

OPERATION GREER E14/0362

PUBLIC INQUIRY BRIEF

Supreme Court Transcripts

VOLUME 2

HEARING BRIEF



Operation Greer - E14/0362

Supreme Court Transcripts

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IN THE SUPREME COURT
OF NEW SOUTH WALES
EQUITY DIVISION

5 ACTING DEPUTY REGISTRAR BELLACH

THURSDAY 5 FEBRUARY 2015

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

EXAMINATION

Mr J Baird for the Receiver
15 Examinee Cronan appeared in person
Examinee Johnson appeared in person

20 DEPUTY REGISTRAR: Good morning, everyone. Once more this is the
matter of Gandangara Management Services Limited. Mr Baird, I note your
appearance. How are we proceeding today?

BAIRD: Firstly with the continuation of the examination of Ms Cronan, and as I
25 think I indicated to you, Registrar, the intention is that we try to complete
Ms Cronan's examination by 12.30 and take an early lunch in accordance with
the Court's suggestion yesterday, and then start the examination of
Mr Johnson at 1.30 and continue until 4, if that were a convenient course.

30 DEPUTY REGISTRAR: Thank you, let's begin. Ms Cronan, if you'd like to
come forward once more, please, have you got your glasses with you?

EXAMINEE CRONAN: I have - thank you. Do I need to do the Bible again
and--
35

DEPUTY REGISTRAR: I'll just remind you you're still under oath, do you
understand that?

EXAMINEE CRONAN: Yes, I do.
40

DEPUTY REGISTRAR: Do you need me to remake the warning I gave you
yesterday at the start of your examination or not?

EXAMINEE CRONAN: Yes, please.
45

DEPUTY REGISTRAR: Please listen carefully to what I'm about to tell you.

EXAMINEE CRONAN: Yes.

50 DEPUTY REGISTRAR: 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 being 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
5 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 for which you are claiming privilege. Please note, though, that if you give a false answer or refuse to answer a question that's been put to you, you may be liable for perjury or contempt of court, do you understand?

10

EXAMINEE CRONAN: Yep. Thank you.

DEPUTY REGISTRAR: Thank you.

15 <EXAMINEE CRONAN, ON FORMER OATH(11.10AM)

<EXAMINATION BY MR BAIRD

20 Q. Ms Cronan, in the proceedings yesterday we had reached the point where you made reference to some legal advice you thought you had obtained in relation to the payment of bonuses to Mr Johnson, and you said that you thought that you might have a hard copy of that advice at your abode and would make a search for it. Overnight have you been able to make a search and have you had any success in locating that document?

25 A. No, I've been unsuccessful, I'm afraid.

Q. Doing the best you can from recollection, and having thought about it overnight, can you tell me as much as you can about this advice for which you were looking?

30 A. Okay. The advice wasn't in specific to the bonuses that were paid, it was specific to the structure of the corporations and the land council and how the interests of each of those parties related to each other, and whether or not it conflicted the original Lang Rights Act.

35 Q. So it was an advice on wider topics, I take it, than merely the issue of the bonus?

A. Yes, but it would encompass the same sort of scenarios.

Q. Right and about when, to the best of your recall, was this advice given?

40 A. There have been several advisors over the years and I couldn't recall the time frame for it.

Q. I mean are you able to give a year, 2009, 2011, 2012, 2013, are you able to be more specific?

45 A. I would hazard a guess at 2009-10.

Q. As early as that?

A. Yes.

50 Q. Do you know who was the author of this advice?

5 A. We've had quite a few advisers, as I said before. There's been Ellicott QC, there's been Baker & McKenzie, there's been BD Legal, there's been - and I can't remember who the company was that both Gandangara and the Registrar jointly engaged to give advice as well. You may stand a better chance of an answer of that one with Jack, he'd be more up to speed on that, I would imagine.

10 Q. What I'm attempting to ascertain was, as best you can recall, which of these various advisers dealt with the issues that you have just mentioned, namely, that of incorporation of subsidiaries, and also to the extent that you recall the issue of a bonus to the CEO?

15 A. Many of them would have referred to that sort of information, given that there were amendments, and more than one set of amendments during that time frame as well, to the Aboriginal Land Rights Act which would have impacted on the opinion.

20 Q. Ms Cronan, I'm going to show you a document in the hope that the document that I show you might be the document to which you are referring. I'm showing the witness, Registrar, volume 9A of MFI 1, and I'm asking the witness to turn to tab 15 in that volume, please, Registrar?

A. This doesn't have a tab.

25 Q. In that case, the page number is 2377. That you will see from the covering letter is a letter from Mr B Coles QC to Baker & McKenzie dated 5 May 2010?

25 A. Yep.

Q. Behind that is the joint opinion with the heading, "Baker & McKenzie", do you see that at page 2378?

30 A. Mm-hmm.

Q. Take a brief moment to look at that document and to see whether, by looking at it, this might be the advice to which you refer, and if it's of any assistance to you, the section that deals with s 52D of the Act starts on page 2386?

35 A. Have you already asked the question?

Q. I'm asking you to look at this document and the question is, as I said, is this perhaps the advice for which you were looking last night?

40 A. It's quite possible.

Q. Do you have a recollection of seeing the joint opinion which starts at page 2378 at any time before today?

45 A. I've seen all the opinions at some stage or another, so it can get a little confusing after you've read one after the other, et cetera, et cetera.

Q. As you say, if you've seen it, do you think that you saw it in the period shortly after 5 May 2010, sorry, first saw it? Do you think it was brought to your attention at about the time Baker & McKenzie delivered it?

50 A. Yeah.

Q. You were chairperson of GLALC at that time, were you not?

A. Yes, I was.

5 Q. Could you direct your attention to the passage starting on page 2386 under the heading, "The second question"?

A. Yep.

Q. At paragraph 27 that document says, this document relates to the potential application of s 52D of the Act?

10 A. Mm-hmm.

Q. And then continues on with the summary of the substance of the Act?

A. Mm-hmm.

15 Q. You might recall yesterday, Ms Cronan, I made available to you a copy of the Act, I have that copy here and I'm happy for that copy to be handed up to you again if that assists?

A. Yep.

20 DEPUTY REGISTRAR: I give you leave to approach.

BAIRD: Registrar, you still have your copy?

Q. And I direct your attention particularly to paragraph 31?

25 A. Mm-hmm.

Q. You'll see in paragraph 32 there is a view expressed in these terms:

30 "In our opinion, by setting up the subsidiary companies and transferring assets to them in circumstances where the provisions of the companies' constitutions may operate in the way described, GLALC has not reached its duty to ensure that no part of its income or property is transferred in a prohibited fashion. There are a number of reasons for this conclusion."

35

Is that, do you think, the advice or opinion that you had in mind when you gave your answers about relying on legal advice yesterday?

A. Yep.

40 Q. Were there other advices that you can think of upon which you had in mind?

A. As I said yesterday, we've had a great deal of advice from several different people in relation to the structure and all those sorts of affairs. I'm not sure what you're trying to get at the moment.

45

Q. I'm just trying to make sure that we're dealing with the same advice that you had in mind to which you referred to in your evidence yesterday?

A. Okay, well, there have been several, as I said before, because there have been amendments to the Land Rights Act, so that alters the way in which things are affected.

50

Q. I understand that. Because the amendments to s 52D occurred later than 5 May 2010, did they not?

A. I can't remember exactly when they came into effect, but yeah, around about that time.

5

Q. I'm just having my instructing solicitor check that date. The proposition on which this advice is premised, as is clear, is it not, is that assets of GLALC were transferred to a subsidiary company?

A. No, they weren't.

10

Q. I'm sorry, I'll make myself very clear. Would you look at paragraph 32 which I just read out to you--

A. Yep.

15

Q. --which refers to setting up subsidiary companies. If you need to refer back to paragraph 31, please also do so. Paragraph 31 reads,

"The question directs attention to the situation whereby GLALC has or will have established companies into which it will transfer assets",

20

do you see that?

A. That's making an assumption, yep.

25

Q. That's the hypothesis on which this advice is predicated, correct?

A. It appears - yep.

Q. So in order for the opinion expressed in paragraph 32, to which you made reference in your evidence yesterday, to hold water, there has to be a transfer of an asset from GLALC into a subsidiary, correct?

30

A. I'm not understanding what you're saying, I'm sorry.

Q. In your evidence yesterday, Ms Cronan, you said that one of the reasons there was no impropriety or breach of the Act in the payment of a bonus to Mr Johnson was because the payment was made by GMS, not by GLALC, correct?

35

A. Yep.

Q. Do you remember saying that?

A. Yep.

40

Q. This advice is about that very question, is it not, about the payment by the subsidiary out of assets transferred to it by GLALC, correct?

A. Yes, but I'm still not sure where you're coming from.

45

Q. Please direct attention to the question that's being asked and don't try to double guess or second guess what's going to happen. This advice, as it says, is directed to a situation whereby GLALC has or will have established companies into which it will transfer assets, do you see that in paragraph 31?

A. Yes.

50

Q. Which is exactly the situation that you directed my attention to in your answer yesterday, correct?

A. Can I read that again?

5 Q. Of course.

A. Okay.

Q. You will recall yesterday I showed you section 52D of the Act?

A. Yep.

10

Q. You agreed with the proposition that that section prevented GLALC paying a bonus--

A. Yep.

15 Q. --out of its income or property, directly or indirectly, to Mr Johnson being a member of staff, correct?

A. Except that it wasn't GLALC that paid the bonus, it was GMS.

20 Q. Would you attend to my question please, Ms Cronan. I put to you that s 52D prevented the payment of a bonus by GLALC to Mr Johnson, out of the property of GLALC, where Mr Johnson was a member of staff, correct?

A. Yes.

25 Q. You then proffered the same answer as you're attempting to give me now, that section 52 had not been contravened because the payment was not by GLALC, right?

A. Yes.

30 Q. You said that yesterday?

A. Yep.

Q. And you've said it again this morning?

A. Yep.

35 Q. Thank you. What I'm putting to you is that - I'll do it in two steps. You are familiar with Mr Johnson's employment contracts as at May 2010, correct?

A. Yep.

40 Q. There were two of them?

A. Yep.

Q. There was one between GLALC and Mr Johnson dated 1 May 2010?

A. Yep.

45 Q. I can show that to you if you wish to see it?

A. No.

50 Q. And there was a second involving Mr Johnson, also dated 1 May 2010, but on this occasion it was between GMS on the one hand and Waawidji on the other, right?

A. Mm-hmm.

Q. Waawidji, W-A-A-W-I-D-J-I, Pty Ltd? And Waawidji was Mr Johnson's company, right?

5 A. Yep.

Q. The bonuses were actually paid by GMS to Waawidji, that's correct, isn't it?

A. Yes.

10 Q. You knew that?

A. Yes.

Q. I can show you the invoices and the payments if you desire to be satisfied--

A. No.

15

Q. --on that fact, they are all in Court?

A. No.

Q. There were no bonuses paid by GLALC to, firstly, Mr Johnson, correct?

20 A. Yep.

Q. Nor to Waawidji, correct?

A. Yep.

25 Q. Only GMS made the payments?

A. Yep.

Q. GMS did not own the land that Gandangara Estate Stage 2 development, did it?

30 A. No.

Q. It was owned by GLALC?

A. Yes.

35 Q. GMS did not own lot 101 Barden Ridge, correct?

A. Yep.

Q. That was owned by GLALC also?

A. Yep.

40

Q. In June 2011, GLALC completed the sale of both Gandangara Estate Stage 2 and lot 101 Barden Ridge, correct?

A. I'm not sure of the exact date but yep.

45 Q. I think it is important and I'm happy to show you that date to satisfy you. If you don't remember the exact date, let me show you a document? Could the witness have volume (I) A, please? In volume (I) A could you go to tab 9, please, which is the annual report for 2011 for GLALC. I think I took it to you yesterday?

50 A. Yep. Which page?

Q. And I think I showed you two pages that particularly go to page 337, heading "Note 3"?

A. 337 you said?

5 Q. Yes, 337. And in note 3--

A. Yep.

10 Q. --there's reference to proceeds from sale of land assets and there's reference to the Stage 2 development of \$14-odd million and 101 Barden Ridge of \$2.5 million, and if you wish to see those matters referred to in the statement of cash flows, they appear at page 323?

A. Mm-hmm.

15 Q. On the basis of that information, I put to you that the sale of the Stage 2 development and lot 101 Barden Ridge were completed in about June 2011, in any event, within the 2011 financial year?

A. Yep. Based off that information that's correct.

Q. I beg your pardon?

20 A. I said based off that information that's correct.

Q. Thank you. On that assumption, the bonus provisions in the Waawidji agreement with GMS would be enlivened for the 2011 financial year, right?

25 A. After the audited statement, yes.

Q. Might the witness be shown the Waawidji which is at volume (II) in - I think I showed you this document yesterday also, Ms Cronan.

A. Which one?

30 Q. In volume (II) please go to tab 2?

A. Yep.

Q. Tab 2 has the agreement between Waawidji and GMS to which I have referred?

35 A. Yep.

Q. Do you see that?

A. Yep.

40 Q. I think for the sake of fairness I might as well remind you that I also showed you the document at tab 1 yesterday which was the agreement between Mr Johnson and GLALC?

A. Yep.

45 Q. And I think I drew your attention yesterday to the sections of each of those agreements that dealt with performance assessment?

A. Yep.

50 Q. And in tab 2, if you look to page - we'll start with schedule 1 which is the page numbered 778, but it actually follows immediately after 765, we went

through that yesterday?

A. Yep.

5 Q. Schedule 1 shows the annual remuneration of Mr Johnson to be \$100,000 plus superannuation, do you see that?

A. Yep.

Q. And over the page in part 7, the page numbered 779, is the heading "Performance Assessment"?

10 A. Mm-hmm.

Q. I think we discussed yesterday the procedure for Mr Johnson to achieve certain KPIs in order to be entitled to be paid that bonus, correct?

A. Yep.

15

Q. And there was a procedure whereby independent members of the board you said, not yourself, conducted that assessment and thereafter there was a process of calculation that was undertaken and verified or completed by the auditor, right?

20 A. Well, the audited statements were used, yeah.

Q. Yes, the end of the process was that the auditor certified a certain amount in accordance with the calculations that are set out in part 7 headed "Performance Assessment"?

25 A. Yep.

Q. What I am putting to you, Ms Cronan, is that the payment of the bonus to Mr Johnson came out of the proceeds of sale of the properties owned by GLALC indirectly, would you agree with that?

30 A. I don't know that I do.

Q. You said the payment came directly from GMS to Mr Johnson for his bonus for the 2011 year?

A. Yep, I also spoke yesterday about unimproved land as well.

35

Q. The payment came from GMS to Mr Johnson, correct?

A. Yes.

Q. That's a common fact?

40 A. That's a given.

Q. GMS had no assets of its own, did it?

A. No, it didn't.

45 Q. All the property was owned by GLALC?

A. Yes, it did.

Q. GMS provided services to GLALC, correct?

A. Yes.

50

Q. That was the purpose of its incorporation?

A. Yes.

Q. For which it was entitled to be paid, correct?

5 A. Yes.

Q. Do you need to see the GMS service contract with GLALC to be satisfied as to what?

A. No.

10

Q. The only monies that GMS received came from GLALC for services provided by GMS to GLALC, right?

A. Yep.

15 Q. The monies that GLALC paid to GMS came from the proceeds of sale of Stage 2 development and lot 101 Barden Ridge, correct?

A. I'll get you to repeat that if I could.

Q. The monies that GLALC used to pay GMS--

20 A. Yep.

Q. --came from the proceeds of sale of the land at Gandangara Estate Stage 2 development and lot 101 Barden Ridge, correct?

A. Yes, yes.

25

Q. In those circumstances, Ms Cronan, is it not clear that the payments of the CEOs bonus to Mr Johnson came indirectly from GLALC?

A. No.

30 Q. They came, you just agreed, from GLALC to GMS?

A. I agreed that that's where GMS got its money from.

Q. Thank you?

A. I don't agree that that's an indirect payment from GLALC to Mr Johnson.

35 I believe - that's like me paying you for something and then me telling you what you can do with your money.

Q. What I'm putting to you, Ms Cronan, is that this was a scheme devised to flat(?) the operation of section 52D of the Act, right?

40 A. No, that wasn't what it was set up to do.

Q. The whole purpose of this device was to pay a bonus to Mr Johnson, right?

A. Sorry?

45 Q. Stripping aside corporate entities, the purpose of the Waawidji bonus arrangements in that agreement was to permit a bonus to be paid to Mr Johnson by his company Waawidji, correct?

A. No that wasn't why it was set up that way thank you.

50 Q. Why else would Waawidji have a bonus performance, a bonus agreement

both as to performance results and a results basis. Why else does the Waawidji agreement have those provisions other than it was in contemplation that Mr Johnson via Waawidji would receive those bonuses?

5 A. I could ask you the same question about the other contract that he had that also has the same arrangement in it. They're duplicate contracts.

Q. That's right.

10 A. The only difference is one says Mark Johnson, the other one says Waawidji.

Q. Let's deal with the first one then seeing as you have raised it Ms Cronan. Can you turn back in the volume before you, volume (II), to tab 1 and turn in that volume to page 7 - pages numbered 763.

15 A. 63 did you say?

Q. 763. I think we established yesterday this is identical with the pages that appear at page 778 in the Waawidji contract, right?

A. Yep.

20 Q. You have already agreed with the proposition that GLALC could not pay a bonus to Mr Johnson out of the proceeds of sale of lands that he owned?

A. He didn't own land.

25 Q. Ms Cronan you have already this morning agreed with the proposition that GLALC owned the land at Gandangara Estate Development 2 and Lot 101 Barden Ridge. Do you need to be reminded of that?

A. No I don't but you did say just then that he owned the land.

30 Q. I said that - I will repeat it, I think you misheard me. I will give you possibly that. Mr Johnson is not entitled to be paid by GLALC a bonus if that bonus is out of the proceeds of sale of land owned by GLALC, correct?

A. He is not allowed a bonus from GLALC of any kind of any performance.

35 Q. And that includes out of proceeds of sale of land owned by GLALC right?

A. Yes.

40 Q. Thank you. So if GLALC sells property owned by it the performance bonuses that are set out at pages 763 and 764 cannot apply so as to entitle Mr Johnson to be paid that bonus out of the proceeds of sale, correct?

A. Yes.

Q. They have no application in that event?

A. Yes.

45 Q. However, in Waawidji you say they do have application?

A. Yes because Waawidji is with the management services.

Q. That's right and because the payment, you say, comes from GMS, not from GLALC, right?

50 A. Yes.

Q. But GMS has no assets of its own, correct?

A. Yes.

Q. The only moneys it receives is moneys from GLALC?

5 A. Yep.

Q. The moneys that GLALC - you have agreed with this - pays to GMS came in the 2011 year primarily out of the proceeds of sale of Gandangara Estate Stage 2 and Lot 101 Barden Ridge, correct?

10 A. That's not the only income that ..(not transcribable).. had.

Q. You agreed with that proposition that the--

A. Primarily - the primary source of income would have been from that yeah.

15 Q. Yes the primary source of income was that. And therefore the payments to Mr Johnson came firstly from the proceeds of sale of GLALC Property via GMS in turn via Waawidji to Mr Johnson, correct?

A. No. And that was very convoluted too.

20 Q. The process was a three-step stage. GLALC sold land?

A. Yep.

Q. It paid moneys to GMS?

A. For services rendered, yes.

25

Q. It paid moneys to GMS?

A. Yes.

Q. GMS paid moneys to Waawidji?

30 A. Yep.

Q. And Waawidji paid moneys to Mr Johnson?

A. I don't know what Waawidji did, don't ask me to give an opinion--

35 Q. You knew that Waawidji was Mr Johnson's entity did you not?

A. Yeah but I don't know that Waawidji has actually made payments to Mr Johnson.

40 Q. I am putting to you that this entire process of diverting the payment via GMS and Waawidji was a simple attempt to get around the prohibition in section 52D that invalidated the operation of the performance assessment in the GLALC/Johnson contract at tab 1?

A. I would argue that the contract existed before 52D did.

45 Q. Can you take it from me - what 's the date please - section 52D came into operation in 2006, all right, that's what the Act says, so it was certainly in contemplation in 2011 and to be quite clear the advice I've just directed your attention to in volume 9A at page 2386, that's an advice dated 5 May 2010 refers in its terms to section 52D. So let us have no mistake about the
50 potential operation of section 52D as at 30 Jan 2011 please.

A. Okay.

Q. How did the Waawidji contract with GMS come into existence, what was your involvement in that?

5 A. It was drafted when the review took place, at the same time.

Q. At whose request was this agreement brought into existence?

A. It's not unusual for an employee to want to be contracted as well.

10 Q. Would you - I will deal with this question in this way. In 2007 there was only one contract in relation to Mr Johnson's services correct?

A. In 2000?

Q. In 2007 when Mr Johnson started--

15 A. Yep.

Q. --he only had one contract?

A. That's my understanding yep.

20 Q. I appreciate we had your evidence yesterday that you were not integrally involved in that agreement however you had as a member of council at least some knowledge of it?

A. Mm-hm.

25 Q. In 2010 a review takes place right?

A. Mm-hm.

Q. And in 2010 as you can see from tab 1 there is a second or renewal of the contract between GLALC and Mr Johnson. Please look at tab 1 if you need to satisfy yourself about that?

30 A. No.

Q. And you can see from page 777 that that agreement bears your signature that I showed you yesterday?

35 A. Yep.

Q. And you can see from the schedule 1 that the effective date or the commencement date was 1 May 2010?

A. Mm-hm.

40

Q. In addition to that contract there is a second contract, the one at tab 2 that we have been looking at this morning?

A. Yep.

45 Q. It is also signed by yourself as appears at page 765?

A. Yep.

Q. And it also has a commencement date of 1 May 2010 that appears in schedule 1 at page 778?

50 A. Yep.

Q. Right now as you signed that agreement I take it you had some involvement in the entry of GMS into that agreement?

A. Yep.

5 Q. What was that involvement and how did this agreement come about?

A. The same way the other one did. It went to the board, they both went to the board at the same time.

10 Q. Can I go back a step please and say why two contracts instead of one in 2010?

A. Because for one 2007 there was no - there wasn't all the corporate structure that there is today or was more recently. So there wouldn't have been a GMS 2 to have a contract with.

15 Q. Did the incorporation of GMS increase Mr Johnson's workload to your knowledge?

A. Yeah.

20 Q. Were not exactly the same services being provided but only via two corporate entities instead of one?

A. No.

Q. What were the additional services that Mr Johnson was providing via Waawidji to GMS?

25 A. The health services, wouldn't have had health services in 2007--

Q. No, Waawidji to GMS?

A. We didn't have Marumali in 2007, we didn't have the transport straightaway.

30

Q. Sorry, just focus on the period May 2010?

A. Yep.

35 Q. At that stage those other two companies you mentioned are not incorporated, they don't come along until 2012.

A. Transport was.

40 Q. In relation to the work being done by Mr Johnson in about May 2010 why was it that you on behalf of each of GLALC and GMS signed two contracts when three years earlier there had only been one contract?

A. Because it was a request that was approved by the board.

Q. It was a request by Mr Johnson?

A. Yep.

45

Q. And he asked for two salaries?

A. No he asked for one salary to be divided in two.

Q. Do you remember what he salary was under the 2007 agreement?

50 A. No I don't remember the exact figure.

Q. Was it more or less than \$80,000?

A. I didn't know the exact figure.

5 Q. Can you recollect whether, for the period 2007 to 2010 Mr Johnson's salary being paid by GLALC was more or less than \$80,000 plus superannuation?

A. As I said I wasn't involved in that contract, I'm not sure what the amount was on that.

10 Q. I am suggesting to you that what he was paid was less than \$80,000 plus superannuation, would you be able to agree or disagree with that suggestion?

A. I would agree because I have no other thing to go by.

15 Q. And then in 2010 as appears from page 762, Mr Johnson's salary from GLALC is \$80,000 plus super and at the same time via Waawidji GMS is paying him \$100,000 plus super.

A. Mm-hm.

20 Q. Would there have been some difficulty do you think in obtaining the approval of members of the council to payment of CEO's remuneration for a single combined amount of \$180,000 in May 2010?

A. It wasn't a decision for the members.

25 Q. Do you think members might have been somewhat upset at the thought of paying their CEO \$180,000 in May 2010?

A. Probably.

30 Q. Was that the reason why it was split into two contracts, one for 80,000 and one for 100,000 via different entities?

A. No that's not why it was .

Q. Did Mr Johnson - Mr Johnson it was who asked that his salary be divided, is that what you said a moment ago?

A. Yep.

35 Q. Did he give you a reason for that division?

A. It was more convenient for his company to be receiving the moneys as well.

40 Q. Was it less transparent, was that the idea?

A. No it wasn't less transparent. It probably was in the eyes of some but that's not what the intention was.

45 Q. When you as chairman of the board of GLALC - stopping there for a moment - as chairman of the board of GLALC you were ex officio director were you not of GMS?

A. Yes.

Q. There is a - excuse me a moment.

50 A. All board members of the land council were board members of the corporations.

Q. That's right it says so under the constitution does it not?

A. Yes it does.

5 Q. Clause 8 of GMS's constitution states that a director of GLALC is a director of GMS, that's correct isn't it?

A. That's correct.

Q. You don't need to see the constitution to--

A. No I don't.

10

Q. --verify that?

A. That was the same with all of the corporations.

Q. That's right?

15

A. Yeah.

Q. And that's why you had power of course to sign the document at tab 2 on behalf of GMS?

A. Yes.

20

Q. Okay so in entering into this agreement on behalf of GMS you knew that Mr Johnson was receiving and to be paid a salary of \$80,000 plus superannuation under the agreement of the same day between he and GLALC right?

25

A. Mm-hm.

Q. And at the same time Mr Johnson via his company Waawidji was to be paid \$100,000 plus superannuation from GMS right?

A. Mm-hm.

30

Q. And you also knew that the bonus provisions in the GLALC/Johnson employment contract were caught by section 52D?

A. Mm-hm.

35

Q. However you had you say in your mind an advice obtained about a year earlier you say to the effect that if the payment was made by a subsidiary of GMS to an entity of Mr Johnson it was not caught by section 52D right?

A. Repeat the question.

40

Q. That's what you said earlier wasn't it, that if a payment was made not by GLALC but by GMS and it was made not to Mr Johnson but to Waawidji then it wasn't caught by section 52D?

A. No. You're making - no.

45

Q. What did you say, that's what you said yesterday as I understood it, please correct me if I am wrong?

A. I said that Mr Johnson received a bonus through GMS.

50

Q. Because the payment was from GMS it was not caught by section 52D that's what you said?

A. Yes.

Q. Thank you and what I am putting to you is that the advice that you sought to rely on does not in fact state that?

5 A. Okay.

Q. The advice that you purport to rely on refers to the situation where GLALC had transferred assets into companies it had established but in this case there was no transfer of assets to companies established by GLALC was there?

10 A. (No verbal reply)

Q. The answer to that question was no, is that correct? Is that what you just said?

A. I didn't quite understand it actually.

15

Q. In this case there was no transfer of assets by GLALC to GMS being a company established by it?

A. That's correct.

20 Q. So therefore those parts of the Waawidji/GMS employment contract of 1 May 2010 pertaining to Mr Johnson's bonus set out at pages 778 and 779 could only be saved from the operation of section 52D if the payments to be made came from assets that had been transferred to GMS, right?

A. There were no assets transferred to GMS.

25

Q. Thank you.

A. I thought there were--

30 Q. And because there were no assets transferred to GMS the advice to which we have been referring this morning of 1 May 2010 starting at page 2378 simply had no operation in those circumstances did it?

A. No.

35 Q. So it was wrong of you to say in your evidence yesterday that you had legal advice to the effect that these payments were permissible and that section 52D did not apply. That was incorrect to state that was it not?

A. Just because you haven't got the right piece of advice that we were referring to doesn't make it wrong what I said--

40 DEPUTY REGISTRAR: in fairness to the examinee, the examinee has said repeatedly that there are numerous pieces of legal advice. They may not be this one that you are referring to but there may be multiple and other ones that she has referred to and I note that for the record, thank you.

