--

A. Yep.

Q. It's stated to be between Mark Julius Johnson, that's the full name of Mr Johnson is it not?

20 A. Yes, it is.

Q. And GLALC?

A. Mm-hmm.

25 Q. And it's an employment contract?

A. Yep.

Q. Now you gave me - I will complete the document. If you turn through the document to page 777 you will see the execution page?

30 A. 777, yep.

Q. Do you see that?

A. Yep.

35 Q. And at the top of the page-

A. That's me.

Q. It's signed by the employer and there's a signature there, is that your signature?

40 A. Yep.

Q. And midway down the page there's another signature there, it appears to be that of Mr Johnson?

A. Yep.

45

Q. Do you recognise Mr Johnson's signature?

A. Yep.

50 Q. So if you look at the schedules which are immediately following. Schedule 1 is at page - it's the next following page, it's numbered 762 but there was a

problem with the photocopying, but you see the page that's headed "762 Schedule 1"?

A. Yep.

5 Q. And the commencement or effective date is stated to be 1 May 2010?

A. Mm-hmm.

Q. Do you see that?

A. Mm-hmm.

10

Q. Now you gave me an answer a moment ago in relation to presentation to the Board about the renewal of Mr Johnson's contract?

A. Mm-hmm.

15 Q. Is this the contract that we're talking about that you made the presentation to in 2010?

A. Yep, yep.

Q. Doing the best that you can recall, about when was this meeting?

20 A. I think it was just before this date actually, yeah, if I remember correctly. I'm not a hundred per cent certain.

Q. So without the benefit of a Board minute in front of you, you can't be certain exactly when the approval or the meeting at which this occurred, but

25 your best recollection is that it's likely to be shortly prior to 1 May 2010, is that a fair summary?

A. Yeah, yep.

Q. Now I know you gave me an answer a moment ago, I just want to follow through some of the parts of that answer. You said there was as PowerPoint presentation at that meeting?

30

A. There was.

Q. Who prepared that PowerPoint presentation?

35

A. I did.

Q. I beg your pardon?

A. I did.

40 Q. Do you still have a copy of that PowerPoint presentation?

A. No. No, I have kids at home and they sabotage computers.

Q. Do you know if a copy of that PowerPoint presentation was left--

A. It should be in the--

45

Q. --with the Board papers?

A. Yeah, there should have been.

Q. Doing the best that you can recollect, and I accept that it's coming up for five years ago, what matters did you put out in that PowerPoint presentation?

50

5 A. I put up what he was currently receiving and what the - I don't know what the proper term is for it - what the proposed salary would be, and the - in comparison to the general market and people doing the same job for the same sort of environment with developments and all the rest of it, and what their averages were for them getting paid and all that sort of stuff with the same qualifications and all that sort of stuff, yeah, so I did comparative research and put that into the PowerPoint as well. So they had a good comparison to make and drew a line in the sand basically of this is - what he's worth, but this is what we will be giving him basically, yeah. He didn't get what he was worth.

10

Q. Where were you obtaining this comparative information from?

15 A. From - I actually Googled it all on the internet and it was from organisations in Australia and they were upmarket employment places. I can't remember the exact names of them all now. It was all - all the information was in the PowerPoint. I put the little foot that's on the bottom, that had all the - where I got the information from and all that sort of stuff.

REGISTRAR

20 Q. By way of addresses(?)?

A. The references yes, thank you.

BAIRD

25 Q. Did anybody assist you in this process or did you do it entirely yourself?

A. I did it entirely myself. I'm not silly.

Q. What was Mr Johnson's input into this PowerPoint presentation?

30 A. Not a lot actually. He didn't get a lot of say in it. I did the research and I had discussed it with him prior to the meeting saying that this is what my recommendation will be. He wasn't too impressed with it but that was what it was and that's what I went with, and it was just up to the Board as to whether or not they were satisfied with that given all the circumstances and the information.

35

Q. You made reference to Mr Johnson's earlier contract, did you as at May 2010 have before you a copy of Mr Johnson's earlier contract?

A. I requested it, yeah. I requested it so it could be reviewed.

40 Q. Was that a 2007 contract?

A. Yes, I think it was a 2007 one, if my memory serves me correctly.

Q. Do you still have a copy of that contract?

45 A. I can't remember to be quite honest. No, no I never got a copy of that one. I viewed it and then I based it off that, yep.

Q. When you say you viewed it, did you have a hard copy in front of you or was it on--

A. Hard copy, yes.

50

Q. Do you know what happened to that hard copy?

A. I think I gave it back to finance to file.

REGISTRAR

5

Q. Ms Cronan, do you have a copy of that spread sheet and an email? If it was attached to an email you might be able to provide Mr Baird or those that instruct him?

A. For the - for the presentation that went to Board?

10

Q. Yes?

A. No. No, because I had it on an USB and I - I actually took it into the office and loaded it up on the - because the practise was that the Board would meet and Jack would have his laptop and everything set up to put the PowerPoint up onto the Smartboard and stuff, and--

15

Q. I'm just exploring if there's another option as to where this PowerPoint might be?

A. Yes.

20

Q. If it was emailed to someone it might be attached to an email somewhere, in an email account?

A. I didn't - I didn't email it because I didn't want it to be tampered with.

25

Q. Perfectly fine. I was just making those enquiries, thank you?

A. Yeah, because I would have had to have emailed it to Jack himself and I didn't - as I said I didn't want it to be tampered with.

BAIRD

30

Q. What was Mr Johnson's salary for the 2007 onwards period, can you remember?

A. I can't remember to be quite honest.

35

Q. If you look at page 762?

A. Yep.

Q. Part 7 of Schedule 1 you will see that his 2010 salary was an annual remuneration of \$80,000, and there was some superannuation and a total of \$87,200, do you see that?

40

A. Mm-hmm.

Q. Were those amounts that he asked for or were they amounts that you determined?

45

A. This is in the new contract?

Q. Yes?

A. These - these are amounts that I determined after negotiating with him, because he knew what he was worth, and I just said, 'We just simply can't afford that in any case.' So yeah, negotiated that to that.

50

Q. How much was he asking for?

A. Well he didn't ask so much but he was worth in excess of what he's getting paid, quite a substantial amount more.

5 Q. What did you think he was entitled to be paid?

A. What we could afford basically. I mean with his bonuses, if he was entitled to bonuses, than that would, in my opinion at the time, cover the shortfall.

10 Q. If you turn over the page, to the page numbered 763, it's internally numbered page 14 and the heading at part 7 is Performance Assessment, do you see that?

A. Mm-hmm.

Q. Beneath that is the date February 2007, do you see that?

15 A. Mm-hmm.

Q. Are you able to explain why that date appears on that document?

A. More of a typo than anything else.

20 Q. Could I suggest to you, one possibility is that the pages that are numbered 14 and 15 internally have simply been photocopied from the earlier contract and added into this contract, would that be a possibility?

A. It's possible, it's possible, it was the same calculation from the previous, yeah.

25

Q. I was about to say if you look at those two pages, that in the volume are numbered 763 and 764, are they, to your recollection the same as applied for the previous period?

A. Mm-hmm.

30

Q. Yes or no?

A. Yes, thank you.

35 Q. I want to ask you some questions at some stage about how this bonus system worked but as an overview can you tell me what your understanding of the process was that was summarised in sections 1 and 2 on those pages?

A. Okay, so the process was that Jack would go through - or Mr Johnson would go through an evaluation process by the board members.

40 Q. How were those board members selected?

A. They were selected by the board at a board meeting to be the persons that would participate in the process.

Q. They were independent board members?

45 A. Yeah, yeah, yeah. I was never part of that process for lots of reasons and they would be given like a chart sort of thing that they had to grade him on and from that his performance would be calculated.

Q. And then the percentages would apply?

50 A. Yes.

Q. As per what he's set out on those two pages?

A. Yes.

5 Q. Was it your view that Mr Johnson was entitled to be paid a bonus out of the proceeds of sale of the Gandangara Estate Stage 2 and lot 101 Barden Springs Development sales proceeds?

A. Barden's Ridge.

Q. Barden's Ridge?

10 A. Yep. He was entitled to be paid, I think it was the surplus, not the actual proceeds but the surplus at the end of the day figure was what he was to be paid from, after all was said and done. Not the actual proceeds at the beginning of the process, which would be the greater amount.

15 Q. And I take it that as chairperson of an Aboriginal Land Council you have at least a general familiarity with the terms of the Aboriginal Land Rights Act?

A. Yeah I do.

20 Q. Could I show for the assistance of the witness a copy of section 52 of the Aboriginal Land Rights Act which I'll just call the act.

DEPUTY REGISTRAR: Do you mean 52D Mr Baird?

25 BAIRD: Section 52D Registrar, I think you already have a copy.

DEPUTY REGISTRAR: Yes I do.

EXAMINEE CRONAN: Which never used to exist once upon a time but yeah.

30 BAIRD

Q. Take a moment to read that to yourself Ms Cronan, it's relatively short, there's only two subsections. The first question is are you familiar with that section?

35 A. Yeah I am.

Q. And were you--

A. And I've had quite extensive advice on this matter.

40 Q. Were you familiar with that section in 2010?

A. Yep.

Q. As at 1 May 2010 or thereabouts?

A. Yep.

45

Q. What is your view of the operation of section 52D in relation to the payment of bonuses to Mr Johnson out of the proceeds of sale of the property of GLALC?

A. Okay, well again it wasn't proceeds of sale, it was the surplus that--

50

Q. Just stopping there for a moment, it's the surplus from the sale of the property isn't it?

A. Yeah.

5 Q. And if you're looking at subsection 1 of the act it says no part of the income or property of the Council is transferred directly or directly by way of dividend or bonus or otherwise by way of profit to members of council, board members or any of member of staff, do you see that?

A. Yep.

10

Q. My question to you is what is your view of the operation of section 52D of the act in relation to the payment of a bonus to Mr Johnson where that bonus is calculated by reference to a surplus achieved from the proceeds of sale of two properties, Gandangara Estate Stage 2 and lot 101 Barden Ridge?

15 A. By a special purpose vehicle, the sale was done by a special purpose vehicle for a corporate entity of the land council, was the one that paid him the bonus.

Q. Just have a look at Mr Johnson's--

20 A. See where the payment came from.

Q. --contract, is it not. Mr Johnson's contract is with GLALC?

A. Yep.

25 Q. Please turn to page 751?

A. Yep.

Q. Mr Johnson's contract is not with a special purpose vehicle, correct?

30 A. It actually has two contracts. There is one with Waawidji and you'll find that the bonus was actually paid to Waawidji, not to Mr Johnson directly.

Q. We'll get to that Ms Cronan. At this stage I'm directing your attention to a contract, that which appears at tab 1 of volume (II), a contract between GLALC and Mr Johnson which contains some bonus provisions that I've taken you directly towards at pages 763 and 764, correct?

35

A. Yep.

Q. And I have asked you what is your understanding of the operation of section 52D of the Act in relation to the payment of bonuses to Mr Johnson under this contract in respect of the sale of those two properties out of the surplus from the proceeds of sale of those two properties?

40

A. That was a couple of questions in one.

Q. It's one question. Do you want me to say it again? What is your view as to the operation of the act. Does it apply or does it not apply?

45

A. It doesn't apply.

Q. So under that contract, the one that I've just taken you to, the one at tab 1 in volume (II) with the commencement date of 1 May 2010, your evidence is that Mr Johnson's is not entitled to be paid a bonus, correct?

50

A. No that's not what I said.

Q. That's what you just said was it not because the act, you say, prohibits the payment of a bonus under that contract, correct?

5 A. You're confusing me.

DEPUTY REGISTRAR: Mr Baird, if it's of assistance, I thought the answer implied that Ms Cronan believed the act didn't apply to the contract which appears at page 751.

10

EXAMINEE CRONAN: Yeah that's the--

DEPUTY REGISTRAR: Not the way that I think you've interpreted.

15 BAIRD: Ms Cronan's evidence was that the payment of the bonus was not caught by the act because the bonus was paid by a different entity, being either a special purpose vehicle or Waawidji.

20 DEPUTY REGISTRAR: I understand that was her earlier answer but to that specific previous question you've just asked Ms Cronan will correct me if I'm wrong that the answer to your most recent question of whether the act applied to, as I said, the contract at 751 was that the act did not apply to that contract, is that Ms Cronan?

25 EXAMINEE CRONAN: That's correct.

BAIRD

Q. And I'm testing the reasons for that and I'll put this question to you--

30

DEPUTY REGISTRAR: By all means, I'm just clarifying that for you because I think you had a different take on the answer.

BAIRD: My understanding was Deputy Registrar, but I'll certainly clarify it.

35

Q. If GLALC paid monies to Mr Johnson out of the surplus deriving from the sale of the two properties, Gandangara Estate Stage 2 and lot 101 Barden Ridge, what is your view as to the operation of section 52D of the act on the payment of such a bonus?

40 A. It's not relevant or applicable because it wasn't GLALC that paid him the bonus.

Q. That was not my question and I was very careful to place it. I said if GLALC were paying a bonus what is your view as to the operation of the act, would the bonus be prohibited or would the bonus be allowed if the payment were being made by GLALC?

45

A. If GLALC made the payment it would have been an offence to that.

Q. So that's the first step--

50 A. But that's not what happened.

Q. I'm coming to that. The first step is that the section prohibits GLALC itself from paying a bonus, correct?

A. Mm-hmm, yep.

5 Q. Now the contract Mr Johnson had was with GLALC, correct?

A. One of them yeah.

Q. Could I invite you to turn one tab further to tab 2 please Ms Cronan?

A. Mm-hmm.

10

Q. You'll see that's an agreement between Waawidji - I'll spell that for the record W-a-a-w-i-d-j-i Pty Ltd and Gandangara Management Services Ltd, do you see that?

A. Yep.

15

Q. And if you turn to page 765, the execution clause?

A. 765 did you say?

Q. 765. Do you see your signature, do you see it's signed there?

20 A. I don't have a 765 I'm sorry.

DEPUTY REGISTRAR: I think it's 766 Mr Baird.

25 BAIRD: 765 is the correct number but I'm just checking that the witness's copy has been correctly identified. I'm looking at the page that has the internal numbering 12. There was a photocopy mix-up.

EXAMINEE CRONAN: Sorry your Honour.

30 DEPUTY REGISTRAR: I think Ms Cronan and I both made the same mistake.

BAIRD: I think the mistake started in the photocopying and it may not have been completely corrected. I'll just let my instructing solicitor fix that up. Can we approach the Registrar please to and fix it?

35

DEPUTY REGISTRAR: I've found the page, I'm fine.

BAIRD

40 Q. So the page that has the number 765--

A. Yep.

45 Q. Unfortunately it appears in the bundle immediately after the page numbered 776 as you point out but it has the internal page 12 to identify that it's in the correct place. Do you see a signature at the top right hand corner there?

A. Yep.

Q. Is that your signature?

50 A. Yes it is.

Q. Do you see beneath that a signature purporting to be Mr Johnson?

A. Johnson yeah.

Q. You recognise that as Mr Johnson's signature.

5 A. Yeah.

Q. If you turn over the page the internal page numbered 13?

A. Mm-hmm.

10 Q. Do you see the commencement date there 1 May 2010?

A. Yes.

Q. Do you see that?

A. Yep.

15

Q. Waawidji was of course Mr Johnson's personal company was it not?

A. Yep.

Q. That contract also was in existence in the 2011 financial year, correct?

20 A. Mm-hmm.

Q. If one turns over the page, the page numbered 14 internally and numbered in the bundle 779-780 and 781, one sees does one not, the same bonus provisions that I've just taken your attention to behind tab 1. Please take a moment to check, if you like and compare pages 779, 780 and 781 with pages 763 and 764?

25

A. Yep.

Q. To satisfy yourself it's the same bonus procedure?

30 A. Yep.

Q. And the page which is 779, has the same date at the top, February 2007?

A. Yep.

35 Q. Now these were the only two employment contracts or remuneration contracts that Mr Johnson had in the 2011 financial year, right?

A. Mm-hmm yep.

Q. We dealt with the first contract, the one between GLALC and Mr Johnson?

40 A. Mm-hmm.

Q. We're now dealing with the contract between GMS and Waawidji, the one at tab 2 right?

A. Mm-hmm.

45

Q. With reference to the same section, effectively the same question. What is your view as to the operation of section 52D of the act in relation to the payment by GMS to Waawidji of a bonus calculated by reference to a surplus arising from the sale of the two properties, Gandangara State Stage 2 and Lot 101 Barden Ridge?