45 BAIRD: I am about to come to that exactly.

50 Q. So I have taken you fairly and squarely to that advice starting at page 2378 and I thought you said in your evidence this morning that was not only an advice you sought at the time but that that was an advice that you had in mind when you gave your evidence yesterday correct?

A. I think I said it was possible.

Q. Now you say there might be other advices which you--

5 A. No I did say from yesterday that there was several advices from - from legal experts I suppose you'd call them and I did say that I wasn't sure of all the people that had provided them. I did give some names of the companies this morning.

10 Q. What I am putting to you is fairly and squarely when you were chairperson of GMS on 1 May 2010 you did not have any legal advice which permitted a bonus payment to be paid to GMS - by GMS to Waawidji where that bonus came out of the proceeds of sale of GLALC property?

A. You can make that assumption if that's what you choose to do.

15 Q. I am putting to you and that was your state of mind in May 2010 was it not?

A. No it wasn't.

Q. You knew that this purported bonus in the Waawidji contract was simply a device to skirt around the provisions of section 52D didn't you?

20 A. No that was not the case at all.

Q. There was an intention on the part of Mr Johnson to get around the Act was there not, to your knowledge?

25 A. It was not his intention to get around any Act.

Q. And it was your intention that he be paid a bonus, correct?

A. Yes.

30 Q. And for that purpose you were prepared to use this device to obviate the provisions of section 52D to prevent them from having operation, correct?

A. That was not the case at all.

Q. You said that in your role as chairperson of GLALC you kept a fairly close eye on what was happening at an operational level?

35 A. Mm-hm.

Q. I am using general terms, at that stage, but that you were fairly hands on CEO is that fair to say?

40 A. Hands on the CEO

Q. You were fairly hands on in terms of the CEO were you not?

A. Yes I was.

Q. You supervised him?

45 A. Yep.

Q. You didn't just sit back and let him do whatever he wanted and not report back to you?

50 A. No.

Q. In the constitution you are aware that there are provisions that govern the performance of the CEO correct?

A. Yes.

5 Q. Do you need to be reminded - it might be fair to the witness to be shown volume (VII) tab 7.

A. Will I be needing these other two volumes again?

10 Q. Probably not, just put those to one side thank you. In tab 7 of volume (VII) which is the GMS constitution--

A. Page?

Q. Can you turn please to page 1649. There is a heading halfway down the page, duties of chief executive officer?

15 A. Yep.

Q. There's a number of things. I'm not going to read each of those out, they are quite lengthy but can I take it in general terms that you as chairperson had an understanding of the duties and responsibilities of the CEO?

20 A. Yep.

Q. Yesterday I took you to the delegation of authority to Mr Johnson?

A. Mm-hm.

25 Q. What supervisory role did you exert over Mr Johnson in terms of his retention of outside consultants and contractors, did you check what he was doing?

A. Yes.

30 Q. Did he report back to you when he proposed to retain an outside consultant?

A. Yep.

Q. Were you kept informed as to the terms of their consultancy?

35 A. Yep.

Q. And how much they were to be paid for the services they provided?

A. Yep.

40 Q. So you knew what was going on in at least general terms?

A. Yep.

Q. When it was proposed to retain the services of a consultant did Mr Johnson tell you that there was an agreement to be entered into?

45 A. Yes he did.

Q. I can show you the various - I will go back a step. There were three at least major outside consultants to GLALC in the 2010 to 2012 period?

A. Yes.

50

Q. Being in particular Dixon Capital - it was Mr Nguyen right?

A. (No verbal reply)

Q. Sorry you have to say yes or no.

5 A. Yes.

Q. Also, Essential Media Communications, who was Mr Perkins?

A. Yep.

10 Q. And also Ardon Management right?

A. Yes.

Q. And Dixon Capital and Ardon Management were integrally involved in the development of Gandangara Estate State 2 and Barden Ridge?

15 A. Yes.

Q. Were you aware that certainly Dixon Capital entered into a number of agreements with GLALC in relation to the development of Gandangara Estate State 2 and Barden Ridge?

20 A. Yes.

Q. Do you still have volume (II) close by, it was just in front of you. By way of example could you turn to tab 7 in volume (II). Thank you. Go to tab 7 in that same volume you will see at page 871--

25 A. Sorry which tab was it again?

Q. Tab 7. At page 871. You will see there is a proposal by Dixon Capital?

A. Yep.

30 Q. That continues for a number of pages and concludes at page 877?

A. Yes.

Q. And it's dated 15 May 2007?

A. Yep.

35

Q. I appreciate that you were not a chairperson of GLALC at that time. But that was the first contract taken between Dixon Capital and GLALC?

A. Yep.

40 Q. Turn over the page to tab 8, page 878, you will see there is a second proposal from Dixon Capital to Mr Johnson of GLALC?

A. Yes.

Q. And that is dated 17 June 2009?

45 A. Yep.

Q. And I take it that you were chairperson of GLALC by June 2009?

A. I can't remember the exact month. But it was some time in 2009.

50 Q. Let's turn to tab 10. There is another proposal for renewal of retainer by

Dixon Capital to, on this occasion GMS, care of GLALC?

A. Mm-hm.

Q. It's dated 8 August 2010. That's at page 881.

5 A. Yep.

Q. By 8 August 2010 you were chairperson of GLALC and also thereby director and presumably director and presumably chairperson of GMS as well?

A. Mm-hm. Yes.

10

Q. Do you recollect any discussions that you had in the period leading up to August 2010 with Mr Johnson about the renewal of the Dixon Capital retainer?

A. Yes.

15 Q. And what did Mr Johnson say to you?

A. What he was doing, what the amounts were and along the lines of too tight-fisted with money and that yes you must pay for what you receive.

Q. If you turn in particular to page 883, two pages further in that tab, you'll see there's reference there to a success fee payable in respect of the GLALC development, do you see that?

20

A. Yep.

Q. And did Mr Johnson inform you of that matter on or shortly prior to 8 August 2010?

25

A. Yep.

Q. So you knew about that?

A. Yes.

30

Q. And in general in terms as we discussed yesterday Mr Wing would attend meeting of the board at least in part from time to time--

A. That's correct.

35 Q. --make reports to the board and keep them informed as to progress of the developments?

A. That's correct.

Q. Having informed you, what authority did Mr Johnson have from GLALC or GMS to enter into the contract with Dixon Capital in the terms that appear at pages 881 to 885?

40

A. I'm not quite understanding the question that you're asking.

Q. Did he have authority to enter into this agreement in terms of that proposal for continuation of retainer?

45

A. Yes, he would have been given that authority by the board.

Q. You'll see the document at 881 is entitled "revised retainer agreement"?

A. Mm-hmm.

50

Q. Did Mr Johnson by himself without reference to the board have authority to enter into this agreement?

5 A. I would have to check the minutes, go back and have a look at them. I can't remember offhand. But he would - Jack was really good with bringing stuff to the board, getting those motions where required and putting the information up ..(not transcribable)..

Q. My question was slightly different.

10 A. Okay.

Q. What I'm trying to find out is whether Mr Johnson firstly needed to obtain approval for the board and secondly did obtain approval from the board, or did he have power to enter into agreements on his own without reference to the board?

15 A. There was no collective motion to enter into agreements on his own unless he was specifically given that by the board in a particular reference to a contract. So in reference to if we sent him off to do something we would make that part of the motion, if that makes sense at all. Sorry, I'm not talking very clearly I don't think. Okay, so the motion at board level was for all contracts to
20 be entered into by the both of us, that's not always possible and when dealing with the consultants and employees and whatnot it was at times relevant for the CEO to be given that authority by the board.

Q. And in exercising that delegation of authority did he have to report back to the board for it approval or would he simply do it, to use the vernacular, off his own bat?

A. He wouldn't do things off his own bat.

Q. So in your view is this a fair summary of what you're saying, that even if
30 Mr Johnson had power to sign or enter into this agreement he still needed to get board approval at some stage?

A. Exactly.

Q. Whether before or after it still had to be ratified by the board?

35 A. He would have to get it beforehand.

Q. So the board or at least the chairperson, yourself, had to be informed of the purposes and the extent of the revised retainer agreement as at 8 August 2010 from Dixon Capital?

40 A. Exactly.

Q. But in any event as it transpired he did in fact inform you at least--

A. Yes.

45 Q. --of these matters, you were aware of them?

A. Yes.

Q. And can I take it that you approved them?

A. Yes.

50

Q. Did you have a view yourself as to the value of the services being provided by Dixon Capital as at August 2010?

A. I believe I did.

5 Q. What was that view?

A. That he was providing us with the project management of our developments quite extensively with each of the contractors and other consultants in various fields for the development out there.

10 Q. My question was directed to as to the value of the services. Was it good value, was he expensive, was he cheap, was he not doing his job? What was your view?

A. You get what you pay for and we have a high expectation.

15 Q. Can I put this to you, that Dixon Capital was paid rather a lot of money in relation to the development of those two properties, right? Would you agree with that?

A. He was being paid well.

20 Q. He was definitely getting paid well. And were the value of those services good value in your view?

A. Yes.

25 Q. So you approved the entry into these retainer agreements, particularly the one that we just looked at as at August 2010?

A. Yes. As I said before you get what you pay for.

Q. Turning now to EMC and Mr Perkins, and if you want to refresh your memory you can turn to tab 11 in that same volume.

30 A. ..(not transcribable)..?

Q. Same, yes, turn over to tab 11 if you need to refresh your memory.

A. Yeah.

35 Q. Tab 11 at page 886 I'm showing you the first quote from EMC dated 20 February 2009. '

A. Yeah.

40 Q. In relation to EMC did a similar position pertain, namely that Mr Johnson required board approval in order to enter into any contractual arrangement on behalf of GLALC for the retention of EMC?

A. ..(not transcribable).., yeah.

Q. It did?

45 A. It applied regardless of who the consultant was.

Q. In relation to the retention of EMC starting from about February 2009 were you aware - were you made aware by Mr Johnson of the terms on which it was proposed to retain EMC's services?

50 A. Yeah.

Q. You were aware of those?

A. Yeah.

Q. And did you approve of GLALC's retention of GMC?

5 A. EMC.

Q. EMC, thank you.

A. Yeah. Yeah, I did.

10 Q. Yes?

A. Yes.

Q. The returns of that retained changed, did they not?

A. Yes.

15

Q. Over the following period?

A. Yes.

Q. If you can turn over to tab 12 starting at page 889.

20 A. Mm-hmm, yeah.

Q. As at 22 May 2009 you'll see that's a submission by EMC to GLALC?

A. Yes.

25 Q. How would you describe the services proposed to be provided by EMC at that time? Just in general terms.

A. Professional, they were--

Q. Media consultancy or lobbying or advisory or--

30 A. All of the above. So they were doing many projects for us in regards to lobbying, in regards to media, basically getting the message out there for the general media, our members newsletter, a video that was produced for the organisation as well for promotional purposes. Yeah, there was a great deal of stuff that was going on.

35

Q. If you turn over the page. As at page 890 you'll see there is reference to a strategic communications retainer?

A. Mm-hmm.

40 Q. For which he was to be paid an amount of \$6,000 per month?

A. Mm-hmm.

Q. And then there is a media relations package?

A. Mm-hmm.

45

Q. For an additional amount of \$2,000 a month?

A. Yeah.

50 Q. And then there is reference to some newsletters and there is a video and other things?

A. Yeah.

Q. That scale of charges, was that a matter which you as chairperson of GLALC was aware of in May 2009?

5 A. Yes.

Q. Or at least as at 22 May 2009?

A. Yes.

10 Q. Was that a matter you discussed with Mr Johnson?

A. Yes.

Q. And what was Mr Johnson's view as to the charges proposed to be made by EMC?

15 A. He was in favour of it.

Q. And what was your view?

A. My usual view, tight-fisted, but eventually you must get what you pay for.

20 Q. Did you think it was rather a lot to be paying for these services?

A. I did because I felt like we could do some of it ourselves. But yeah, you can't be everything to everybody all the time, so at some point you must bring in professional assistance.

25 Q. So that retainer is - if you add those numbers it's 6,000 plus 2,000 plus 1,000 a month for the period June to December 29. That's \$9,000 a month to EMC?

A. Mm-hmm, yeah.

30 Q. Did you have a view yourself that it was rather a lot of money to be paying Mr Perkins of EMC at that time?

A. There were times when I felt that that was a bit excessive.

Q. Did you express that view to anybody?

35 A. Yes.

Q. To whom?

A. To Jack, to the board.

40 Q. And to the board?

A. Yeah.

Q. So this was a matter that was discussed at board level?

A. Yes, it was.

45

Q. What was the range of opinions at the board in relation to payments of this magnitude to EMC?

A. The benefits outweighed.

50 Q. So is it fair to say that although it was expensive it was still worth, is that a

colloquial way of putting it?

A. Yes. Probably, yeah.

5 Q. And certainly this agreement of May 2009 I take it the approval was given by the board to Mr Johnson to enter into or to accept this submission in May?

A. Yes, yes.

10 Q. Now I want you to turn forward in that tab, please Ms Cronan, we'll go firstly to tab 13 just for completeness and you'll see tab 13 is dated 2 December 2009?

A. Mm-hmm.

Q. That at page 893.

A. Yeah.

15

Q. I just want you to, in the light of the evidence you've already given, confirm that you saw that proposal, that submission, at about that time?

A. Yeah.

20 Q. And that you approved Mr Johnson accepting that submission?

A. That's correct.

Q. And you'll see the retainer amounts appear on pages 894 and 895?

A. Yeah.

25

Q. And they're basically similar to the ones that we were just speaking about at tab 12?

A. Yeah.

30 Q. The next document at tab 14 on page 897 is a submission from EMC of 6 October 2010 entitled "Heathcote Ridge project"?

A. Yeah.

35 Q. It's my understanding that this submission did not itself proceed on its own, is that correct? Let me assist. From what I understood from Mr Perkins yesterday, instead of this submission proceeding separately instead that Heathcote Ridge project was rolled up into what was called an all up proposal, which is the proposal that you see at tab 15 dated 4 November 2010 at page 901.

40 A. Yeah.

Q. That's the one that I want you to address yourself, please.

A. Yeah.

45 Q. Take a moment to look at the agreement at tab 15 and in particular the retainer arrangements at 903.

A. Yeah.

50 Q. You'll see at page 903 the retainer amount has gone up to \$15,000 a month for the strategic communications retainer?

A Yeah.

Q. And the media arrangement relations retainer has gone up to 10,000 a month?

5 A. Yeah.

Q. They're pretty substantial increases from the amounts at tab 13, are they not?

10 A. Yeah.

Q. Did you have a view on that increase at that time?

A. Yes.

Q. What was your view?

15 A. Again I'm tight-fisted, I don't like parting with money. But yeah, it was something that we had to do ..(not transcribable)..

Q. But in--

20 A. You do understand what the Heathcote Ridge is, don't you?

Q. Please explain.

A. It's several hectares of land that would have become a new suburb it's so big, schools and hospitals and medical centres and all the infrastructure that's required for a suburb. So there's quite a deal of work to be done.

25

Q. Mr Perkins wasn't giving any - doing any work in relation to the development of Heathcote Ridge, was he?

A. He was doing a lot of lobbying for it.

30 Q. So you'll see, as I showed you a moment ago at tab 14, the separate submission for Heathcote Ridge was for a monthly retainer of \$6,000 a month, that appears from page 899?

A. Yeah.

35 Q. But in the roll-up the previous \$6,000 a month at tab 13 plus the proposed \$6,000 a month at tab 14 now find their way into \$15,000 a month at tab 15?

A. Yeah.

40 Q. And in addition, if you look at the foot of page 902, EMC was to perform various services for other Aboriginal land councils?

A. Yeah.

Q. Including Deerubbin and La Perouse?

45 A. Yeah.

Q. Were you aware of that, Ms Cronan?

A. Yeah.

50 Q. What was your view on GLALC or GMS paying moneys to EMC for services to be provided by EMC for the benefit of Deerubbin and La Perouse

Aboriginal land councils?

A. We had an agreement with those councils.

Q. And what was that agreement?

5 A. I think you'd be aware of the agreements.

Q. I'm asking you. You just said that you had an agreement with those councils and I'm asking what was those agreements?

A. To assisting with their developments.

10

Q. Yes, but in relation to the services of Mr Perkins/EMC and other consultants--

A. He's part of our team.

15 Q. --what was the relevant parts of the agreements with firstly Deerubbin and secondly La Perouse LALCs?

A. Well, I really find it offensive to be talking about Deerubbin with the director in the room from Deerubbin.

20 BAIRD: Can the witness be directed to answer the question, please Registrar.

DEPUTY REGISTRAR: Ms Cronan, I'll direct you to answer the question. I note your reservations in doing so, but these are open court proceedings where any member of the public can observe those proceedings--

25

EXAMINEE CRONAN: Even if it's to the detriment of the land council, to Gandangara?

DEPUTY REGISTRAR: As I explained to you yesterday, these proceedings are information gathering exercises, okay? This will enable the receivers to point out possibly whether any causes of action exist against other organisations, being other land councils for example, and I'm now reminding you of my direction for you to answer the question.

30

35 EXAMINEE CRONAN: Okay.

BAIRD

Q. Let me lead into it this way, and I hadn't appreciated there was any controversy about this. I directed your attention to the final paragraph on page 902 in the submission of EMC dated 4 November 2010 whereby EMC made it clear that not only was it providing services to GLALC but it was going to provide services for the benefit of Deerubbin and La Perouse.

A Yeah.

45

Q. And I asked you if you were aware of that and you answered in the affirmative.

A. Yeah.

50 Q. And I asked you why that was and you gave the answer because GLALC

had agreements with Deerubbin and La Perouse.

A. Yeah.

5 Q. My question was simply what is the nature of those agreements, firstly with Deerubbin and secondly with La Perouse, in so far as they related to chart work to be done by EMC?

A. Yeah, and it was part of the same - it was part of the package that we would help them do their developments.

10 Q. Right, and?

A. And EMC is part of that team that assist in that process.

Q. So GLALC was assisting La Perouse and Deerubbin in their land developments, is that correct?

15 A. Yep, GMS--

Q. And GMS?

A. Yeah.

20 Q. And for that purpose consultants to GLALC were also assisting Deerubbin and La Perouse, is that right?

A. Yeah.

25 Q. What was the quid pro quo for that, if I might ask, what's the other side of the ledger? Were these services to be provided for free or were they to be paid for?

A. They were to be paid for.

30 Q. So what was the arrangement in relation to the payment of GLALC for the services to be provided by EMC for the benefit of Deerubbin and La Perouse?

A. That GMS would pick up the cost of it in lieu of those land councils providing the funds later on when they had their developments through, when they'd achieved their developments.

35 Q. So the services weren't provided for free, were they?

A. No, even though Deerubbin would have you believe that there was.

Q. And those service were at some stage, in your view, to be paid for firstly be Deerubbin--

40 A. Yeah.

Q. --and secondly by La Perouse, is that right?

A. Yeah, and La Perouse has paid up and Deerubbin still owes us three-quarters of a million dollars.

45

Q. Let me deal firstly with La Perouse then. At what point in time - I'll go back half a step. So the arrangement as you understood it was for La Perouse to reimburse GLALC and GMS for moneys that it paid out on their behalf?

A. Yes.

50

Q. And was there a procedure whereby GLALC or GMS rendered invoices to La Perouse?

A. Yes.

5 Q. And when were those amounts to become payable by La Perouse to GLALC or GMS?

A. When they had achieved the sales, yeah.

Q. Sales of what?

10 A. The sales of their developments.

Q. And has La Perouse achieved sale of its developments?

A. Yes, it has.

15 Q. And following from that has GMS called on La Perouse to pay the amounts invoiced to it?

A. Yeah.

Q. And has La Perouse paid those amounts?

20 A. They have.

Q. So so far as you on behalf of GLALC and GMS are concerned that agreement has been honoured by La Perouse, is that a fair summary?

A. They have, yep.

25

Q. And so far as you're aware all invoices rendered by GMS or GLALC to La Perouse have been paid by La Perouse?

A. Yes.

30 Q. So there is nothing further outstanding on that deal?

A. That's correct.

Q. Now turning to Deerubbin, did the same position apply in your view?

A. Yes.

35

Q. The nature of the arrangement was that GLALC would provide services to Deerubbin?

A. Yep.

40 Q. And it would invoice Deerubbin for those services?

A. Yeah.

Q. And at some stage, and I'll get you to tell me precisely when in a moment, at some stage Deerubbin had an obligation to pay those invoices?

45 A. Yes, they did.

Q. What was that point?

A. That was the same point as La Perouse, when they had achieved their sales.

50

Q. And what were they selling?

A. They were selling land also that had been developed.

Q. So Deerubbin--

5 A. ..(not transcribable).. I think it was.

Q. Sorry, I apologise.

A. I think it was Hazelbrook.

10 Q. So Deerubbin was selling a development at Hazelbrook?

A. Mm-hmm.

Q. And that was the development in respect of which in particular EMS was providing consultancy services?

15 A. Yes.

Q. For the benefit of Deerubbin, not GLALC?

A. Yes.

20 Q. And GLALC or GMS had written invoices as we said to Deerubbin in respect of those services?

A. Yeah, their CEO actually brought them to GMS and signed off on them.

Q. Who was their CEO at the time?

25 A. Kevin Kavanagh(?).

Q. The invoices I'm referring to, can you assist me with what period?

A. I couldn't give you a timeframe, I'm sorry, we've given it to ..(not transcribable)..

30

Q. So it was after Mr Gundar had become employed?

A. Yes.

Q. So it was certainly clearly after March 2011--

35 A. Mm.

Q. --and probably later.

DEPUTY REGISTRAR: Is that a yes?

40

EXAMINEE CRONAN: Yes.

BAIRD

45 Q. And then you say Mr Kavanagh signed off on them, could you be more explicit as to what you mean by that phrase?

A. Literally brought them in, signed the invoices and submitted them for payment.

50 Q. In your presence?

A. At time, yeah.

Q. When he signed them was he to your understanding acknowledging Deerubbin's liability to pay them?

5 A. Yes.

Q. And promising to reimburse GMS or GLALC when the time came?

A. Yes.

10 Q. And in your view that time has come?

A. It's been and gone. My understanding is they're broke again.

Q. Please, Ms Cronan. When to your understanding did the Hazelbrook development complete?

15 A. I can't give you a timeframe, I'm sorry.

Q. Roughly when do you think Deerubbin--

A. James(?) will be able to--

20 Q. Roughly when do you think did Deerubbin become liable to pay on the amount of the invoices to GMS?

A. On sales.

Q. I mean are we talking 2012, 2013, 2014?

25 A. I can't remember the exact date, I'm sorry.

Q. Within the last 12 months or further back than that?

A. Further back than 12 months, the land council has been in administration for 12 months.

30

Q. Do you have an understanding of what the total amount invoiced by GMS or GLALC to Deerubbin is?

A. I've already stated that figure, around three-quarters of a million dollars, around \$750,000.

35

Q. And in your view is that amount of \$750,000 an amount which Deerubbin is presently legally obliged to pay back to GMS?

A. Yes.

40 Q. Can I just return, in the time that remains, to the tab that we were looking directly at--

A. Can I just interrupt for a second. There was actually legal proceedings that were commenced, there was mediation and all sorts of stuff to get those moneys refunded back to the GMS, and that's still - to my knowledge to this date it hasn't been finalised.

45

Q. Thank you, Ms Cronan. I'm reminded, just while I'm on that topic. Were there similar arrangements to the ones we've discussed with Deerubbin and La Perouse in relation to Walgett Aboriginal Land Council?

50 A. No, Walgett was a different kettle of fish.

Q. How was it different?

5 A. In that there was no actual loan. There was an agreement that in the event that they were able to get something happening that they would at that time pay a figure, but it wasn't anything set in concrete because it was very - it's a
10 separate set of circumstances out in that part of the country and - yeah, it was just - yeah. Land councils in country areas are in the unenviable position of - in comparison to the ones here in the city. They don't have the resources that the city land councils have, they don't have the land base. The land base that they do have is not valued like the city land obviously, land prices are far
15 different. There's a lot of different laws out that way as well with travelling stock reserves and stuff like that. You don't have any of that in the city as well. So there were a lot of things that were up in the air. So there wasn't anything as concrete as what there was sign the city land councils. We weren't even sure that we'd reach that point where there would be a development. So we
20 assisted them, it was kind of like a big brother thing I suppose is probably the best way to describe it.

Q. Doing the best you can in relation to this assistance, with whom were you having discussions on behalf of Walgett?

20 A. We were sending Jack out to do that, can't send up whole boards out too. Jack was acting on behalf of the board of Gandangara and reporting back. He always reported back on what was the story out there, how meetings with their board was going, their understanding of expectations and all that sort of stuff and what needed to be done in order to help them recover. Yeah, a lot of stuff.

25

Q. About when did this process start?

A. I can't remember the date for that either. I'm so sorry.

Q. Are we talking 2012, 2011, 2013?

30 A. It was later in the piece.

Q. After Deerubbin and La Perouse?

A. Yeah, yeah, it was the last one of the three.

35 Q. Do you know with whom Mr Johnson was dealing at Walgett?

A. In the first instance Anne Dennis I think her name is, because she was the CEO at that point in the first instance but she later became a NSWALC councillor so then she couldn't be the CEO there so--

40 Q. And then was it Mr Sing?

A. No there was actually somebody that stood in between Mr Sing and Anne at one point too, I'm not sure what that person's name was.

45 Q. But you knew Mr Sing from at least May 2013 because he'd formerly been at GLALC, did he not?

A. Yep.

Q. Do you have any understanding of about what the total value of the services provided by GLALC for the benefit of Walgett were?

50 A. No.

Q. I mean are we talking a small amount, in the small thousands or tens of thousands or are we talking of large amounts in the hundreds of thousands of dollars?

5 A. I'd say in the tens of thousands. It was more about helping them get their housing up and running properly, like getting that managed well in the first instance because they're housing - they didn't have control of their own housing. That was done by another company which I can't think of the name of right now.

10 Q. But anyway, in summarising it the process of dealing with Walgett, you say, was one in which Mr Johnson firstly had the authority of the Board to conduct and secondly was one that he reported back to the Board frequently on?

A. Certainly, certainly.

15 Q. That's the summary of your evidence?

A. Yep.

20 Q. I was trying to complete the EMC invoices and retainers situation. We were looking at tab 15 which was the submission of 4 November 2010 at page 901, do you see that?

A. I think I'm in the wrong folder.

Q. Sorry, still in folder 2, volume (II)?

25 A. Yep, I'm back there.

Q. We were looking just a moment ago at page 903 and the retainers at \$15,000 a month and \$10,000 a month respectively, do you see that?

A. Yep.

30 Q. I asked you some questions about that amount?

A. Yep.

Q. Could you then also turn over to tab 16 starting at page 906 and it's entitled EMC Contract Extension May to December 2012?

35 A. Yep.

Q. You'll see from page 907 it's dated 28 April 2012?

A. Yep.

40 Q. And again one can see the terms of the retainer?

A. Yep.

Q. And turn to page 911 and that has the details, does it not, of the retainer amounts?

45 A. Yep.

Q. And they're largely in line with the retainer amounts for the previous period that we saw at page 903, are they not?

A. Yep.

50

Q. And then we have the next extension appearing at tab 17 to the period December 2012 to February 2013?

A. Yep.

5 Q. I take it in general terms that each of these contracts and each of these extensions were matters that Mr Johnson brought to your attention as Chairperson of GLALC at the time?

A. Yep.

10 Q. Informed you of and obtained your approval too, is that right?

A. Yes.

Q. You will see at page 920 the amounts to be paid under that contract retainer, an amount of \$127,500, do you see that?

15 A. Yep.

Q. Now in addition to the retainer under the 4 November agreement appearing at tab 15 there was a separate retainer, was there not, of EMC? At the same time, do you remember that?

20 A. I do remember something.

Q. Do you remember that by August of 2011 there was a separate stakeholders relations management agreement and retainer of EMC by GLALC, do you remember that?