50

A. I believed that 52D has not relevance.

Q. Was this a matter upon which you or the board or the Council obtained legal advice?

5 A. Yes we did.

Q. From whom was that advice?

A. I can't remember the exact person's name.

10 Q. Do you remember what company or firm gave that advice?

A. I can't remember exactly. We've had so many advices. We've had more advice than we can shake a stick at.

15 Q. Do you recollect there being advices obtained specifically in relation to the payment of bonuses to Mr Johnson in the 2011 financial - or in respect of the 2011 financial year?

A. I can't remember. I know we've had lots and lots of advice. I just don't remember the specifics of which year or which piece and some of the names I couldn't even pronounce.

20

Q. But it's your view that because the payment was by GMS to Waawidji, the payment of the bonus it was not caught by section 52D?

A. That's correct.

25 Q. What about the words in line 2 of subsection 1 where it says "transferred directly or indirectly". What force do you give to the words "indirectly"?

A. "Indirectly"?

Q. Yes.

30 A. I would say to one of his companies if he was being paid by the Land Council but he wasn't being paid the bonus by the Land Council.

Q. Which was the corporate entity that owned the land at Gandangara Estate Stage 2?

35 A. The Land Council owned the - just bear with me while I think of the word, I'm sorry.

Q. Unencumbered?

A. No, unimproved.

40

Q. Unimproved?

A. Unimproved land of the development. Management services developed it from that.

45 Q. Who was the vendor on the contract for sale?

A. The Land Council because it is at the end of the day the title holder.

Q. So the land was actually sold by GLALC, correct?

A. Yeah I suppose it was.

50

Q. But GMS paid Waawidji the commission or bonus, is that right?

A. Yes.

5 Q. And because the payment was from GMS to Waawidji, even though it was out of the proceeds of sale owned by GLALC, therefore section 52D of the act did not apply, is that your evidence?

A. Can I get you to repeat that?

10 Q. Although GLALC was the vendor of the land, the owner and seller of the land, because the bonus was paid by GMS to Waawidji then in your view section 52D of the act did not apply, is that your evidence?

15 A. I don't believe that GLALC was a vendor, I believe they were the owner of the land. The title holder of the land. They weren't the vendor. Management services did all of that sort of stuff, on behalf, as an agent I suppose you'd call it for the Land Council and yes they did pay the bonus to Waawidji.

Q. GLALC owned the land, one, that's correct?

A. Mm-hmm.

20 Q. Two, the land was transferred at some stage or other to the ultimate purchaser, correct?

A. Yes.

Q. Whether directly or indirectly by GLALC, correct?

25 A. Yes.

Q. GLALC does not itself pay a bonus, right?

A. Yes.

30 Q. GMS pays the bonus and GMS does not pay the bonus to Mr Johnson but pays it to Waawidji, his company, right?

A. Yes.

Q. For that reason, it's your view that section 52D did not apply?

35 A. Yes.

Q. Was that a view that you obtained as a result of legal advice that you or the board obtained?

A. Yes.

40

Q. Are you able to assist the receiver in identifying and locating that advice. I'm asking you to look for it?

A. I can try.

45 BAIRD: Okay. Registrar I see the time, we're at a convenient point and Mr Perkins has arrived and I would seek to interpose him, having regard to where we're at, at the moment, with the witness's concurrence, what I suggest is that Ms Cronan's examination be adjourned until when the Court rises tomorrow what time the Court is available and if we can get an earlier start
50 again, that would be grateful, if not otherwise 11am and her examination

renew at that time to your convenience Registrar and possibly she could use the intervening period to locate and identify this legal advice that was obtained on this topic at that time.

- 5 DEPUTY REGISTRAR: It will have to be 11 o'clock tomorrow, it can't be an earlier time as today. Today was just a fortunate once off.

BAIRD: Thank you Registrar.

- 10 DEPUTY REGISTRAR: Ms Cronan I'll stand your examination over until 11 o'clock tomorrow. At that point in time you will be required to attend court once more to continue your examination in these proceedings. Do you understand?

EXAMINEE CRONAN: Yes.

15

DEPUTY REGISTRAR: Thank you, you are excused.

EXAMINEE CRONAN: Registrar, can I ask a question?

- 20 DEPUTY REGISTRAR: You may.

EXAMINEE CRONAN: All the information we relied upon was kept in central records at the Land Council. Why is it that I'm expected to come up with this information several years down the track now, when the information should be readily available within the Land Council at the central filing system?

25

DEPUTY REGISTRAR: It would appear that those who instruct Mr Baird have been unable to find that information. If you can point them to a place within the office location as to where it should be that might assist them in locating the document, otherwise they're hopeful that copies of that advice might be available through the board members such as yourself because they've been unable to find them to date. That's what would appear.

30

EXAMINEE CRONAN: I'm hoping I may have a hard copy at home.

35

DEPUTY REGISTRAR: Thank you.

BAIRD: I'd be grateful for that. There's a very large number of documents. Unfortunately when the receiver came in there is, not unusually, and element of disarray and unfortunately relevant documents aren't always easy to locate and the assistance of the witness would be greatly appreciated Registrar.

40

DEPUTY REGISTRAR: Does that make it clear Ms Cronan?

- 45 EXAMINEE CRONAN: Thank you, yes thank you.

DEPUTY REGISTRAR: You are excused.

<THE WITNESS WITHDREW

50

BAIRD: Thank you Registrar. Mr Perkins was here and I've suggested an 11.30 start for him so that we could take a small comfort stop. Let's do that and then we can reconvene at 11.30. We can now go off record, dispense of the formalities, that's fine.

5

SHORT ADJOURNMENT

DEPUTY REGISTRAR: Mr Baird?

10 BAIRD: Thank you, Registrar, the next witness is Mr Christopher Perkins. Mr Perkins is present along with his solicitor, Mr Unsworth. My instructing solicitor has just made a copy of the examination bundle available to Mr Unsworth so we didn't have the problem we had yesterday.

15 DEPUTY REGISTRAR: Please come forward, thank you, Mr Unsworth. Mr Perkins, if you'd like to take a seat in the witness box, please.

<EXAMINEE PERKINS, SWORN(11.35AM)

DEPUTY REGISTRAR: Can you please state your full name, address and occupation for the Court record?

5

EXAMINEE PERKINS: Yes, my full name is Christopher Terence Perkins. I'm a communications consultant and I have my own sole operator business called Link Public Affairs operating out of Brisbane.

10 DEPUTY REGISTRAR: Please listen carefully to what I am about to tell you. This examination is being conducted under the Corporations Act 2001 and is an unusual Court proceeding in that you are required to answer the questions that are put to you, even if your answer may be incriminating or make you liable for a penalty. However, the answers you give to the Court today cannot
15 be used against you in a criminal proceeding or any proceeding imposing a penalty if you clearly state the word "privilege" before answering the question. You must do this for each answer for which you are claiming privilege. Please note, though, that if you give a false answer or refuse to answer a question that is put to you, you may be liable for perjury or contempt of Court, do you
20 understand?

EXAMINEE PERKINS: I do.

25 DEPUTY REGISTRAR: Furthermore, everything that is said in this courtroom is being recorded, which means you must articulate a response to the questions that are being put to you. That may require you to repeat an answer or spell out a name for clarification, do you also understand that?

EXAMINEE PERKINS: I do.

30

DEPUTY REGISTRAR: Mr Baird, are orders being sought under s 597(13)?

BAIRD: They are please, Registrar.

35 DEPUTY REGISTRAR: Are there any objections? I order that the questions put to the examinee and answers given by him be recorded in writing, and I direct the examinee to sign a copy of that transcript once it has been prepared by this Court, thank you.

40 BAIRD

Q. Mr Perkins, I'd like you to be shown a document to start with if I could please, that document is in volume (II) of MFI - and could I ask you to turn to tab 11? Do you have tab 11 before you, Mr Perkins?

45 A. I do.

Q. That's a document that starts at page 886, do you see that?

A. Yes.

50 Q. Just take a brief moment to look at it, if you wouldn't mind, Mr Perkins, just

to refamiliarise yourself with it. It consists of only three pages, and on the third page, page 888, do you see a signature?

A. I do.

5 Q. Is that your signature?

A. It is.

Q. So I take it from that document which is dated 20 February 2009, and it's a letter addressed from Essential Media Communications, I understand that to be colloquially your company, right?

10 A. No longer, but it was at the time.

Q. Let's explore that to start with and then I'll come back. In February 2009 what was your relationship with Essential Media Communications?

15 A. I was the Queensland manager.

Q. Was that a company?

A. Yes.

20 Q. Was it a Pty Ltd company or a public company?

A. Pty Ltd.

Q. Were you a shareholder in it?

A. Not at that point, later I was.

25

Q. At some later stage what percentage shareholding did you have?

A. Ten per cent.

Q. Never greater than 10%?

30 A. No.

Q. How many states in Australia in February 2009 did - do you mind if I use the acronym EMC?

A. Of course.

35

Q. How many states did it operate in?

A. Three at that point including Queensland, although I can't remember if we started in WA or South Australia, but I think only three.

40 Q. You said you were the Queensland manager?

A. Correct.

Q. I take it from that you were the most senior personnel in Queensland?

A. Yes.

45

Q. Who was above you in the hierarchy?

A. The directors.

Q. You were not a director?

50 A. No.

Q. Did you at any later stage become a director?

A. I did.

Q. When was that?

5 A. That was from the beginning of 2010.

Q. From the beginning of 2010 until when were you a director of EMC?

A. Until March of last year.

10 Q. March 2014?

A. Correct.

Q. Are you still a shareholder in EMC?

A. I am not.

15

Q. You've exited that organisation completely?

A. Yes.

Q. Who were the directors of EMC in February 2009?

20 A. Peter Lewis, Tony Douglas and Elizabeth Lucan.

Q. Whereabouts were they based?

A. Peter Lewis based in Sydney and Tony Douglas and Elizabeth Lucan based in Melbourne.

25

Q. I take it that the information on page 886 is, as to what EMC does, was correct at that time?

A. Yes.

30 Q. I don't need to refresh your memory as to that. What I want to ask you are the circumstances pertaining to how you came to be submitting this quote, to use this word, to Mr David Wing of Dixon Capital?

A. Sure.

35 Q. What was the lead-up to this letter being sent, Mr Perkins?

A. Well, the consultancy that I was running in Queensland had done some work for an organisation called BARE, an acronym, B-A-R-E, which was I think Brisbane Association for Rates Equity, it was a small community group. One of the board members, I think, who I hadn't met but who was aware of the work we had done for that organisation - I think he was a board member, I'm not sure, but obviously a key person in that community group - was aware of the work that we had done. I understand that when David Wing was looking for an appropriate consultancy to assist Gandangara, which I understand they have looked, he and Jack, for some time, I'm not sure how long, couldn't get a values fit between the land council and a consultancy, that this person from the community organisation that was aware of our work thought that we, our company and myself, may have been a good fit, recommended that to David, and David made contact. Basically it was a cold call, as I remember, and we set up a meeting to meet with David and Jack.

50

Q. When you say "Jack" you're referring to Mr Johnson?

A. Correct, yep.

Q. He was the CEO of Gandangara Aboriginal Land Council, correct?

5 A. That's right.

Q. If I use the acronym GLALC for that, you're familiar with that?

A. That's fine.

10 Q. About when was your meeting with Mr Wing and Mr Johnson?

A. I can't recall, but presumably it would have been within a month or two months before the date of this, but I can't recall.

Q. So there was a preliminary meeting which, if you look at the foot of the page, there's a date 16 February, does that assist your recollection?

15 A. Yes, well, there you go.

Q. So there's a preliminary meeting on 16 February 2009, then you submit the quote. Why were you submitting the quote to Mr Wing?

20 A. Because I was told to.

Q. Who told you that?

A. Both Jack and David. My understanding was that David was sort of the co-ordinator of the consultants.

25

Q. Could you be a little more specific about the nature of the services that you were proposing to provide under your term "communication strategy" please?

30 A. Well, at this stage Gandangara was in its early stages of embarking on a number of developments, as well as a sort of a broader vision that Jack had for Aboriginal land councils. So this was really about me getting my head into that space and providing a strategy about how to take them from where they were, I guess in that public sphere, to where they wanted to go.

Q. Is that what you meant by "developing an overarching strategy" on page 887?

35 A. Correct, yes, and yes, that's right, and indeed, yeah, that strategy was produced.

Q. I take it from that that "there was subsequently a submission or a tender that was prepared by EMC and given to GLALC"?

40 A. I can't remember how it was finalised, whether it was finalised by an email or how - I don't remember, I just recall that I was engaged to do the work.

Q. If you turn over to tab 12 page 889 there's a document there on EMC letterhead and it's entitled "Submission from Mr Jack Johnson CEO GLALC" and it's dated 22 May 2009, do you see that?

45 A. Yep.

Q. Again if you look at page 892 there's a signature which appears to be your signature, is that correct?

50

A. Correct.

Q. So is this, as I surmise, the submission that follows the quote that we just looked at, tab 11?

5 A. No. Tab 11 was a quote for the development of the strategy.

Q. Yes?

10 A. And tab 12 - let me just be sure about that, yes. Tab 12 is a quote really for the implementation of that strategy, and if you look at the paragraph under "Details of Proposal" it says, "Division set out in the overarching communications strategy, Gandangara stepping up". So this is - the strategy by then has - that was envisaged by tab 11 has been delivered and this is the quote for an ongoing relationship to provide services to deliver that strategy.

15 Q. Was a separate fee charged in relation to the delivery of that strategy?

A. That is it. Tab 12 is the proposal for the ongoing relationship.

Q. But you said that there was a develop overarching strategy at tab 11 page 887?

20 A. Yes.

Q. Do you see that? There was actually a time and cost of \$9,600 allocated for that at page 887, do you see that?

A. Yes.

25

Q. My question was simply, did you render a separate invoice for developing the overarching strategy prior to 22 May 2009?

A. I can't recall, but I would expect so.

30 Q. The next stage is the submission which is at tab 11, and there are details of the services to be provided on pages 890 and 891?

A. You mean tab 12?

Q. Did I say tab 11? I meant to say tab 12. I apologise. Yes?

35 A. Yes.

Q. Pages 890 and 891 at tab 12?

A. Yes.

40 Q. They contain the details of the services? That's under the heading "Service and Description", right?

A. Yes, correct.

45 Q. At that stage the monthly retainer is \$6,000 plus GST, that appears on page 890, is that correct?

A. Well, there was a total--

Q. Sorry, I'll break it down to its integers?

A. Sure.

50

Q. For the first column on page 890--

A. Yes.

Q. --the monthly retainer was \$6,000 per month?

5 A. For that particular services.

Q. For that service, yes?

A. Yes.

10 Q. So that's about four days per month at \$1,500 a day, that's what it says, isn't it?

A. That's right.

15 Q. And then on page 891 there's a media relations package which is different from a strategic communications retainer?

A. Correct.

20 Q. If the strategic communications retainer was to involve four days' work per month, the media relations package, it appears, is 100 hours at \$2,000 per month, is that right?

A. As an estimate.

Q. As an estimate, for a six-month period from June to December?

A. Correct.

25

Q. Plus GST of course?

A. Yep.

30 Q. So at that stage, just with those two matters, that's \$8,000 per month, right?

A. Correct.

Q. And the details of what's involved in a media package relation appear from the second column on page 891?

35 A. Mm-hmm.

Q. And then in addition to that there are, in the next row across the page, two four-page newsletters at \$1,000 per month from June to December?

A. Yes.

40

Q. So that's now \$9,000 per month if my maths is correct?

A. Correct.

45 Q. And then on top of that there's a separate, it would appear, one-off fee for video production and print design of \$10,000?

A. Correct.

Q. And the rest is ancillary expenses?

A. Yes.

50

Q. In return and in addition to that package there are the matters that you referred to on page 4?

A. Yes.

5 Q. One day's professional media training, advice and assistance on speechwriting and pictures for brochure and newsletters?

A. Yes.

Q. They were sweeteners, shall we say?

10 A. Well, they were in recognition of the relationship, correct.

Q. What was the process, as you understood it, for this submission to be approved and accepted and to become a contractual basis between EMC and GLALC?

15 A. I don't know what their internal processes were, all I recall would be that I would have been given approval through either Jack or David Wing.

Q. That's where my questions were going, I'll be a little more specific? Firstly, did you ever receive a written document advising you of the acceptance of this proposal?

20 A. I don't recall, a lot of it was done verbally, but there may have been, I can't recall.

Q. By written document, it could have been a formal agreement, do you recollect whether there was a formal agreement or not?

25 A. I don't recall.

Q. Or it could have been by email?

A. It could have been.

30

Q. And that email could have come from Mr Johnson, could it?

A. It may have, but I can't recall.

Q. You can't recall whether Mr Johnson sent you an email--

35 A. No.

Q. --stating that GLALC had accepted this submission?

A. No, I don't.

40 Q. The other possibility you adverted to was that it could be an email from Mr Wing, is that right?

A. That's right.

45 Q. Do you recollect whether or not Mr Wing ever sent you an email confirming that GLALC had accepted this proposal?

A. No, I can't remember the exact nature of how I knew that it was confirmed, but I knew it was confirmed.

50 Q. Mr Wing, you have previously said, had acted as introducer of EMC to GLALC, right?

A. Yes.

Q. What was Mr Wing's authority, as you understood it, to enter into agreements on behalf of GLALC?

5 A. Ultimately the authority rested with Jack. My understanding was that David acted under his instruction.

Q. And how did you get that understanding?

A. Because they both told me that Jack--

10

Q. Mr Wing told you that, did he?

A. No, Jack said that David is the co-ordinator of the consultants.

Q. So if Mr Johnson told you that Mr Wing was the co-ordinator of the consultants, about when do you think he told you that?

15

A. At the meeting, the first meeting that we had.

Q. So what, in your mind, gave Mr Wing, if he did, the authority to accept your proposal in May 2009?

20

A. Jack's say-so that David had the role of co-ordinating it.

Q. But the role of co-ordinator does not necessarily entail, does it not, authority to enter into contracts?

A. Well, that was not for me to decide.

25

Q. Entering into a contract for a size of this some \$8,000/\$9,000 per month was a matter of some importance to EMC, was it not?

A. Yes.

30

Q. Wouldn't you normally have taken some care to ensure that there was a proper contract between EMC and GLALC?

A. I would have assumed that if there was an email that confirmed that, that that would have been enough.

35

Q. That's what I asked you about a moment ago. Do you know whether or not such an email existed and if so from whom was it?

A. No, I don't recall.

Q. You don't recall at all?

40

A. Correct.

Q. At this stage?

A. That's right.

45

Q. Did you keep a copy of that email in EMC's records?

SPEAKER: Well, he said he doesn't recall.

BAIRD

50

Q. Was it your practice if such an email had emanated for a copy of it to be kept in EMC's records?

5 A. Well, it would have been kept, presumably, on our email list, although we changed over on 2010 I think to the Cloud whatever, I'm not even sure what that means, but it would have been kept in an email file unless that, as I said, then got changed over when we changed our systems. But if there was an email at that point in 2009 it would have been kept.

Q. You left EMC when in 2014?

10 A. End of March.

Q. I can advise you that an order for production was issued by my client the receiver to EMC in conjunction with these examinations. I take it that you had no personal part in complying with any order for production that was issued to EMC?

15 A. No, I did.

Q. You did, did you?

20 A. Yes.

Q. Even though you already left EMC?

25 A. I'm no longer an employee or a partner, but I am subcontracted by EMC to do some work for clients in Brisbane and they - the emails were - EMC's IT consultant put them all onto a drive that I looked at.

Q. So let me just break down that process a little clearer so that we can understand where the documents are, I'm grateful for your assistance. So you are aware that in connection with this examination the receiver through the Court caused an order for production--

30 A. Yes.

Q. --to be issued to EMC firstly and secondly you had some involvement in the compliance by EMC with that order for production?

35 A. Yes, but not only that, I think I also received a personal one to which I replied that I have no separate records there; that's already been provided.

Q. I understand that. Dealing with the one addressed to EMC, your best recollection, if I understand your evidence, is that documents were located by either yourself or by your consultant was it, is that correct?

40 A. The IT--

Q. The IT person?

A. --consultant, yes.

45 Q. And those documents were--

A. Well, when you say documents, I'm talking about emails.

Q. I'm coming to that?

50 A. Yep.

Q. And those documents were in electronic format?

A. Correct.

5 Q. And those electronic documents were converted or copied onto a portable system of some kind, was it a--

A. Well, I don't know what they did at that point, so the step before that is that the IT consultant compiled all - we did a search for Gandangara, Jack Johnson, David Wing, whatever, and all of those emails were put onto a file, like a digital file that was on - that I could access, and then they then
10 presumably put it onto, I don't know what format they then put it onto but--

Q. That was where my question was going?

A. Right.

15 Q. Do you know how the actual method of production to the receiver occurred, whether it was a CD--

A. No.

Q. --or some kind of drive or thumbstick or--

20 A. No, I don't know.

Q. Thank you for that assistance as to the process.

25 Can I simply say by way of explanation that not every document that is produced can be assimilated in time, however we have been able to identify some of the documents that have been produced. Could I just interrupt the process that I was in and for the sake of clarity take the witness to a document in volume 9A. In volume 9A, Registrar, at page 2352, if the witness could turn to that. This may clear up the confusion that we were experiencing a moment
30 ago and I'm grateful to my instructing solicitor.

35 That document, I am instructed, has been printed out from the production of EMC and it appears to be an email from Mr Wing to yourself with a copy to Mr Johnson and it appears to be dated 28 June 2009, and you can read the contacts for yourself, but it commences, "On behalf of GLALC I'm pleased to confirm EMC's appointment on the basis outlined", do you see that?

A. Yep.

40 Q. Just stopping there, would that be the email of the kind that you were referring to in your evidence a moment ago?

A. Correct.

45 Q. And having now had your memory refreshed by looking at that, are you able to say whether or not that email constituted in your mind the acceptance of the proposal that you had submitted at tab 12?

A. Yes, it did.

Q. You'll see after the bullet points there's the statement,

50 "GLALC's engagement of EMC on the terms outlined in their

proposals for the period 1 July to 31 December 2009 at which time it will be reviewed",

do you see that?

5 A. I do.

Q. That is a reference, is it not, directly to the document at tab 12 in volume (II) that we were looking at a moment ago?

A. Yes.

10

Q. I might just get you to put volume 9A aside for the time being, but we now appear to have clarified the process of approval. Might I enquire in a media relations package, what is involved in 100 hours of media support over seven months, what actually is done?

15 A. Well, it's a range of things. There's proactive and reactive media. So proactive media is where, for example, Gandangara is doing, you know, performing some service for local Aboriginal people that we think is, you know, a good story to be told, and the media relations person would make, you know, would basically speak to the personnel at Gandangara to get the details, would
20 find a spokesperson for the story, would write a draft of a media release or a pitch, would then get that approved, would then go talk to relevant journalist or journalists about that story, pitch it to them, organise the interview if that was the nature of which it mostly was, organise an interview, prepare the
25 spokesperson for the interview in terms of, you know, the key messages, et cetera, and any follow-up that the journalist required, organising if there was a photo-shoot to go with it to go and make sure, you know, for example, if it was at the - if it was about one of the developments, then to go to one of the developments and have photographs taken, et cetera, to support the story. So there's that type of media, and there's reactive media which is if a journalist
30 rings, you know, our organisation to say, well, what's your client or - they wouldn't say that, but what's Gandangara say about X, Y or Z that's come up, or we've had, you know, an issue been raised by a member of Gandangara and they say this, what do you say, et cetera. So there's reactive media, and again a similar process is in train where you speak to the relevant personnel
35 about whatever the issue is, get the facts, prepare a response, get it approved and then provide that or either provide the written response to the journalist or arrange for an interview, and again prepare the spokesperson for that interview. And I guess there's - they're the two main sorts of media work that are done.

40

Q. Most of the work in the first one, the proactive, would have resulted in a releasing to the print media, correct?

A. Yes that's right.

45 Q. Was there occasionally television work as well involved?

A. You would be stretching my memory there. In that period probably not, in that six month period--

50 Q. Actually it is a seven month period as it turns out, I may have misled you there--

A. That is all right.

Q. Can you remember approximately how many media releases would have occurred in that seven month period between June and December?

5 A. No.

Q. As you can see at the foot of that column, that is the third column, Cost. Fee to be invoiced monthly with report on hours spent and hours remaining. Do you see that?

10 A. Yes.

Q. So if that system was followed somebody by reviewing the invoices would be able to see what sort of time had been spent to that time I assume?

A. Yes.

15

Q. The previous retainer at \$6,000 per month on page 890, apart from DLALC having access to yourself for one day a week what else was involved in that?

A. Well, there were meetings, I would attend those. This applies, applies more generally to that strategic retainer not necessarily specific to this period because I can't remember what work I did back then. But broadly that also involved sometimes writing either submissions to government, writing materials for maybe - not just government at the ministerial level but at the bureaucratic level if it were the Department of Planning. Or other sorts of you know strategic, anything really that involved the, I guess, the strategic positioning of the organisation and its - you know to pursue the goals that had been set.

Q. Do you have any recollection of how much time you actually spent between June and December 2009 in performing the work that you referred to under the description retainer in the submission?

30 A. No.

Q. Is it possible to work out from the invoices to be rendered monthly what time you spent?

35 A. Well I would have rendered - sent the invoices based on that proposal.

Q. Did you record your time and did you keep timesheets electronically or anything like that?

A. No.

40

Q. How would you know what enabled you to calculate how much time per week or month you spent on the affairs of DLALC?

A. Well it was based on an estimate of the work done and I guess my time that I would have done if I had to go to meetings, that would be on my diary as well as my general recollection.

45

Q. To assist you on this topic my instructing solicitor has been able to locate an invoice which may be of assistance as an example. I show you bundle 5. It might be easier to answer this sort of question with the aid of an example in front of your Mr Perkins. In volume (V) could you tab 13 please. We have just

50

selected page 1271, there may be other examples there, but if you look at page 1271 behind tab 13 you'll see that is a tax invoice from EMC to DLALC dated 30 September 2010. I appreciate that is a period that is 12 months later than the period previously referring to. If you could look at that for a moment?

5 On reflection, to keep it within the period that we're talking about it might be easier if we went back one year earlier. Could I ask you to go, and I apologise for this, back to tab 12, page 1260 and that is definitely an invoice falling in the period. It is dated 31 October 2009, do you see that?

A. I do.

10

Q. So in that month on the consultancy for October 2009 the first entry is for the strategic communications retainer. It says two days used in October and 9.5 days in the bank. You may wish to refer back to page 890 in volume (II) to understand that calculation more. Am I correct in assuming firstly, that in 15 October of 2009 you spent two days doing work pursuant to EMC's strategic communications retainer?

A. That would have been the case if it is there.

Q. I accept that at this stage you may not have a recollection yourself--

20

A. I certainly don't.

Q. But by looking at that document that is what one is to infer from that document?

A. Yes.

25

Q. Secondly, by reference to the calculation appearing under the Cost column at page 890 where is remaining under that retainer the value of 9.5 days as yet unused, is that correct?

A. Yes.

30

Q. That is when one goes to the second last sentence "DLALC does not have to use each month's allotment but it must be used or paid by the end of 2009 when the contract will be reviewed"?

A. Correct.

35

Q. But in the meantime the \$6,000 is paid even though only two days in October were utilised in that month?

A. Correct.

40

Q. Similarly in relation to the media relations retainer, in October one day was used, is that the correct assumption to make from that document?

A. That is what it says.

45

Q. There remained to be utilised 77 hours under the retainer and the provisions of that retainer are those I think I have already referred you to on page 891, correct?

A. Yes.

Q. A similar process?

50

A. Yep.

Q. Then there was a newsletter retainer where there were no hours used .
The notation "Two newsletters to come", is that right?

A. That is what it says.

5 Q. But the charge was still \$1,000 for that month?

A. Correct.

10 Q. Making a total of \$9,000 plus GST for that month. Under the retainer there were various further time of EMC that was available to be used under the retainer?

A. Correct.

Q. If at the end of the December period that time as not used then it was still paid for, correct?

15 A. Correct.

Q. For invoicing purposes when you say a day, what is the number of hours or period in the day that's utilised?

A. 7.6 to 8.

20

Q. Mr Perkins I don't propose to take you through each invoice that has been produced. Is it fair to say that the invoices speak for themselves in the matter that we have looked at?

A. Yes.

25

Q. One can by looking at the invoices rendered and the amounts paid see what work was done and what work remained to be performed under the retainer?

A. That is as it is outlined, yes.

30

Q. Could I ask you therefore to turn in at tab 12 of volume (V) to the last two pages in that tab. There is an invoice on 30 November 2009, again it is for the total amount of \$9,000 under the retainer plus some expenses, and plus GST of course--

35 A. I am sorry, this is--

Q. 1261 the one that is dated 30 November 2009?

A. Yes.

40 Q. And that is in the same format as the preceding page for October that we looked at?

A. Yes.

45 Q. It shows what work was done, six days under strategic communications retainer, three days under the media relations retainer, twenty hours under the newsletter and shows what balance remained to be used?

A. Yes.

50 Q. Turning over the page then to December 2009 at page 1262 and those retainer amounts are again the 6,000, 2,000 and the 1,000?

A. Yes.

Q. There is reference to four days being used in December under the strategic communications retainer with 7.5 days remaining in the bank. Under the media relations retainer the three days in December were used and 29 hours remained in the bank. Under the newsletter retainer 35 hours were used and two newsletters were to come, do you see that?

A. Yes.

Q. In relation to each of those three items, the 7.5 days under the strategic communications retainer, the 29 hours under the media relations retainer and the two newsletters under the newsletter retainer what happened to them?

A. I couldn't tell you.

Q. Did they carry forward into the following year or did they as the contract says were simply absorbed?

A. I can't answer the question, I don't know what would have happened. I would imagine that the newsletters would have been produced at some point. The difficulty was sometimes quite a lot of time would be spent trying to get stories from the client and final approval was often difficult. But I can't tell you where all that ended up, but the contract provides for it.

Q. I am not trying to trap you at all Mr Perkins--

A. No.

Q. Just turn over to tab 13 and look at the first document there, which is page 1263, and again there is reference to the amount of work that was done in January--

A. Yes.

Q. And to a certain number of days remaining in the bank?

A. Yes.

Q. My question is to the best of your recollection was a fresh consultancy entered into in January of 2010 or for the period of January 2010 which had a new retainer period, or did the unused days from the December invoice carry over to January?

A. I think the answer to that is there would - if the previous contract was to December of 20 - sorry, 2009 then there must have been some form of approval for us to have continued doing any work in 2010. So I expect that they were, by the look of it, from similar terms and so we rolled over the hours.

Q. Rather than making assumptions which is difficult at this stage five years down the track and when we have some documents to assist, keeping volume (V) nearby please, can you go back to volume (II), and I will show you the next proposal if I might. That is at tab 13 starting at page 893. It was the other folder that we had open a moment ago when we were looking at tabs 11 and 12?

A. Okay.

Q. I just want you to go to the next tab--

A. Right, tab 13.

Q. Tab 13, so that you're not guessing?

5 A. Yes, okay.

Q. So that document at page 893 is a proposal, it is dated 2 December 2009 and on the face of it, it is a very similar nature to the proposal of 22 May 2009 which is at tab 12?

10 A. Yes.

Q. Looking at the content, the retainer rates, the strategic communications retainer media relations package and the quarterly four page newsletter seem to be same?

15 A. Yes.

Q. Namely \$6,000, \$2,000 and \$1,000 a month respectively?

A. Yes.

20 Q. I otherwise cannot discern any noticeable difference between the amounts of this proposal and the previous proposal which became a retainer?

A. No, that's correct--

Q. Please correct me if I've missed something--

25 A. No, no, that's right 6, 2 and 1 is the same as what it was before.

Q. You can see on page 894 of the second paragraph at the top "The current contract ends in December 2009. The contract provides for a retainer based approach. To this date the time has been in credit to GLALC. The proposal is fees remain static. Structure of contract remains the same. Time in credit to GLALC to be rolled over into a new contract". Do you see that?

30 A. Yes.

Q. The new contract was to be for one year to December 2010?

35 A. Yes.

Q. Does that assist you now in considering your answer to my earlier question as to what happened to the credit that was recorded at the end of December 2009 as shown at the page I took you to which was page 1262 in the volume (V)?

40 A. 1263?

Q. No, 1262. Remember I showed you tab 1262 which is an invoice dated 31 December 2009 and I asked you a question about what happened to the credit?

45 A. Yes.

Q. You were hypothesising an answer which was unfair of me because I didn't have a document to assist you?

50 A. Yes.

Q. My question is now that you have seen page 894 are you able to answer the question, what happened to the credit that is the unused hours recorded on the invoice at page 1262?