25 A. Vaguely.

Q. I'll assist you if I could. Could the witness also at the same time have volume (V), and in volume (V) go to tab 14. Tab 14, if you look for instance at page 1274?

30 A. Yep.

Q. You will see the amounts there of \$15,000 and \$10,000 respectively and those are the amounts that correlate to the amounts shown at page 903 that we just looked at, right?

35 A. Yep.

Q. Good. If you go further into that tab one comes to page 1282 and that's dated 31 August 2011 and there was still the charges from EMC of \$15,000 and \$10,000 a month respectively, right?

40 A. Mm-hmm.

Q. Immediately over the page at 1283 there's a separate invoice also dated 31 August but it's for different amounts and in respect of different things, do you see that?

45 A. Yep.

Q. The first entry at page 1283 is stakeholder relations management and that's \$12,500?

A. Yep.

50

Q. And then there's an additional ten hours a month approved by David Wing to assist with reducing backlog, and that's \$2,300 and then there's two lots of \$5,000 in relation to the Heathcote Ridge website retainer, one for July and one for August 2011, do you see that?

5 A. Yep.

Q. Were you aware of these additional retainers of EMC by GLALC?

A. I know we were requesting a lot of work from them at that particular time, we were getting ready for the VPAs.

10

Q. Dealing with the period August 2011 were you aware of any approval by GLALC for Mr Johnson on its behalf to enter into separate retainers of EMC in relation to stakeholder relations management?

A. Why do you think that Mr Johnson did that on his own?

15

Q. That's now what I asked you?

A. Okay, sorry, I misunderstood.

Q. I asked were you aware of an approval by the Board to Mr Johnson for him to enter into that?

20

A. Yep.

Q. You were aware of that?

A. Yep.

25

Q. So as at July August or thereabouts of 2011 Mr Johnson had told you that in addition to the retainer of November 2010 there was a further retainer that Mr Perkins proposed?

A. Yep.

30

Q. In relation to stakeholder relations management?

A. Yep.

Q. What was the stakeholder relations management about?

35

A. Stakeholder relations management was about getting the PMs onside and the planning minister for the Heathcote Ridge project and about doing all that was necessary to promote the area and the proposal in order for the VPA to be approved.

Q. Isn't that rather an extraordinarily large amount of money to be paying to EMC in August of 2011, would you agree? Just look at the total?

40

A. It was an extraordinarily large demand that we were putting on all of our consultants at that point to get the VPA through. It's of State significance, the Heathcote Ridge project.

45

Q. The amount at page 1282 is \$25,000?

A. Yep.

Q. The amounts just for retainers on page 1283 are a further \$24,300. That makes a total of \$49,800 in that month alone just to EMC for retainers?

50

A. Yep.

Q. Do you agree?

A. Yep.

5

Q. Nearly \$50,000 in a month for EMC?

A. Yep.

10 Q. In your view was EMC providing services to that value for the benefit of GLALC at that time?

A. Yes they were.

Q. You really thought that EMC was worth nearly \$50,000 a month to be paid for the media consultancy and lobbying work that it was doing?

15 A. Yeah, yeah. We had a lot of groundwork to make up after - after the CEO's dismissal in early, I think that was 2011 if I'm not mistaken. We had a lot of politics to fix after all of that, particularly when we had a Board member who was totally out of control and made sure that the media found out about it all because of a personal vendetta.

20

Q. Who was that Board member?

A. That would have been Wendy Mayberry or otherwise known as Wendy Morgan these days.

25 Q. Was your view as the value of the services being provided by Mr Perkins shared by other members of the Board?

A. I'm sorry--

30 Q. Did a majority of the Board agree with your views as to the value of the services being provided by EMC?

A. Yes certainly. We'd had an impeccable reputation until that had occurred and we needed to try and get that back in order to get the VPA through. We did get the VPA through in the end by the way.

35 Q. If I put to you that the total value paid to EMC over the four year period from 2009 to 2013 was approximately \$1.5 million does that accord with your recollection?

A. Yes.

40 Q. Is it your view that EMC provided services to GLALC that were worth approximately \$1.5 million in that four year period?

A. Yes.

45 Q. In relation to payment of moneys to Waawidji do you have any - I've shown you the consultancy agreement of 1 May 2010, you will recollect. For the period prior to 1 May 2010 do you have any knowledge about payment of Waawidji invoices by GLALC prior to May 2010?

A. Only the - my understanding was there wasn't any because at that time there had been no surplus operating.

50

Q. If there had been an invoice rendered by Waawidji to GLALC before 1 May 2010 do you know any reason why Waawidji would be entitled to render such an invoice?

A. I have no idea I'm sorry.

5

Q. And any reason why GLALC would pay it?

A. I have no idea.

10 Q. Could the witness just for the sake of the record be shown in volume (III) tab 15 and could you just turn in volume (III) tab 15 please to page 493. You'll see the document at page 493 is dated 25 January 2010 and it's on its face an invoice by Waawidji to Gandangara Development Services and it seeks reimbursement of expenses and disbursements for January 2010. Do you see that?

15 A. Yep.

Q. Do you have any knowledge or understanding of why Waawidji would be invoicing Gandangara Development Services, also called GDS, in January 2010 for expenses and disbursements?

20 A. No. I'd say it would be Jack's out of pocket expenses by the - by the--

Q. He had no contract with GDS in January 2010, did he?

A. I don't know.

25 Q. The GDS contract didn't come into existence until 2012, did it not?

A. Did you ask Shalesh about this?

30 Q. We did but I was just - if the position is if you don't have any knowledge about it I'm not going to invite you to speculate. The question is do you have any knowledge about the rendering or payment of invoices prior to May of 2010?

A. For Waawidji?

Q. Yes, by Waawidji, such as this?

35 A. No.

Q. I'm not going to take your time speculating on something you know nothing about Ms Cronan?

A. Yes, I don't know.

40

BAIRD: Excuse me one moment. I'll just make sure there's nothing that has been omitted.

45 Q. I just wanted to ask you one question about the actual selection of Mr Perkins. Were the contracts for EMC that we've seen and entered into, the retainer agreements that I've shown you this morning, were they the subject of competitive tender?

A. I can't remember to be quite honest.

50 Q. Well how did it come to be that EMC was selected to be the media public

relations expert and lobbyist?

A. I'm just trying to think. I can't - I really can't remember.

5 Q. Wouldn't it have been normal procedure to have conducted some advertising perhaps for the position?

A. That is the normal procedure but I can't remember exactly what happened.

Q. You would remember, would you not, if there had been a tendering process?

10 A. Well I'm hoping I would've remembered but I'm not sure the - you know, I'm just not recalling it.

Q. I'm putting to you that your recollection is accurate and that in fact there was no competitive tendering process that was entered into in relation to the selection of EMC?

15 A. I wouldn't make that conclusion. My memory is just not that good on it.

Q. I'm just putting to you that the only thing that happened was that Mr Johnson recommended to the Board of the Council that EMC be retained without there being any competitive tender first obtained?

20 A. It's a possibility but I can't remember. I truly can't remember.

BAIRD: Thank you Registrar, I'm grateful for the time. I'm sorry, could I just ask Ms Cronan.

25 Q. What assets do you - what property do you currently own?

A. Not a great deal of anything.

Q. When you say "not a great deal", do you own any real property?

30 A. Real estate?]

Q. Yes.

A. No.

35 Q. What's the extent of your other assets?

A. I'm not sure what the question is.

Q. Well do you have moneys at bank?

40 A. Some, not a lot.

Q. Approximately how much?

A. Probably a couple of thousand.

Q. Do you have financial investments?

45 A. No.

Q. Shares?

A. No.

50 Q. And what about your liabilities? What moneys do you owe?

A. I have some liabilities.

Q. What's the total value of those liabilities?

A. Probably around 13 grand.

5

Q. Is that more or less than your assets?

A. Probably about the same.

BAIRD: Thank you Registrar, no further questions.

10

DEPUTY REGISTRAR: Ms Cronan, 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?

15

EXAMINEE CRONAN: Yep.

DEPUTY REGISTRAR: At the start of your examination yesterday I made an order for you to sign a copy of the Court's transcript. Once it has been prepared an officer of this 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 in court. Do you understand?

20

EXAMINEE CRONAN: Yep.

25

STOOD OVER GENERALLY

<THE WITNESS WITHDREW

30 LUNCHEON ADJOURNMENT

<EXAMINEE JOHNSON, AFFIRMED(12.48PM)>

DEPUTY REGISTRAR: Please state your full name and address and occupation for the Court record?

5

EXAMINEE JOHNSON: Mark Julius Johnson, [REDACTED]

DEPUTY REGISTRAR: Occupation?

10 EXAMINEE JOHNSON: I do many things, many things. I don't think I have a category.

DEPUTY REGISTRAR: Well, your primary occupation, whatever that is?

15 EXAMINEE JOHNSON: Horsebreaker, I am - I was a solicitor at one stage, I've retired now.

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 are being put to you even if you 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 of which you're claiming privilege. Please note though if you give a false answer or refuse to answer a question that has been put to you you may be liable for perjury or contempt of court. Do you understand?

20
25
30 EXAMINEE JOHNSON: Yes, sir.

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?

35 EXAMINEE JOHNSON: Yes, sir.

DEPUTY REGISTRAR: Mr Baird, are orders being sought under s 597.13?

40

BAIRD: They are, Registrar.

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.

45

<EXAMINATION BY MR BAIRD

Q. Mr Johnson, I understand that at some stage you assumed the role of chief executive officer of Gandangara Land Aboriginal Council and in respect of that

50

would you mind if I used the contraction GLALC?

A. Not at all.

Q. Were you at some stage chief executive officer of GLALC?

5 A. Correct.

Q. About when did you assume that position?

A. In 2007.

10 Q. And how did that arise?

A. I responded to an advertisement.

Q. In which paper was that advertisement?

A. I can't remember.

15

Q. At that time were you in Queensland?

A. Yes.

Q. And after you responded what happened next?

20 A. There was a very lengthy period of time before I heard, I thought it had died, but I then heard that I was to attend for an interview.

Q. Who did you meet in that interview?

25 A. There was a NSWALC, New South Wales Aboriginal Land Council, I'll use that abbreviation if I may, Mr Baird - there was a NSWALC - there were two NSWALC representatives, one by the name of Alan Hudson, the other gentleman - I should know his name, it escapes me--

Q. Anyway, there was an interview process?

30 A. Yep, you asked me their names so--

Q. Yes, I appreciate that but just dealing with it at a high level there was an interview process and then after that interview what happened next?

35 A. At the end of the interview - I'm led to believe most of the aspirants were interviewed the day before. I had to get a flight down and I was I think the only aspirant that day. They asked me if I could do some work for the Land Council the following week and I agreed to.

40 Q. In terms of becoming the successful applicant was another step in the process approval by the council members?

A. Yes, there was, that was a very lengthy process and a number of meetings.

Q. And at the conclusion of that process you were told by someone I take it that you were the successful applicant?

45 A. Correct.

Q. Who was that person, was that the chairman of the board?

50 A. I think that was the then - no, at some stage and during that process the chairman had been sacked by the members and replaced. I think I was told by the - one of the other three executive personnel, I think it might have been the

secretary at the time, I'm not even sure if that's the correct title.

Q. Do you remember who the secretary was at that time?

A. Tracey Ontaveros(?).

5

Q. Now, this is in 2007 you say?

A. Correct.

Q. At that time did you enter into a written employment agreement with GLALC?

10

A. Yes.

Q. Do you still have a copy of that 2007 employment agreement?

A. I must do, I presented the Court with a copy which you have I presume.

15

Q. If I can assist you I have a copy of the 1 May 2010 employment contract. At the moment I don't have a copy of the 2007 employment contract, I'll just check with my instructing solicitor for a moment if I might?

A. I thought I presented them all to you. I gave you everything I had a copy of, Mr Baird.

20

Q. Thank you for that. While that enquiry is being made and I can assure you it has been searched before without success but we'll check again you don't still by any chance, still have a hard copy or a copy of your 2007 contract?

25

A. I gave you everything I had, Mr Baird, I'm sorry.

Q. You didn't keep extra copies for yourself by any chance?

A. All I kept was electronic and I thought I'd copied off everything I had. I thought it was in there.

30

Q. We'll continue our enquiries and possibly rather than occupying the Court's time I might request your assistance with my instructing solicitor--

A. There would be copies electronically at the Land Council, Mr Baird.

Q. We will try that avenue as well, thank you, Mr Johnson. In general terms in 2007 was there one agreement or two?

35

A. You're testing my memory, but I think there was one agreement that was broken into two parts. Part A was where I was, Mark Johnson, was employed directly by the Land Council and, part B, where Waawidji Pty Ltd provided services to the Land Council. I think that was the way it was structured back then.

40

Q. Waawidji is spelt W-A-A-D-W-I-D-J-I?

A. I don't think so, I might have got you wrong, W-A-A-W-I-D-J-I.

45

Q. Thank you, I accept your correction. What was the difference between the services that you as CEO under the name Mark Johnson provided to GLALC on the one hand, and the services that were to be provided by Waawidji on the other?

50

A. Again I'm testing my memory, I think part A, that is my employment section,

was for approximately \$80,000. The balance, and I'm not sure here whether the total was 100 or 110,000, but the balance was to Waawidji Pty Ltd.

Q. What was the difference in the services that was provided by Waawidji?

5 A. Waawidji was to look at possible development services for the land assets and also look at the land assets itself.

Q. Would it be fair to say, and please disagree with me if it's not correct, but would it be fair to say that the use in part A of yourself as employee and the
10 use in part B of Waawidji as a contractor was simply an income splitting device for your benefit?

A. I can't remember the exact - it was actually - you've got to understand, that contract which all the successors follow almost exactly, wasn't drawn up by me. It was actually drawn up by Mr Alan Hudson, who was acting in a
15 nefarious role, running the Land Council for quite a long period of time. He was or had - he was either at the time an employee of NSWALC, one of the regulators of the Land Rights Act, or he had just left NSWALC. I can't remember the time. So it's unfair to say I did it for an income splitting basis because I didn't do it, Mr Hudson drew it up.

20

Q. Mr Hudson's involvement at this time, and we're talking what month in 2007?

A. I'm not sure. You mentioned a month, Mr Baird.

25 Q. I wasn't sure, that's why I wanted to check.

A. I think you said May, didn't you?

Q. I thought it was - no, that's May in 2010. I thought it was about February 2007, but I stand corrected if that's not right.

30 A. That's when I came down for my interview in February. I think you mentioned to me that there was a contract in May and I know that the process that the members went through was a very long and arduous process.

Q. So Mr Alan Hudson, did you have some discussion with him in about that
35 period of 2007 when it came to drawing up the terms of your employment contract with GLALC?

A. Yes I did. He made me an offer and I said it wasn't good enough and that was our discussion. He then went back and came back with the document that I found appropriate.

40

Q. So apart from actually documenting the arrangement, Mr Alan Hudson had some role to play in the negotiation and selection of the successful applicant. Is that right?

A. He was on the panel, yes, sir.

45

Q. Did he tell you that he had some experience in drawing up these kind of employment contracts in the past?

A. I don't think..(not transcribable)..knew the situation. The onus was upon them to draw up a contract, but there's an area that, you know, it comes to.

50 That didn't attract me at all, right. What attracted me, because I still thought it

was below par, but all that the Land Council could afford. What attracted me was the fact that there was a productivity bonus included. That, if you - if you want to understand what the hook was, that was it, so let's get down to the fine detail.

5

Q. The productivity bonus that you mentioned, can I just explore with you its part in this contract that Mr Alan Hudson produced, just taking it step by step. At some stage you were notified, possibly by the secretary, that you had been the successful applicant. Correct?

10 A. Either by the secretary or Alan Hudson, one of the two.

Q. And the next step was that they told you they would prepare and submit to you for your approval a draft employment agreement. Right?

A. Correct.

15

Q. At some stage, possibly in about May 2007 you received such a document from Mr Hudson?

A. Correct.

20 Q. That document had at least three elements in it that we've mentioned, firstly, at part A, as you say, which was between yourself and GLALC. Correct?

A. Mm-hmm, yes.

25 Q. Just for the record you just have to say "yes" or "no", thank you, Mr Johnson. Second, part B, you mentioned--

A. Can I cut you off there, Mr Baird, because you're wrong, if I may, just for the record.

30 Q. Absolutely, yes.

A. There was four parts to it, right, as there is in the contracts right up to there. There's the part A, which was GLALC employing Mark Johnson, there was part B GLALC contracting the services of Waawidji. The bonus scheme that Mr Hudson put to me that I found most attractive was two parts, so hence I'm
35 saying four rather than three parts. Part A of the bonus scheme was incremental increases in the contract, annual incremental increases based on a review process, part B of the productivity bonus was based on growing a surplus for the Land Council. Now bear in mind the Land Council was about two and a half million in debt at the time and there was some eight million
40 missing.

Q. I may be able to assist you somewhat with documents, thank you for that explanation. Could the witness be shown volume (II) of MFI 1. A folder will be brought to you, Mr Johnson. In that volume (II), Mr Johnson, could you please
45 turn to tab 1 page 751, and the document that I'm showing you there runs from pages 751 through to and including 764. Do you see that?

A. I have those pages, Mr Baird.

Q. And the description on 751 is that it's an agreement between yourself,
50 that's you, Mark Julius Johnson. Correct, yes?

A. Haven't we confirmed that, Mr Baird?

Q. Yes, that's you.

A. Yes.

5

Q. And GLALC, and if you turn to page 777 you will see an execution page and about two-thirds of the way down the page on the right-hand side there's a signature. Do you see that signature?

A. Just bear with me, 7--

10

Q. 777.

A. Triple 7. These are out of sequence, Mr Baird, I'm sorry. I'm looking from 765 to 778. Just bear with me and I'll locate it.

15 Q. Can I assist you that in the document the internal numbering, page 11, 761, do you have that page?

A. 761, just bear with me.

Q. 761 in the document.

20 A. We're way out of sequence here, Mr Baird, I'm sorry.

Q. Just follow me step by step.

A. I've got 771, thank you.

25 Q. You see because of a photocopying error page 761 is followed by page 777. Do you see that? The error has been corrected.

A. Sorry--

Q. Go to page 761, Mr Johnson.

30 A. 761?

Q. Go to 761. Do you have page 761?

A. I've found 777.

35 Q. 761 has the internal numbering page 11. Do you see that?

A. Yes.

Q. And if you turn over the page the next internally numbered page is page 12, but at the bottom right-hand corner that has page 777?

40 A. Yep.

Q. The pages are now back in their correct sequence, but there was a photocopying error when it was being copied. Please accept that, thank you. Looking at that page which is now in its correct place, the page numbered 777

45 has two signatures on it. Do you see that?

A. Yes. Well, it has more than two, Mr Baird.

Q. I accept that, and looking down the right-hand side of the page, about two-thirds of the way down, there is a signature opposite the space for you to sign. Is that your signature?

50

A. Yes it is, sir.

Q. And above it at the top of the page do you see a signature beneath the name, "Cinderella Cronan"?

5 A. Below it, yes.

Q. You see the name "Cinderella Cronan"?

A. Yes.

10 Q. And beneath that there's a signature?

A. Yes.

Q. Do you recognise that signature to be that of Ms Cronan?

A. I'm sorry, I can't remember her signature, Mr Baird.

15

Q. Still on that page, on the left-hand side was the name of a witness, Alfred Sing. Do you remember him witnessing your signature?

A. Not really, but I see a signature there.

20 Q. If you turn over the page, the next page, which is numbered 762, is headed "schedule 1". Do you see that?

A. Yes.

Q. And part 4 in the middle of the page it says "Commencement, effective date 1 May 2010"?

25

A. Yes

Q. So the document that I am showing you is not the agreement that you entered into in 2007, but a subsequent agreement. I make that clear at the start, okay?

30

A. Yes.

Q. However, if one turns to the following page, page numbered 763 which has the heading "Part 7 performance assessment". Do you see that?

35

A. Yes.

Q. Beneath that is the date February 2007. Do you see that?

A. Yes.

40 Q. And if you look at pages 763 and 764 they are two pages and they contain a performance assessment?

A. Yes.

Q. What I want to suggest to you that those two pages have simply been photocopied from your 2007 employment agreement and inserted into your 2010 employment agreement. Just have a look at them and see whether you agree or don't agree with that explanation.

45

A. More likely copy and paste than photocopied. I think we've progressed from those days, sir.

50

Q. I'm happy to accept copy and paste. Just looking at - can I ask you this question, looking at the pages that are numbered 763 and 764, was it your recollection that your two bonuses that you referred to a moment ago, which are set out in these two pages, similar provisions applied in respect of your
5 2007 employment agreement?

A. Yes, sir. To my memory, yep.

Q. And for the sake of fairness, because I will be coming back to it, if you turn to the next tab, Mr Johnson, it's at tab 2 in that volume, starting at page 766,
10 you will see that is a separate agreement between Waawidji and Gandangara Management Services. Do you see that?

A. Yes.

Q. Do you mind if I use the contraction GMS for Management Services?

15 A. Sure.

Q. Again if you look through that document, we have a similar pagination problem which has been corrected. If you go to page 776 in that document you will see that it is internally numbered page 11 at the foot of the page?

20 A. Yep.

Q. If you turn over the page, the page that is numbered internally page 12 has signatures on it, but at the bottom right-hand corner it is numbered 765. Do you see that?

25 A. Correct, yep.

Q. And you can now understand the nature of the error that has occurred, that execution pages from the two agreements have been mixed up and swapped. And I take it that on page 765, Mr Johnson, that's your signature about
30 two-thirds of the way down the page?

A. Yes.

Q. If you would turn over that page to schedule 1, appearing at 778, 779, 780 and 781, you will see in there from part 4 of the schedule that the
35 commencement date is also 1 May 2010. Do you see that, on page 778 about a third of the way down the page?

A. Yes.

Q. Then over the page 1C's part 7, "performance assessment" and those terms appear to be identical with the performance assessment in the other employment of contract of 1 May 2010?

40 A. Yes.

Q. Just at that point, would it be fair to say that in May 2010 two separate
45 agreements were entered into in relation to your services in this sense, instead of there being a part A and a part B, there was now on the one hand one agreement between GLALC and yourself, and on the other hand a separate agreement between GMS and Waawidji?

A. Yes.

50

Q. Can I proceed on the assumption that the performance assessment procedures, firstly, for the Waawidji employment contract, set out at page 779, 780, 781, and secondly in the GLALC Johnson employment agreement set out at pages 763 and 764, was substantially the same as those that applied to your 2007 employment of contract with GLALC?

A. It would seem so, yeah.

Q. We'll come back to those if I might. I just wanted to clarify that confusion because as you can see we didn't actually have your written 2007 employment agreement in front of us. Just reverting to where we were, shortly after 2007 when you became CEO there was a community land and business plan effected in respect of the Land Council, was there not?

A. 2008?

Q. 2008.

A. Yep.

Q. Shortly after 2007?

A. Yeah, around that time, yes Mr Baird.

20

BAIRD: Could the witness be shown volume (I) A of the MFI 1.

Q. I just want to ask some questions of you, Mr Johnson, in relation to the community land and business plan.

A. Mr Baird, I'm somewhat confused. I was summonsed here under section 596A of the Corporations Act to answer questions examinable, pertaining to the corporations. You go asking me something that's prescribed by the Aboriginal Land Rights Act New South Wales that pertains to an Aboriginal Land Council. I don't see that the two intersect. I don't see that the summons and the matters I'm being asked to be examined over and what you're asking me now relate.

30

Q. If you wish to take objection to the registrar, Mr Johnson, you may do.

A. I object, sir.

35

Q. But to answer your question and by way of submission the obligation is to answer questions in relation to the examinable affairs of GMS. GMS is a wholly owned subsidiary of GLALC. The documents I have shown the witness have clearly pertained to GLALC and therefore in my submission fall within the examinable affairs of GMS, the applicant, that's my submission.

40

DEPUTY REGISTRAR: Mr Johnson, you are entitled to make the objection you have made. Mr Baird has made submissions to the Court contrary to that objection. I have heard both sides. My ruling is that it falls within the examinable affairs of the company pursuant to the summons that has brought you to court today and you must answer those questions.

45

EXAMINEE JOHNSON: Where were you leading me to, Mr Baird, in this folder?

50

BAIRD

Q. Yes, could I take you to tab 4, please. I just want to ask some general questions as to your understanding of the community land and business plan for GLALC in the period 2008 to 2011. As you can see from page 115 that's the heading on the document. Do you see that?

A. Correct.

Q. Just take a very brief moment to look at it, then I want to ask you detailed questions about the totality of the document, but my first question, is that a document that you've seen before?

A. Yes, it is.

Q. Is it a document that you saw at or around 2008?

A. I would believe so, without going into detail, yes.

Q. And at that time did you have some familiarity with it?

A. Yes.

Q. Would you please turn to page 119. In point 3 there's a statement there:

"Vision: GLALC is committed to the advancement, protection and promotion of Aboriginal people, heritage and culture. GLALC will realise this through the proper protection, acquisition, management and development of its assets to achieve long term generational self-sustainability."

You knew that at the time, did you not, Mr Johnson?

A. Yes.

Q. And you agreed with that vision, did you not?

A. Well, I'm not sure whether I did and it wouldn't matter. It wasn't up to me to agree or disagree, that was a decision of the members.

Q. I accept that. Can I put it this way, it was part of your function as CEO to carry out and effectuate that vision, was it not?

A. Put it that way, yes sir.

Q. I bring to your attention paragraph 4 immediately beneath that which referred to the commitment. Do you see that?

A. Yes, sir.

Q. Could I then move over on page 120 to the heading - paragraph 6 at the foot of the page, "Background". In the second paragraph under point 6 it refers to GLALC "focussing primarily on the provision of an economic basis for the support of its members' needs, particularly through land developments". That was something you knew quite a deal about at that time, did you not, Mr Johnson?

A. No. No sir, that's not correct.

Q. Could I take you to the next sentence then, "Such developments have been completed at Alford's Point, Menai and Barden Ridge (Gandangara Estate, stage 1, Menai." Do you see that?

A. Correct.

5

Q. In 2008 the proposed development of Barden Ridge and Gandangara Estate were matters that were within your sphere of responsibilities as CEO, were they not?

A. Can I put it into context, Mr Baird?

10

Q. Of course.

A. The early land developments were done prior to me arriving on the scene. I had never had involvement in land development, so to say I all of a sudden had an epiphany or was struck up the rear end by a bolt of lightning and understood what land development was, would not be correct. It was a growing concept that I was learning about. Now the reference to Barden Ridge - sorry, Gandangara Estate, stage 1 was completed, right, so I was learning what land assets we had. We had no way of checking at that time what land assets we had. We had no mapping system, no clear records.

15

20 There was land claims lodged by NSWALC that we didn't understand the implications of them lodging land claims on our behalf, and it's still very questionable.

Q. Can I stop you there at this stage, Mr Johnson, please, and just--

25

A. It's very complex I'm suggesting to you, Mr Baird.

BAIRD: I accept, but, Registrar, could you possibly repeat, as you have repeated to other witnesses, the nature of this examination; that is, an information gathering exercise, not a cross-examination, and I'm simply seeking to obtain information from a witness.

30

DEPUTY REGISTRAR: Mr Johnson, the summons that has brought you here pursuant to the Corporations Act as part of these proceedings is simply an information gathering exercise on behalf of Mr Baird and those that instruct him as receivers on behalf of the said company, being Gandangara Management Services Ltd. So these aren't adversarial court proceedings, they are simply inquisitorial in nature to try and gather information as to how and what claims might be available in the future and if so against whom. So in that respect that's essentially why you are here, to assist them in that regard, to gather information as to what did happen during the course of the company's operation.

35

40

BAIRD: Thank you, Registrar.

45 EXAMINEE JOHNSON: Can I therefore, Registrar, ensure that the information and the questions are correct when put to me.

DEPUTY REGISTRAR: If you need clarification of the questions that are being put to you, then you should seek that clarification at that point in time.

50

EXAMINEE JOHNSON: I was endeavouring previously to clarify the point that I believed was incorrect.