A. Yes.

5

Q. They were rolled over?

A. Yes.

10 Q. So when one goes to 1263, the January 2010 invoice , the figures there of 11 days in the bank. It is correct they now include the previous credit rolled over?

A. Yes.

15 Q. To your understanding, so I don't have to follow this through month by month, did that system then continue as each contract retainer was renewed?

A. Well, unless there was any change to that structure that would be right.

20 Q. Back in volume (II) the next tab, which is tab 14, it is dated 6 October 2010 and it seems to be a separate submission in relation to the Heathcote Ridge project?

A. Yes.

Q. Is that a different project from the ones that you were previously retained in?

25 A. I would need to read it to know whether it was to replace it or be on top of it or, I would need to read that.

Q. Let me go back up a step which might assist?

A. Mm.

30

Q. In the 2009 seven month period and the 2010 12 month period that we have looked at, the subject of the previous two retainers, what were the works and projects of GLALC of which EMC was principally concerned?

A. Sorry, which period are you talking about.

35

Q. Well, the subject of the two previous retainers. The first retainer was for 7 months to December 2009?

A. Yes.

40 Q. The second retainer was for 12 months to December 2010, we have just seen that. Those are the two retainers at tabs 12 and 13?

A. Yes, yes.

45 Q. So before I take you into tab 14 just tell me what the actual projects or developments or plans of GLALC were that you were working on?

A. I couldn't recall specifically but I think the Barden Ridge Stage 2 project was happening around then, but I can't recall exactly, and any other supporting stories around that.

50 Q. The major land development of GLALC in that period was the development

of stage 2, Gandangara Estate which was at Barden Ridge, was it not?

A. It was at Barden Ridge.

5 Q. That was a matter on which Mr David Wing and Dixon Consulting were doing a great deal of work, were they not, to your knowledge?

A. As far as I know, yes.

Q. You were assisting Mr Wing in the media relations aspect in relation to that development, is that correct?

10 A. Well, yes and other - if there was any other messaging or strategy, anything around that, yes.

Q. In relation to a subdivision and sale of land what were the kind of media services that EMC was providing?

15 A. Well it wasn't--

Q. Or could divide?

A. Yes, well in relation to that, to Gandangara's developments in general it was really about I guess the rarity of an Aboriginal Land Council doing
20 developments of some scale in a different model. Most people associate Aboriginal Land Council in terms of housing, as in sort of a welfare housing, this was a straight full profit commercial enterprise, the profits for which were going to go back to Gandangara members in terms of services and health services and other things, which is a positive story to tell for Aboriginal people
25 taking control of their destiny. So in that sense it was a rarity but there were also issues, I have to recall, but I think there were some issues with regard to the park and things like that that the local media had some interest in. So there would have been stories around that presumably, I can't remember. So in terms of the development that would be the main - well, there was an opening,
30 and I can't remember when that was to be honest, whether it was in that period or another period, but there was an opening at which the minister attended of the park and you know milestone media.

35 Q. You mentioned earlier the media relations consultant retained by the EMC, was it he or she who was doing the bulk of this work or interfacing with GLALC in relation to these kinds of stories?

A. Yes There were consultants in our Sydney office who managed the meetings because I was based in Brisbane, so we used consultants in our Sydney office to do the - I mean I was always involved in terms of direction
40 and messaging and what to do, but the actual doing of it was done by consultants in Sydney.

Q. Who were they, do you know their names?

45 A. Yes. Back then I think a Laura McLean and Olivia Greentree.

Q. Did they themselves interact closely with representatives with GLALC?

A. Yes.

Q. Particularly Mr Johnson?

50 A. On occasion when that was required, for example I remember Laura went

to the opening of the park for Barden Ridge Stage 2 for example. I remember talking to her about talking to Jack about the Liverpool ex person George Leed or whatever it was. So yes they would have had to have dealt with Jack.

5 Q. What about Mr Sing would they have dealt with him--

A. Mr Sing--

Q. He was the property manager, housing development manager. Sorry, housing manager not housing development manager, housing manager?

10 A. Probably not. Was he the manager for the - see there is a difference between the housing, which was the welfare type housing that they operated--

Q. Yes?

15 A. So they wouldn't have had a lot of cause, I wouldn't have thought. There were sometimes issues around disgruntled, people who were renting those Land Council houses and sometimes that could be an issue. But outside of that I wouldn't have thought they would have had a lot to do with Mr Sing.

20 Q. With that background does that assist you to recall whether the submission in relation to Heathcote Ridge project was a renewal of the previous 12 month retaining appearing at tab 13, or whether it was a separate project--

25 UNSWORTH: Before the witness answers that question I think he said that he wanted to read the proposal first.

BAIRD: That's right and I am happy for him to take the time to read it.

UNSWORTH: Perhaps he could do that.

30 BAIRD

Q. Having given that understanding, take a look at that document?

A. Yes.

35 Q. What I really want to know is it more of the same or is it something different, and so that there is no tricks, also take the time to look at tab 15, page 901 which is a proposal of 4 November 2010. What I am seeking to understand is the difference between the two proposals?

A. Sure.

40

REGISTRAR: Mr Perkins take your time and let us know when you are finished.

BAIRD

45

Q. Without interrupting too much Mr Perkins what I was proposing to put to you that it seems that there were two separate submissions for media work on two different projects, one being the Heathcote Ridge project of 6 October submission and the second being the more general retainers of 4 November

50 2010 proposal?

A. Yes.

Q. If you want to look at both of those that's fine, but that is all I am trying to ascertain is whether they are different?

5 A. No, no I understand that. So I have read the tab, the one at tab 14. You directed me to another one to read?

Q. Tab 15?

A. Tab 15, right.

10

Q. And again without going to it in much detail Mr Perkins is it not the case that the proposal of the 4 November 2010 at page 901 is a continuation for the later period of the accepted proposal dated 2 December--

A. Sorry, you're going to have to ask that when I've finished reading, sorry.

15

Q. I'm sorry, what I'm trying to do is to assist you in this respect.

A. Mm-hmm.

20

Q. If you look at tab 13 and compare it with tab 15 they're the same work for the following, I just want to do it at high level?

A. Yes. Well, no.

Q. No, it's different work is it?

25 A. Well it's additional and there are some differences. So what am I comparing, tab?

Q. Okay, so if you compare tab 13 which is stated at page 894 to be for one year to December 2010?

A. Yes.

30

Q. If you compare that with tab, firstly with tab 15?

A. Yes.

Q. And that's a proposal for--

35 A. Yes.

Q. That's the one date 4 November 2010?

A. Yep.

40

Q. And that seems to be very similar--

A. Well there are differences.

Q. Could you point out to me firstly the differences?

45 A. Yes, the - well the, let me just line them up, the strategic relation communications retainer is more in terms of both dollars and the breadth of services, certainly volume of services. That is also true for the media relations retainer. The online retainer is new and different as is online products and services new and different.

50 Q. Just dealing with the strategic communications retainer, apart from the

increase in the monthly amount?

A. Yes.

5 Q. From the amount shown at page 894, what were the differences in the work?

A. Well, Heathcote Ridge project the main difference was in volume, so there were significantly more government work, there was significantly more I guess strategic writing in terms of things for government to support that project, meetings with the Department, meetings with Ministers, political lobbying.

10 There was I also had meetings with, a few meetings with the group that was known as SASL which included some other land councils. We also the community - the next phase of Heathcote Ridge meant that there was community engagement so that was a new phase of the work, that they would be the main differences.

15

Q. I'll just stop you there because possibly not, I've tried to do it at a high level to make it clear where I'm going. I've directed you to your proposal at tab 14 for Heathcote Ridge project--

A. Sorry, I thought you were referring me to tab 13, I thought--

20

Q. So we have three proposals?

A. Yes.

Q. So there's the one at tab 13?

25

A. Yes.

Q. Which we know was carried into effect, was accepted and invoiced?

A. Yes.

30 Q. That's dated 2 December 2009?

A. Yes.

Q. And we've seen the invoices that are issued pursuant to that?

A. Yes.

35

Q. And the next proposal which may or may not have been accepted which is where I'm going?

A. Yes.

40 Q. Is a proposal dated 6 October 2010 for Heathcote Ridge project?

A. Yes.

Q. That seems to have separate work and a separate charge proposed in relation to that project?

45

A. Yes.

Q. And then we have a proposal dated 4 November 2010?

A. Yes.

50 Q. Which seems to include work in respect of Heathcote?

A. That's right, yes.

Q. As you pointed out?

A. That's right, yes.

5

Q. And the amount other than that the headings in the set out seem to be the same as for the 2009 retainer and what I'm inquiring is whether or not the Heathcote work may have been rolled into the 4 November 2010 proposal?

A. Yes.

10

Q. And there may have been the Heathcote Ridge separate proposal may not have proceeded and it may have been combined into another proposal?

A. Yes, I'm reading that that would be my understanding, that the latter would have been the - well I don't know what end it would have to, I'm sure you will in a minute refer me to what the upshot of that was but it's clear I think from reading that that the proposal at tab 15 supersedes all previous ones.

15

Q. Thank you, and could I ask this for the record, do you know whether or not the proposal at tab 14 was ever accepted?

20

A. I would say not otherwise I wouldn't have written the proposal at tab 15.

Q. For the sake of your assistance - can the witness, there seems to be one email that there's at least indirectly on the project, does the witness have volume 9A there, if not, could he be shown it - the correspondence one, yes?

25

A. Yep.

Q. I thought so, and in that could you go to page 2409 and there seems to be some email communication concerning this referred to in those emails, if you read page 2409 from the foot of the page up, bearing in mind that the email from you on 3 November 2010 is a day before the proposal that we've seen at tab 15 and 1 in 5. Do I read that correctly that the two proposals have been combined?

30

A. Yes.

35

Q. Into one all in proposal?

A. Yes.

Q. Yes?

A. Yes.

40

Q. And in relation to acceptance of the 4 November 2010 proposal at tab 15 of volume (II), sorry, is the email of 12 November 2010 which appears at the top of page 2409 the only email that you were aware of relating to acceptance of that proposal?

45

A. Well, I have no recollection of any of the emails exactly but I wasn't cc-ed in on that one.

Q. So you weren't cc-ed in on that one?

A. So I wouldn't have been aware of that either.

50

Q. Do you know whether at some stage you did actually receive an approval or a confirmation of acceptance?

5 A. Well, it's the same answer as before, I don't recall exactly how it would have happened but it would have happened because we wouldn't have done the work and so there would be, there would have been either a meeting or an email or some form of confirmation.

10 Q. Let me just clarify this, for your assistance I'm picking up the last sentence in Mr Wing's email to Mr Johnson which he says, "I'm loath to do this because he is entitled to have some clarity about his arrangements". Do you recollect having some discussions with Mr Wing in the period 3 November to 12 November 2010 about your new proposal and its acceptance?

15 A. Well, there's an email from me there to him and it's obvious I think in the language in the second last sentence, "I hope this is what Jack is looking for this time". So there was obviously discussions backwards and forwards about what exactly it was that Jack wanted and I don't remember exactly you know what meetings were requirements or what was meant to happen at that particular time but certainly obviously without a contractor I would have been reticent to be doing a lot of work so - and we may well have had discussions 20 along those lines but other than that I don't recall any, I couldn't point you to a date or a specific conversation that I recall but the only one thing that I can say is that it was not uncommon for there to be sometimes a time lag in Jack giving final approval for things.

25 Q. I'll try this one more time as a prompter because it's the last one that I've got, on page 2409 the final sentence in Mr Wing's email says, "I look forward to hearing from you on Monday about the EMC plan"?

A. Mm-hmm.

30 Q. That would be Monday 15 November 2010, do you have any recollection of having a discussion with either Mr Wing or Mr Johnson on or after 15 November 2010 in which you were informed that your updated all in proposal had been accepted?

35 A. As I have said before I have no specific recollection of either a conversation or receiving an email except to say as was the case with the previous one there must have been some form of confirmation otherwise we wouldn't have proceeded.

40 Q. As far as you are aware the invoices that you had rendered after 1 November 2010 were firstly in accordance with, calculated in accordance with the proposal which appears at tab 15?

A. I can't recall what invoices were sent but if they reflect that then the answer is clearly, yes.

45 Q. I'll show you one just so for your assistance?

A. Yeah.

Q. You can put volume 98 to one side for the moment thank you. I think you still may have volume (V) up there?

50 A. Yes.

Q. And at the same tab, tab 13, please go to page 1272, and if you look at the invoice dated 30 November 2010 which appears at page 1272 the heading is, "Communications consultancy for November 2010", and then there are two retainer amounts identified?

5 A. Yes.

Q. A strategic communications and coordination retainer at \$15,000 and a media relations retainer of \$10,000?

10 A. Yes.

Q. And if one looks on the proposal of 4 November 2010 at page 15 and refers to the retainer amounts on page 903 they're the same two amounts are they not?

A. Correct.

15

Q. Namely \$15,000 and \$10,000 per month?

A. Correct.

20 Q. So does that assist in the question I put to you a moment ago that by reference to this invoice you rendered invoices calculated in accordance with the November 2010 proposal?

A. Correct.

25 Q. And is it your answer that because you submitted invoices in accordance with that proposal you assume, although you cannot now recall, that there was some form of communication of acceptance of that proposal to you?

A. Yes, except that clearly all of the proposal wasn't accepted because there were other components that don't appear on the invoice.

30 Q. That's what I was coming to, the first two retainers, the \$15,000 and the \$10,000 appear there, other amounts do not, for instance, the online retainer which is recorded at page 904 and the online products and services do not appear. Doing the best that you can and assisted by the documents that you have there can you recollect any discussions about acceptance of part only of
35 the 4 November 2010 proposal that you had with either Mr Johnson or Mr Wing?

40 A. Well, I recall that the online retainer was accepted, again, I can't tell you the method of acceptance because we set up the Heathcote Ridge website and that went through the Heathcote Ridge project and I do recall that the online products and services was not accepted. We had a I remember a sort of a planning day where the other members of I think SASL which what was the germ or germination of that idea and it was in line with what Mr Johnson was wanting to achieve at that time but in the end that was not accepted and
45 therefore doesn't appear on the invoices. The Heathcote Ridge one will appear on separate invoices. The online retainer I should say will appear on separate invoices.

50 Q. Okay, the invoice of 30 November 2010 also bears a difference from the preceding month's invoice of 30 September 2010 which appears at the preceding page, namely, page 1271. Could you just look at the two invoices,

I'm comparing page 1271 with page 1272?

A. Yes.

5 Q. The first and most obvious difference is that the retainer amount is increased from \$6,000 to \$15,000, do you see that?

A. Yes.

Q. And that's for the reason that you've given before which is set out in the proposal?

10 A. Yep.

Q. Namely, increased scope of work, particularly the Heathcote Ridge project?

A. Yes.

15

Q. And it also appears from page 903 there's an increase in rate?

A. Yes.

20 Q. And there are other matters that are referred to in the 4 November 2010 proposal which explained the difference between the two there?

A. Yes.

Q. But there is another difference between the two invoices, could I ask this question?

25 A. Yes.

Q. The retainer at tab 13 was expressed to be for the 12 months period, that is, one year to December 2010?

A. Yep.

30

Q. The new retainer pursuant to acceptance of part or all of the 4 November 2010 proposal at tab 15 commenced immediately as in 1 November 2010?

A. Yes.

35 Q. Is it that the new proposal superseded the previous retainer in relation to the last two months of 2010?

A. Yes.

40 Q. Because the previous retainer was meant to go up to 31 December 2010 but in fact, as one can see from looking at the invoices I've directed your attention to, the new invoicing process commenced in November?

A. Correct.

45 Q. If one looks at the invoice for - in the production from EMC unfortunately there is no invoice produced for the months of October 2010, we only have the invoices at page 1271 for September 2010 and at page 1272 for November 2010, do you know whether or not an invoice for October 2010 was issued by EMC?

A. Well, I don't know but I would say, yes.

50

Q. One would assume so?

A. One would expect so, yes.

5 Q. One would expect so, but without the detail of that invoice one would not know how many days in October 2010 had been used and how many, to use your expression, days remained in the bank, would one?

A. No.

10 Q. Because the 30 September 2010 invoice at page 1271 doesn't enable one to work forward for the October month. If there was any unused, as in days in the bank, in the October invoice what would have happened to that with regard to the November retainer?

A. I can't answer that because I don't know what it was.

15 Q. I accept that.

A. Except what I note from September was that there was three days in the bank for the strategic communications and six days in arrears for the media relations so.