5 DEPUTY REGISTRAR: That's fine, but what I need you directly to do is to answer the question that is being put to you.

EXAMINEE JOHNSON: Yes, Registrar.

10 DEPUTY REGISTRAR: Thank you, Mr Baird.
BAIRD

15 Q. In the process of your selection as CEO the previous year, is it not correct that you had conveyed to the selection committee that you had some experience in matters of land development?
A. No, sir.

20 Q. That's incorrect?
A. Yes, sir.

Q. From 2008 onwards the development of stage 2 of Gandangara Estate and also of lot 101 Barden Ridge were matters that particularly concerned you as CEO, were they not?
A. The second one was 101. What was the first?

25 Q. Gandangara Estate, stage 2 and lot 101, Barden Ridge?
A. I was aware of them, yes sir.

30 Q. Those developments occupied, I suggest, a great deal of your time as CEO after 2008?
A. Yes, sir.

35 Q. Can I ask you to turn to page 124 please, Mr Johnson. There's a separate heading in the community land and business plan, 7.1.3, entitled "Development of land and assets" which commences, "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 the benefits to members." Do you see that?
A. Correct.

40 Q. Then there's a reference to division 4 of the Act being rigorously applied. Do you know off the top of your head what division 4 of the Aboriginal Land Rights Act was?
A. I don't know. I would be guessing and say I think that's around sections 42
45 et cetera.

Q. You're not required to guess, Mr Johnson.
A. I would be guessing, Mr Baird.

50 Q. Beneath the table there are two paragraphs on page 124, the first

paragraph commences, "In order to ensure clear delineated accountability and transparency, GLALC will establish a wholly owned corporate entity to act as the development manager managed for each development undertaken." Do you see that?

5 A. Yes.

Q. That in fact was followed that plan, was it not?

A. The simple answer is yes, but it was a very complex process, Mr Baird.

10 Q. I accept that. In general I should have said, the idea of incorporating special purpose vehicles for separate--

A. The concept, yes.

15 Q. Was by and large followed. Immediately beneath that there's the paragraph that reads, "None of the wholly owned corporate entities will have administration or finance capabilities as all financial and administrative functions will be performed at commercial rates by GLALC, thus ensuring full transparency, accountability and file retention." Do you see that?

A. Yes, I see it.

20

Q. Was that aspect of the community land and business plan also adhered to?

A. Until we realised that that was impractical. When it was made we didn't have the understandings that we - that involved. All of this was a learning process. We had no model to follow, no roadmap to follow, no instructions.

25 What we did we had to learn ourselves.

Q. Thank you, Mr Johnson, you've answered the question, you've said enough, thank you. Now I see that the community land and business plan was for the period 2008 to 2011. Was there a new plan in 2012?

30 A. From memory, yes.

Q. About when was it realised that the prohibition or the direction at the foot of page 124 was no longer practical, as you've said?

A. That happened much earlier.

35

Q I just want to ask you a general question and please feel free to answer as you wish, was there to your knowledge a tension amongst members of council between GLALC on the one hand taking title under the, shall we say, native title provisions to land, and on the other hand developing--

40

A. I have to stop you there sir, what you're saying is absolutely incorrectly. Native title doesn't enter into the matter in /New South Wales.

45 Q. GLALC because the registered proprietor of certain land at various points of time, correct?

A. At the moment land was rented to GLALC it became the proprietor in a feasible time.

50 Q. And in 2008 GLALC was the registered proprietor of the land referred to as Gandangara Estate, correct?

A. Yes sir.

Q. And the land referred to as Barden Ridge? Particularly Lot 101 Barden Ridge?

5 A. Lot 101, yes, correct.

Q. I'll restrict my questions to those two properties. Was there in your mind any tension between the ownership of that land by GLALC and its development for commercial purposes?

10 A. I don't understand your question and specifically the word tension, in context I don't understand sir.

Q. Did members of the council make known to you any opposition on their part to the development of those two properties by GLALC?

15 A. If we take them separately the members had already resolved and completed Stage 1 of Gandangara Estate. Stages 2 and 3 had been in the plans with the land council long before I arrived. So they were far from new. They were well established plans long before this community land and business plan. Lot 101 I am led to believe because it also was prior to my
20 time, it was unique insofar as it wasn't a land claim. Land had been developed under the approval of the Shire of Sutherland that was under claim. That action was illegal under the Aboriginal Land Rights Act and 101 was compensation, so we need to put this into context Mr Baird.

25 Q. Mr Johnson please listen to my question, is the answer to my question simply no?

A. I don't understand your question, what's the tension?

30 Q. Mr Baird, I asked you did any council member make known to you any opposition to the development of this land in 2008?

A. Not those two parcels that I know of sir.

Q. Thank you Mr Johnson--

35 A. That's wrong, sorry Mr Baird. From memory at times, look again, in context, so that we have clarity. For a land sale or development to be approved by the members you have this unique situation of an 80% majority required. Now there were occasions where land sales were unanimous. There were occasions where there was one or two objectors, but the 80% threshold was always followed, that's the law. So at all times there was an
40 80% majority followed.

Q. So for that reason there was I take it no particular controversy in your mind about following these developments, is that fair to say?

A. Define controversy Mr Baird.

45

Q. I'll move on Mr Johnson, I don't want to straddle words with you. Page 132 Mr Johnson, paragraph 8.1, that refers to the process that we've already looked at in an earlier paragraph about corporatisation of the GLALC organisational structure, can you see that?

50 A. Yes sir.

Q. And I take it that's a matter that you were familiar with in 2008 and onwards?

A. Yes sir.

5 Q. And similarly over the page at 133 the first paragraph refers to the same process, is that right?

A. Yes sir.

10 Q. At page 154 under the heading paragraph 24 there's a heading Organisational Structure, do you see that?

A. Yes sir.

15 Q. And again without going through the detail I take it that those matters were within your knowledge and sphere of responsibility as Chief Executive Officer in 2008 and onwards?

A. Yes sir.

20 Q. And for the matters of detail over the page is the organisational structure which seems to occupy a number of the following pages, do you see that?

A. Yes sir.

25 Q. Did you have any input into the preparation of this plan in 2008 or in the period leading up to it?

A. Yes sir.

Q. And what was that?

A. I was one of those people involved in the consultation process. It was a long process that involved all the members.

30 Q. Do you know who actually prepared the Community Land and Business Plan?

A. Yes sir a gentleman by the name of, I've gone blank, he was an accountant or partner working for Lawlers, Anthony Ashbury.

35 Q. So Lawlers had some part in the preparation of the physical document that we see before us today?

A. Lawlers were funded by ..(not transcribable).. to do the land and community business plan.

40 Q. And you assisted them I take it in your input so far as it was required?

A. I had input, yes sir.

Q. And who was the chairperson or chairman of GLALC in 2008, do you recall?

45 A. Possibly Sandra, possibly, I'm not quite sure Mr Baird.

Q. And at some stage did Ms Cronan come on to the board of GLALC in 2009 and subsequently?

50 A. I'm not sure when she first came on, I thought she'd been there from the beginning in 07, but I may be wrong.

Q. Did she at some stage assume the position of chairperson of GLALC in the 2009/2010 period?

A. I forget the starting period but yes sir she assumed the position.

5 Q. And at some stage was Gandangara Management Services GMS Incorporated?

A. Yes at some stage it was incorporated.

Q. And did that incorporation occur in about April 2010?

10 A. I have to rely on you Mr Baird.

Q. Does that accord approximately with your recollection that it was about towards the middle of 2010, about April 2010?

A. Approximately yes sir.

15

Q. And at some stage did GMS enter into a service agreement with GLALC?

A. Yes sir.

20 Q. And was that service, well I'll show you a document to assist you, it's unfair to put you to a memory test, might the witness be shown volume (VIII), you can put that volume to one side if you like Mr Johnson. Volume 8 I am going to ask you to turn please Mr Johnson to tab 1 or page 1932, you'll see that's a document entitled Services Agreement 2012/2013 and it's between GLALC on the one hand and GMS on the other, do you see that?

25 A. Yes sir.

Q. And if you turn to page 1953 you'll see the execution page for that agreement and do you see on the right hand side opposite GLALC your signature?

30 A. Yes sir.

Q. And beneath that opposite the execution for GMS do you also see your signature?

A. Yes sir.

35

Q. On each occasion Ms Cronan has signed as Director/Chairperson, do you see that?

A. Yes sir.

40 Q. Now just looking at that document are you able to say whether that is the first services agreement between GMS and GLALC or on the other hand do you think there may have been an earlier agreement?

A. I can't remember sir, I remember it was a very long and arduous process. It was really in the hands of the lawyers. We were in their hands in this matter.

45 And you've got to remember sir GMS wasn't the starting point of the SPV, you've got the propriety limited companies prior to that that were deemed unfit for our services and we converted to companies limited by guarantee, again at the advice of lawyers.

50 Q. Which lawyers do you refer to?

A. We had a plethora, Gadens were involved, Baker McKenzie were involved and those two I remember clearly. In fact I think from memory the contracts might have been drawn up by Gadens.

5 Q. Thank you Mr Johnson, you can put that folder to one side, I just, in the interests of fairness wanted you to see a document that has an operative date, as you see from page 1934 of 1 July 2012 I wanted you to be satisfied that as at 1 July 2012 there was a written services agreement between GLALC and GMS and that's correct isn't it?

10 A. There were demands being put on us at the time by the auditors to have those contracts in place sir.

Q. Can I assume from what you've just said that therefore this may in fact be the first written agreement of that kind?

15 A. No I didn't say that at all sir, I said I wasn't sure.

Q. No you referred to the auditors demanding that that situation be put in writing?

20 A. The auditors were demanding that there be service contacts in place. Yes sir, I have clarity there. I am not sure that that was the first agreement in place.

Q. Thank you for that clarity Mr Johnson. Could I also ask the witness to be shown volume (VII)? You can close that up and put them away if you like Mr Johnson?

25 A. Where would you like me put them Mr Baird?

Q. My instructing solicitor will take them away from you if you like. Just while that's being done, the document that I'm about to show you is the constitution of GMS, just so that you can cast your mind to that and I want to ask you about a couple of clauses in that document. My instructing solicitor will close up those documents and take them away for you so that you've got some space in the witness box. Now on the assumption that GMS was incorporated in April 2010 as I have said a moment ago, it had a constitution and I'm asking you to turn to tab 7 in volume (VII), page 1627, to look at the document that appears between pages 1627 and 1662 and satisfy yourself that is in fact the constitution of GMS?

35 A. I can't do that Mr Baird, not without referring to ASIC records, I'm sorry. You're asking me to remember these and there's a new level of contract, a constitution, I can't verify sir without doing that.

Q. That was not my question, nor my intent Mr Johnson, please. If you want to see the ASIC record as to the date of incorporation of GMS I'm happy to show it to you but from the search my instructing solicitor had a moment ago the date of the corporation is 16 April 2010, is that correct? If you want to see that search I'm happy to show it to you?

45 A. No but you asked me to confirm it sir and I can't do that.

Q. Mr Johnson what I'm asking you is a separate question. I'm asking you to look at the document that's entitled Gandangara Management Services

50

Constitution?

A. Yes sir.

Q. Have you seen that document before?

5 A. Yes sir.

Q. Are you familiar with the constitution of GMS?

A. Vaguely sir.

10 Q. Are you able to say whether the document that appears on pages 1627 to 1662 is in fact the constitution of GMS?

A. No I can't confirm it sir.

15 Q. Could I ask you to turn to page 1632? At paragraph 1.5 would you agree that one of the principal purposes of GMS was to improve, protect and foster the best interests of all aboriginal persons within the GLALC area and other persons who are GLALC members?

A. Correct sir.

20 Q. Could you turn also please to page 1643?

A. Yes sir.

Q. Paragraph 8.11 under the heading Conduct of Directors, you see the paragraphs that are set out there in paragraphs A to E?

25 A. Yes sir.

Q. And I put it to you that that was a matter with which you were familiar at least in general terms in about April 2010 and onwards in relation to the duties of directors of GMS?

30 A. Yes sir.

Q. And you were not yourself a director of GMS were you not?

A. Correct sir.

35 Q. You were the CEO of GMS?

A. I'm not sure about that sir. If I was I was, there was some of the companies I was clearly the CEO, some of them I was the honorary CEO, I can't remember which is which sir, hence my hesitation.

40 Q. Fair enough. Let me approach it this way then. In both April 2010 and May 2010 you were CEO of GLALC, correct?

A. Correct.

45 Q. And in May 2010 as we've seen Waawidji, your company, entered into an employment agreement with GMS, correct?

A. Correct sir.

50 Q. If you need to refresh your memory I'm happy to show you the document, but in paragraph 1.1 on page 766 it reads the service contract provider, hereby contracts the services of Waawidji Pty Ltd to provide the services of Mark Jack

Johnson to act as Chief Executive Officer (CEO) of GMS, do you need to see--
A. Is that 2010 Mr Baird.

Q. It's 2010, May 2010?

5 A. I think that's right sir, yeah.

Q. I'm happy to show you--

A. No ..(not transcribable).. my own uncertainty, but thanks for that clarity.

10 Q. So on the assumption that you were the CEO of GMS in April 2010 then could I ask you to turn to page 1649? Page 1649 tab 13.7 is the heading, sorry paragraph 13.7 is the heading Duties of Chief Executive Officer, do you see that?

A. Yes sir.

15

Q. Just please read it to yourself sub-paragraphs (a) to (i), I don't propose to read them out loud?

A. Yes sir.

20 Q. And would you agree that in April 2010 and onwards those were the duties that you had as CEO of GMS?

A. Yes sir.

25 Q. That folder can be put to one side and returned. I want to ask you some further questions in relation to the various employment agreements that either you or Waawidji had with either GLALC or GMS over the period after May 2010, for that the witness will need access to volume (II) if it's no longer there. I just want to take you through for the sake of clarity, the agreements or some of the agreements which we have. In volume (II) I've already shown you the documents at tabs 1 and 2 which are both effective as at 1 May 2010. Would
30 you then please turn to tab 3 and you'll see that that document is entitled An Agreement Between Waawidji as the Contract CEO on the one hand and Gandangara Transport Services or GTS on the other, do you see that?

A. Yes sir.

35

Q. And if you turn to page 794 you'll see that the commencement or effective date is 1 July 2012?

A. That's right.

40 Q. At the preceding page 793 is an execution page and again on the right hand side about two-thirds of the way down do you see your signature?

A. Mr Baird may I ask for clarity again if you don't mind?

Q. Yes

45 A. You're asking me about an agreement between Waawidji Pty Limited and the Gandangara company.

Q. Yes?

50 A. I'm not aware that Waawidji has been summonsed to appear here. I have been.

DEPUTY REGISTRAR: Do you raise an objection Mr Johnson?

WITNESS: Yes I am Registrar.

- 5 DEPUTY REGISTRAR: I understand that the nature of the agreement that you're objecting to is an agreement between Waawidji and Gandangara Transport Services. It falls within the examinable affairs of Gandangara for you to answer questions which involve Waawidji's involvement in Gandangara. That falls within the examinable affairs and hence makes the question relevant to the proceedings. That's why I'm allowing the question and directing you to answer it.
- 10

BAIRD

- 15 Q. In that document Mr Johnson I think I asked you to identify your signature on page 793, is that your signature, about two-thirds of the way down?
A. Yes sir.

- Q. And is that the signature of Ms Cronan towards the top of that page?
20 A. I'm going to fall back on my previous answer, so.

- Q. Now the relevant provisions of that agreement which start on 1 July 2012 appear from pages 794 and onwards, can I direct your attention to Part 7, Annual Remuneration?
25 A. What page sir?

Q. 794, the following page?
A. Yes sir.

- 30 Q. There's an annual remuneration of some \$74,871 odd, do you see that?
A. Yes sir.

- Q. And there's a Performance Assessment Provision at pages 795 and 796, do you see that?
35 A. Yes sir.

Q. I apologise, it's 795, 796, 797 and 798 through to 806, is that right?
A. Yes sir.

- 40 Q. And if you look at page 795 the heading Part 7 Performance Assessment again it bears the date February 2007, you see that?
A. Yes sir.

- Q. And those pages bear a remarkable similarity to the pages that we looked at earlier in relation to the 2010 agreements do they not?
45 A. Yes they were cut and paste and explains it to you.

- Q. So anyway in 2012 Gandangara Transport Services or GTS was paying you remuneration of some \$47,000 odd per annum, correct?
50 A. Yes sir.

Q. The next document is at tab 4, page 807, this is an agreement between Waawidji and Gandangara Health Services or GHS, do you see that?

A. Yes sir.

5 Q. And again if one looks at the execution page that appears at page 108, if you would turn to that?

A. Yes sir.

10 Q. And is that your signature appearing about two-thirds of the way down on the right hand side of the page at 818?

A. Yes sir.

Q. Over the page becomes Schedule 1 at page 819 and do you see under Part 7 the reference to annual remuneration?

15 A. Yes sir.

Q. And again the remuneration provided there is the amount of \$47,871.15?

A. Yes sir.

20 Q. And there's no superannuation provided for there?
(No verbal reply)

Q. Again starting from page 820 appears what is now becoming a fairly family Part 7 Performance Assessment dated February 2007?

25 A. Yes sir.

Q. And the last of these documents appears at tab 5 starting at page 832 and that is an agreement between Waawidji and Marumali, is that the correct way to pronounce it?

30 A. Near enough Mr Baird.

Q. I'll accept your correction on this Mr Johnson, how would you pronounce it?

A. Marumali.

35 Q. And that also has a commencement or effective date of 1 July 2012 does it not appearing from page 844?

A. Yes sir.

40 Q. The same as the two documents that I've just shown you for GHS at tab 4 and GTS at tab 3?

A. Yes sir.

Q. And again at page 843 is a signature page and is that your signature appearing about two-thirds of the way down the page on the right hand side?

45 A. Yes sir.

Q. And again from page 844 the annual remuneration is shown under Part 7 to be the amount of \$47,871.15?

A. Yes sir.

50

Q. And on this occasion there's employee superannuation of some \$12,900 odd?

A. Yes sir.

5 Q. So on 1 July 2012 there are three further service agreements entered into by Waawidji with three separate entities, being Marumali, GTS and GHS, correct?

A. Just for clarity I'm led to believe those three replaced on previous, yes sir.

10 Q. I accept that correct. Now Marumali was a wholly owned subsidiary of GLALC, correct?

A. Not at the time sir, no sir.

Q. What was it?

15 A. An independent entity. You've got to remember it was never our understanding that these were wholly owned entities at the time. That was the basis for much dispute between ourselves and the current administrator. We were always of the very, very firm belief that they were not wholly owned subsidiaries.

20

Q. All right, well let me--

A. That was never resolved Mr Baird.

25 Q. Let me take you back a little step then. Can you turn please back to tab 3 and I want to ask a question about GTS or Gandangara Transport Services firstly. Do you know who the shareholder of GTS was?

A. There were none.

Q. Do you know who the members of GTS were?

30 A. You're testing my memory but I think from memory it might have been, it was another corporate entity Mr Baird, I can't remember exactly which one.

Q. It was part of the GLALC group of companies was it not?

A. I can't remember who the member was sir.

35

Q. It was part of the GLALC group of companies was it not?

A. It was a part of the group of companies, yes Mr Baird.

40 Q. Can I assist you please, tell me if you wish to check the company search but the founding member of GTS was GMS, correct?

A. I'll accept that Mr Baird.

45 Q. And if you need to verification the page that I'm looking at, Registrar, is in volume (VII), tab 22, page 1854, there is a copy of the constitution of GTS and at page 1854 the founding member of GTS is stated to be GMS. On that assumption Mr Johnson would you agree that as GMS was a wholly owned subsidiary of GLALC that GTS was a part of the GLALC group of companies?

A. No, sir.

50 Q. Why do you disagree with that statement Mr Johnson?

A. I'd suggest that GMS was not a wholly owned subsidiary of GLALC.

Q. I'll get you the company search of G of GMS, sir. The founding member of GMS was GLALC, would you agree with that?

5 A. No, sir.

Q. Would that to the witness be shown, we're going to deal with that sort of detail, volume (VII), tab 7?

10 A. No, no, wrong - that may be correct.

Q. Thank you.

A. But we're talking about members. Do members own the organisation sir.

Q. The founding member of GMS is GLALC, correct?

15 A. The founding member of GMS is GLALC--

Q. Sorry, I withdraw that--

A. I don't, I don't think that's correct Mr Baird.

20 Q. I'm sorry, Mr Johnson, I'm sorry, can I withdraw that--

DEPUTY REGISTRAR: Just one moment Mr Johnson.

25 BAIRD: We have all the company searches here, let me just check the corporate tree for a moment as well, see if that assists. I have to do it the slow way. If the witness has in front of him volume VII.

Q. Could we firstly go to the search at tab 2 please, Mr Johnson, you've raised the point, it needs to be clarified.

30 A. Is that tab 2 was it sir?

Q. Tab 2.

A. Which file was that?

35 Q. Volume VII which I think has just been brought to you, do you have?

A. Is that volume VII?

Q. It has a number on the front that there.

40 A. I can't see a number, sir - yes I can, my apologies, yeah, volume VII.

Q. Thank you, can you turn--

A. Roman numeral, vii.

Q. That's right, can you turn to tab 2 please?

45 A. Yep.

Q. At page 1568 you'll see that that is a company search of, G-L-A-L-C, Development Services Ltd, do you see that?

50 A. Yes, sir.

Q. Could you then please turn to tab 4 in that volume which starts at page 1576?

A. Yes, sir.

5 Q. And that's the constitution of GLALC, G-L-AL-C, Development Services Ltd?

A. Yes, sir.

10 Q. And at page 1579 do you see the founding member means GLALC, G-L-AL-C, do you see that?

A. Yes, sir.

Q. Okay, so that's the first step in the chain. The next step can I take you to tab 5, page 1612?

15 A. Yes, sir.

Q. And that's a company search Gandangara Management Services Ltd, do you see that?

A. Yes, sir.

20

Q. Next we have tab 6, sorry, tab 7 is the next tab I'm sorry?

A. Seven?

25 Q. Yes, tab 7, starting at page 1627 is the constitution of GMS that we've already looked at?

A. Yes, sir.

Q. At page 1630 "the founding member" means, G-L-A-L-C, Development Services Ltd?

30 A. Yes, sir.

Q. Next one, GTS, and would you then next-ly in that volume turn to tab 20?

A. Twenty, yes sir.

35 Q. Twenty, two zero, and at page 1843 you'll see that's a company search for Gandangara Transport Services Ltd, i.e. GTS?

A. Yes, sir.

Q. And the constitution then of GTS appears at tab 22?

40 A. Yes, sir.

Q. Tell me if I'm going too fast?

A. No, you're fine. What page sir?

45 Q. Page 1851 is the constitution and at page 1854 you'll see the definition "founding member" means Gandangara Management Services Ltd?

A. Yes, sir.

50 Q. Would you now accept, having looked at those documents, the proposition that Gandangara Transport Services Ltd is a member of the GLALC group of

companies?

A. A member, yes sir.

Q. Thank you. Now--

5

DEPUTY REGISTRAR: Any problems?

BAIRD: Thank you.

10 Q. Now, we would put that volume to one side thank you Mr Johnson. I was taking you to the document, the documents at tabs 3, 4 and 5 in volume (II) which we're just looking at which are the three, shall we call them, service or employment agreements of Waawidji, each dated or effective date commencing 1 July 2012 and respectively with GTS, GHS and Marumali(?)?

15 A. Yes, sir.

Q. You gave in one of your answers a moment before you expressed the possibility that there had been some agreements that preceded these agreements, is that, did I correctly understand what you said?

20 A. Yeah, you pointed them out Mr Baird.

Q. No, I said I pointed you to these agreements?

A. Yes, sir.

25 Q. And you said, please correct me if I'm wrong, something to the effect that those agreements replaced earlier agreements, is that right?

A. That's correct, yes, replaced.

Q. What agreements did they replace?

30 A. The previous employment contracts and agreements with Waawidji that you've referred to in these here, in this examination.

Q. Can I put to you that there is no previous agreement between Waawidji and Gandangara Transport Services prior to 1 July 2012?

35 A. Yes, certainly correct sir.

Q. Can I put to you that there's no prior agreement between Waawidji and Gandangara Health Services before 1 July 2012?

40 A. ..(not transcribable).. yes, yes, correct sir, yes.

Q. And similarly in relation to Marumali that there's no separate or earlier agreement between Waawidji and Marumali prior to 1 July 2012?

A. Correct.

45 Q. So these agreements did not replace any earlier iterations?

A. No. You're absolutely correct, I apologise for my incorrectness.

Q. There's no need to apologise Mr Johnson, thank you. Now, apart from those three employment agreements what other employment agreements did you have with the GLALC group of companies as at 1 July 2012?

50

A. Me or Waawidji, sir?

Q. I apologise, I accept that correct, "you" collectively being both you and Waawidji?

5 A. I think Solomon and Solomon has decided that we're not collective sir.

Q. Let me set it up, I'll do it for you one by one if you like. I assume you still had the service agreement in existence that was continuing to operate between GLALC and yourself that we looked at earlier and that it was
10 continuing to operate in July 2012, do you need to go back and see that document again?

A. No, no, I know what you're referring to. I'm not sure sir if that also was replaced at the same time. I can't remember whether that was just continued on or whether it was replaced.

15

Q. I might be able to assist you.

A. Thank you.

Q. Please go back to tab 1, page 751--

20

DEPUTY REGISTRAR: Of which folder Mr Baird?

BAIRD: Sorry, the folder we're in, which is still volume (II), Registrar.

25 EXAMINE JOHNSON: Tab 1.

DEPUTY REGISTRAR: Mr Johnson do you have folder number 2 there or has that been--

30 EXAMINE JOHNSON: Yes, I do sir, yep, I have that page.

BAIRD

Q. Now we looked at that agreement earlier, that's the agreement between
35 yourself and GLALC and that's the one which has the effective date of 1 May 2010?

A. Yes.

Q. And what I want to put to you, is that agreement continued in effect after 1
40 May 2010 right until the termination of your employment and if you need verification of that please turn to page 762 and it'll show what the expiry date is?

A. Well, I'll have to accept your advice on that. As I say I can't remember whether it was replaced with something similar at the same time as the other
45 three. I'll accept what you give me, you have the records.

Q. I don't want you to take in on faith Mr Johnson--

A. Well that's the best I can do Mr Baird.

50 Q. --could you just bear with me a moment please Mr Johnson. Turn to

page 762, in the middle of the page immediately beneath part 4, the commencement date, is part 5 headed, "Nominal expiry date", and the date shown there is 31 May 2015, do you see that?

A. Yes, sir.

5

Q. Aided by that would you not agree with me that this agreement was intended to have an operating period of five years and one month?

A. I agree that that's what its intention was, yes, sir.

10 Q. Doing the best that you can did this agreement remain in place and on foot until the termination of your employment by GLALC?

A. My answer remains exactly the same, Mr Baird.

Q. You're not sure?

15 A. I'm not sure, I have to rely on you.

Q. If there were another agreement are you able to assist me as to when this other agreement came into existence?

20 A. I've done that sir. If there is another agreement it would have come into place the same date as this other three agreements if but I can't remember sir.

Q. Which was about 1 July 2012?

A. Correct, sir.

25 Q. Can I assume that if there were such another agreement it was on similar terms to this agreement, the 2010 agreement?

A. Yeah, I'd agree with that sir.

Q. Particularly as to payment of remuneration?

30 A. From memory there was no change sir.

Q. And from your memory there was no change to the other provisions?

A. Correct.

35 Q. Such as superannuation and performance bonus, is that fair?

A. Correct.

Q. Secondly, in relation to GMS, I've taken you and shown you the document which is at tab 2 which is the 2010 agreement between Waawidji and GMS.

40 My question to you is the same, by reference to page 778 and the nominal expiry date of 31 May 2015 can I put to you that this agreement was intended to have an operating period of five years and one month?

A. I don't think so sir. If the starting year was 2012--

45 Q. Ten, I said 1 May 2010, as appears from page 778?

A. Yes, okay, yes sir.

Q. Now is your answer in relation to the Waawidji GMS contractual position the same as before, namely, that you do not recall whether or not this

50 agreement was superseded in 2012 by another agreement of a similar kind?