20 Q. And one year's later still to come?

A. It's, yeah, so it's hard to know.

Q. Without the October invoice one doesn't know?

A. No, that's right.

25

Q. There is another difference between the November 2010 invoice and the ones which preceded it that in the description of strategic communications and coordination retainer there is no longer the identification of days used and days remaining in the bank, do you see that?

30 A. Correct.

Q. Is there a reason for that to your knowledge?

35 A. Yes, the - it was changed to a, you know, sort of which is the general nature of EMC retainers was to a sort of an all up arrangement which I think is referred to in the document and it was basically meant that we gave an estimate and a fee and if that's accepted then that's the rate that gets charged and we are effectively on call for all of those services no matter what.

40 Q. So as from 1 November 2010 whatever arrangement had existed prior to then the practice of having the retainers calculated by reference to monthly usage and usage to that date and also amounts of time not used ceased?

A. Correct.

45 Q. And in its place it was the, shall we say, lump sum arrangement or?

A. All up.

Q. All up, thank you,--

A. Yeah.

50 Q. --number that you mentioned a moment ago. And I take it that from

November 2010 you were still not utilising time sheets?

A. Correct.

5 Q. So how did you know whether or not you were doing \$15,000 worth of work a month for GLALC under the strategic communications retainer?

A. Well, I knew that I was on call and I was doing a lot of work and I was doing a lot of travel and we were - I would have had probably diary notes and we were producing the work that was required.

10 Q. The work that you were doing included not only work for GLALC but also for other land councils did it not?

15 A. Well, I have to be honest I'm not - I was certainly at meetings where other land councils were there because they were part of an organisation called SASL and I was certainly for quite a period there where we were talking about the development or proposed development by the Deerubbin Land Council and I certainly went to Walgett to assist there. We had a meeting with the local council and we certainly did some work with La Perouse around some media for one of their developments. That was the main work that we did. Again, I'm
20 not sure of the timing because obviously as you all know the relationship with Deerubbin and SASL and/or Gandangara ceased so I'm not sure at what point they were there but it certainly for a period I was directly involved with meetings with those other land councils.

Q. Firstly, when you say SASL what's the acronym S A S L?

25 A. Yes.

Q. What does that stand for?

30 A. Well it was originally Sydney Aboriginal Services Limited and then when they went outside of Deerubbin and La Perouse to Walgett they changed the, S, to mean, and I don't know if that was done formally, but it was changed to State-wide Aboriginal Services Limited.

Q. If you look at the top of page 903 under the box for strategic communications retainer the first bullet point it says, "Strategic
35 communications council for Gandangara, Deerubbin, La Perouse and/or SASL", do you see that?

A. Yes.

40 Q. So does that confirm the answer you've given a moment ago that under your retainer you were doing work not only for Gandangara, GLALC that is, but also for other Aboriginal land councils identified as Deerubbin and La Perouse?

45 A. Yes, but not for all of that time and, as I said, Walgett was - we did some work for Walgett later so that was only as it was, as envisaged at that point in time when the document was written but if your question is, "Did we do some work for other land councils", the answer to that is, yes we did.

Q. And about when did you do that?

50 A. That's what I say when it comes to dates I can't be sure but obviously there was Deerubbin was included at the time of writing that document so therefore

presumably I can't recall when the things you know the two organisations fell out but up till that point I know certainly we did some media work, not a lot but I think we did do some media work with Deerubbin and, yeah, I would only be guessing now. I think we were going to try to do a newsletter for them as well but I have perhaps I'm not sure about that.

DEPUTY REGISTRAR: Mr Baird I note the time, would now be a suitable time to adjourn and we'll reconvene at 2 o'clock.

BAIRD: I think so, just for the witness's assistance I'm just going to ask some questions after the adjournment in relation to the apportionment of his time between the various land councils.

EXAMINEE PERKINS: I can easily answer that now.

BAIRD: And I'll take you also to the Deerubbin agreements just so that it's not to take you by surprise. Thank you, Registrar.

DEPUTY REGISTRAR: Thank you, please stand.

LUNCHEON ADJOURNMENT

DEPUTY REGISTRAR: Mr Perkins if you'd like to come forward and take a seat in the witness box please do so. Once more I remind you you're under oath. Please say yes for the record.

EXAMINEE PERKINS: Yes I acknowledge that.

BAIRD

Q. I was asking you some questions before luncheon adjournment Mr Perkins about contracts, proposals, acceptances between EMC and GLALC. Before I revert to that questioning could I complete, for the sake of the record, the last of the contracts of which you were aware, I use the word contract in a wide sense? Could you please in volume (II), which is still before you, turn to the next tab, which is tab 16 and you will see a document there entitled EMC Contract Extension made to December 2012, do you see that?

A. Yes.

Q. Would you just take a moment to look at that document and briefly as to its contents, I don't propose to take you through the document in detail, but I did want you to be satisfied for yourself as to the matters on page 907?

A. Yes.

Q. And as to the matters on page 909? They were in general terms Mr Perkins, I wasn't going to ask you detailed questions about them. I just wanted you to satisfy yourself that in general terms that's what we're talking about?

A. Yes.

Q. But I was going to draw to your attention particularly the matters at pages 9 and 11 which are the, as you might say the retainer provisions, the services to be provided and the amount of the retainer for those and the comments about comparison with previous periods?

5 A. Yes.

Q. Now from the documents produced to the receiver, the documents that I've shown you today constitute the totality of the proposals that had been submitted by EMC to GLALC of which we are aware, unless I happen to be incorrect or you are aware of another proposal, are you able to assist?

10 A. Look I'm not aware of one but.

Q. Sorry I withdraw that question. Well that would explain it, thank you very much indeed. I'm told there's a document at tab 17, I don't have a tab 17, do you have a tab 17?

15 A. I do.

Q. That would explain why I don't have a tab 17. Would you also have a look at the document which is at tab 17 and is numbered 920-1 through to 920-5? From that numbering I'm assuming that that document was omitted from the previous brief and was recently added. Could you look at that document in general terms as well, which on its face would appear to pick up the period from the end of the document at tab 16 through to, that is from December 2012 through to February 2013?

20 A. Yes.

Q. Having regard to that tab can I then repeat the previous question?

A. Yes.

30 Q. Having looked at those documents that I've taken you to this morning and this afternoon are they all the proposals of which you aware that EMC submitted to GLALC?

A. Yeah, well they are all of them that I am aware of.

35 Q. If I put to you, I'll put the question the other way around, they're all the proposals of which the receiver is aware of, they're all the proposals that the receiver has been able to ascertain from the discovery and the discovery has been principally by EMC and from GLALC's own records?

A. Yes.

40

Q. The receiver I can assure you is not aware of any others, but if you are aware of any others now would be a good time to say?

A. No I'm not.

45 Q. Could I then revert to where we were before lunch when we were examining shall we say the new agreement that came into existence in relation to the proposal of 4 November 2010 which appears at tab 15? And in particular for assistance I'm going to be asking you questions about page 903 and the change in the rates we referred to there and the nature of the services and any additional services that were provided leading up to this proposal?

50

A. Yes.

Q. Now I think we'd established before lunch there was a change in the scale of rates from that scale at page 903 pursuant to the 4 November 2010 to the scale that was attached to the 2 December 2009 proposal, being the scale that appears at tab 13 page 94. Please take a moment to check that for yourself that I did put that to you before lunch?

A. Sorry can you ask the question, the difference--

Q. I was reminding you that there'd been some questions to you contrasting those two documents?

A. Yep.

Q. And where this line of questioning is going is in relation to the differences between those two scales that's all?

A. Sure.

Q. So I think we'd established that there was firstly a change from the retainer of \$6,000 a month to \$15,000 a month and that had a great deal to do with the additional work that was involved in relation to Heathcote?

A. Yes.

Q. The Heathcote Ridge work being the subject of the 6 October 2010 proposal at tab 13 page 897 which did not proceed but which was instead, if I remember correctly, rolled into the all up proposal for November 2010, is that right?

A. Yes, that's just a recap on what we talked about before?

Q. Yes?

A. Yes.

Q. A second reason is apart from the inclusion of the Heathcote Ridge work is the increase in the standard rate from \$2,000 a day to \$2,800 a day, but discounted as it states at page 903 by 23.5%, is that right?

A. Yes.

Q. A third difference is the inclusion of strategic communications for Gandangara Deerubbin La Perouse and/or SASL, correct?

A. Yes.

Q. And that's exactly where we were when we took the luncheon adjournment?

A. Yes.

Q. Are you able to assist the receiver with any estimate of the value of the work that may or may not have been performed by EMC for Deerubbin LALC, La Perouse LALC or SASL from 1 November 2010 onwards?

A. No I couldn't break that down because the way that I approached it was basically that it was a sort of all-in retainer and I was there to service the group that was SASL, so there was no division of labour, it was whatever needed to

be done be done.

Q. Well firstly you said there were no timesheets kept?

A. Correct.

5

Q. Were you advised of or aware of any arrangement that might exist between GLALC on the one hand or any or all of Deerubbin La Perouse and SASL for GLALC to recover from those entities a proportion of any services rendered by you for their benefit?

10 A. No.

Q. So no one told you that there was any split up or recovery or reimbursement arrangement at all?

A. No.

15

Q. Did it strike you as unusual that you would be doing work for Deerubbin La Perouse and/or SASL but invoicing GLALC for it?

20 A. Not especially. The invoice was probably just set up from the original thing and it probably continued. In my mind that Jack was the principal, for want of a better term, and so the invoices were how they managed it internally, if I had been advised to change the entity to which we were invoicing that would have been done, if not we just continued to send the invoices.

25 Q. But just dealing with that step by step, Mr Johnson was the CEO of GLALC, correct?

A. Yes.

Q. And can I suggest he had the normal authority to your understanding of a CEO of any corporation, correct?

30 A. Yes.

Q. Put it this way, in terms of approval of your proposals were you aware of any requirements of approval by GLALC other than by Mr Johnson as CEO?

35 A. I was aware that he would have had discussions, well I was told that when and how often I don't know, but his board was certainly aware of our work and I had met, I was at a board meeting on one occasion and had worked directly with the chair on a few occasions.

Q. Who was that Chair?

40 A. Cindy Cronan.

Q. Is it correct to say that to your understanding Mr Johnson had authority as CEO of GLALC to approve your proposals into contracts with EMC?

45 A. That's what was my understanding. Well I actually, I didn't really have an understanding of what their internal authority processes were--

Q. That was my next step, I'll stop you there. Beyond the authority of Mr Johnson as CEO, were you aware of any other step or approval that had to be obtained by it in order to enter into a contractual relationship with EMC?

50 A. Not specifically.

Q. So you relied upon Mr Johnson and his authority as CEO?

A. Correct.

5 Q. When you had meetings with the chairperson from time to time, Ms Cronan as you've mentioned, did she indicate to you at any time any restriction on Mr Johnson's authority to contract and negotiate with you?

A. No.

10 Q. You may want at the same time to have close by if you need to refresh your memory Mr Perkins in volume (V), which I think is also there, the page that we looked at before lunch behind tab 13, being page 1272. I say that because in your earlier answer you made references to invoices?

A. Right, so I'm going to?

15 Q. So keep tab volume (II) open in front of you, page 903, but in your answer you made references to invoices rendered pursuant to that proposal?

A. Right.

20 Q. For the sake of fairness I wanted you to have available to you invoices, particularly the ones at 1272 and onwards that appeared to be rendered pursuant to that retainer so that you could review them or refresh your memory at any stage if you so desire?

A. Yes I have them here.

25 Q. Were you ever asked by anybody at GLALC to provide an apportionment of the value of your services between GLALC on the one hand and anything of Deerubbin La Perouse and SASL after 1 November 2010?

A. I don't recall.

30 Q. For instance did a Mr Gundar from the Finance Department ever contact you and make an inquiry of you in that regard?

A. I don't recall that, no.

Q. Did you recollect every having any communications with Mr Gundar?

35 A. Maybe invoices, but I don't recall him being at any of the meetings that I attended, nothing of substance, no.

Q. And no one else at GLALC for instance, the chairperson or Mr Johnson ever asked you for a split up between the time you spent on its work and the time you spent on work for other land councils?

40

A. Not that I recall.

Q. As you are here today in the witness box - you may already have answered this question but I'll ask it again - are you able to provide any estimate of the proportion of services provided by you to any of Deerubbin La Perouse or SASL?

45

A. No.

Q. I mean would it be 50% or 10% or 90%? Are you able to give any estimate at all?

50

A. For the whole term of the contract?

Q. Yes.

5 A. The work for Deerubbin La Prouse would have been in the minority but it would depend on what period, but most of the work was for Gandangara or SASL I guess.

10 Q. You appreciate it's a matter of some significance to the receiver of GLALC that it's been paying for services that were provided by you to other entities. You understand that issue do you not?

A. Well yes, we have been invoicing - yes, I understand that, it's apparent in the invoices and the proposals that there's reference for us doing work for other organisations, yes.

15 Q. And you understand that it would be a matter of concern to a court appointed receiver to see if on behalf of GLALC it could recover amounts from other entities that were in respect of work that EMC had done for those other entities?

20 A. I wouldn't have turned my attention to that matter.

Q. That being the case - let me put it this way. To your understanding, Mr Johnson had no authority on behalf of Deerubbin LALC did he?

A. Unless it was through SASL.

25 Q. Secondly, Mr Johnson had no authority on behalf of La Prouse LALC did he?

A. Unless delegated to him. They may well have delegated him to do things.

30 Q. They may well have, but to your understanding did he have such authority? A. I don't know. I don't know what their internal processes were.

Q. Did Mr Johnson ever say to you that he had authority to act for Deerubbin LALC?

35 A. We wouldn't have had such a discussion. I would never have questioned him on what authority he did or did not have.

Q. Well you're entering into a contract to provide services for these entities. I'm suggesting to you it would have been most germane for you to know that you were dealing with persons who had authority to represent these entities.

40 A. But as I explained before, when we were actually providing the service, for example, media work, our consultants would have been dealing with the - both I think the chair and the CEO of Deerubbin directly. Presumably if they had an issue with that they would have advised.

45 Q. Well I'm sure from their perspective they were very happy to have work done for them for nothing, but I'm asking about GLALC's paying for those services that it wasn't getting and I'm trying to ascertain what authority Mr Johnson had to give you instructions in relation to Deerubbin La Prouse or SASL.

50 A. I can make no comment.

UNSWORTH: Was that a question?

BAIRD: No it wasn't, I hadn't finished. I was allowing the witness to absorb that.

5

Q. The question I was about to ask is what authority were you aware of personally that Mr Johnson had to represent any of Deerubbin LALC, La Perouse LALC or SASL.

A. I would have left the matter of authority to him.

10

Q. That's not an answer to my question, Mr Perkins. What authority were you aware of that he had?

A. Well I wouldn't have been concerned or turned my attention to what authority we had because there was a proposal which listed a range of services and it was sent to Jack. I attended meetings where representatives of La Perouse and Deerubbin were in attendance that I was in attendance at, so I therefore assumed everyone was aware that work was being done and when we did it, it was appropriate. No one advised me otherwise.

15

20 Q. Is the best answer that you can give that you were not aware of any authority that Mr Johnson had to represent any of Deerubbin LALC, La Perouse LALC or SASL?

A. Yes, I was not aware of it because I had no interest in it.

25 Q. SASL, who is or what is the people who represent that? Is entity the correct word to describe it or is it - association, is that a better word?

A. Well I can't answer that. I don't know what its legal status is.

Q. Well you've said before that it was the Sydney--

30 A. Yes, that's the title. The title they gave to the grouping was originally Sydney Aboriginal Services Limited which then changed to State-wide Aboriginal Services Limited, but what that entity's legal status was I have no idea.

35 Q. Using a general non-legal word, it's an association of land councils?

A. Yes.

Q. Being GLALC, Deerubbin La Perouse, and subsequently Walgett?

A. Yes, that's my understanding.

40

Q. It didn't to your understanding have any separate corporate structure or a structure under the Act such as for instance the NSW Land Council?

A. No, I couldn't comment on that.

45 Q. Who was EMC with to your knowledge dealing with at Deerubbin LALC?

A. Well as I'd said before, we - I had been in attendance with meetings when they were talking about the potential development at Deerubbin and the - both the CEO and chair were at those meetings.

50 Q. Can you give me their names?

A. Yeah, well the chair was a gentleman called Frank whose name I now - surname I now forget, and the CEO was - I can picture the guy. I can't remember his name but--

5 Q. At some stage or other was the CEO or acting CEO of Deerubbin Mr Sing?

A. Not - no, not - no, when I was dealing with them it was - I do apologise, I can't remember his name, but no, it wasn't Mr Sing, it was a gentleman from the Deerubbin Land Council.