A. What's your question Mr Baird?

Q. I'll do it in steps then--

A. No, no, just--

5

Q. --I thought I could it in a roll up. Did this agreement remain on foot from 1 May 2010 through to the end of your employment, sorry, Waawidji's employment by GMS?

A. No, sir.

10

Q. And doing the best you can, about when was it terminated?

A. It was terminated on the date of these three new contracts.

Q. Is that 1 July 2012?

15

A. Yes, sir.

Q. And is your evidence then that in place of the agreement which appears at tab 2, three separate agreement agreements came into place, is that right?

A. Yes, sir.

20

Q. Being the three documents we've seen at tabs 3, 4 and 5?

A. Yes, sir.

25

Q. Is it therefore correct to assume that after 1 July 2012 Waawidji was no longer paid remuneration at the annual rate of \$100,000--

A. It was--

Q. Sorry, by GMS?

A. Correct, sir.

30

Q. And in its place Waawidji received the three amounts that I've shown, that I've taken you to for GTS, GHS and Marumali?

A. Yes, sir.

35

Q. In addition to those three salaries we have the salary being paid by GLALC as we've discussed in addition--

A. I'm sorry, what three salaries are you talking about, Mr Baird, what three salaries?

40

Q. Mr Johnson I just took you to the three salaries from 1 July 2012 for each of GTS, GMS and Marumali?

A. You think it's appropriate, just a genuine question Mr Baird, to refer to agreement fees as salaries, I question that.

45

Q. Remuneration, would you prefer the word remuneration?

A. Okay, fine, I agree with that.

Q. In addition to the three lots of remuneration that were being paid to Waawidji under the documents at tabs 3, 4 and 5 from 1 July 2012 you personally were receiving remuneration from GLALC at the rate of

50

approximately eighty - I'll make sure I have the exact amount correct, \$80,000 either under the document that appears at tab 1 or a replacement for that document?

A. Yes, that is correct.

5

Q. Thank you. So either you or Waawidji were receiving four separate amounts of remuneration from 1 July 2012 onwards?

A. Yes, sir.

10 Q. What was the reason for that Mr Johnson?

A. The remuneration between myself and GLALC was a statutory requirement. The CEO had to be an employee of the Land Council. That had to be. I remember when I first started at GLALC in 07 that was not my choice but that was a statutory requirement, so that was a matter of compliance. The conversion from a single contract to three was at the request I believe of my accountant at the time.

15

Q. Who was that?

A. Victor Bimrose.

20

Q. And what did he say?

A. He suggested that the contracts should be from three separate entities if at all possible and I said, well that was possible. And I put that to the board.

25 Q. How did you do that?

A. I asked them if they would accept that, there was no change in the amounts and they accepted that.

Q. Orally or in writing?

30 A. It was put to them at a meeting and confirmed in writing that you have just taken me to the confirmation in writing.

Q. Did you address the board in meeting on this aspect?

A. Yes, I did so.

35

Q. Can you recollect about when that occurred?

A. At the time of these ..(not transcribable)..

Q. Approximately July 2012 or a little before?

40 A. Approximately, thereabouts.

Q. And were you present when the board voted?

A. I can't remember that, sir.

45 Q. It would be normal would it not for you to absent yourself from the meeting for such a vote to be taken--

A. It would be normal for them to absent me, yes sir, that's why I can't remember whether that occurred or not because there wasn't a change in conditions or amounts.

50

Q. Well there was a slight increase in total was there not?

A. If there was that would have been because of part A of the structure which was incremental per annum.

5 Q. What increase was there in the scope of your duties between 2007 and 2012?

A. Massive.

Q. In what respects?

10 A. We went from an organisation with the day I started one employee and a two and a half million dollar debt that had to be paid to an organisation that in at least one of those years of operation had an operating budget of around 20 million. We had massive developments on the go, one of them the largest single programme ever invoked in Aboriginal Australia. We had transitioned
15 into a very large multi-faceted service delivery. Organisation where we were for the first time ever a land council was providing services to its members. The transformation was massive. Number of staff, operating budget. We spent over a period of years I think from memory around about \$5 million on the Barden Ridge project alone.

20 Q. Thank you, Mr Johnson, I accept your answer, can we move to the 2010 period please. If one performs the arithmetical exercise of adding up the remuneration being paid to you under the GLALC agreement at tab 1 of \$80,000 together with the remuneration being paid under Waawidji, this is also
25 under the 1 May 2010 agreement by GMS of \$100,000 at page 778 one gets the total remuneration package of \$180,000 plus superannuation, you'd accept that?

A. Mm-hmm.

30 Q. Now by 2012 what was you and Waawidji's total remuneration package?

A. I'm not sure sir.

Q. Was it more than \$180,000?

A. It would have gone up by the increments within the contract.

35 Q. Putting aside bonuses do you think your total remuneration package had increased substantially after that time or what it about the same?

A. I'm led to believe the increases would have been at around 7% per annum, that was in the contracts sir.

40 Q. In tab 2 can you refer back to page 779 headed, "Part 7, performance assessment"?

A. Yes.

45 Q. And this is the tab that deals with bonuses?

A. Yes sir.

Q. Could you just give me some guidance how and to assist my understanding of how these performance assessment and bonuses operated,
50 the bonus entitlement itself appears from clause 7 from recollection - sorry, I'll

just make that the contract covers it - sorry, it's part 6 on page 769, that's the overall or shall we say the general entitlement to the remuneration package set out in part 6 of schedule 1, do you see that on page 769, clause 6.1?

5 A. Can you tell me where I locate 769, it's one of those, what precedes it please Mr Baird?

Q. Mine's in order, mine has 768 as the preceding page, in the document at tab 2 it's the one, two, three, fourth page in?

10 A. Yep, I have got it, yep.

Q. And it's headed, "Remuneration", do you see that?

A. Yes sir.

15 Q. "The service contract provider shall provide the contract CEO an annual remuneration package as set out in part 6 of schedule 1 that shall comprise the following components, one service fee component", do you see that?

A. Yes sir.

20 Q. And then on top of that is to be the contract's CEO remuneration to be reviewed in accordance with clause 15, et cetera, and 6.3 and 6.4 are self-explanatory, do you see that?

A. Yes sir.

25 Q. For the sake of completeness if you look at clauses 7 and 8, which are additional benefits and leave entitlements, those matters are dealt with, they do not include the matters of bonus do they?

A. Seven and eight, no sir.

30 Q. And then superannuation in clause 9 also clearly deals with superannuation only does it not?

A. Yes sir.

Q. So the entitlement to be bonus is to be found under clause 6, and clause 6 directs one to schedule 1, correct?

35 A. Yes sir.

Q. Schedule 1, starting part 6 is in fact an inaccurate reference in clause 6.1, clearly that's meant to be a reference to part 7 is it not?

40 A. It seems so, Mr Baird.

Q. That's fairly obvious. So under the hearing, "Part 7 performance assessment", there is a procedure that has to be undergone in order for one to be entitle to a bonus, correct?

45 A. Yes sir.

Q. And that involves a review process and the achievement of certain what are colloquially called KPIs?

A. Yes sir.

50 Q. In respect of the 2011 financial year do you know whether or not a

performance assessment was conducted of your performance as CEO under the Waawidji GMS contract?

A. I'm led to believe it was done every year, Mr Baird.

5 Q. Thank you, and are you able to say what the KPIs achieved were?

A. No, sir.

Q. Did you ever see the performance reviews?

A. No, sir.

10

Q. Did Mr Gundar for instance - you know who Mr Gundar was don't you?

A. Yes sir.

Q. He became the finance manager in March 2011 didn't he?

15

A. Yes sir.

Q. Did he ever tell you what the KPIs achieved were?

A. No, sir. I saw the end result as whether or not I - in the form of whether or not I got a bonus. I saw it in the form of dollars.

20

Q. I just want to ascertain your understanding of the procedure Mr Johnson. So section 1 is what I think you've referred to as the incremental increase, is that the one, the performance allowance of up to 15% of the total remuneration package plus a remuneration package incremented 50% of the bonus amount, is that correct, do I understand you correctly?

25

A. Yes sir.

Q. And then separately from that is section 2 and it's based on outcomes achieved for GLALC as shown in the reports, do you see that towards the foot of page 779?

30

A. Yes sir.

Q. And there's a subparagraph (a), "Prior to being eligible for a consideration of a results bonus the following must be achieved", and there's four subpoints there and they speak for themselves do they not?

35

A. Yes sir.

Q. Including satisfactory and achieved KPI, no audit qualification, no auditor's concerns and a minimum surplus of \$250,000 being generated?

40

A. Yes sir.

Q. And then over the page at 780 it shows what amounts are not to be taken into account when the bonus is calculated?

A. Yes sir.

45

Q. Now I'll take you to the specific examples in a moment in respect of the 2011 year Mr Johnson but speaking generally was it you or Mr Gundar who made the calculations of any entitlement to a bonus on Waawidji's part in the 2011 year?

50

A. It was always the finance manager Mr Baird.

Q. I won't trouble you with the finer details of calculation on page 780 then Mr Johnson. Just to put it in perspective, in the 2011 year the first of the major sales of the development occurred, did they not and if you aren't able - unable to be certain I can assist you?

5 A. The first of the which sales?

Q. The major sales of the development of Gandangara Estate?

A. Stage 2.

10 Q. Stage 2?

A. Yes sir.

Q. And also the sale of lot 101 Barden Ridge occurred, did it not?

A. I'm not sure whether that was the same year sir. I don't think it was.

15

Q. I'll assist it's not a memory test. Could volume 1, may be shown to the witness please and the other volumes can be taken away at this stage but leave volume (II) nearby but no need to have it open. So volume (I) A Mr Johnson can you please go to tab 9 and if you look at p 295 you'll see that's entitled "The GLALC Annual Report for the 2011 Year". Do you see that?

20

A. Yes sir.

Q. Now I put to you a moment ago that certain sales had occurred in that year. For your assistance can you turn to page 337 Mr Johnson and about a third of the way down the page there's a heading "Note 3" on 337. So do you have page 337 open?

25

A. Yes I do sir. I see the two land sales.

30 Q. Yes?

A. And income.

Q. Yes there's reference there to the stage 2 development being sold in 2011 for approximately 14.023 million dollars and to lot 101 Barden Ridge being sold for 2.5 million dollars. Do you see that?

35

A. Yes sir.

Q. Immediately beneath that is an entry "Cost of sales from sale of land assets" and there's a figure of 11.308 million dollars in brackets. Do you see that?

40

A. Yes sir.

Q. Do you know what that relates to?

A. Don't - I'd - no I'd be guessing Mr Baird. It'd be a figure created by Lawlers the auditors.

45

Q. Well it would not, for instance, include the cost of acquiring the land, would it?

A. No it wouldn't sir.

50

Q. Because the land cost nothing to acquire?

A. Yes sir.

5 Q. So this is a figure which refers, on its face, to the costs from sale of the land, clearly?

A. That entry remains unchanged Mr Baird.

10 Q. And as CEO I'm asking you if you have some understanding of the nature of the costs that were incurred in the process of selling those two land assets? Can you give me some examples?

15 A. You ..(not transcribable).. - you're forcing me to guess Mr Baird. My answer remains unchanged. That was a figure created by Lawlers. Now they worked in an environment of their own. They came up with the audited reports, they - and which this is a part of. They were very independent, beholden only to the regulator and they were presented - they had a team of their accountants in the office for several months every year doing the audit and going through the documents and they would have done the audit and presented it to the Board. Now this is their document Mr Baird not ours, not Gandalgara's, when I refer to ours. It's theirs.

20

Q. Do you think they'd simply pluck that figure from the blue Mr Johnson?

A. Of course I don't Mr Baird but where they specifically derived it from I can't tell you.

25 Q. Let me summarise for you and you can agree or disagree with some of the evidence given by Mr Gundar in these proceedings. I'll do it step by step. Firstly GLALC maintained its financial records on an MYOB software accounting system. Do you know whether that's correct or not?

A. Correct.

30

Q. At the end of each financial year the finance officer in 2011, Mr Gundar supplied to Lawlers the MYOB records. Do you whether that occurred or not?

A. That occurred.

35 Q. And that was a procedure that occurred each year, correct?

A. Correct.

Q. And based on GLALC's MYOB accounting records Lawlers prepared a draft of a report?

40 A. Correct.

Q. A draft financial statement to be precise?

A. Correct.

45 Q. And that was in turn submitted to GLALC for its review and comment?

A. Correct.

Q. And that was a matter that in ordinarily circumstances the finance manager would attend to, correct?

50 A. Correct.

Q. And the finance manager would consult with you to the extent necessary and keep you informed of that process, would he not?

A. Correct.

- 5 Q. In relation to 2011 financial statements and you're looking at part of them here, do you recollect having any discussions with Mr Gundar about the draft financial statements prepared by Lawlers?

A. I would have.

- 10 Q. If Mr Gundar had a query or had a matter that Lawlers asked him to look at, he would in the ordinary course have kept you informed, would he not?

A. Correct.

- 15 Q. Is it fair to surmise that in terms of cost of sales from sale of land assets that item would have included payments to consultants in respect of the realisation of those properties?

A. When you say "fair to surmise" that equates to a guess. I agree with you.

Q. All right?

- 20 A. It's fair to surmise.

Q. For instance, of course, payment of real estate agents' commission?

A. I imagine that would be included.

- 25 Q. And payments to Ardon Management who were property managers for one of the developments, correct?

A. I imagine that would be included.

Q. And payments to Dixon Capital, Mr Wing?

- 30 A. You're confirming that this was prepared by Lawlers.

- 35 Q. If you need confirmation of the amount that was actually achieved, please would you turn back to page 323 and at page 323 there's an entry about 11 lines down which reads, "Net gain or loss of sale of property, plant and equipment" and there's an item there \$5,214,460 and there's a reference there to Note 3 and if you turn back to page 337, Note 3, you see the identical figure there \$5,214,460. Do you see that?

A. Yes sir.

- 40 Q. Is the summary of your evidence therefore that, apart from what appears in these accounts, you had no specific knowledge of how the amount of 5.214460 was actually derived?

A. Income less cost of expenses.

- 45 Q. Nevertheless in reaching a surplus or deficit before income tax which appears some five lines from the bottom we'll see the amount there 5.051232 dollars. Do you see that?

A. What was that amount sir--

- 50 Q. The surplus before income tax, five lines from the bottom?

A. On page 337?

Q. On page 323?

A. 323 bear with me, took my finger out of there. Sorry?

5

Q. See the figure there, the surplus before income tax?

A. Yep.

Q. 5,051,232. Do you see that?

10 A. --yep.

Q. And that figure is derived after taking into account the net gain on sale of the property that we've just looked at in the middle of the page of 5,214,460. Do you see that?

15 A. Yes I see it.

Q. And that's correct isn't it that in order to derive the surplus before income tax for the year one has to take into account all the positive items and take away all the negative items that are shown under the 2011 column, correct?

20 A. Yes but--

Q. Well it's a simple arithmetic exercise, isn't it Mr Johnson?

A. No it's not Mr Baird, there are complexities. Can you tell me because I genuinely need to know, is this a consolidated report of the group activities or not?

25

Q. This is the consolidated report as I understand it, if you need to check that.

A. Because it's headed "Land Council" and at the time there was entities in place.

30

Q. Stopping there Mr Johnson I mean focusing your attention upon the calculation that appears at page 323 for the year 2011?

A. Yes and I'm reading "surplus". To answer you--

35 Q. Let me put it to you this way. In the 2011 there are a number of items of income recorded.

A. Page 32?

Q. Page 323?

40 A. Yes sir.

Q. The first item is rental income of some \$574,000?

A. Yes sir.

45 Q. There's also services income of \$386,000, correct?

A. Yes sir.

Q. An NSWALC allocation of \$130,000 and there's some funding from the New South Wales Department of Transport of \$514,000, correct?

50 A. Yes which indicates to me sir that that's consolidated.

Q. I said that Mr Johnson but let me continue please. There's miscellaneous other revenue, interest, miscellaneous operating grants, some money from DEEWR, some money from IPRC and then one comes to the net gain on sale of property, the figure of 5.241 million dollars that we've looked at a moment ago?

A. Yes sir.

Q. Then that exercise brings all those positive figures to account and deducts from them all the figures shown in brackets below, correct?

A. Yes sir on that page, yeah.

Q. On that page?

A. Yep.

Q. And that's one achieves a surplus of 5.05123 dollars. Do you see that?

A. Yes sir.

Q. Now my question to you Mr Johnson is, for the purpose of the calculation of the CEO's bonus, which is the correct figure to use? Is it the figure of 5,214,460 shown as "Net gain on sale of property" in the middle of the page or is it the figure of 5,051 shown as surplus before income tax towards the foot of the page?

A. Mr Baird I was never involved in that process so I can't answer that. What I can tell you is, an independent consultant was brought in after the event and found errors, took those errors to the Board and it was rectified. Now I can't answer the question you're asking. "Is that the figure that was used to calculate the CEO bonus?" I can't answer that Mr Baird. I wasn't involved in that and it wouldn't be appropriate for me to be either.

Q. Leaving that volume open, could you go back please to volume (II) which I think has also been left nearby for you?

A. Yes sir.

Q. Go back to tab 2, page 780?

A. Yes sir.

Q. What I want to put to you, as you've said before, the matter of a surplus was a matter that was in your mind in 2007 when you first commenced employment with GLALC, correct?

A. Yes sir.

Q. It was in your mind because you'd discussed it with officer whose name you gave a moment before?

A. Yes sir.

Q. And it was a matter of some importance to you that as CEO you should get a performance-based bonus, correct?

A. That was of some importance to me, a performance-based bonus, yes sir.

Q. And in the financial year 2011 the situation occurs that Gandangara Estate

2 is sold?

A. Yes sir.

Q. And Lot 1 Bardon Ridge is sold?

5 A. Yes sir.

Q. For, as we can see from Note 3, a total of some 16.5 approximate million dollars. A very substantial amount of money, correct?

A. Yes sir.

10

Q. As a result of which a surplus was created?

A. Yes sir.

Q. A surplus of some magnitude?

15 A. Yes sir.

Q. According to the accountants in excess of 5 million dollars?

A. Yes.

20 Q. I was seeking your elucidation as to whether you knew by looking at page 323 whether the accountants had used the figure for the calculation of your bonus of 5.214 million dollars or instead the amount of 5.051 million dollars and as I understood your answer you were unable to assist? You didn't know?

A. Unable to assist sir.

25

Q. At page 780 in volume (II)?

A. Yes sir.

30 Q. The heading "Example 1 calculation". In that example, the example is given as the CEO scoring 66.6% on his performance rating and generating a surplus of \$350,000. Do you see that?

A. Yes sir.

35 Q. What I'm suggesting to you is that the word "surplus" in that section of Waawidji's employment contract is a direct reference to the surplus that is recorded in the financial statements for 2011 being the amount of 5.214460 million dollars on page 323. That's the surplus isn't it?

A. Sir it was an area I had no direct involvement. So I think you'd be better off speaking to the people that had direct involvement. I only had an awareness that I was due for an amount and I waited to be advised what that amount was. That was how the system worked.

40

Q. And you're telling me you didn't know precisely what the surplus was that had been generated?

45 A. I knew that figure and I - but I didn't know that that - whether that was the figure that was - I - you know I stayed clear of that process Mr Baird.

Q. But as CEO you knew what the surplus that had been generated was?

A. Yes sir I read the audited report.

50

Q. If you want to go back to the report starting at page 299, please do so but that's the report that you as CEO had a hand in preparing and presenting to the Board and members, correct?

5 A. Sir as I repeated before the preparation of that document was wholly and solely in the hands of Lawlers.

Q. I'm not talking about the financial statements Mr Johnson, I'm talking about the report to the Land Council that--

10 A. That template that NSWALC prepared.

Q. Yes?

A. It was just a template that we filled in as such.

15 Q. Yes but that was still your job to fill in the template and prepare the report was it not?

A. Job yeah.

Q. So you knew very well what the surplus was, correct?

20 A. Yeah.

Q. And you knew very well that you were entitled to a bonus out of that surplus in your mind, correct?

A. Yes.

25 Q. And I'll show you some documents later which take you to the calculation of that bonus. Now what was your understanding of the effect of section 52D of the Aboriginal Land Rights Act on your entitlement to a bonus as 30 June 2011?

30 A. Sorry.

Q. What was your understanding of the effect of section 52D of the Australian Aboriginal Land Rights Act 1983 upon your entitlement to a bonus for the year ended 30 June 2011?

35 A. You're asking me to draw a conclusion about the Aboriginal Land Rights Act here.

Q. I'm asking about your understanding of your entitlement to a bonus?

A. I wasn't entitled to - Mark Johnson wasn't entitled to a bonus from GLALC.

40 Q. And your understanding, can I put this to you? Did you have an understanding as to whether or not Waawidji was entitled to be paid a bonus by GMS?

A. Correct.

45 Q. And what was that understanding?

A. That it would be paid a productivity bonus - that Waawidji would be paid a productivity bonus by GMS.

50 Q. And did you have an understanding as at June 2011 or subsequently as to whether or not the payment of that bonus was prohibited by section 52D of the

Act?

A. It wasn't sir. I had that understanding that it wasn't prohibited. It couldn't apply section 52 - was the entire Aboriginal Land Rights Act fails to capture corporations sir at that time.

5

Q. Let me explore that a little further. You've said that you had an understanding that that section of the Act did not apply. What was your understanding based on?

10 A. Reading of the Act. It refers to a payment by a Local Aboriginal Land Council to the CEO of the Local Aboriginal Land Council.

Q. Did you also have some legal advices at that time on that subject?

A. The Board had legal advices I'm led to believe at that time, yep and I'd--

15 Q. Did someone from the Board tell you that?

A. I believe there was substantial legal advice around the service agreements, the formation of the contracts - of the constitutions that took in many of those matters yeah. It was very broad-reaching and quite a lengthy process Mr Baird. It didn't happen overnight.

20

Q. And was Ms Cronan as chairperson of the Board involved in that process to your knowledge, your understanding?

A. Yes she was.

25 Q. And did she tell you what the result of those advices were?

A. Regarding what.

Q. This issue we're talking about, the--

A. 52D?

30

Q. Yes.

A. As I said it's my opinion the 52D didn't apply. I stand by that Mr Baird.

35 Q. I accept that Mr Johnson. I'm enquiring what other information you had and you mentioned in your answer that there was some other advices about at that time?

A. That's right and the other advices I'm led to believe confirm that 52D didn't apply to corporations.

40 Q. And I was enquiring as your understanding, can I do it in two steps. Did you see those advices yourself?

A. I believe so.

Q. Were you also told by somebody of the effect of those advices?

45 A. I believe so.

Q. And was that someone Ms Cronan?

A. She would have been one of the people involved. In fact, more than likely we would have heard it and read it together.

50

Q. Can you remember which advices that you may have seen or discussed with Ms Cronan that dealt with the issue of the CEO bonus from whom they were given?

A. It would have been either Gadens and/or Baker McKenzie.

5

Q. I'll take you to a document in a moment. Might the witness be shown a copy of section 52D. I believe the Court already has one.

DEPUTY REGISTRAR: The court does.

10

BAIRD

Q. Now it's a fairly short section. Please look at it in a moment Mr Johnson.

A. Mr Baird I have to object.

15

DEPUTY REGISTRAR: The basis being?

EXAMINEE JOHNSON: I'm being asked a question pertaining to the Aboriginal Land Rights Act.

20

DEPUTY REGISTRAR: Yes.

EXAMINEE JOHNSON: And this is a matter under section 596A of the Corporations Act.

25

DEPUTY REGISTRAR: Yes.

EXAMINEE JOHNSON: I fail to see how a matter pertaining to a Land Council under the Aboriginal Land Rights Act is captured under the Corporations Act.

30

DEPUTY REGISTRAR: Because the company, the subject of your summons here today is a Land Council and has direct involvement with the Act itself and in particular possibly this section that causes it to be relevant to this examination under the Corporations Act and then satisfied I'll allow the question.

35

BAIRD: Thank you Registrar.

Q. Could I just remind you Mr Johnson that I have already taken you to the constitution of GMS and if you need to be refreshed in volume (VII) at tab 7 I took you to the constitution of GMS. I read out to you paragraph 1.5 which was the company's principal purpose and I also took you to the passage that dealt with directors duties and the duties of the CEO?

40

A. Correct.

45

Q. Do you remember me taking that to you?

A. Correct.

Q. And the duties of the CEO start at page 13.7 on page 1649 and I asked you to read those to yourself. Can I put it to you as I did before that the

50

principal purpose of GMS was to improve, foster and protect the best interests of all Aboriginal persons within the GLALC area. Do you see that?

A. Yes sir.

5 Q. That would therefore include, would it not, as a duty of GMS, compliance with any provision of the Aboriginal Land Rights Act, would it not?

A. No sir. How do you draw that conclusion?

10 Q. If the obligation of GLALC is to comply with the Act, you would agree with that? The obligation of GLALC is to comply with the Aboriginal Land Rights Act?

A. Yes sir.

Q. We've established GMS is part of the GLALC group of companies, correct?

15 A. No sir, no sir. What we've established is that there is a membership link. Now--

Q. Thank you?

20 A. But Mr Baird can - if I can draw the analogy. I'm a member of ..(not transcribable).. in South Sydney but I'm sure Mr Crow would hate to think that I'm a part owner of it.

Q. Are you seriously suggesting to this Court Mr Johnson that the Aboriginal Land Rights Act 1983 does not apply to GMS?

25 A. Yes sir I'm absolutely convinced that that's the case.

Q. And therefore payment of any bonus by GMS is not caught by section 52D. Is that your stated position?

A. That's my understanding Mr Baird--

30

Q. And is that your stated position in Court today?

A. Yes sir.

Q. Well I'm putting to you that's a complete nonsense Mr Johnson?

35 A. Go for your life Mr Baird.

Q. You know very well that the Act applies to the Aboriginal Land Council and all members of that Land Council group of companies, don't you Mr Johnson?

40 A. No sir let me refer to the Australian Constitution, if the State law is in conflict with Federal Law, Federal law prevails.

Q. No you will answer my questions Mr Johnson. You have already today agreed with me that GMS, GTS, GHS and Marumali were all part of the GLALC group of companies?

45 A. No sir that's where we have different - I have not agreed. You put it to me originally that they were owned by GLALC. I have never agreed to that supposition at all. I agree that there was a membership chain(?).

50 Q. I put that fairly and squarely to you and you agreed with that proposition and the transcript will record that Mr Johnson?

A. Please read it back to me. I believe I differed with you on that point and I will continue to.

Q. I direct your attention to section 52D which is in front of you Mr Johnson?

5 A. Yes sir.

Q. Subsection (1) reads, "That a local Aboriginal Land Council", would you agree that includes GLALC?

A. Yes sir.

10

Q. --"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 council, board members or any member of staff of or consultant to the council". Do you see that?

15 A. Yes sir.

Q. You were a member of staff of GLALC weren't you?

A. Yes sir.

20 Q. And in your earlier answer you accepted did you not that section 52D prevented the payment to you personally of a bonus out of the income or property of GLALC, correct?

A. Yes sir.

25 Q. Thank you. What I'm putting to you is that section 52D applies in relation to Waawidji's contract with GMS, you understand the proposition - not asking you to agree or disagree, do you understand?

A. I don't understand sir. (break in recording)

30 Q. ...that the device of paying a bonus by GMS to Waawidji was calculated to avoid the operation of section 52D which would otherwise catch you directly, did you not?

A. No sir, it was done in compliance with an agreement between GMS and Waawidji Pty Limited. The agreement was between those two entities. Now if
35 you wish to believe--

BAIRD: Sorry, Registrar, the question has been answered and I don't wish to listen to speeches from this witness. I've put a question and he's answered In the negative.

40

REGISTRAR: Thank you.

BAIRD: Thank you.

45 Q. Would you direct your attention to page 232 that we've looked at?

A. Yes sir.

Q. And you agree with me that there's an amount of 5.214460 million dollars shown as the net gain on the sale of GLALC properties in the 2011 year,
50 correct?

A. Yes sir.

Q. GMS rendered invoices, did it not, to GLALC for services provided by you to GLALC?

5 A. ..(not transcribable).. sir.

Q. That service agreement did not come into effect until a year later did it?

A. That service agreement didn't, no sir.

10 Q. And there's no evidence of any earlier sale agreement operating in respect of the 2011 financial year, correct?

A. We've been down this track before Mr Baird.

15 Q. There's no evidence of any agreement in respect of the 2011 financial year between GMS and GLALC for the payment of services to GMS?

A. You're starting to come up with other evidence that exists too Mr Baird.

Q. Is it your evidence that there is such an agreement?

A. I've said there is that possibility.

20

Q. I'm not asking about a possibility, is it your evidence that there positively is such an agreement?

A. Sir, your client controls the entire evidence base, your client controls it, not me, so I believe it's unfair to ask me ..(not transcribable)..it's still in existence.

25

Q. Mr Johnson, I want your best recollection as to whether or not such agreement as you allege did in fact exist?

A. I believe there were agreements in place prior to the one you are alluding to, yes sir. I've said that was a possibility all the way through.

30

Q. I'm going to ask you to make a search tonight and when you return tomorrow morning I am going to ask you to produce any document in your possession that answers that description, namely a service agreement between GMS and GLALC operating for the period prior to 1 July 2012, can you do that?

35

A. Sir I believe your request to be unfair and improper. You're aware that I had no access to the record base where that record may exist.

Q. I'm asking only as to documents in your possession Mr Johnson?

40

A. I've provided all those documents to you Mr Baird.

Q. Are you prepared to undertake a search tonight, a further search of your records?

A. ..(not transcribable)..

45

Q. Thank you. Tomorrow morning I'm going to ask you if you can from the search that you have made overnight, locate any such agreement of the kind that we have just discussed and you aver exists. All right. Now, GMS has undoubtedly received moneys in respect of the 2011 year from GLALC, correct?

50

A. For services rendered, yes sir.

Q. GMS had no assets of its own, correct?

A. In the beginning, no sir.

5

Q. As at 2011 it didn't own any real property, correct?

A. Correct sir.

10 Q. The only property that we are talking about in terms of the bonus are the two properties Gandangara Estate Stage 2 and Lachlan 01 Barden Ridge, that were sold in 2011, correct?

A. They were part of the income.

15 Q. Correct, they are the only two properties that are sold in that financial year that generate a surplus, correct?

A. They were the only properties sold.

Q. And they were owned by GLALC?

A. Correct sir.

20

Q. And they generated a surplus as we've just said, correct?

A. For--

Q. For 2011--

25 A. --consolidated ..(not transcribable).. .

Q. Yes?

A. Yes sir.

30 Q. And that surplus was GLALC's surplus?

A. No, they're consolidated brief sir.

Q. GLALC was the owner of the land, correct? Do you need to see the registration--

35 A. GLALC was the owner of the land.

Q. Thank you. GLALC was the vendor of the land - it sold the land?

A. Yes sir.

40 Q. Thank you. Do you need to see the contracts for sale--?

A. No sir.

Q. You were the CEO, you knew about that didn't you?

A. Yes sir.

45

Q. You supervised the sale process closely?

A. Yes sir.

50 Q. Fourteen million dollars for one and 2.5 million dollars for the other, substantial amounts of money for the Land Council, right?

A. Yes sir.

Q. Thank you. So, what we are dealing with here is the property or income of GLALC that has been generated from the sale of those two properties, correct?

A. In part, yes sir, in part.

Q. And that is property or income within the meaning of section 52D subsection 1 of the Act that is before you, correct?

A. Yes sir.

Q. Thank you. GLALC, having received these moneys then pays the GMS invoices, right?

A. For services rendered.

Q. That payment came out of the proceeds of sale of the income or property of GLALC, correct?

A. ..(not transcribable).. yes sir.

Q. GMS then pays Waawidji's invoices, correct?

A. Correct sir.

Q. And those invoices include the bonus amount, correct?

A. Yes sir.

Q. I'll show you your invoices in a moment, I'll show you your invoices tomorrow morning having regard to the time - but would you agree that there was a misdescription on your invoices, that is, Waawidji's invoices to GMS and in fact they were not described as payments of bonus, do you remember that?

A. No sir.

Q. You don't remember--

A. I can't remember.

Q. I'll take you to that tomorrow morning.

A. Thank you.

Q. But in any event Waawidji rendered invoices to GMS?

A. Yes sir.

Q. And the moneys that were paid to Waawidji by GMS in turn found their way to you, Mr Johnson?

A. ..(not transcribable).. Mr Baird.

Q. Tell me more about Waawidji, Waawidji's your company is it not Mr Johnson?

A. I'm the sole director, yes sir.

Q. You're the sole director, who's the sole shareholder?

A. There is no sole shareholder. I'm one of them.

Q. Apologise. You are a shareholder?

A. Yes sir.

Q. How many shareholders are there?

5 A. Two.

Q. Who is the other shareholder?

A. Michelle Hall.

10 Q. And what share percentage does she have?

A. Fifty per cent, from memory.

Q. And does she hold that outright or on trust for you?

A. Outright I think Mr Baird.

15

Q. So you're a 50% shareholder?

A. Yes sir.

Q. And a sole director?

20 A. Yes sir.

Q. So I put it to you that any payment that is made to Waawidji is a payment for your benefit, correct?

25 A. No sir. One minute you said company was operating expenses and it exists in real terms Mr Baird.

Q. That was not my question--

A. So it's not as if it all flows through to me Mr Baird.

30 Q. I didn't say that I said, Mr Johnson, please attend to my question, that any payment to Waawidji is a payment for your benefit?

A. No sir.

Q. You're the sole director and a 50% shareholder?

35 A. No sir. If I said to you all income ..(not transcribable).. within Waawidji and I've derived no benefit, that could be legitimate.

Q. Do you seriously contend Mr Johnson that a payment made to Waawidji is not a payment for your benefit?

40 A. No sir.

Q. Well I put it to you that a payment made to Waawidji is for your benefit?

A. It may be so.

45 Q. Not 'may be', it is, isn't it Mr Johnson?

A. No sir. Look, you're pretending that the corporate veil doesn't exist Mr Baird, I won't accept that.

50 Q. What I'm putting to you Mr Johnson is that there has been an indirect payment of the income and property of GLALC to you via this device of a

payment to GMS and in turn a payment to Waawidji. Do you agree with that proposition?

A. No sir.

- 5 Q. What I'm also putting to you is that you knew after 30 June 2011 and 2012 that the method of payment of your bonus was in fact illegal under section 52D. Do you agree?

A. Absolutely not.

- 10 Q. And that the advices that you referred to which I'll take you to tomorrow morning Mr Johnson, do not countenance that payment as you allege?

A. Mr Baird, you're a bucket full of air.

Q. I take it that you disagree with that?

- 15 A. I disagree with that. Where's your evidence Mr Baird.

Q. What I'm putting to you Mr Johnson is you knew that any payment of a bonus directly or indirectly to you was not only a breach of section 52 of the Aboriginal Land Rights Act but was also a breach of your duties as CEO of both the Land Council and GMS?

- 20 A. Registrar, I object, I've answered that question, several times already I've answered that question regarding whether or not section 52D was breached. I believe I've answered--

- 25 REGISTRAR: I don't think you've answered this question and that's why I allow it.

EXAMINEE: Okay, go ahead Mr Baird, sorry.

- 30 REGISTRAR: Please repeat the question Mr Baird.

BAIRD

- 35 Q. I'll repeat the question. What I had put to you was that the payment of any bonus which came out of the income or property of GLALC indirectly to you or to Waawidji was a breach of the duties and obligations you owed both as CEO of GLALC and as CEO of GMS?

A. You've pointed out by your own steps that that could not be the case Mr Baird.

40

Q. Do you agree with that or do you disagree with that?

A. Clearly I disagree because of the steps you've taken me through.

<THE WITNESS WITHDREW

45

REGISTRAR: Mr Baird I note the time - now might be an appropriate time to adjourn and we will reconvene at 11 o'clock tomorrow in this court room.

ADJOURNED TO FRIDAY 6 FEBRUARY 2015 AT 11AM.

50

RSB:SND

150367

IN THE SUPREME COURT
OF NEW SOUTH WALES
EQUITY DIVISION

5 ACTING SENIOR DEPUTY REGISTRAR BELLACH

FRIDAY 6 FEBRUARY 2015

10 **261609/14 - IN THE MATTER OF GANDANGARA MANAGEMENT
SERVICES LIMITED ACN 143 178 965**

EXAMINATION

Mr Baird for the Liquidator
15 Examinee Johnson appeared in person

20 DEPUTY REGISTRAR: Mr Baird, I note your appearance again. Mr Johnson,
I note your appearance likewise. I remind you, Mr Johnson, you are under
oath still.

EXAMINEE JOHNSON: Thank you, Registrar.

25 DEPUTY REGISTRAR: Mr Baird, when you're ready.

<EXAMINEE JOHNSON, ON FORMER OATH(11.05AM)

<EXAMINATION BY MR BAIRD

30 Q. Now, Mr Johnson, I understand that you have completed a legal degree, is
that correct?

A. Yes, sir.

35 Q. Might the witness be shown a document and that document is in volume
9A .and while that's being provided could Mr Johnson tell me when he
obtained his legal degree?

A. I graduated I think from memory 02, I think.

40 Q. I don't want to trick you, Mr Johnson, would you please turn in volume 9A
to page 2231 and do you see a two page document that appears at 2231 and
2232?

A. 04, humble apologies.

45 Q. Thank you. Now, do you see the two page document that appears at 2231
and 2232?

A. Yes, sir.

Q. Do you recognise that document?

50 A. Not really but I recognise the information contained in it.

.06/02/15

1

Q. Is that a document that you had a hand in preparing?

A. No, sir.

5 Q. Could you turn to the final paragraph on page 2232, do you see the final paragraph there?

A. Yes, sir.

Q. It says, "I am recognised" et cetera. It speaks in the first person, this document, does it not?

10 A. Yes, sir.

Q. Isn't this document, this two page document, effectively what is colloquially known as your CV?

15 A. No, sir, my CV doesn't look anything like that. This might be something that my staff prepared at some stage in the past.

Q. Do you think you've seen it before?

A. I've seen the information contained in it, sir.

20 Q. Could I direct your attention firstly on page 2231 at the top of the page immediately after your name and address there's a title chief executive officer/solicitor. Do you see that?

A. Yes, sir

25 Q. Is that title solicitor correct as at the date of this document?

A. What's the date of the document, sir?

30 Q. The document seems to speak as at - I withdraw that and go backwards. In the middle of the page on 2231 is the statement, "Jack joined with GLALC on 26 February 2007 as CEO And leads a dedicated team of staff at GLALC." So, my question is as at 26 February 2007 was it correct to describe you firstly as chief executive officer?

A. To the best of my knowledge, yes, sir.

35 Q. And was it also correct at that date to describe you as a solicitor?

A. I cannot remember whether I had a practising certificate at that time. I've held them on and off, Mr Baird. I can't remember the dates, I'm sorry.

Q. How long did the Bachelor of Laws course take you to complete?

40 A. I did my Bachelor of Laws, undergraduate, my postgraduate and my masters in three years.

Q. In the heading Education and Qualifications there's an entry 2005 Masters of Law Queensland University of Technology, that is correct I take it?

45 A. That's so.

50 Q. Okay. Now, in the fourth paragraph on that page could I direct your attention to the second sentence, the words, "Jack feels that the only thing stopping us from progression is a lack of understanding of the Act". Do you see those words?

A. Yes, sir.

Q. And I presume that the reference to the Act is the Aboriginal Land Rights Act?

5 A. I presume so, sir.

Q. Is the sentiment that is expressed in that sentence correct, is that right?

A. It possibly was at that time. As I said, I didn't prepare this, Mr Baird, so please note that.

10

Q. I was merely asking whether you agreed that you felt that "the only thing stopping us from progression was a lack of understanding of the Act"?

A. Quite possibly at that time but that would be one of very many things that's preventing our progression, Mr Baird. Would you like me to list some of them?

15

Q. No thank you very much?

A. Okay.

20

Q. Can I take it from that that at least as at February 2007 you had some familiarity with the Act?

A. I started to have familiarity with the Act in 2007, yes, Mr Baird.

25

Q. And over the page on page 2232 there is a reference to the positions that you've held since 2007 including the companies we mentioned yesterday, Gandangara Health Services, Gandangara Management Services, Gandangara Employment and Training and the other companies listed there. That information I take it is correct?

A. Yes, sir.

30

Q. As is the next line, you were chairperson of Marumali from 2007 to 2008, is that right?

A. Yes, sir. I think those years are correct.

35

Q. To the best of your recollection?

A. Yep.

Q. And in 2009 you were CEO of Sydney Aboriginal Services Ltd?

A. To the best of my recollection.

40

Q. Which appears to have provided executive and governance support to Walgett La Perouse and Deerubbin Land Councils, is that right?

A. Yes, sir.

45

Q. And lastly in 2011, which seems to be the last date mentioned on this document, you were a director of the South-Western Sydney Local Health District Board Building Council?

A. Yes, sir.

50

Q. Thank you. We might put that document to one side. I wanted to ask you a question also about the company Waawidji Pty Ltd that I asked you some

questions about yesterday. You said yesterday that you were the sole director of that company, right?

A. Yes, sir.

5 Q. And you were a 50% shareholder of that company?

A. Yes, sir.

Q. And you mentioned a name yesterday but I regret to advise I've forgotten it, who's the other shareholder in Waawidji?

10 A. Michelle Hall.

Q. And is she your partner?

A. Yes, sir.

15 Q. Do you have a de facto relationship, do you live together?

A. Yes, sir.

Q. In the year 2012 are you able to recall what the total amount of income earned by Waawidji was?

20 A. No, sir.

Q. Did it have any other form of income apart from payments received from GMS?

A. I can't recall, sir.

25

Q. Do you recollect it providing services to any other entity or corporation at all?

A. I can't remember with reference to the time frame that you're specifying, I'm sorry, sir, I can't remember the date of it.

30

Q. I merely wanted to ascertain if GMS was Waawidji's sole client or if there were other question. I'll make the question broader?

A. It may have, sir, yes.

35 Q. I'll make the question broader. For the years 2012, 2013 and 2014 can you recollect any other clients of Waawidji apart from GMS?

A. Yes, sir.

Q. And apart from companies that are members of the GLALC group of companies?

40

A. Yes, sir.

Q. Who would they be, can you identify them?

A. I can identify at least one which would be the Aboriginal Education and Consultative Group.

45

Q. Thank you, Mr Johnson. Now, when you became CEO of GLALC on or about 26 February 2007 or shortly thereafter as you said yesterday I take it that you were familiar with your duties as CEO of GLALC?

50 A. I grew familiar with them, sir, yep.

Q. And certainly in 2011 and 2012 you were familiar with those duties, were you not?

A. Yes but they were changing and growing so it was a process rather than an event, Mr Baird.

5

Q. My question is directed more to the general obligations rather than the specifics of the role. Can I just ask you about one or two matters. Would you agree that as CEO of GLALC you had an obligation to act in the best interests of GLALC?

10 A. Yes, sir.

Q. Would you agree that as CEO of GLALC you had a duty to comply with the provisions of the Act?

A. Yes, sir.

15

Q. And as we discussed yesterday on 16 April 2010 GMS became incorporated and if you need to check the company search well then I can show you but if you're prepared to assume that fact would you then accept that as CEO of GMS you had a duty to act in the best interest of GMS?

20 A. Yes, sir.

Q. And you had a duty as CEO of GMS to comply with the provisions of the Act?

A. Which Act, Mr Baird?

25

Q. The Act that we've been talking about which I defined yesterday, the Aboriginal--

A. No, I disagree. I don't agree with that statement then, Mr Baird.

30 Q. Let me answer for the first question that you raised. The Act I'm referring to is the Aboriginal Land Rights Act. When I say the Act I'm referring to ALRA, do you accept that?

A. I believe - no, sir, I don't agree.

35 Q. I was referring to the contraction, I'll revert to my previous question. Do you accept that as CEO of GMS you had an obligation to comply with the provisions of the Aboriginal Land Rights Act 1983?

A. I repeat my answer, no, sir.

40 Q. Are you familiar with the Darkinjung decision?

A. There are many, sir, many. There were decisions being handed down over quite a period of time, Mr Baird.

45 Q. I take it from that that your answer is that you are familiar with some of the decisions concerning that land council?

A. Some decisions are very lengthy, when you use the term familiar it's - I'm not going to be drawn into that. I'll say, no, I'm not familiar because you'd have to define familiarity for me, please.

50 Q. Might the witness be shown a volume which is volume which is volume 9A

and in volume 9A might the witness turn to page 2389, please. The document that I am showing you starts at page 2389 and continues through up to and including page 2408 consisting of a total of 20 pages. As appears from page 2408 is the joint opinion of Mr R J Ellicott QC and Mr M Wright and it is dated
5 16 September 2010. The first paragraph of the opinion states that the Council's instructing solicitors act for GLALC. My question to you, Mr Johnson, is have you seen that opinion before?

A. Yes, I have, sir.

10 Q. Was it an opinion that you read at or about the date that it bears,. namely, 16 September 2010 or shortly thereafter?

A. In 2010 I read it, yes, sir, five years ago.

Q. Thank you. As CEO of GLALC did you have some part in the instruction of the solicitors for GLALC to request counsel or brief counsel to deliver this joint opinion?
15

A. I made the request of our solicitors to get the opinion, yes, sir.

Q. Who were those solicitors?

20 A. I think at the time they were Baker McKenzie.

Q. Could I ask you in that advice, Mr Johnson, please to turn to page 2396, the starting point appears to be at 2396, do you see that?

A. Yes, sir.

25

Q. There's a heading there Barrett J's decision in Darkinjung and other case law. Do you see that?

A. 42, yes, sir.

30 Q. Thank you, paragraphs 42 onwards up to and including paragraph 82 and would you agree with me that as at 16 September 2010 or shortly thereafter you had read those passages of that joint opinion?

A. Yes, Mr Baird.

35 Q. When I refer to the Darkinjung decision I am referring to the decision referred to in paragraph 42?

A. Okay.

Q. That was a decision of Justice Barrett I n 2006?

40 A. Okay.

Q. In 2010 did you have some understanding of the effect of that decision?

A. Yes, I had some understanding of the effect.. I also had an understanding that it was old law as at 2010, Mr Baird.

45

Q. Well, you were as at 2010 a fully qualified lawyer yourself, correct?

A. Yes, sir.

Q. And you'd completed your Master of Laws?

50 A. Yes, sir.

Q. So you were quite capable of reading these paragraphs in this joint opinion and forming your own opinion about them, correct?

A. Yes, sir.

5 Q. Could I direct your attention to paragraph 54?

A. What number, sir?

Q. 54?

A. 54.

10

Q. You will see the first sentence in paragraph 54 on page 2401 reads, "It is open to GLALC to create subsidiary special purpose entities." Did you agree with that expression?

15 A. It was still very early days in the process. This was the first of several opinions. There was much that was still up for further discussion so every time you ask me whether I agree I mean to say I'm uncertain about that, Mr Baird.

20 Q. Well, I'll ask the question in simple form and you can answer it as you choose. In October of 2010 did you have the opinion that it was open to GLALC to create subsidiary special purpose entities?

A. Yes, I did at that time, yes, sir.

25 Q. Then in page 2401, the second sentence of paragraph 54 the authors state:

30 "Following the reasoning set out in the judgments discussed above, in particular that of Campbell J in Sanpine and Barrett J in Darkinjung, a subsidiary entity could not be used as a means to subvert GLALC's obligations under the Aboriginal Land Rights Act."

Do you see that sentence?

A. Yes, sir.

35 Q. And did you yourself in September/October of 2010 have an opinion as to the correctness or otherwise of that statement?

A. In context one had to understand what obligations were being referred to. It clearly wasn't all so you'll have to ask me in context.

40 Q. The context was the statement, "A subsidiary entity could not be used as a means to subvert GLALC'S obligations under the Act". Do you agree or disagree with that statement?

45 A. When I questioned Mr Ellicott QC regarding that the context was with regards to divesting assets. There was no way GLALC in his opinion, and I agreed with him, could divest assets outside of the Aboriginal Land Rights Act requirements. That as the obligations that we were speaking of at the time from my memory.

50 Q. And doing the best that you can do you have a recollection whether you agreed or disagreed with Mr Ellicott's and Mr Wright's joint opinion in

paragraph 54, namely, that a subsidiary entity could not be used as a means to subvert GLALC's obligations under the Act?

A. If those obligations are referring to divesting assets, yes, I agree.

5 Q. And if those obligations were referred to other obligations, other matters apart from divesting assets what is your view?

A. It depends on what that obligation is. You'd have to be specific to get a specific answer, Mr Baird.

10 Q. So is it the case that you did not yourself hold an opinion as widely expressed as that of Mr Ellicott QC at that time?

A. Conversations with Mr Ellicott QC following receipt of this advice were cause for us to seek further advice from Mr Ellicott which we got and they're in the records of Gandangara. So there was cause for further advice.

15

Q. Do you recollect from whom those further advices were obtained?

A. One of them was from Mr Ellicott.

Q. Very well?

20 A. And at Mr Ellicott's request that advice did not follow the same authors as the advice you're referring to here.

Q. Could I move to the next paragraph, paragraph 55. It states, "In this case it is intended that the board of each company be identical at all times to the board of GLALC". Do you see that?

25

A. Yes, sir.

Q. Was that something with which you agreed at that time?

A. I accepted it. I'm not sure that I agreed.

30

Q. The next sentence, "It would in our view also be prudent and highly desirable that GLALC's CEO", that's you, "be appointed as the CEO of each company." Do you agree with that?

A. I accepted it. I don't necessarily agree.

35

Q. You accepted it?
(no verbal reply)

Q. Could you turn over the page to section 2402 please. Are you familiar with section 51 of the Act?

40

A. What does it state, Mr Baird?

Q. I'll get it for you?

A. Thank you.

45

Q. If it helps you it's reproduced on page 2393 at paragraph 23, if you turn back to paragraph 23?

A. 2393?

50 Q. Yes, paragraph 23?

A. Yep, thank you, I am familiar, Mr Baird.

Q. I think that might have been a section I mentioned to you yesterday. Be that as it may, returning back to page 2402 there's the heading there The Questions and in the second paragraph it states:

10 "In order to ensure adherence to the objects as stated in section 51 and having in mind that in accordance with the dicta referred to above each of these special purpose vehicles should set out what is stated in section 51, as does for example the future funds constitution."

Do you agree with that?

15 A. Again it needs to be looked at in context, Mr Baird. You're trying to simplify some fairly complex issues here.

Q. All I'm asking, I'll do it step by step if you like, firstly, that second paragraph on page 2402, I take it that you read that at about that time?

20 A. Yes, sir.

Q. And did you have the opportunity to discuss the opinions expressed in that paragraph with Mr Ellicott QC?

A. Yes, sir.

25 Q. And you understood what the paragraph states that I've just read out to you?

A. Yes, sir.

30 Q. My question is simply do you agree with Mr Ellicott's opinion stated herein, namely, "Each of these special purpose vehicles should set out what is stated in section 51"?

35 A. I'm going to go back to one of my previous answers because I believe it's relevant. In conversations with Mr Ellicott following this advice, which is normal when you have conversations following advice for clarity, Mr Ellicott expressed some concerns regarding what was in this advice that caused us to seek further advice. You're asking me to look at this on its own rather than in context with following advices and I don't believe that's appropriate, Mr Baird.

40 Q. Could I direct your attention to the fourth paragraph on page 2402, the one that commences and reads with the words:

45 "It is critical that whatever an SPV does it should in fact do it in pursuit of the object stated in section 51 even if its activities are limited to a special aspect of that object. Likewise, safeguards to ensure this should be in place in the day to day administration of each SPV."

Do you see that paragraph?

50 A. Yes, I do, sir.

Q. Did you at that time agree with that advice?

5 A. If you look at it in context Mr Baird and that context is that it had to follow section 51 which is for - and also the High Court ruling in Wagga Wagga where the actions of a Land Council have to be beneficial and remedial for Aboriginal people. If you look at it in that context yes I agree.

Q. GMS was NSBV correct?

A. Yes sir.

10 Q. Its special purpose was to provide administration services to GLALC?

A. Yes sir.

Q. Amongst other things?

A. Yes sir.

15

Q. So following that advice it was incumbent on GMS to observe section 51 of the Act, correct?

A. It was incumbent I would suggest not to do anything detrimental to section 51 of the Aboriginal Land Rights Act, yes sir.

20

Q. In your view it was more than just not doing anything detrimental, it's quite clear from that paragraph the opinion of Mr Ellicott QC with which you agreed, namely that whatever GMS did it should do it in pursuit of the object stated in section 51, correct?

25 A. And had to be beneficial and remedial to Aboriginal people. Yes sir.

Q. So therefore it would be incorrect to state, as you said earlier in your evidence today and yesterday, that GMS was not subject to the provisions of the Aboriginal Land Rights Act?

30 A. No sir I don't believe that's the case at all.

Q. If it was bound to do whatever it did in pursuit of the object stated in section 51 then I'm putting to you that GMS could not act in contravention of the Act lawfully?

35 A. I disagree with you sir wholeheartedly.

Q. Can I direct your attention to paragraph 60 on the following page 2403. Now I take it that as you've said earlier paragraph 60 part of that joint opinion was passage that you read at or about that time?

40 A. What was your question Mr Baird, sorry I just finished re-reading.

Q. I take it that you read that paragraph, paragraph 60?

A. Yes sir.

45 Q. And the paragraphs through up to and including paragraph 67 at or about that time?

A. Yes sir.

Q. Was that matter one that you had the opportunity to discuss with
50 Mr Ellicott QC?

A. Yes sir.

Q. Did you in fact discuss it with him?

A. Yes sir.

5

Q. Doing the best that you can recall now, what was the substance of those discussions?

A. The further advice was neither. In Mr Ellicott's opinion this was far from conclusive and he was one of the significant authors.

10

Q. Paragraph 61 immediately following 60 the authors state that section 52D is therefore open to the construction that it accepts that there may be circumstances where a board member of an LALC can receive remuneration from the Council. Do you see that?

15

A. Yes sir.

Q. That was the issue that was under discussion in those paragraphs was it not?

20

A. I'm not sure whether that was the issue that was under discussion. The advice was advice pertaining to 52D. What caused that to be initiated I'm not sure.

Q. Paragraph 63 expresses the authors opinion that the proper interpretation of these provisions is that a board member of LALC is forbidden to be an employee of that LALC. Do you see that?

25

A. Yes sir.

Q. Being fair the authors do say that section 52D (sub-section 2) sub-section (b) is open to other construction but nevertheless was that opinion expressed in paragraph 63 by Mr Ellicott QC and Mr Wright, an opinion with which you agree at that time?

30

A. I accepted it Mr Baird.

Q. You didn't disagree with it?

35

A. Mr Baird I was taken away the day I was born under the Act, there's much that is law that I totally agree with, that I accept. I accepted this, now whether I agree that's a different kettle of fish. I'm stating for the record I accepted it.

Q. Could you then direct your attention please to paragraph 68 on page 2404. The authors state that it remains to consider whether in this case the employment of the chairperson and the payment of a salary is by the Management Services Company his or her employment by it is permissible under the Australian Land Rights Act. You see that paragraph?

40

A. Yes I do.

45

Q. And that paragraph relates directly to the contract between Waawidji and GMS, does it not?

A. How do you draw that conclusion, it's a statement that seems to me not to mention any contract between GLALC and GMS. So how do you draw that conclusion.

50

Q. The reference in the second sentence is to a Management Services Company, correct? Do you see the words "Management Services Company" in the second line of paragraph 68?

A. Yes sir.

5

Q. That would include GMS would it not?

A. Yes sir.

10 Q. The employment of the chairperson at the end of the first line beginning of the second sentence is a direct reference to Ms Cronan, is it not at that time who held that position?