10 Q. If I suggested to you that at some stage towards the middle of 2013 Mr Sing, that's Mr Alfred Sing, became acting CEO of Deerubbin, is that a matter that accords with your recollection?

A. I wouldn't recall that.

15 Q. Do you recollect having any dealing with Mr Sing on behalf of Deerubbin after about May 2013?

A. I don't recall.

20 Q. I may have misled you. Mr Sing was associated with Walgett not with Deerubbin. I do apologise, I've been putting questions to you on a false basis, thank you. So Mr Sing at some stage - sorry, we know what he did. In May 2013 he became acting CEO of Walgett LALC. Did you have any dealings with Walgett LALC or Mr Sing after about May 2013?

25 A. I can't remember the date but I can tell you that the only dealings that I had with Walgett - I think their - or their acting CEO I think attended a couple of meetings in the Gandangara office with the other land councils, and a group of us went to Walgett and met with members of their land council. We then met with them advocating on their behalf that the local Walgett Shire Council on a potential development that was occurring there and we did a tour of Walgett.

30 Q. Can you assist at all as to a year?

A. Beg your pardon?

Q. As to a year, 2013, 2012, 2011?

35 A. Look, no, I have to say once I move on from a client those things just go, but I would say 2012 but don't hold me to it. Well only because 2013 was - if I can go back now in my dates, 2013 August I think was when the administrator was appointed so it wouldn't - certainly we - certainly not after then and I don't think it was in the six months before then, but again I can't be, can't be 100%
40 sure on that.

Q. What about Deerubbin?

A. There'll be records probably in the email. There'll be a record of - probably emails about the trip to Walgett so you'll have that information.

45 Q. What about Deerubbin? Whereabouts were their office situate, or did you ever go to their office?

A. I didn't go there but I think a couple of the consultants from Sydney attended there.

50

Q. Whereabouts are their offices?

A. Western Sydney somewhere.

Q. Separate from the GLALC offices?

5 A. Yes.

Q. But you yourself never went to the Deerubbin offices?

A. No.

10 Q. Having regard to the introduction to your 4 November proposal, are you able to say whenabouts did EMC start providing media services to Deerubbin and/or La Perouse?

A. No, I couldn't tell you the dates. We - it would have been some time after that proposal presumably.

15

Q. But it's contemplated in this proposal that you were going to commence doing work for him?

A. Correct.

20 Q. And I say that because in the previous proposal there's no reference to them is there?

A. Correct.

25 Q. Can you remember any discussions that you had with either Mr Wing or Mr Johnson about you commencing to do work for either or both of Deerubbin or La Perouse Land Councils?

A. Sorry, I think I've answered that.

30 Q. At this stage, I'm talking November 2010. We've ascertained this proposal has a new element to it.

A. Well there must - yeah sure.

35 Q. And I'm trying to ascertain what discussions preceded this proposal for this work to be included in the proposal. Can you remember any discussions you had on that topic with either Mr Wing or Mr Johnson?

A. There would have been, otherwise they wouldn't be in the proposal.

Q. Yes, I assume that. But over what period of time preceding November 2010 do you think these discussions took place?

40 A. I don't know. I couldn't recall how long they were there for, but I imagine that if SASL was - existed, pre-existed, which it must have, this document, that it may well have been that there had been - because there was a group called I think the Development Control Group or something that had meetings and that was, and that was the meetings where the representatives of the other
45 land councils were present, so I may well have been at meetings with them prior to that but I can't recall.

50 Q. Just to assist you and to possibly jog your memory, if you'd turn back to page 902 in tab 15, 4 November 2010 proposal. If you go to the foot of the page, the last paragraph, read that to yourself, there's reference to this issue

of GLALC partnering with Deerubbin and La Perouse LALCs to form SASL. I'd just like you to read that paragraph to yourself and when you have, the question will be is what's contained in that paragraph your best recollection to date of those discussions?

5 A. Yes.

Q. But if you take a moment just to - if there's anything else you remember--

A. I did, I just read it, yeah, yes.

10 Q. Beyond what's in writing there, as you sit here today in the witness box, you have no other memory of those discussions, separate memory?

A. No, that would be an accurate summary of them.

15 Q. In the proposal that's referred to therein, this is reading from the fourth line, the request for EMC to put forward an all-in proposal to cover all the additional work as a result of representing three LALCs, not just GLCC, and in addition the Heathcote Ridge project and similar projects, was there any arrangement for you to divide or apportion part of your retainer fees towards the work that you did for the other land councils?

20 A. No.

Q. For the period after November 2010, by examination of EMC's invoices - please refer to them if you need to at page 1272 and onwards, is there any way that anyone can determine what proportion of work was done for the

25 LALCs apart from GLALC?

A. Not on the invoice, no.

Q. I'll broaden the question, with access to all of the documents produced by EMC is there anyway anyone at this stage can undertake or effect that proportionality?

30 A. No, I wouldn't think so.

UNSWORTH: I object to that. I mean--

35 BAIRD: The witness understands the question, Registrar.

UNSWORTH: Yes, but I mean it's premises on the basis that the witness understands every document that was produced and I understand there were many thousands of documents products. Is that right?

40

EXAMINEE PERKINS: Mm.

BAIRD: I asked the witness from his understanding simply whether it was physically possible to do that now retrospectively, and as I understood the witness's answer he didn't think so.

45

EXAMINEE PERKINS: Probably not.

BAIRD

50

Q. The other two changes that we mentioned briefly before the luncheon interval in the description of the work being performed and in the quantum of the invoicing that appears from the proposal at page 903, the other two changes are, firstly, of course, the work for Heathcote project. Now in relation to the Heathcote Ridge project, again is it possible to identify at all what proportion of the work done in any month related to the Heathcote Ridge project for GLALC as opposed to other work that you were doing for it?

5 A. No.

10 Q. That's the first. The second is the change between what you might call the carry forward or crediting procedure that we looked at under the previous invoicing system. If you wish to refresh your memory I took you before lunch to page 1271 in volume (V). That was the 30 September 2010 invoice, which had the notation that we looked at in several invoices of X many numbers of

15 days used in a month and a remaining number of days in the bank?

A. Yes.

Q. If one looks at the November 2010 invoice at 1271, that system of notation no longer appears. Correct?

20 A. correct.

Q. There is instead a simple one line entry for strategic communications and coordination retainer of \$15,000?

25 A. Correct.

Q. I think you gave me an explanation before lunch as to how that figure was appropriate. Do you remember that?

A. Yes.

30 Q. Could you tell me once again you derived the amount of \$15,000, which appears on 903 and submitted that in your proposal of 4 November 2010?

A. It would have been estimate of how long I thought was required.

Q. I think that's what you said before. How did you go about estimating or putting together your estimate?

35 A. Based on work done, the work - the significant amount of work that I knew was coming up and the fact that it was on call and, you know, there was quite a lot of work to be done around Heathcote Ridge.

40 Q. Could I just look at the various elements of that. We know that under the previous retainer arrangement the monthly retainer was \$6,000 per month. I take it that you were of the view in November 2010 that you were doing approximately \$6,000 worth of work per month or more for the services similar in kind to those recorded in your invoice at 1271. Is that fair?

45 A. I'm not sure. Can you rephrase the question?

Q. I'm trying to work out how you got to \$15,000 a month?

A. It was an estimate based on how much work I thought would be required.

50 Q. So the elements of that estimate were, firstly, the work that you had

previously been doing. You said that?

A. Yes.

Q. And you had previously been charging \$6,000 a month for that work?

5 A. Yes.

Q. And that work was ongoing?

A. Yes.

10 Q. Of that general kind of description?

A. Mm-hmm, yes.

Q. Did you think that that \$6,000 per month was a reasonable amount to charge for that kind of work?

15 A. In the early - yes, otherwise I - yeah. But it's the nature of a retainer, it goes up and down so there would have been periods where I was doing a lot more than that, but that was the nature of it, which would be part of the reason why the subsequent proposal was more than that.

20 Q. But without timesheets it would be difficult, well-nigh impossible now to say in which months you did more than \$6,000 worth of work and which ones you did less?

A. In retrospect that's correct.

25 Q. And apart from the \$6,000 per month - which to be fair to you was subject to a rate increase, which is noted on page 903, there was an increase in your rate to \$2,800 per day - and we also know that this proposal included work in relation to Heathcote Ridge and we know that by reference to the document at tab 14 you had, one month earlier, submitted the proposal for that work at also
30 \$6,000 per month. That appears on page 899. Is that fair?

A. Well yes, that's what the document says, yes.

Q. So we have, as at 4 November 2010, in putting together your estimate, the following four elements at least, the amount you were charging under the
35 previous retainer; a rate increase; correct?

A. Yes.

Q. The amount that you proposed to charge for the Heathcote Ridge Project, and I take it from your earlier, your estimate of the likely amount of increased
40 or additional work that was to come?

A. Yes.

Q. And apart from those four matters was there any other matter that you took into account to derive the amount of \$15,000 a month and GST for the
45 strategic communications retainer at page 903?

A. You've, you've gone through like four. When I would have pulled it together it would have been - I would have looked at it as a whole - my whole listing perspective because I could be doing anything from writing a submission, attending a meeting, doing lobbying. So I would have just done
50 an overall estimate of time and value and put a figure on it, and the client could

either accept it or reject it.

Q. Are you aware whether or not your proposal or the proposal for there to be a retained media consultant was put out to tender by GLALC?

5 A. I don't know.

Q. No one ever told you that it was?

A. No, no, I was assuming it wasn't.

10 Q. Wouldn't it have been normal in your experience of land councils for retainers such as these to go competitive tender?

A. I have no experience with land councils prior to this one.

15 Q. You've been in the process, I take it, of submitting tenders for media consultancy work in the past, have you not?

A. No, rarely do we go by tender. Almost all of our work is through relationships.

Q. Rarely do you go by tender?

20 A. Rarely.

Q. Can you think of one example in the 2009 to 2011 period where EMC submitted a competitive tender for this kind of work?

25 A. I wouldn't - I wouldn't be aware because I'm not aware of all the tenders that were - that the company would have proposed, but I can, I can say that tendering in a competitive tender process would have been a very small proportion of our normal work.

30 Q. And in Queensland, so far as you were concerned, had you submitted a tender to - a competitive tender for EMC services to any respective client in that, say 2010, 2011 years?

35 A. No. I'm sorry, the competitive tender, there may have been a tender with the - well, a proposal that was being - there may not have been either by the way but I just if when I stop and think, I think the Queensland Council of Unions occasionally, for a project that wasn't for retainers but for a project - I've never put in a tender, like a competitive tender for a retainer but there may have been a - like a production of a television commercial that they may have asked a couple of providers to provide. But other than that, almost never via tender.

40

Q. Could I just briefly take you back to the invoices in volume (V). And just so that you can be familiar with the documents, at tab 13 I've taken you to page 1272, which was the invoice with the 30 November 2010, and I simply want you to satisfy yourself, without looking at the detail, any great attention, that in December, the invoice for December 2010 was in similar format to the one of 30 November 2010. And if one looks through the invoices at tab 14 starting from page 1274, those invoices again seem to be similar in nature through to an including page 1282, which is 31 August 2011. So all of those are invoices pursuant to that same proposal and acceptance of that proposal.

50

When we get to the document at 1283 there seems to be a slight, or there seems to be an additional element if you look at that invoice at the third entry as Heathcote Ridge website retainer for August 2011. Do you see that?

A. Yes.

5

Q. I haven't seen such a document - please assist me if I've got it wrong - but does that indicate to you that you undertook some separate work in relation to Heathcote Ridge or is that possibly a reference to the items referred to on page 904 of volume (II)?

10 A. Yes, that's the Heathcote Ridge website retainer, is the item in the top row - for want of a better term - or the first half of the page 904.

Q. Is there some reason why the first entry at page 1283 is an amount of \$12,500 instead of the amount of \$15,000 that had been for the preceding months? It has a slightly different, it has a different description.

15

A. No I - yes, well that's because it's - that's a different, that's a different - if you look at the top of 1282 that's an invoice in Gandangara. If you look at 1283 that's an invoice to Gandangara but care of Arben, and that's where the Heathcote Ridge specific stops. So that is a separate to the one we're talking about, that's the stakeholder relations, so that's the point at which we then had to engage - which is envisaged in the document that we referred to before - engage a community or stakeholder relations expert to conduct - carry out that work, which is standard for developments.

20

Q. And you said that was referred to in the document we looked at before. Which particular part of that document?

25

A. I'll have to have a look but I, I recall reading one where it says something about stakeholder not including direct stakeholder management, so I'd have to find where that is. But yes, if you look at page 903 there's - so there's the aspect of mind, which was the Council and stakeholder management but then with - where is it - yes, there's one, two, three, four five - the 5th dot point there's a bracketed amount that said there would have to be additional charges for the actual, you know, community meetings, the facilitator, all of that work.

30

35

Q. So if I understand you correctly, when one looks at the 5th bullet point in the first box on page 903, that's the one you've just referred to, is that right?

A. Yes.

Q. The description of the work in brackets is represented in invoicing terms by the entry on page 1283 against the description, "stakeholders, relation management and the amount \$12,500"?

40

A. Correct, correct.

Q. So do I have that correctly that in addition - in relation to the strategic communications retainer, not only was EMC being paid \$15,000 a month under the 4 November 2010 proposal, but it was also separately invoicing \$12,500 per month for stakeholder relations management as recorded in the invoice at page 1283?

45

A. Correct.

50

Q. Could you assist me as to how this invoice at page 1283 comes to be addressed to GLALC care of Arben Management?

5 A. Well I was advised to because Arben were the development - I think project managers for Heathcote Ridge and so those costs that were quite clearly specific to Heathcote Ridge, like direct services like the website and the stakeholder management, should go through, through the project managers because they were the ones dealing largely with the community engagement consultants, so that they would have to, you know, look at it to make sure that yes, that's in line with the work that's being done et cetera. So I was advised
10 that those invoices should go through for the purposes of approval through Arben.

Q. Who gave you those advices?

15 A. It would have been either David or Jack.

Q. Do you have a recollection of them either directing you orally or sending you an email to that effect?

A. I don't know which method.

20 Q. So it may or may not be in the documents produced by EMC, you don't know, is that right?

A. That's right, yeah.

Q. Who at Arben Management were you dealing with?

25 A. Martin Waters.

Q. Martin Waters?

A. Mm-hmm.

30 Q. I see. That's the person mwaters@arben.com.au?

A. Correct. He was the principal there.

Q. Was he reporting to Mr Wing in any way, to your knowledge?

35 A. I think all of the consultants went through David. He was sort of - coordinated all of the myriad consultants required for such a project.

Q. Is there any way, from these invoices or other records of EMC, you can identify the work that you did in relation to this invoice separately from the work that you were doing under the 4 November 2010 proposal?

40 A. Well, these ones, this invoice here at 1283 includes, really, two specific things. One was the stakeholders relations management, which was - I mean obviously I played a role in that but was the - most of the work was done by a subcontractor and so that really relates to that - and the website is the Heathcote Ridge website. So I would have obviously approved content,
45 sometimes written content, but the day-to-day management of that would have been done through our Sydney office.

Q. If you look at the face of the invoice of 31 August there's reference in the expenses to flights for yourself from Brisbane to Sydney on 17 August,
50 23 August, and 31 August?

A. Correct. Sorry, what invoice are you looking at?

Q. I'm still looking at 1283. Do you see the middle of 1283?

A. Yes.

5

Q. Underneath the expenses?

A. Yes, that's right, yes, yes.

10 Q. Is it fair to assume that the purpose of those visits was to attend meetings in Sydney on 17 August, 23 August, and 31 August?

A. Correct, yes.

Q. There's also a reference to some accommodation in Sydney on 23 August and 31 August?

15 A. Correct.

Q. And there's reference to taxi expenses. And that makes it fairly easy for you to identify that you were in Sydney for various meetings to do with this project?

20 A. Yes.

Q. At that time, I take it from looking at the second entry, there was an additional charge - or put it this way, there was a charge of \$2,300 for an additional ten hours that month. You see that?