A. I'm not sure that it was sir, so I don't know, I can't remember. Was Ms Cronan an employee at that time.

15 Q. What I'm putting is that Ms Cronan in September of 2010 was the chairperson of LALC, that's correct isn't it?

A. Mr Baird I'm reading section 68 that you've directed me to, you're raising issues that are not mentioned in there and you're telling me to agree with that, I don't.

20

Q. Just deal with my questions one at a time Mr Johnson and please don't leap ahead. In September of 2010 Ms Cronan was the chairperson of GLALC was she not?

A. You've established that with me thank you.

25

Q. So the reference to the chairperson in that sentence emphasised by the use of the word "her" end of the second line is clearly a reference to Ms Cronan, right?

A. I can't confirm that or deny it, I'm sorry.

30

Q. What I'm putting to you is that that issue applied equally not only to Ms Cronan and any prospective employment of her by the Management Services Company but equally to your position as CEO and the prospective employment of Waawidji by GMS. Do you agree or disagree with that suggestion?

35

A. Can you put the question to me again Mr Baird, I'm struggling a bit.

Q. What I'm putting to you is the issue that's set out in paragraph 68 which on its face clearly is a reference to Ms Cronan applied--

40

A. You're drawing that assumption Mr Baird and I'm not agreeing with it.

Q. She was the chairperson at the time, who else is it referring to?
(No verbal reply)

45 Q. Thank you. What I'm suggesting to you is that the issue that is set out in paragraph 68 was an issue that effected Waawidji's employment by GMS also. Do you agree or disagree?

A. No.

50 Q. When you read that you thought that had no relevance to you whatsoever?

A. How should I draw that bow.

Q. Is the answer to my question yes or no?

A. Where's the reference Mr Baird, point me to the reference.

5

Q. Is the answer to my question yes or no, did you think it applied to you or not?

A. No.

10 Q. In paragraph 70 did you read paragraph 70 at that time or shortly thereafter?

A. At that time, yes sir.

15 Q. Did you agree or disagree with the statement in the final sentence of that paragraph "We are inclined to the view that this argument is correct and should be accepted by a court"?

A. You're asking me, I'm just seeking some clarity here Mr Baird. You're asking me whether I agree that this advice is saying that employment of her by a subsidiary would not be in breach of the Act. Is that what you're asking.

20

Q. It wasn't specific as her but that is what I'm asking in general terms yes?

A. I don't - I believe this advice says that employees of a subsidiary company, if that's what they were, that's still to be debated, I'm not confirming that they were was not in breach of the ALO.

25

Q. Just pulling back one step Mr Johnson, it's clear from a reading of paragraph 70 and 71 that there was some controversy about whether or not the terms, particularly of section 52D applied to a subsidiary of GLALC at the time?

30 A. No, I don't agree that there was controversy at all.

Q. I'm sorry, I'm just reading from the document itself?

A. Yes the document does not refer to controversy.

35 Q. Could I finish, those two paragraphs set out the competing arguments do they not?

A. They set out an argument.

Q. They set out two arguments?

40 A. But your question was about a controversy.

Q. I withdraw controversy?

A. Thank you.

45 Q. Those two paragraphs set out two competing arguments, do they not?

A. Yes sir.

Q. They express a view in terms of the words "We are inclined to the view favouring one argument over the other", correct?

50 A. Correct sir.

Q. My single question was where Mr Ellicott QC and Mr Wright said they are inclined to the view that this argument is correct, that argument referring to the preceding sentence in paragraph 70, did you at that time agree with their view?

- 5 A. That - I agreed with their view that a subsidiary could employ a board member of a Land Council. I agreed with that.

Q. What about section 52D, did that apply as well to the employment by the subsidiary?

- 10 A. Let me be blunt Mr Baird, my argument and all my previous answers are based on my belief that section 52D even when it qualifies and this advice refers to those qualified. Section 52D does not pierce the corporate veil. Now that's my belief.

- 15 Q. Thank you for that Mr Johnson. Can you on that point then direct your attention to paragraph 71 where the competing argument is expressed in these terms. "Nevertheless because the ALRA provisions against employment of a board member by LALC are so fundamental to that Act a court would be justified in a given case to conclude that the employment of that board member by a subsidiary company was only a device to avoid prohibition and that it should be treated as a breach of that prohibition and lead to disqualification of the board member". Did you at that time agree with the opinion expressed in paragraph 71 that I've just read out?

A. No sir.

25

Q. And your reason for disagreeing with it was?

A. My conversations with Mr Ellicott, he was what - that was one of the points that caused for further advice to be sought.

- 30 Q. Can you recollect when this further advice was obtained?

A. After this one.

Q. About how long after?

A. I'm not sure sir from memory, you would have it.

35

Q. You might put that folder to one side for the moment Mr Johnson. So the summary of that is that in respect of the matter that I just read out at paragraph 71 you firstly had your own opinion, correct?

A. I had my own opinion based on many conversations with many lawyers.

40

Q. You had considerable legal qualifications yourself at that time?

A. You're making that judgment Mr Baird.

Q. A Master of Law is not an inconsiderable qualification is it?

- 45 A. It's all relevant Mr Baird.

Q. You had some high level legal--

A. I'm proud of my qualifications and the way I gained them Mr Baird.

- 50 Q. You held an opinion different from that expressed by Mr Ellicott QC and

Mr Wright in paragraph 71 at that time, September 2010?

A. I'm suggesting that you are doing what I don't agree with, you're reading that on its own rather than in context with all which if my memory serves me right violates the fundamentals of interpretation.

5

Q. There is another advice, a brief seeing as we're in that folder might as well deal with it now for convenience. Could you turn back in volume 9A please Mr Johnson to page 2377?

A. Yes Mr Baird.

10

Q. The document at page 2377 is a letter from Mr B Coles QC to Mr Andrew Beatty of Baker and McKenzie stating that it attaches a joint opinion and if you turn over the page starting at page 2378 and continuing through to page 2388, some 11 pages is that joint opinion. That's dated 5 May 2010. My question to you Mr Johnson is do you believe you have seen that joint opinion from Mr Coles QC and Mr Wright before?

15

A. Yes I have.

Q. Did you see that at or about early May 2010?

20

A. Yes sir.

Q. Could I direct your attention please on page 2386 to the heading, the second question immediately before paragraph 27, do you see that?

A. Yes sir.

25

Q. In paragraph 31 the authors pose this question, in these terms. "The question accordingly directs attention to the situation whereby GLALC has or will have established companies into which it will transfer assets" and the rest of the paragraph you can read yourself?

30

A. Yes sir.

Q. You're familiar with that question at that time?

A. Yes sir.

35

Q. And paragraph 32 the authors express their opinion. They say "In our opinion by setting up the subsidiary companies and transferring assets to them in circumstances where the provisions of the companies' constitutions may operate in the way described GLALC has not breached its duty to ensure that no part of its income or property is transferred in a prohibited fashion". That's the opinion, is that an opinion that you agreed with at that time?

40

A. I accepted that Mr Baird, yes.

Q. Of course that opinion stated in its hypothetical form was not what in fact happened in relation to the development and sale of Gandangara Estate stage 2 and Lot 101 Barden Ridge was it?

45

A. You'll have to enlighten me, I don't see your logic at all.

Q. At no stage did GLALC transfer Gandangara Estate stage 2 to GMS or any other subsidiary did it?

50

A. No sir.

Q. Neither did it transfer Lot 101 Barden Ridge?

A. Correct.

5 Q. Thank you that folder may now be put to one side Mr Johnson. I asked you some questions yesterday about your 2007 contract and I want to just explore briefly the rendering of invoices by Waawidji under your 2007 contract if it did or did not. You, if I remember correctly, stated that your 2007 contract which we don't have in court had two parts to it, a Part A between GLALC and yourself, that's correct?

10 A. Yes sir.

Q. And a Part B between GLALC and Waawidji correct?

A. From my memory sir yes.

15 Q. The performance bonus provisions that we looked at yesterday in respect of the 2010 contracts were also in similar if not identical form attached to 2007 contract, is that right?

A. I believe so sir yes.

20 Q. The first contract between GMS and Waawidji was 1 May 2011 agreement right and I'm happy to take you back and show it to you?

A. I'm going to take your advice on that.

25 Q. We looked at it yesterday. What I was enquiring, to the best of your recollection, was whether Waawidji had rendered invoices to GMS prior to 1 May 2011?

A. I can't remember sir. If that was the set up date of GMS I don't know how Waawidji could have sir, so you're confusing me with your question.

30 Q. It was merely a question, if you can't recall you can't recall. Let me show you two documents to assist?

A. I don't see sir how Waawidji could have invoiced an entity prior to its existence.

35 Q. Can I show you a document and then we'll deal with it in the context of that document. Can the witness be shown volume (X) please. In volume (X), turn to tab 13 - tab 13 could you turn to page 3873?

A. Yes sir.

40 Q. Now you'll see that document is dated 1 April 2011 approximately 11 months after the GMS Waawidji Services agreement and you'll see that it is entitled "A Reimbursement of Costs Paid on Behalf of GMS to purchase a Nissan Navarra from GLALC/Waawidji". Do you see that?

A. Yes sir.

45

Q. Do you recollect GMS reimbursing costs in connection with the purchase of that Nissan Navarra in April of 2011?

A. Mr Baird I'm not the author of this document, the way it reads doesn't read correctly to me. I'd say there's a typo there Mr Baird but I'm not the author, I

50 suggest I'm the wrong person to be asking.

Q. You're the CEO of GMS are you not?

A. Yes sir.

5 Q. And this is a document which on its face is a purchase order created by GMS, correct?

A. This is an internal finance document Mr Baird.

10 Q. Yes I accept that and what I wanted to know is whether it was correct that GMS paid out \$29,000 in about 1 April 2011 in connection with its purchase of a Nissan Navarra?

A. I believe that part of it is correct, what I question is the term reimbursement Mr Baird, I think that's a typo.

15 Q. I'm happy to accept your correction, if I can get an explanation of the transaction. Who was selling the Nissan Navarra?

A. Ms Hall.

Q. So it wasn't your vehicle, it was your partner's vehicle?

20 A. That's right, communal use Mr Baird.

Q. So she was selling it and she was selling it to GLALC or GMS?

A. GMS from memory.

Q. Was the price \$29,000?

25 A. I'll accept that Mr Baird.

Q. Doing the best that you can recollect?

A. I'll accept it Mr Baird.

30 Q. Can I take it that this transaction in your view had nothing to do with the provision of services by Waawidji to GMS, is that right?

A. No sir.

Q. It was a totally separate arrangement?

35 A. Correct sir.

Q. What word would you use in place of the word "reimbursement"?

A. Purchasing.

40 Q. And how was the price of \$29,000 derived, do you know?

A. Again, and you should have asked Mr Gundar this because there was a process in place that had been enacted prior where they sought independent valuations. They also sought a copy of my replacement trade-in valuation and knocked some money off that and offered that price.

45 Q. So, so far as you were concerned the transaction was properly conducted with an arms' length valuation to determine the price of the vehicle?

A. Yes sir and those valuations were on record.

50 Q. Because otherwise you would be in a position of a conflict of interest would

you not being the CEO of GMS on the one hand as the purchaser and the partner of the vendor of the other?

A. Yes I would suggest I would have been sir.

5 Q. Could I, for the sake of completeness and your assistance just to close that topic, in volume (X) at page 3872, which is the preceding page there is what appears to be an invoice from Waawidji to GMS dated 23 November 2010, numbered 99, do you see that?

A. Yes sir.

10

Q. Is that an invoice that you on behalf of Widji created?

A. Yes sir.

Q. And delivered to GMS?

15

A. Yes sir.

Q. And that amount of \$31,900 corresponds exactly does it not to the amount of \$29,000 plus GST that appears on page 3873, does it not?

A. ..(not transcribable).. I'll take your advice on that.

20

Q. And in addition there were some registration and transfer fees paid of \$1,167 as appears on 3873. So, in summary Mr Johnson it's your view that that was a proper transaction with the price indeterminately independently determined by separate valuations?

25

A. To the best of my knowledge, as I said finance did a lot of that sir.

Q. Put that folder to one side thanks Mr Johnson. I want to show you a letter that was received from the auditors in about November 2012 and could the witness be shown volume (I) BB. And in volume (I) BB I want you to turn to tab 13 page 46. By way of lead in to that page is you look at page 450--

30

A. 450?

Q. 450 is where the document starts just to identify it it's described as Final Management letter for the year ended 30 June 2012 and it's Lawler Partners, do you see that?

35

A. Yes sir.

Q. And on page 451 it has a date 1 November 2012 and it's a letter from Lawler Partners addressed to the Board of GLALC and it's headed

40

Management Letter for the year ended 30 June 2012, do you believe that you saw that letter and its contents at or shortly after 1 November 2012?

A. Yes sir.

Q. You would have seen that in your ordinary course as CEO would you not?

45

A. Yes sir.

Q. In the attached letter, could I now take you to page 462, the heading is Unsatisfactory Records Identified during the 2012 audit. And starting at paragraph 4.1, there is reference to an observation, it was raised in the 2011 Management letter,

50

5 “that service entities within the GLALC group have been established to provide professional support to the Land Council and also other Land Councils external to GLALC. It was also noted during the audit that there are currently no formal agreements among the entities with respect to the provision of services to provide their commerciality and demonstrate that they are bona fide.”

Was that an issue which you were aware of in November 2012?

10 A. I'm aware that it was raised Mr Baird. I'm also aware of the Board's response.

Q. What was the Board's response?

15 A. They didn't put any credit in it whatsoever. They took the document as a whole and they sought further advice. Independent advice.

Q. Can I, keeping that page open, also show the witness the document which is in volume (VIII), a document that we referred to yesterday but may not have looked at. I think my recollection is incorrect I think we did look at this document yesterday - the document in volume (VIII), tab 1, is entitled Services Agreement 2012-2013 and it's between GLALC and GMS. Do you see that?

20 A. Yes sir.

Q. And I think, correct me if I'm wrong, that we did look at that document yesterday. Can I take it that that document, it has an execution page of page 1953, and it has an operative date of 1 July 2012 as appears from page 1934, can I take it that you were familiar with that document as at that time?

25 A. Yes sir.

Q. That's in fairness Mr Johnson so that you know what document I'm referring to. What I'm suggesting to you is that the observation paragraph 4.1, by Lawlers about an absence of a management or service agreement as at 30 June 2012, was in fact a true statement. There was no such agreement as at 30 June 2012?

30 A. You're testing my memory here Mr Baird. I think that might be correct, there was no written document and that was - by the time this document was prepared and presented to the Board, I'm led to believe, and I'm testing my memory, that it had been rectified and we sought to have Lawlers removed - that was one of the Board's many issues with this report.

40 Q. That's so. And what I'm putting to you is that the document that I've taken you to at tab 1 of volume (VIII), is the proper Management Agreement between GLALC and GMS that in the auditor's opinion was required. That's the first thing, that's right isn't it?

45 A. No sir, they were after a written document.

Q. Yes?

A. They didn't specify the contents.

50 Q. I didn't say that, but this is the written document that satisfies their objection, only one day later, correct?

A. Probably sir.

Q. By 1 July 2012--

A. No I don't agree with that Mr Baird.

5

Q. I'll just finish this question. By 1 July 2012 there was in existence a written agreement for the provision of management services between GMS and GLALC, right?

A. I'm not sure it was that date but I'll take that.

10

Q. Please look at the document if you need to satisfy yourself as to the date, as I said at page 1934 it has in typewritten form dated 1 July 2012. Do you accept that?

A. Yes I accept that.

15

Q. So that particular concern of the auditor's that I've directed your attention to in page 462, had been rectified prior to the issue of the auditor's letter, in fact, had it not?

A. Yes sir, from memory.

20

Q. In your view. What I'm putting to you is that prior to the entry of this written agreement, that is 1 July 2012, there was in fact no written services agreement between GMS and GLALC?

A. That may be correct, I'm not sure Mr Baird.

25

Q. So isn't this the position then Mr Johnson, that as at 30 June 2011, that's the financial year that we looked at yesterday in which the sales of Gandangara Estate Stage 2 occurred and the Lot 101 Barden Ridge sales occurred, as at 30 June 2011 GMS which had been incorporated on 16 April 2010 had no assets of its own, correct?

30

A. On the date of incorporation, correct.

Q. No, as at 30 June 2011--

A. I'm not sure if that's correct Mr Baird.

35

Q. Do you need to see a balance sheet of GMS to satisfy yourself of that fact as at 30 June 2011?

A. I would have believed that it had some assets at that time.

40

Q. I think your evidence yesterday was that GMS was receiving payments from GLALC for services rendered during that 2011 financial year?

A. That's correct.

45

Q. Apart from its entitlement to be paid upon invoices and for services rendered, can you think of any other assets that GMS owned as at 30 June 2011?

A. It was accumulating assets to operate, Mr Baird.

Q. What assets were--

50

A. Well, office equipment - it was accumulating assets to operate. Mr Baird.

Q. And what was the - do you have a recollection of the amount or value of those assets?

A. No Mr Baird.

5 Q. Did you ever see any separate balance sheet of GMS as at 30 June--

A. I can't remember when I saw a balance sheet from GMS.

Q. Apologise, 30 June 2011?

10 A. I can't remember when I saw balance sheets for GMS - but are we talking about the balance sheet or an asset register, Mr Baird. I doubt, even with my limited accounting knowledge that we'd see assets on a balance sheet.

Q. What I might assist the witness as best I can if the witness can have Waa, and you might turn in volume (I) A to the 2011 annual report which is at tab 9. If you turn to appendix C behind tab 9, starting at page 316, are the financial statements for the financial year 2010-2011, that are referred to in that annual report, as is clearly stated on page 318, do you see that Mr Johnson?

15 A. Yes Mr Baird.

20 Q. And the very first sentence on page 320 which is a question you directed to me yesterday, reads "Your Board members present their report on the Gandangara Local Aboriginal Land Council and its controlled entities for the financial year ended 30 June 2011. Do you see that?

A. Yes sir.

25

Q. That means the accounts that are referred to there are the consolidated accounts for that group, correct?

A. I believe so Mr Baird.

30 Q. Thank you. And the controlled entities include - well, turn to page 344 please Mr Johnson. And if you turn to note 22, there's a definition of controlled entities. Do you see that? At the top of the page, on page 344.

A. I don't see a definition.

35 Q. There's a listing of them?

A. There's a list of the--

Q. Sorry, I withdraw "definition", there's a listing of the controlled entities?

A. thank you.

40

Q. And the peer identity is stated to be the Land Council, and then there are three subsidiaries listed. Do you see that?

A. Yes sir.

45 Q. Gandangara Employment and Training Services Limited, Murrin Mingora Pty Limited and Gandangara Development Services Limited. Right?

A. Yes sir.

50 Q. That list does not include Gandangara Management Services Limited, does it?

A. No sir.

Q. So these accounts do not refer or include any assets of GMS in the consolidated accounts, do they?

5 A. Wouldn't seem to.

Q. So how is Mr Johnson, are you able to say, that GMS had any assets at all as at 30 June 2011?

10 A. I said it may, Mr Baird. I said it was accumulating assets and may have accumulated them and had assets. I'm not convinced otherwise.

Q. I'm suggesting to you that if GMS had any assets it would have been included as a controlled entity in that list in the 2011--

15 A. Not necessarily so Mr Baird.

Q. Not necessarily so, you say?

A. Correct.

20 Q. Do you need to see the 2012 accounts where it becomes a controlled entity, would you like to satisfy yourself--

A. You can take me through this, of course.

25 Q. My proposition to you, to see if you agree to this to save time, that as at 30 June 2011 GMS was not a controlled entity of GLALC. Do you agree or disagree with that?

A. I believe it wasn't a controlled entity of the Land Council, I agree with that.

Q. So in the consolidated accounts for GLALC as at 30 June 2011 no separate assets of GMS are recorded, correct?

30 A. Doesn't seem to be, no.

Q. You aver that it's possible that GMS might have had some assets of its own, separate from those shown in those financial statements but you're not sure, is that a fair summary?

35 A. Absolutely. Can I qualify that Mr Baird, it might shorten this.

Q. Of course?

40 A. That document as I referred to yesterday is a document prepared by Lawlers, they prepared their documents in a sterile environment from the Land Council and the entities. We never had control of what went in them and what came out of them. And often there was many disputes. Those disputes were still going on when Mr Hellic asked me about vehicles that were clearly owned by the entities that didn't show up in the audited accounts. Now, that was as late as May 2014. So--

45

Q. No I'll stop you there Mr Johnson, because that's not responsive to my question. My question was asking you--

A. It's relevant.

50 Q. --about the assets of GMS?

A. I don't take what Lawlers present as true and accurate Mr Baird.

Q. So you dispute the accuracy of the accounts prepared by the auditors, is that right?

5 A. Yes, and I believe my dispute grew in intensity as we got closer to 2013.

Q. So in relation to 2011 year do you dispute the audit of accounts where they do not show any assets of GMS being included in the consolidated accounts?

10 A. I'm saying that that went on for my entire time there so I suggest it was possible from the beginning to the end.

Q. Are you saying Mr Johnson that the 2011 audited accounts are wrong?

15 A. I believe that there are errors in them and the Board has pointed those out on many occasions Mr Baird.

Q. There was no error in relation to GMS though was there?

A. I believe there may have been yes.

20 Q. Do you persist in the face of this evidence, in maintaining that GMS had assets of its own as at 30 June 2011, that re not recorded in the consolidated accounts as at that date?

A. Let me repeat my answer. That may have been the case.

25 Q. If GMS was receiving in income in the 2011 financial year, it could only have been from GLALC. Correct?

A. No.

Q. What other entity or entities was GMS providing services to for reward in the 2011 financial year?

30 A. I can't remember exactly for that time period but it provided services and was paid by the other entities and possibly because I'm not sure of the timeframe, other land councils.

35 Q. Mr Johnson, we have just been through and established that the first written management agreement was 1 July 2012, a year later. There is no services agreement in existence between GMS and any member of the GLALC group of companies as 30 June 2011. Correct?

40 A. Mr Baird, even if you are correct and accurate, you're not providing for pre-contractual arrangements. You're saying that because a starting date of a contract is XYZ, that no pre-contractual arrangements could have existed prior to that date.

45 Q. What I put to you is that in the 30 June 2011 year, the only company in the group of companies that GMS was providing services to was GLALC. Correct?

A. No. There's a list of companies on the audit. If GMS was in existence at that time, I suggest it was providing services to some of those entities under a fee for service arrangement.

50 Q. Under a fee for service arrangement you say. Is that right?

A. Why not, Mr Baird.

Q. You're the one making the assertion, Mr Johnson. What document exists to prove what you have just said?

5 A. Pre-contractual arrangements, Mr Baird, are quite common.

Q. Do you have a recollection of an invoice being delivered by GMS to any entity other than GLALC, in the year ended 30 June 2011?

10 A. Those things were handled by finance, Mr Baird. I'm not the person to ask.

Q. I'm suggesting to you that any such arrangements commenced in the 2013 financial year. That is the year that started--

A. No sir. They commenced prior that. You're wrong, Mr Baird.

15 Q. What I'm putting to you, is that GMS had no other income other than the moneys that it received from GLALC in the year ended 30 June 2011?

A. I can't confirm that, Mr Baird. I'm sorry.

20 Q. And it certainly had no property or assets of its own out of which to make any payments to Waawidji. Correct?

A. I can't confirm that Mr Baird and I'm not sure I agree with it at all.

Q. Waawidji was rendering invoices to GMS during the 2012 financial year, was it not?

25 A. I believe so. You've told me so.

Q. And also in relation to the 2011 financial year, for the last two months, that is May and June 2011?

A. I believe so.

30 Q. Because its arrangement started on 1 May 2011. Correct?

A. I believe so, Mr Baird.

35 Q. And the only money that GMS had to pay Waawidji was the money it got from GLALC. Right?

A. You've asked me that question prior, Mr Baird. My answer remains unchanged.

40 Q. What I'm putting to you is that as at 30 June 2011, you were very familiar, as we've discussed, with the joint advice of Mr Ellicott QC, and Mr Wright, that we've discussed earlier this morning. Right?

A. I'm familiar with it, yes Mr Baird.

45 Q. And you knew that under section 52D of the Aboriginal Land Rights Act, there was a prohibition on GLALC, transferring its property to any employee of GLALC. Right?

A. Yes sir.

50 Q. And you knew that the opinion of Mr Ellicott and Mr Wright was that if a payment by a subsidiary of GLALC to an employee of GLALC was made out of

the income or property of GLALC, then that would be a breach of the Act also. Correct?

- 5 A. I can't see how that should occur. How could a third party entity disburse property from another entity? I don't see how you - I don't understand what you're drawing there. It makes no sense to me, Mr Baird.

Q. Do you need to see section 52D again?

A. No, Mr Baird. I understand that. I don't understand your inference.

- 10 BAIRD: I think in fairness to the witness because he's a lawyer and I'm taking him to the section of the Act, I would like the section of the Act that was available before him to be before him again.

Q. Do you have section 52D still in front of you please?

- 15 A. Yes sir.

Q. I wish to direct your attention in the second line of subsection (1), Mr Johnson, to the words, "transferred directly or indirectly". Do you see that?

- 20 A. Yes sir.

Q. What I'm putting to you is that payment from GLALC of moneys representing its income on property, firstly to GMS and secondly to Waawidji, constitutes an indirect transfer of that income or property. Do you agree with that, Mr Johnson?

- 25 A. No sir. What is clear from all the advices, is that entities can provided services to the Land Council for a fee for service. That is very, very clear in the advices--

Q. I wasn't talking about a fee for service--

- 30 A. --and that is what happened.

Q. I'm not talking about a fee for service. I'm drawing your attention--

A I know you're not.

- 35 Q. --to the paragraph which I've already discussed with you this morning. If you need to read it again, it's paragraph 71 of Mr Ellicott's opinion where he expressed the view that:

- 40 "A court would be justified in a given case, in concluding that the employment of that Board member by a subsidiary company, was only a device the prohibition and that it should be treated as a breach of that prohibition.

I read that paragraph to you--

- 45 A. That's right and I responded by saying that clearly wasn't the end of the matter and Mr Ellicott advised us accordingly.

Q. Did you accept that advice at that time, Mr Johnson?

- 50 A. No because Mr Ellicott said he wasn't convinced entirely with that as it was written and led us to further advices.

Q. Do you accept that if that advice was correct, then the payment of your bonus, your bonus being the payment from GMS to Waawidji, would be in contravention of section 52D of the Act?

5 A. I think, the way your question's phrased, if you look at my answer preceding, where I said I didn't agree and Mr Ellicott gave us further advice on that, so you need to look at it in context, Mr Baird, with the further advices.

Q. What I'm suggesting to you is that there were no further advices from Mr Ellicott in relation to the operation of section 52D?

10 A. I'm not sure about that Mr Baird.

Q. The further advices were on different matters such as the future fund, were they not?

15 A. Mr Baird, we had long conversations and we weren't led to believe that 71 was true and accurate in the minds of all the ..(not transcribable)..

Q. Let me put this to you--

A. Hence it's got to be looked at in context, Mr Baird.

20 Q. Let me put this to you. From at least 16 September 2010, you were on notice of the opinion expressed in paragraph 71 of the joint opinion of Mr Ellicott QC and Mr Wright. Correct?

A. Yes sir which caused further conversations.

25 Q. And if that advice were right, then there was a risk that it would prohibit the payment of the bonus that you sought in the 2011 financial year. Correct?

A. No. That's not correct, Mr Baird. As was pointed out to me yesterday, this is an adversarial system based on, at times, opposing opinions by lawyers of equal weight.

30 Q. You knew that there was a risk if Mr Ellicott was right and you were wrong, that there was a risk that your bonus would be prohibited. Correct?

A. No sir.

35 Q. You read Mr Ellicott's opinion and you thought, that's wrong, I don't have to worry about it. Is that what you're saying?

A. Mr Baird, 71 refers to payments to a board member.

40 Q. I'm talking about section 52D which as you well know, is the subject of that paragraph?

A. Yeah all right, I'll take you back to 52D and my previous answer remains categorically unchanged.

45 Q. Mr Johnson, it's a very different question. You're clearly aware of what the advices state in clear terms and I'm putting to you that whether you agreed with them or disagreed with them, you knew that there was a chance that Mr Ellicott was correct. Isn't that right?