25 A. Yes, I see that.

Q. It says "Approved by Mr David Wing."?

A. Correct.

30 Q. How did you obtain such approval from Mr Wing?

A. Same as before. I don't know whether - either by email or verbally.

Q. Do you think Mr Wing was in attendance at these meetings in Sydney on 17th, 23rd, and 31 August.

35

Q. He probably was. I think that stakeholder meeting was a - was stakeholders for the project and therefore like people who were putting in objections or whatever with regard to the development. And I think they - look, the short answer is I don't, I - no, I couldn't tell you whether he was at any of those. He may well have - he certainly would have been at the 31 August one because that was a meeting in relation to getting the submission ready. I can't - no, I don't think he went to the Planning Minister and the Sutherland MP because they, I think, were on site. Well, we had a number of meetings with them, with the Minister and also with the local Member of Parliament. Some were on site at Heathcote Ridge, taking them around, and some were - or at least one was in the Minister's office in Parliament House. So which one that was I can't know, but I don't think David was at - certainly wasn't at the on-site one. And the stakeholder meeting, if that was the sort of the semi-public meeting of stakeholders in relation to the development, then he, he would not have gone to that meeting. That was - Martin Waters would have gone to that

50

meeting and indeed, probably chaired the meeting.

Q. So how did Mr Wing know to approve an additional ten hours for that month?

- 5 A. I would have spoken to him and said the hours contracted, there's a backlog and there won't be enough. Presumably. Because otherwise I wouldn't have done it unless there was a form of approval.

- 10 Q. It says there, "To assist reducing backlog due at December." What backlog's that?

A. It'd be the backlog of the work probably, stakeholder work. So whether it was writing submissions or summarising submissions or hitting some deadline in the development process.

- 15 Q. You've said before that the retainer system was a lump sum system?

A. Yes, that's right but this is, as I've explained, this component was separate to the early one that we've spoken about. This was basically a, it was a retainer based on, based on the time of the stakeholder relations consultant.

- 20 Q. I've shown you a number of documents today in relation to proposals and retainers. We have no more documents. You've directed my attention to the words in brackets on page 903 under the fifth bullet point in the first box. In relation to the invoice for stakeholders' relations management, are you able to direct me to any other written proposal covering this work, apart from those words in brackets?

25 A. There would have been.

Q. There would have been?

- 30 A. Yes. The contractor's name was Stephanie Barker. I would have written something. I wouldn't have just, you could appreciate - or perhaps you can't, but Jack's a fairly direct man, there is no way I would have just gone off and started hiring people and putting it on an invoice without there being an approval. So - and I remember - now that, that may have gone to Arben, I'm not sure, but certainly there would have been some form of proposal. Why it's
- 35 not in discovery I can't answer that question, but there certainly would have been a written proposal for the stakeholder relations.

Q. Would that written proposal have gone from EMC to Arben Management perhaps?

- 40 A. It may have gone to Arben, it may have gone to David Wing, probably both, or, so, yeah, I - it would certainly have gone to both of those, I would have thought.

- 45 Q. And under that proposal, which unfortunately we do not have in writing today, not only was there, I take it, a monthly retainer of 12,500 but there was a system of you being able to bill for additional hours per month. Is that correct?

A. Yes. My recollection of that one was that that was done on an hours basis, that, yeah.

50

Q. It says an additional ten hours per month at \$2,300, which - that's fairly straightforward, \$230 an hour?

A. Yeah.

5 Q. For somebody?

A. That's right.

Q. And that wasn't your charge out rate, was it, Mr Perkins?

A. No, no. No, no. No. As I've said that's a, that's a separate - that's right.

10

Q. But the Heathcote Ridge website retainer appears for the first time in August 2011, that's \$5,000?

A. Yes.

15 Q. And that's pursuant to the other proposal, the one that we've been looking at?

A. That's right.

Q. At tab 15?

20 A. That's right.

Q. So this invoice covers work under two separate proposals and/or retainers?

A. Correct.

25

Q. Whereas the invoice that immediately precedes it at page 1282 for the same period is only in relation to the 4 November 2010 proposal?

A. That's right. That's correct.

30 Q. I am hypothesising but tell me if this may or may not be correct, is it possible that the Heathcote Ridge website retainer or the online retainer at page 904 found its way out of that proposal into the Heathcote Ridge stakeholder's relation management proposal we're talking about?

35 A. I would doubt it. I can't be certain but I would doubt it because it was already covered for in this proposal. I would have thought that the stakeholder relations one would just have dealt with the stakeholder relations consultant.

Q. So as it appears, just simply from the face of the documents at 1282 and 1283, in August 2011 the EMC was paid for retainers alone \$25,000 under the November 2010 proposal, that appears from page 1282?

40

A. Yes.

Q. And in addition, the amount of \$24,800 for retainers and additional hours per month under the combination of the stakeholders relations management proposal and part of the 4 November 2010 proposal?

45

A. Correct.

Q. Is that correct?

A. Clearly.

50

Q. So that's, if my arithmetic is correct, \$49,800 in the month of August 2011 on media relations?

A. No.

5 Q. That's not correct?

A. No, because it's not on media relations.

Q. Sorry, in relation to the item - okay, I will withdraw media relations. In respect of the work the subject of firstly the--

10 A. All of the services provided total the addition of those two--

Q. Well, in respect of the proposals at tab 12 for strategic communications retainer, media relations retainer and online retainer on the first instant and for the other proposal that we don't have in respect of stakeholder relations management for Heathcote Ridge?

15

A. Correct.

Q. And this all without a competitive tender process?

A. Yes.

20

Q. Is not \$49,800 in one month, namely August 2011 a very large amount for EMC to be charging an Aboriginal Land Council for that work?

A. No.

25 Q. You do not think so?

A. I think it's an appropriate amount given the services that were provided and obviously there was a subcontractor. I suspect that if you were to - give that we were working on is a billion dollar development project that in the commercial world, what the main developers would be charging for this sort of work would be significantly higher than that. There was facilitation, engagements, submissions, government lobbying, media work, strategic council, messaging, online work, the development of a professional online website. I expect that that's in line with or probably under what if you went out to the normal commercial providers of these services would be charging.

30

Q. Can you recollect of August 2011 what was your, that is from Queensland, your total billings for that month for all clients?

A. No, I couldn't remember.

40 Q. Can you recollect what proportion of billings for the month of August 2011 these two invoices to GLALC represented of your billings?

A. No, I don't but I know that some was - it all wasn't proportioned to, for example, the Queensland budget because some of it was done out of New South Wales.

45

Q. I understand that but put it this way, I will do it step by step then. GLALC was a major client of EMC in August 2011?

A. Yes, absolutely.

50 Q. I mean, any client that your billing nearly \$50,000 a month to is a major

client, right?

A. Correct.

5 Q. And are you able to say whether that represented half of your fees for the month or more than that or less than that?

A. For the entirety of EMC or--

Q. No, particularly for you?

10 A. Okay, well, it wouldn't have been 50,000 then. It would have been 15 - my proportion of that would have been probably, well, it would have been 15 because the - I think, that's my recollection of how it was divided up internally because the media relations was done out of Sydney. The website was done out of Sydney and the stakeholder relations was done by a subcontractor.

15 Q. So you were the strategic communications and co-ordination retainer man?

A. Yes but as you can see, I had a finger, as you would expect, a finger in all of those pies so I attended those stakeholder meetings at night here in Sydney as well for example, as well as developer meetings with all of the consultants, environmental consultants, planning consultants, traffic consultants, fire
20 consultants. I attended all of those meetings so I was across the detail, was aware of what the sensitive issues were so that I could advise the client accordingly.

Q. But even at \$15,000 a month for your work, EMC was still a significant
25 client of yours, correct?

A. Yes, no question of that.

Q. And are you able to say what proportions of your billings in that period it represented?

30 A. Probably, again I couldn't recall exactly but probably 40% maybe, 30, 40%, I'm not sure what our billings were in Queensland at that point but--

Q. You are aware I take it that after August 2011, complaints were raised about the level of fees rendered and paid to EMC, I take it you're aware of
35 that?

A. Yes, I had meetings about that.

BAIRD: Could the witness be taken or shown volume, according to my records, volume 9B. Yes, 9B and in volume 9B I wish the witness to look at
40 page 2839.

Q. I say this in fairness to you, Mr Perkins, because this is not - and we're talking at December 2012, this is not the first time the issue of the level of billings by EMC has been raised with you is it?

45 A. No, every now and again Jack would mention it.

Q. And could you by looking at the document at page 2839 satisfy yourself that in response to an email from Mr Mikael Smith dated 6 December 2012 which appears at the foot of that page, you replied to him sending him some
50 responses in the table in his original email?

A. Yes, do you want to read the detail of that or?

Q. Please take a quick look at it but I don't wish to - I mean the document speaks for itself. I just wanted to satisfy myself that certain issues had been raised with you--

A. Yes.

Q. --including the cost and the value of the services provided?

A. Yes, yep.

Q. And that occurred in December of 2012?

A. Yes.

Q. And you had an opportunity to respond to those enquiries from Mr Mikael Smith?

A. Yes.

Q. At SASL and you had sent him your responses?

A. Yes.

Q. And I take it that the answers that you gave at that time were true in your opinion?

A. Yes.

Q. Did you ever have any discussions with Mr Smith about the total value of the fees of EMC rendered to GLALC?

A. Yes clearly we - otherwise that was what--

Q. Precisely?

A. Yes we had - there was a meeting with both him and Jack.

Q. What was the tenor of those discussions?

A. Well it was along the lines of this that they wanted to be assured that there was value for money.

Q. The document largely speaks for itself but I just could direct your attention to one aspect of it at 28.40 and 28.41, the paragraph that starts at the bottom of the page and runs over the page. You refer there to a monthly report that covers the work done. Do you see that?

A. Yeah, yes.

Q. I don't think we've discussed that before today. Is it the case from - I assume from that, that in addition to the invoice that was rendered there was a separate monthly report?

A. Yes.

Q. What form did that report take?

A. It was a Word document with list of things done.

Q. Did it have a breakdown of hours--

A. No.

Q. I can only ask this. To the best of your knowledge was and were those monthly reports included in the discovery of EMC?

5 A. I should think so because they were sent to Arbon and through to David Wing so they were part of the emails, they should be there.

Q. And beyond that what is stated at the foot of 28.40 speaks for itself?

A. Yes.

10

Q. And at the top of page 28.41 about 10 lines down, you say, "There are months I would spend significantly more than the allotted time and there are some where I'd spend a bit less. It's a standard judgment with all retainer clients. If you want to shift to fully recorded hourly billing we can but I cannot guarantee this will save you any money." Do you see that?

15

A. Yes.

Q. And that was the opinion you held at that time?

A. Correct.

20

Q. You can put that folder back thank you Mr Perkins. So the position that then pertains reverting to the document at tab 15 of volume (II) with reference to the emails that I took you to before lunch at page 2409 of volume 9A was that the approval process for your proposal?

25

A. Sorry hang on wait till I get my documents.

Q. Sure. I'm just bringing the topics back to your mind?

A. Yes. So where do you want to refer me to?

30

Q. So I'm referring to the 4 November 2010 proposal?

A. Yes.

Q. And if you need to refresh your memory that's the one at tab 15?

A. Yes.

35

Q. Of volume (II) but I wasn't going to take you through the document in any detail?

A. Right yes.

40

Q. But we're talking about that proposal?

A. Yes.

Q. And we're talking about the process of its approval?

A. Yes.

45

Q. And before lunch in fairness to you I took you to the only emails which the receiver has dealing with the approval of that proposal?

A. Yes.

50

Q. That being the two emails that appear at page 2409 of volume 9A?

A. Yes, yes.

Q. And I put to you whether you could recollect whether there was any other emails or correspondence or conversations in relation to the approval of the
5 4 November 2010 proposal other than the two emails at page 2409 and please correct me if I'm wrong but I recollect that your answer was that apart from those two emails you couldn't as you sit here today recollect whether there had been any separate emails or discussions. Is that a correct summary?

10 A. Well not quite. There would had to have been either a discussion or an email otherwise we wouldn't have proceeded.

Q. Okay, I see. Okay.

A. What that was I can't recall.

15 Q. Well what I want to put to you is that following on from your email to Mr Perkins of the 23rd--

A. Sorry I'm Mr Perkins.

Q. Your ..(not transcribable).. from Mr Perkins to Mr Wing of 3 November.

20 A. Yes, yes.

Q. Which appears in the bottom half of page 2409?

A. Yes.

25 Q. What I want to put to you is you did not, in fact, receive any document recording the acceptance of your proposal. Are you able to agree or disagree with that proposition?

A. I would disagree with it. There would had to have been either a verbal or an email approval of that proposal.

30 Q. Well what I want to put to you is that this was a completely ad hoc proposal whereby you put a proposal in writing and then proceeded to bill pursuant to it without receiving formal acceptance of your proposal?

A. No.

35

Q. Do you agree with that?

A. I disagree with that.

Q. What I want to put to you is that Mr Wing simply said - to use the vernacular, "She'll be right mate"?

40 A. No.

Q. It was more formal than that?

45 A. Well it would had to have been in the sense that formally I would have either had to have been advised that David had spoken to Jack and that Jack had approved it or that I'd got an email.

Q. So we should investigate more closely the discovery from EMC in the hope of finding an email from either Mr Wing or Mr Johnson to you dated after
50 12 November 2010 approving in terms the 4 November 2010 proposal?

A. There may well be or as I said there could have been a verbal approval.

Q. Let me just deal with the verbal one because we can't deal with the documentary one today?

5 A. Yes.

Q. Do you, as you sit here, have any recollection - I want to be quite clear. Do you have any recollection of a discussion after Monday 15 November 2010 between either you and Mr Wing or you had Mr Johnson wherein either
10 Mr Wing or Mr Johnson respectively stated to you that EMC's proposal of 4 November 2010 had been accepted by GLALC?

A. I have no specific recollection of dates but I know that I would have either have been very clearly told verbally after - it must have been after that date or received an email. Otherwise it wouldn't have proceeded.

15

Q. Do you know what the total value of the services provided by - sorry I withdraw value. Do you know what the total amount of the invoices rendered by EMC to GLALC is for the period November 2010 through to - sorry.

20 UNSWORTH: I object to this. This is a matter which I expect those instructing can inform the witness. It's not a memory test for the witness. I think there's a more efficient way to get to the point. Perhaps you could put to him what the amount is and get him to agree with that.

25 BAIRD: Thank you. I accept my friend's assistance. Just try to get some clarity on the period.

Q. There is a document which I can take you to if you need to verify figures but at my friend's suggestion I want to suggest to you that for the period from
30 31 May 2009 up to and including 31 January 2014 the total amounts paid by GLALC to EMC was approximately 1.65 million dollars. Are you able to agree or disagree with that suggestion?

A. Well I can neither agree nor disagree 'cause I don't have the figures in front of me but I'll accept that if that is a total of all the invoices we've sent them I'll
35 accept that that figures probably right.

Q. I don't want to do a breakdown but just so that there is no lack of clarity if you could turn--

40 BAIRD: If the witness could be given volume (V) which I think is already there.

Q. Is it not?

A. Mm-hmm.

45 Q. And the witness could turn to tab 11 which I think is a couple of tabs before the one that we were just looking at, volume (V).

A. Yep.

Q. Now I'm not suggesting to you that this is a document that emanated from
50 EMC. I'll state for the record that the document at tab 11 is a schedule

prepared by my instructors and that schedule purports accurately to record each and every of the invoices rendered by EMC to GLALC in the period that I mentioned from 31 May 2009 to 31 January 2014. I accept as my friend has said, this is not a memory test and I do not ask you to agree with the contents in every line of this schedule as you sit here but what I am suggesting to you is if I put to you that the total value of the invoices referred to in that schedule rendered by EMC to GLALC was approximately 1.65 million dollars in that period. Is that as a generalisation about the amount that you thought would have been rendered?

10 A. If that's an accurate summation of all the invoices, clearly.

Q. 1.65 million dollars is a very large amount of money to render to any client in a four year period, is it not?

A. It's a significant amount of money.

15 Q. And the value of the services provided by EMC as we have seen has been the matter of considerable debate amongst members of GLALC to your knowledge, is it not?

20 A. Well I wouldn't have said necessarily considerable, I was aware that there were probably three occasions in that period where it was brought up with me and as you can see I responded to those queries. At times there were adjustments to the fees and they were continued and they were approved and rolled over and that was to my satisfaction and to the client's. Otherwise they would have stopped. There is just one point and it's not a major one but the list of those invoices I see goes to 31 January 2014.

Q. Yes? Would some of those invoices have been for the period after the appointment of the administrator?

30 A. We - yes EMC was not actually paid from after August. The administrator David Lombe approved the - my recollection is the August 2013 payment and from that - so yes invoices were rendered because at no point were we - I got no correspondence from the administrator terminating the arrangement so we continued to send invoices but from September to January inclusive none of those were paid.

35 Q. So in fairness the items 24, 25, 26, 27 and 28 on page 1255 should be excluded?

A. And presumably their equivalent, yes if you go then to the page before 'cause they are divided up into the services.

40

Q. Yes?

A. So you would also need to strike out 50, 51, 52, 53 and 54 on the previous page.

45 Q. Thank you, thank you Mr Perkins I accept that.

A. So aside from those inaccuracies if the rest of it's accurate then the total probably is.

50 Q. Those inaccuracies related to invoices rendered but not approved for payment but not paid?

A. --not paid that's right.

Q. You mentioned three occasions and we've seen one of those in writing today. The other two occasions can I ask you what you recollect of those
5 occasions when the matter of the value of the services provided by EMC was discussed?

A. They were discussions so there wasn't - there was - there would have been a discussion with Jack on well two occasions. I know there was that meeting
10 with Michael--

Q. Just dealing with Mr Johnson?

A. Yes.

Q. Doing the best you can recall about when did these discussions occur?

15 A. --I couldn't.

Q. By reference to an event before or after the sale of stage 2?

A. No I really couldn't recall when it was. I just know that during the time of our relationship there was probably a couple of occasions when he raised the
20 issue of fees.

Q. And what did he say to you?

A. He would have said something like, "My Board just wants, you know, wants to be assured" and I think at one point we provided, it might have been that
25 document but no I think there was another time we - there was a breakdown of media work down, a costing of the value of that media work as well all of the other work. I mean the reality of the - of the Heathcote Ridge project is that it was held up in bureaucratic red tape in the Department of Planning until I became involved and made things, you know, through lobbying efforts and
30 what have you shift and that brought that project to the brink of being signed off as a state significant - so in fact, it's on the Premier - I can't remember the date now but listed it in a public media release, listed it as one of the top ten I think land releases that he wanted to happen. So - and that's a billion dollar project. So - and that's quite aside from the media work, the enhancement of
35 Gandangara's communications and it's web sites and various other things but the value of that alone is significant.

Q. So in general answer you're saying that the lobby or lobbying services that you provided were of great value?

40 A. Yes.

Q. And it's difficult to assess those services?

A. Well I can assess it this way. There was one point where Jack during I - one period I forget exactly when it was but he wondered whether we - whether
45 Gandangara should engage a lobbying firm that had closer relations with the New South Wales government. So on his behalf I met with such a lobbying firm and the fee that they quoted for just lobbying and nothing else which would have included a few meetings and phone calls and what have you was \$30,000 a month and their description to me was that - that basically they can
50 change things with a few meetings that can be of - can be worth millions and,

5 you know, hundreds of millions of dollars to a client so if they only charge on a time basis - like even if they charge \$5,000 an hour and one day's work through a couple of meetings shifted things the value to the client was - could be hundreds of millions so they didn't charge that way but their fee for just the lobbying alone, none of the rest of the work that we did was going to be about \$30,000 a month. That was my only experience with commercial lobbying firms and on that basis I'm confident that the services that EMC provided were of value.

10 Q. About when did that experience occur?

A. That would have been in - I'm not sure. Would have some time in 2013 I think but it was never followed up. It was never pursued. The idea never went anywhere.

15 Q. And can you identify the name of the lobbying firm to whom you spoke and before you answer if you would be more comfortable for confidentiality reasons writing its name down on a piece of paper rather than put in the transcript I'm happy to accept that procedure?

20 A. I would - I was going to say I would prefer that because it was a confidential ..(not transcribable)..

25 Q. Can Mr Perkins be provided with a sizeable piece of paper. Please identify Mr Perkins on that piece of paper which will be marked as an MFI, the name of the lobbying firm to which you have referred in confidence in your earlier answer?

A. Do you want it written in big letters so or--

Q. As long as we can read it Mr Perkins?

30 A. Okay. Because - you may have picked up my memory's not great. I would just would like to double-check that, that it's the firm - 'cause there are two firms in my head. I only met with one of them but I just would want to - I could quickly do that by checking the internet but I'm pretty sure it's that one but I would prefer to check it.

35 Q. On that basis I'm happy to do so and I'm very happy when that document's marked for an MFI for Mr Unsworth to notify my instructing solicitor. If their name is a different name he will communicate with my instructing solicitor in the Court accordingly?

40 A. Yep.

BAIRD: I presume that's acceptable. Thank you. Could that be possibly marked as "Confidential exhibit MFI 2".

45 MFI #2 SEPARATE SHEET OF PAPER FOLDED AND MARKED "CONFIDENTIAL"

BAIRD

50 Q. Thank you, you may put those folders to one side you might be pleased to know Mr Perkins. The very last folder and topic I want to broach with you.

Could the witness be shown volume 9C please. And in volume 9C could you turn please to page 2924?

A. Sorry what page.

- 5 Q. 2924. Look at that for the moment Mr Perkins and satisfy yourself that's an email from Mr Wing to yourself dated 26 March 2013 forwarding to you an email in which Mr Wing was copied, being an email from Mr Young to Jennifer Hughes dated also 26 March 2013. Do you see that?

A. Yes.

10

Q. Firstly do you know who Tony Young is?

A. Yes.

Q. Apart from the fact that he's at BDO?

15

A. Yes.

Q. What was Mr Young's role?

- 20 A. They - Gandangara engaged BDO, I think it was to do a review of the - there was an investigation, financial investigation done with a report and BDO was engaged to review that and basically write a report answering - from the auditor actually I think it was, actually now that I think about it, I could be wrong about that, to respond to the issues brought up in that report or audit report to assist in answering the concerns that were raised in that report.

- 25 Q. And one of those concerns in that report was it not the matter of the CEO's remuneration and particularly his bonus?

A. Yes.

Q. And that appears fairly clearly from the heading?

30

A. Yes.

Q. Who was Jennifer Hughes and if it assists was she a solicitor or a partner at Baker & McKenzie?

A. Yes.

35

Q. And she was working together with Mr Young in that process you've just described?

A. Yes.

- 40 Q. And what was the involvement of yourself, firstly and Mr Wing, to your knowledge, secondly in that process?

- 45 A. Well we all, you know, we all worked as a team. This was, you know, this was really about trying to keep Gandangara from basically going under because, I mean certainly from my perspective I was deeply committed to the overall vision that Jack had which was for Aboriginal Land Councils to use the Aboriginal Land Rights Act to get value from the assets that they had and traditionally Aboriginal Land Councils had no capacity to do that and he had a way of getting that capacity, doing small projects to fund larger projects and then using the profit from those projects to pour back into services to
50 Aboriginal people and that's what he did. So we all worked as a team to try to

basically make that happen really.

Q. I understand and accept that but please bear in mind we are dealing with the time period 26 March 2013?

5 A. Yeah.

Q. Which is a time after Gandangara Estate Stage 2 has been sold and a time after Lot 101 Barden Ridge has been sold, correct?

10 A. I can't remember the dates of when things were sold but I'll take your word for it.

Q. I can take you to the accounts then it will show the receipt of approximately \$14.5 million in June of 2011 from those sales?

15 A. No I accept that you're right with the dates, yes.

Q. So what I'm putting to you, this is a separate process, this is a process whereby there is a review taking place of the CEO's bonus?

A. Yes.

20 Q. Well that's, with respect, not a matter in which you normally would have any involvement at all as a consultant to the company would you, sorry, to the Land Council?

A. No completely incorrect.

25 Q. The CEO's bonus?

A. Correct because as - in the sort of work that I do, issues management and crisis management are critical. Every government department that I've worked in and that I've been involved in has them. Big corporations have them. Most organisations of size have them because they're to deal with the reputation of the organisation and the only way that works is for the senior, most senior consultant in this case me but whatever the - and they can be internal or external, is brought into the discussions about what are the difficult issues that face the organisation because this could very well have and may have been subject to media reports. So I basically - I need to know the facts before I answer because I don't want to answer or get my consultants to answer or give any falsifications in those answers, so it's completely appropriate. And not only that from a media perspective but what we were also working on doing was providing a submission to the Minister to respond to the concerns raised by, I think it was the auditor. So there's no point in me helping draft a response to government if I don't know what the problems are. So it's in fact

30

35

40

imminently appropriate that I be involved in it.

Q. Thank you for that. Let's break that down into a couple of its constituent elements. You saw it as part of your role as media consultant to be across the issue of the CEO's bonus?

45 A. Correct.

Q. Now can I assist you that Mr Wing was examined in these proceedings yesterday and I'll relate to you the substance of Mr Wing's evidence and you can agree or disagree with it as you see. Mr Wing said that in relation to the

50

issue of the CEO's bonus a small ad hoc committee of the external consultants was formed, principally himself, yourself and he mentioned two other people who were to assist in the resolution of the issue, is that a fair summary?

A. Yes.

5

Q. So in resolving the issue, what was your role? Was it to approve the amount of his bonus or was it to make sure that there was no negative media publicity about it?

10 A. Certainly it was not the former and it's not - your depiction of the latter would not be accurate. So my role as - you see and I face this regularly, people reduce the role and the role that consultants such as myself play to media. It's not just media, it's actually about issues management and reputation. So in fact my role in that process was, as I've said, to be aware of it and to basically probably give an opinion about, if they are talking about
15 ways of resolving it, what would be the, you know from my guess how any resolution would be seen in the Minister's office or in public or by other stakeholders who had a stake in it or indeed by the members of Gandangara, how any resolution should be viewed.

20 Q. And what was your opinion that you expressed at that time, can you recall?

A. Well I didn't have an opinion about his bonus. The concern would have been was if there were errors made in the calculation of that bonus how that is explained but I would have had no role - it wasn't for me to say you should be paid X or Y so that part of it was definitely not - I had nothing to do with that.
25 Jack would take my head off if I expressed a view on that. So my role is to, I guess, as I said to work out what is the factual and most accurate way to describe it or to describe any inconsistencies therein.

Q. If you turn over two pages to page 2927, at the top of the page you'll see that Mr Wing is sending you another email on 27 March 2013 and when I say
30 sending to you I'm assuming that you are Chris@essentialmedia.com.au?

A. That would be me.

Q. And in that email he's forwarding to you a copy of a second email from
35 Mr Young to Ms Hughes, this one dated 27 March 2013. Take a moment please just to look at the contents of that email?

A. So am I looking at over the page as well or--

Q. Between the foot of 2927 but look over the page if you desire although
40 that's a repeat, I should imagine, of the one that you've seen but my question to you is at a higher level, is it that you wished to be kept informed of this issue?

A. Yes.

45 Q. That's why you were being copied in on it?

A. Correct.

Q. Rather than having a say--

A. Absolutely.

50

Q. --in the accounting resolution of the issue?

A. I certainly had no say in that, it was for the reasons I've already stated.

5 Q. Could I ask this question in closing Mr Perkins, in fairness to give you the opportunity. If there had been complaints as to overcharging by EMC for the services it rendered to GLALC, what is your response to those complaints?

10 A. Well as already outlined, you could go to a standard commercial, for example, lobbying firm that would have charged more than what our total retainer was for all services for just lobbying services. That comparison alone
15 would be evidence of value for money because we did far more than just lobbying. When you calculate based on what is a fairly standard formula for valuing media work, is you get a calculation of the space in the editorial space and because it's editorial and not advertising it is far more credible and read
20 than advertising so you get the value of the space and there's a multiplier of some - multiplier of 10. I think my multiplier, when I spoke to them, was a multiplier of 3. If you look at the outcome of the work that we did, where Gandangara went from being unknown to being regarded as the leading land council, capable of getting together an advisory group with people such as Phillip Toyne and other people of that nature to work on the environmental part
25 of the development through to trying to change the Aboriginal Land Rights Act by getting eminent people such as Father Frank Brennan who I got involved in and did a lot of the coordination and the strategy behind the Morling Review of the Aboriginal Land Rights Act that those services on top of the day to day media work and the strategic work was of very good value given what was paid. But I do understand, and this was a completely understandable, I guess, gap in understanding, that the members of the board would not have had any experience, just as up until Jack came along and they would have had no experience of billion dollar developments either, they would have had no experience in dealing with the sort of work that I do in the consulting. So they
30 could easily, and we had this discussion, they could easily see the value in say the work that, say, Arben was doing or David Wing perhaps because they could see that well we do a development, money in the bank. It's more difficult to quantify reputation influence but certainly - so I understand that that's not uncommon but the Land Council is not the only client where that can be an
35 issue. But in comparison on commercial terms I have no doubt that the value was there. They went from being unknown to being on the brink of a billion dollar development with a very high reputation being able to attract the sorts of people to assist them in advancing their cause that I spoke of before, that I basically coordinated, so I believe it was of high value.

40

Q. So would you accept or reject those allegations or complaints of overcharging?

A. Of overcharging? I reject them.

45 No further questions for this witness Registrar?

DEPUTY REGISTRAR: Any questions? Mr Baird are you seeking the usual order?

50 BAIRD: Yes I am indeed thank you Registrar.

DEPUTY REGISTRAR: Mr Perkins I'll stand your examination over generally with liberty for it to be restored upon giving you 14 days' notice. If it is not restored within the next six months it is deemed concluded, do you understand?

5

EXAMINEE PERKINS: I do.

DEPUTY REGISTRAR: At the start of your examination I made an order for you to sign a copy of the Court's transcript of today's examination. Once it has been prepared an officer of the Court will contact you to arrange a time and a place for you to come and sign that document and you must do so in accordance with the orders I've made today, do you understand that?

10

EXAMINEE PERKINS: I do understand that but does that have to be in Sydney?

15

DEPUTY REGISTRAR: No, no it can be done in Queensland. Most likely in this day and age done by post or even email.

EXAMINEE PERKINS: Okay fine.

20

BAIRD: Just on that, as Mr Unsworth is representing in the normal practice the transcript would be sent to Mr Unsworth for him to arrange with his client for it to be signed. I'm content with that procedure.

25

UNSWORTH: That's convenient.

DEPUTY REGISTRAR: My understanding is the Court will send it to the examinee themselves because Mr Unsworth won't have an appearance on the record.

30

BAIRD: I see, thank you Registrar.

DEPUTY REGISTRAR: So obviously then it's a matter for Mr Perkins to deal with his solicitor at that point in time.

35

BAIRD: And might I also, having regard to the interstate nature of Mr Perkins, that obviously of course the transcript doesn't make a lot of sense without MFIs, if he needs to have access to the MFIs in order to review his transcript we can do that by making the MFIs available to Mr Unsworth but I don't know that we can get them to Queensland.

40

DEPUTY REGISTRAR: We can cross that bridge when and if it comes to it.

BAIRD: Thank you.

45

<THE WITNESS WITHDREW

STOOD OVER GENERALLY

50

DEPUTY REGISTRAR: Housekeeping? Again the documents or MFIs can remain in this courtroom, we are here tomorrow starting at 11 o'clock and we should be here again on Friday, again 11 o'clock.

- 5 BAIRD: And resuming the examination of Ms Cronan at 11 and we will tell Mr Johnson, not before 12 but we'll review that. I'm going to need at least another hour with Ms Cronan and it may possibly be two hours, we'll make that decision as to whether Mr Johnson should come at 12 or 2 tomorrow.

- 10 DEPUTY REGISTRAR: I'm very practical so if lunch needs to be something like 12.30 to 1.30 to at least give more time for Mr Johnson I'm happy to accommodate that, it doesn't have to be the standard 1 to 2 if that's going to be easier in regards to the time restraint, that might be more practical.

- 15 BAIRD: I'm grateful Registrar, I think that might be a very sensible--

DEPUTY REGISTRAR: Then you've got an hour and a half for Ms Cronan, we can then take the adjournment, if it's need be, we can still leave it as the normal and we'll play it by ear so to speak and then we can go from there.

20

BAIRD: I accept that, I'm grateful for that, that works well.

DEPUTY REGISTRAR: That's the only indulgence I can give you tomorrow.

- 25 BAIRD: Could we work on that plan then please Registrar, Ms Cronan from 11, complete her by 12.30, take the luncheon and then Mr Johnson from 1.30 till 4 and then again on Friday.

- DEPUTY REGISTRAR: I'm fine with that. I'll wait for your confirmation
30 tomorrow once you've spoken to both examinees and we'll deal with that.

BAIRD: We'll notify Mr Johnson by email. I'm grateful for that suggestion Registrar--

- 35 DEPUTY REGISTRAR: I think that then is more use of the Court's time and your time as well.

ADJOURNED TO THURSDAY 5 FEBRUARY 2015 AT 11AM