A. No sir. I disagree with that.

50 Q. So you think that you were right and he was wrong?

A. No sir. I had further conversations with Mr Ellicott that provided substantiation otherwise to 71.

5 Q. I'm not talking about 70. I'm talking about 52D and paragraph 71 is a clear reference to section 52D and I put to you a moment ago, that nothing further that Mr Ellicott put in writing, changed the view that he had expressed in relation to the operation of section 52D. Would you agree with that?

10 A. We believed and it's my belief, that 52D does not pierce a corporate ..(not transcribable).. .

Q. So you're back to the position that you were at yesterday, that because the payment was made by GMS, therefore you could receive it safely. Is that your view?

15 A. No sir.

Q. What is your view then?

A. I believe that moneys earned by GMS under contractual arrangements, then became the realm of GMS and its corporate governance to deal with in line with its constitution.

20 Q. Well firstly, there was no contractual arrangement between GMS and GLALC as at 30 June 2011, was there?

A. No written contractual arrangement?

25 Q. No written contractual arrangement. Correct?

A. It would seem so, Mr Baird.

30 Q. And secondly, the only moneys that GMS received from GLALC in order to pay your bonus of over \$300,000, came indirectly out of the proceeds of sale of Gandangara estate and lot 101 Barden Ridge. Correct?

A. It's such a tortuous route, Mr Baird, that you're trying to shorten dramatically. It came out of moneys earned from fee for service arrangements. That's where the money came from.

35 Q. And what was the level of the services provided by GMS?

A. It provided all administrative services. All services pertaining to developments. It was substantial.

40 Q. In the year ended 30 June 2011, I'm talking about, not later?

A. At that point, GLALC had one employee, I'm led to believe.

Q. In the year ended 30 June 2011, not later, what was the total value of the services invoiced by GMS--

45 A. I can't answer that.

Q. Was it more or less than \$300,000?

A. I can't answer that, Mr Baird.

Q. It was near \$300,000 was it?

50 A. I can't answer that. Can you point to what that amount was?

Q. Yes I can but I will take you there, but I'm asking you for your recollection, Mr Johnson as to what amounts GMS invoiced when it didn't even have a written service agreement?

A. I can't answer that, Mr Baird. I do not know.

5

Q. You don't know?

A. No Mr Baird. You're asking me to recollect a figure from an enormous number of figures during a long period of time.

10 Q. The payment of the CEO's bonus was a matter of considerable importance to you, was it not?

A. I think anyone's pay is a matter of considerable importance to them.

15 Q. And did you have some understanding of where your bonus was going to be paid from in respect of 30 June 2011?

A. I didn't have any idea back in February 2007 when my bonus was going to be paid by. I'm just a believer in productivity rewards.

20 Q. Mr Johnson, that's a nonsense answer. I asked you very directly, did you have some understanding as to where your bonus was going to be paid from?

A. I don't believe it was a nonsense answer, Mr Baird.

25 Q. Answer my question, Mr Johnson. As at 30 June 2011, in the month in which the sale of the two properties, Gandangara Estate 2011, Stage II, and lot 101, Barden Ridge, were completed, in that month, did you have some understanding of where your bonus was going to be paid from?

A. Yes in context, I do, Mr Baird.

30 Q. Thank you. It was going to be paid out, and in respect of, those sales, was it not?

A. No, Mr Baird. You've got to look in context of what the entire operation was doing at that time and you were just saying that there was only those sales that are relevant and I'm saying that's not the case, Mr Baird.

35 Q. Mr Johnson, your bonus was triggered only by the sale of those two properties. Correct?

A. No sir. It was triggered by a surplus created.

40 Q. And the surplus came from the sale of those two properties. Correct?

A. Quite often.

Q. No. We looked at that yesterday, Mr Johnson?

A. But in the long term, it wouldn't have been no.

45 Q. Mr Johnson, we looked at the calculations pertaining to your bonus yesterday. I took them to you and you agreed that there were only two amounts that were relevant for the calculation of your bonus--

A. At that time.

50 Q. At that time, thank you?

A. To the Land Council but to GMS, Mr Baird.

Q. There were only two sales that attracted the operation of the bonus provisions. Correct?

5 A. You're simplifying what is complex, Mr Baird.

Q. Do you need to see the calculations of the bonus again?

A. You can take me through them again.

10 Q. I will do that and we can go back to the document you had yesterday and the bonus calculations?

A. Yes.

15 Q. In volume 9C, I'll have the witness shown that. This is material we've already looked at, Mr Johnson, volume 9C page 2876. Do you remember me showing you page 2876 yesterday?

A. Yes, sir.

20 Q. Would you not agree that the two entries that relate to the surplus that is applicable for the bonus procedure to apply to, firstly, the stage 2 sales shown there of \$13.7 million less expenses, do you see that?

A. Yes, sir.

25 Q. Secondly, the lot 101 sale to Woolworths of \$2.5 million less expenses, do you see that?

A. Yes, sir.

30 Q. There's a total profit figure there of some \$6.854 million, do you see that? There is an allocation of some \$5.843 million to the Future Fund, do you see that?

A. Yes, sir.

35 Q. At the foot of the page, the author who may be Mr Gundar has used the commission rate of 3% in order to calculate your bonus for that year. Could I put that to you that as at 26 March 2013 you were familiar in general terms with the structure of the bonus claim as encapsulated in that document?

A. Yes, sir.

40 Q. So you knew that in 2011 financial year when your claim for a bonus on its face was of the order of \$300,000 or more, correct?

A. Correct.

Q. You knew that the only monies with which GLALC had to pay that bonus were monies it received from the sale of those two properties, correct?

45 A. No, sir, the arrangement was with GMS. Totally different - there was no obligation for those bonuses to be paid immediately, Mr Baird and--

50 Q. I withdraw that. I will put it differently. The only monies available with which to pay a bonus of the magnitude of \$300,000 were monies that GLALC had received from the sale of those two properties which it in turn paid to

GMS, correct?

A. Are you also taking into consideration the loans that had been, the paper loans that were in place at that time?

5 Q. Mr Johnson--

A. No, Mr Baird--

Q. My question is very simple--

A. So is my answer.

10

Q. I'm not going to answer your questions. I will restate the question and ask the registrar to direct you to answer it. You knew as at 30 June 2011 that the only monies that were available with which to pay a bonus of the order of \$300,000 to you were monies which firstly GLALC received from the sale of these two properties and secondly which it paid to GMS?

15

A. No, sir--

Q. Is that correct?

A. No, sir, I don't believe that's the case at all. So loans in place between the entities that technically should still be there.

20

Q. The monies that GMS received from GLALC came directly from the sale of GLALC's property and income, do you agree with that?

A. No, sir. There was also loans in place so that wasn't the only--

25

Q. On 30 June 2011 there were no loans between GLALC and GMS, were there?

A. That's not true, Mr Baird. I can't answer what they were but there were loans in place between entities, land councils.

30

Q. If you need to be reminded of that and I really think you're starting to make up some of your answers. Would you turn please to tab 9 on page 1A and identify in the statement of the financial statements where there is recorded any loan whatsoever from GLALC to GMS?

35

A. Sir, you--

Q. It's not there, is it, please satisfy yourself of that?

A. Sir, you meant to ask Mr Gundar about how those loans were handled.

40

Q. Mr Johnson, my question is this. The audited statements for 30 June 2011 do not record any loan from either GLALC to GMS or GMS to GLALC, do they?

A. And that was one of the issues all of us had that caused them to be adamant that the written documents needed to be in place so that there was in their minds recording that they could feel firm about, Mr Baird.

45

BAIRD: Registrar, I have put that question to him three times and he has refused to answer. Could I have a direction that the witness answer that question and not give some other answer that he wants to make a speech about.

50

REGISTRAR: Mr Johnson, before I formally direct you to answer the question I will give you one last opportunity to answer the question that is being put to you specifically. I will ask Mr Baird to repeat the question. I give you this opportunity before I formally direct you to answer it if required.

5

BAIRD

Q. In the 2011 financial statements consolidated for GLALC there is no recording of any loan between GLALC and GMS either from GLALC to GMS or from GMS to GLALC, is there?

10

A. There's no recording.

Q. It is therefore a completely specious suggestion to say in answer to my earlier question that GMS was owed some money from somewhere with which it used to pay Waawidji's bonus. That is simply a kite flying exercise by you, is it not Mr Johnson?

15

A. No, Mr Baird.

Q. It's quite clear that the only monies GMS received came in the 2011 financial year from GLALC, correct?

20

A. The only monies GLALC received came from the sale of those lands. That's correct, Mr Baird. We agree there.

Q. In turn the only monies of the magnitude of \$300,000 that GMS received came from GLALC?

25

A. I'm not an accountant here, Mr Baird, hence my struggle. I don't believe that's correct because there were pre-contractual arrangements in place. Services were being provided and were being recorded as loans.

Q. We've established there's no recording of any such loans or consolidated accounts--

30

A. No, no, we haven't. You've established it in the Lawler's audit there's no recording of them.

Q. Are you saying the audited accounts are wrong? Is that what you're saying?

35

A. You've heard me say that there was--

Q. In this respect, in respect of loans between GMS and GLALC are you saying the audited accounts are wrong?

40

A. That's a consolidated report. It wouldn't show it. It a consolidated report, Mr Baird.

Q. Don't be smart with me, Mr Johnson. We've just established that GMS is not in the control entities and is not referred to in those accounts?

45

A. Okay, there would loans with them other entities--

Q. They're not shown, are they?

A. They're not shown, Mr Baird.

50

Q. Are you saying the accounts are wrong?

A. Sorry?

Q. Are you saying, therefore, that the accounts are wrong?

5 A. You heard me say that before.

Q. In that respect?

A. In that respect.

10 Q. So you are saying the audited accounts are incorrect in that they fail to record loans from GLALC to GMS or from GMS to GLALC for the 2011 financial year, is that what you're saying?

A. Absolutely, it also doesn't record the loans to land councils.

15 Q. Yes or no, is that what you are saying?

A. That's what I'm saying, Mr Baird.

Q. The magnitude of those loans are more or less than \$300,000?

A. Substantially more, Mr Baird.

20

Q. In respect of the 2011 financial year?

A. Absolutely.

Q. You're making that up, aren't you?

25 A. No, I'm not. There would be about three quarters of a millions dollars a loan to Deerubbin land council.

Q. That's got nothing to do with GMS loan to GLALC, has it?

30 A. Yes, that's where the loan part of the arrangement lies. GMS would have provided those services.

Q. It was providing no such services is in the 2011 financial year, was it?

A. I can't agree with that, Mr Baird. Show me. I would have thought that there was, Mr Baird.

35

Q. We'll come to Deerubbin in due course but let's not be distracted from this proposition that the only monies that GMS could receive with which to pay a bonus of \$300,000 emanated from GLALC, correct?

A. I pointed out that I disagree with that and why.

40

Q. You have no basis and you can state to the Court no reason for that disagreement, can you?

A. I believe I've stated my reasons, Mr Baird. Would you like me to repeat that?

45

Q. You do not have a single document to support your assertions, do you?

A. I believe they exist. I don't have any documents with me, Mr Baird, none whatsoever.

50 Q. You have produced no document to the receiver that supports such an

assertion, have you?

A. Because those records exist at 103 Moore Street, Mr Baird. We've established that.

5 Q. The receiver has possession of the accounts and documents of GLALC, correct?

A. Correct.

Q. He has possession of the accounts and records of GMS, does he not?

10 A. Correct.

Q. Are you saying that there exist in those records documents which have not been brought to the Court which support the existence of a \$300,000 plus liability of GLALC to GMS?

15 A. Yes and I believe if you refer to--

Q. Yes, is that your honest answer?

A. Yes, Mr Baird. Do you want me to qualify it.

20 Q. Do you have a single document or recollection of seeing a single document to support that assertion?

A. As I've said regarding part A of your question, I have no documents with me. Part B, yes, I've seen documents and they're referred to in Mr Hillig's predecessor's correspondence which would be on record at 103. They refer
25 clearly to loans.

Q. Not in respect of the 2011 year, Mr Johnson?

A. They go back further than that. They go back prior to 10, Mr Baird. They go back prior to 2010. Oh, Mr Baird, you need to ask me the correct questions
30 here.

Q. Mr Johnson, I'm suggesting to you that the evidence you have given this morning is a complete fabrication. You have made up your answers to suit yourself, haven't you, Mr Johnson?

35 A. No, Mr Baird.

Q. There are no such records between GMS and GLALC in respect of the 2011 year, are there?

A. That's incorrect, Mr Baird.

40

Q. As CEO of both GMS and GLALC, what did you advise the board about the existence of these loans that you claim existed in the year ended 30 June 2011?

45 A. Those matters would have been brought to the attention of the board by Mr Gundar or his predecessor because there were loans in existence prior to Mr Gundar's employment. The board was ofay with all of that, Mr Baird.

Q. Did you advise the board of GLALC in respect of the 30 June 2011 financial statements that they were incorrect in the respects that you've
50 identified this morning?

A. The board was aware. The board raised issues.

Q. How was the board aware of that, Mr Johnson?

A. Financial reports regularly.

5

Q. Did you tell them?

A. Mr Gundar would have told them.

Q. Mr Gundar reported to you, Mr Johnson?

10 A. And he also reported directly to the board, directly, on financial matters.

Q. Now you can answer my question did you as CEO of both entities advise the board of GLALC that the financial statements for 2011 were incorrect in your view because they failed to record loans between GMS and GLALC?

15 A. The board was aware of that, yes, Mr Baird.

Q. Did you advise the board of that?

20 A. I believe so, Mr Baird. They were aware of it. They would have been aware because of advice from myself and/or Mr Gundar and/or Mr Gundar's predecessor.

Q. With whom at the board did you have this discussion, Mr Johnson?

A. The board.

25 Q. The whole board?

A. As a collegiate mind.

Q. Who was present?

30 A. The board. You'd have to look at the board minutes to see who was present on those occasions.

Q. So you believe there's a minute of the board meeting that refers to this aspect, is there?

35 A. Mr Baird, there was - what do you want to know?

Q. I'm asking about your disclosing to the board the view that you've expressed in Court this morning that the 2011 financial statements were materially incorrect as prepared by the auditors?

40 A. If you were to ask the board, Mr Baird, I'm trying to answer this directly, whether or not they were aware of loans going back to prior to 2010 I believe wholeheartedly they would respond yes they're aware, Mr Baird.

Q. What I'm asking you is whether as CEO you advised the board that they statements were in your view incorrect?

45 A. Yes, sir, I've had an issue with the auditor of reports from Lawlers for quite some time. We were locked into them by the Act.

50 Q. Is it also to correct to state, if I understand your evidence that the minutes of the board meeting would record your disagreement with the accuracy of the financial statements, is that what you're saying?

A. Possibly not. The minutes of the land council complied with the Act and recorded motions, mover, seconder, attendance et cetera. The minutes are in accordance with the Act.

5 Q. I'm asking about the board in the first instance. Do you believe there is a minute of the board--

A. I'm not sure, Mr Baird--

Q. --reflecting--

10 A. We're going back in time--

Q. --your statement?

A. Don't know, Mr Baird.

15 Q. Did the financial statements along with the annual report get presented to the annual general meeting of the council?

A. Yes, Mr Baird.

20 Q. Did you make any statement to that annual general meeting to the effect that you regarded the financial statements as incorrect and inaccurate in the respects you've stated this morning?

A. I was never part of the agenda of an AGM which is prescribed by the Act so there was no provision for me to offer comment. The agenda of an AGM is a statutory requirement.

25

Q. If I understand your evidence correctly, Mr Johnson, you were firmly of the view that the 2011 financial statements were incorrect, right?

A. I believe so, Mr Baird.

30 Q. Was that a matter that you did or did not disclose to the AGM convened to consider the adoption of that report?

A. There was no provision for me to speak at an AGM, Mr Baird.

35 Q. You're the CEO of the land council, do you believe you had an obligation to inform the meeting of members of your views as to the accuracy or otherwise of the financial statements?

A. No, Mr Baird, that was up to the members to question the audit as prescribed under the Act and the board and the board had already queried with Lawlers.

40

Q. Mr Johnson, you're just making this up on the run, aren't you?

A. If that's the case, Mr Baird, how do you justify that we sought external independent advice to substantiate that errors existed in the audited reports. the board had had enough at that stage, felt that they weren't, didn't have an adequate process to exercise good corporate governance because the Act didn't allow it and they sought independent advice, I'm testing my memory here, from a company called BDO and they also substantiated that there were many inaccuracies in the audited report, so I'm not making that up, Mr Baird.

45
50 Q. I'm suggesting to you there were absolutely no such dispute in relation to

the 2011 accounts; that BDO was not retained until 2013; that you have your dates entirely wrong and you are confusing the years 2012 and 2013 with the year 2011 that I've been addressing this morning?

- 5 A. No, sir, if you go back over the transcript I said that the board eventually had had enough after a period of time and called in BDO. I think that took, Mr Baird, from memory two audit reports that they struggled with possibly three but we were trying prior to that to make headway with NSWALC on getting a different auditor to no avail.

- 10 Q. And as we can see from the document at page 2875 that is still before you, Mr Johnson, in volume 9C, as at 26 March 2013 BDO, that is Mr Tony Young, was looking at the very issue of your bonus payment in respect of the 2011 financial year, wasn't he?

A. Correct.

15

Q. And you knew that at the time?

A. Yeah.

20

Q. And in the end that calculation or substantially similar to it, the calculation that appears at 2876 was approved for payment, was it not?

A. Now, there was an error that was pointed out to me. Now, I've mentioned that I wasn't a part of the working job, it was established by BDO that there was an error in that amount.

25

Q. There was, wasn't there? And what was that?

A. That was established.

Q. And what was that error, Mr Johnson?

30

A. I can't remember. And I was never part of that conversation so I'm not sure whether I can say I agree or disagree.

Q. Well the error was fairly simple, was it not, it was that the commission was calculated at a flat rate of 3% as appears in the last entry on page 2876?

A. I'm not sure that that was the error, Mr Baird.

35

Q. Well that one error, wasn't it?

A. I'm not sure, Mr Baird.

40

Q. You don't know how your own bonus commission was calculated, Mr Johnson?

A. We established yesterday that I clearly wasn't a part of that so I can answer quite honestly, no, I don't know.

45

Q. You don't know that your commission was only entitled to be paid, if it were payable, at the rate of a certain percentage up to \$250,000, being 1.5% and 3% above \$250,000. Are you seriously saying you didn't know that?

A. No, I knew that, that's not what your question was, Mr Baird.

50

Q. It was precisely what my question was, Mr Johnson.

A. No.

Q. It said that the error was, or one error, that the commission was calculated a flat 3% instead of being 1.5% for the first \$250,000 and 3% on the surplus above \$250,000. That's one error, isn't it?

A. I don't agree with you but.

5

Q. It's an error that's obviously on the face of it. Do you want to go back and look at your bonus entitlement?

A. That's not - look, my answer would be based on what I've been told since all of that and my understanding is different to that, Mr Baird.

10

Q. Based on what you've been told since, what's your understanding?

A. My understanding is that Mr Gundar at the time - bear in mind he was a fairly new employee at that stage, and this is my understanding, which doesn't mean it's correct - made a calculation based on a surplus that was pre-audited and that amount varied from the audited amount.

15

Q. That's correct isn't the - and I think I-

A. That's my understanding.

20

Q. And I asked you that question yesterday as to what was the correct amount from the accounts to be used as surplus for the calculation of the bonus. Do you remember me asking you that question?

A. Yes, sir.

25

Q. And are you able now to say what the correct figure - whether it was used?

A. Well the correct figure should be the audited surplus.

Q. Thank you. I turn to a different topic, Mr Johnson, one that I raised with you yesterday. If you have volume 9A?

30

BAIRD: Does the witness still have volume 9A close by?

Q. Volume 9A, would you please turn to turn 4? Sorry, there may not be a turn, I'll give you the page number, 2324. Page 2324 has been printed out from the MYOB records of GMS. You've seen printouts from the GMS MYOB records before, have you not?

35

A. Yes, but normally not in that format.

Q. You recognise that page to be what it's titled, the Cash Disbursements Journal of GMS for the year 1 July 2012 to 30 June 2013, correct?

40

A. These reports were never included as the reports I would have got on the Board.

Q. I accept that but you don't dispute that that document is what it says?

45

A. No, I don't dispute, Mr Baird.

Q. You'll see that that cash disbursements journal records nine payments to Waawidji totalling some \$37,000, do you see that?

A. Yes, sir.

50

Q. Do you remember the evidence that you gave me yesterday in relation to the consultancy agreements between Waawidji and the various entities of the GLALC group of companies?

A. Yes, sir.

5

Q. And there were three new agreements on 1 July 2012 for GHS, is one of them, and GTS was a second and Marumali was the third, was it not?

A. Yes, sir.

10 Q. And you also stated that the consultancy between Waawidji and GMS terminated as at 1 July 2012 to be replaced by the three new agreements, correct?

A. Yes, sir.

15 Q. Are you able to explain any reason why Waawidji was receiving regular amounts from GMS during the 2013 financial year?

A. There was an issue that was raised later on and there were errors from the accounts from where those payments were made I'm led to believe. And there was correspondence raised by Mr Hillig's predecessor and there was
20 responses from the finance department and myself. So I'm not sure whether they'd been considered when you ask that question.

Mr Registrar, we will be stopping for a break shortly?

25 DEPUTY REGISTRAR: We will be at 1 o'clock, which is in a matter of minute's time.

EXAMINEE JOHNSON: Thanks, thanks very much.

30 BAIRD: Well, I'll just finish this topic very quickly.

Q. Waawidji had no contractual entitlement to receive payments from GMS under the 1 May 2010 consultancy agreement after 30 June 2012, did it?

A. ..(not transcribable)..

35

Q. So if Waawidji was receiving payments as is recorded at page 2324 totalling some 37,700 odd dollars for the period after 1 July 2012, that could be an error?

A. I believe the error may be - and again, you're better off talking to
40 Mr Gundar about this - the error may be the account that it was paid from rather than the amount, or the reason for payment.

Q. The reason for payment, it's from GMS to Waawidji, that's very clear is it not?

45 A. Well, I'm led to believe it was paid from GMS's account incorrectly, it should have been paid from the other three entities.

Q. Are you aware of any journal or other entry that seeks to correct that discrepancy or error?

50 A. Not, not my error of expertise Mr Baird.

LUNCHEON ADJOURNMENT

DEPUTY REGISTRAR: Once more this is the matter of Gandangara Management Services Limited. Mr Johnson thank you for your return. I will
5 remind you once more you're under oath. Please say yes for the record.

EXAMINEE JOHNSON: Thank you.

DEPUTY REGISTRAR: Do you understand you are still under oath?
10

EXAMINEE JOHNSON: Yes sir.

DEPUTY REGISTRAR: Mr Baird.

15 BAIRD

Q. Mr Johnson arising out of some of the evidence you gave before lunch and in fairness to you over the luncheon interval my instructing solicitors have been able to locate some financial statements for GMS for the year ended 30 June
20 2011. I might show you a copy of those with a copy for the Registrar. Take a moment to look at them please. And as you look at them my first question to be will be "have you seen these before?"

A. This is the reports by Lawler and Associates. They're the same document you showed me in the annual report that we were referring to this morning sir.
25

Q. I think you'll find with respect Mr Johnson it's a different document and in fairness to you can I show you those parts. If you return to the - I'll have this marked as an MFI at the end of this section if I might Registrar - can you turn to the third page which bears the typed number "1", that's stated to the
30 director's report 30 June 2011, and the directors present their report on GMS for the financial year ended 30 June 2011. Do you see that?

A. Yes sir.

Q. ..(not transcribable).. has listed the names of the members of the board and at the foot of page 2 there's reference to the company's principal purpose, do you see that?
35

A. Yes sir.

Q. And on page 3 the review of operations stated the profit of the company after providing for income tax amounted to \$2,134,663?
40

A. Yes sir.

Q. And the company commenced operations on 1 July 2010?

A. Yes sir.
45

Q. At the foot of that page numbered 3 there's a heading "Auditors Independence Declaration" and then there's two signatures and a date 15 January 2013. Do you see that?

A. Yes sir.
50

Q. And also for your assistance over the following page is a letter or a document on Lawler Partners letterhead signed by Lawler Partners including Mr Robert Bell, partner, and that's dated 15 January 2013. Do you see that?

A. Yes sir.

5

Q. Aided by looking at that document are you now able to agree with me that there were some separate financial statements for GMS prepared for the year ended 30 June 2011?

A. I don't disagree with you sir.

10

Q. In your earlier evidence when you made reference to GMS earning income is that the income that is recorded on page 5?

A. I would suggest it would be sir.

15

Q. You can see on page 5 the total revenue is shown as \$3,599million do you see that?

A. Yes sir.

20

Q. And if one turns to note 2 there is a breakdown of that revenue, what's on page 19 Mr Johnson?

A. Yes sir.

25

Q. And refers to the entry as "sales revenue, rendering of services, \$2,657,125. Do you see that?

A. What are you drawing my attention to.

Q. On page 19, note 2, the heading "revenue from continuing operations"?

A. Yes sir.

30

Q. First entry "sales revenue, rendering of services, \$2.657million?

A. Yes sir.

35

Q. There's a further breakdown of that figure if one goes to the page immediately after page 27?

A. 27.

40

Q. You go to 27, that's the director's declaration which is dated 15 January 2013. And then immediately after that is a unnumbered page on the letterhead of Lawler Partners entitled Independent Audit Report?

A. Yep.

45

Q. The fourth heading on that unnumbered page is headed "Basis for Disclaimer of Opinion", do you see that? Do you have that page?

A. Yes sir yep.

Q. That is headed "Insufficient appropriate audit evidence to support management services revenue"?

A. Yes sir.

50

Q. And it continues "Included in the statement of comprehensive income is

revenue for management services of \$2.509257million consisting of the following components. Management fees from parent entity \$1.815305million", just pausing there the parent entity is GLALC is it not?
A. What's your question.

5

Q. The parent entity referred to in that line is GLALC is it not?

A. I can't see where you are I'm sorry Mr Baird.

Q. See the heading towards about two thirds--

10 A. "Basis for disclaimer of opinion"--

Q. Then the next line is the heading "Insufficient appropriate audit evidence", do you see that?

A. Yeah.

15

Q. Then there's a two line statement included in the statement of comprehensive income, do you see that?

A. Two line statement, yeah yep.

20 Q. And the line immediately beneath that reads "Management fees from parent entity"?

A. Yep.

Q. And the amount is \$1.815305million, so you see that?

25 A. Yes sir.

Q. And the reference to parent entity that's a reference to GLALC isn't it?

A. I'm drawing a conclusion here Mr Baird I assume so.

30 Q. And the next entry beneath that is "management fees from fellow subsidiaries"?

A. Yes sir.

Q. And the amount is \$607,608?

35 A. Yes sir.

Q. And those were those other entities to which you made reference in your evidence before lunch are they not?

A. That you said didn't exist, yes sir.

40

Q. No Mr Johnson you said that there were services provided to other entities in the group, correct, you remember that answer?

A. Yes sir.

45 Q. In fairness to you I'm showing you this document which has been obtained over the luncheon interval?

A. Thank you sir.

50 Q. And the third entry is management fees from external parties of some \$86,000?

A. Yes sir.

Q. The following line commences, "During our audit procedures we were unable to determine an appropriate basis for these amounts therefore we have been unable to determine if revenue for management services totalling \$2.509million has occurred at the amounts included in the statement of comprehensive income". Do you see that?

A. Yes sir.

Q. Did you agree with that final paragraph that I've just read to you?

A. Look I can't remember sir but it might be one of the many issues the board had with Lawler's audits. I can't remember that specific paragraph I'm sorry Mr Baird back at that period of time. But there were innumerable issues that the board had when everyone of Lawler's audits from about possibly ten but definitely 11 audits.

Q. Could you turn over the page, the last page which is numbered 29. The second paragraph - sorry I'll start at the first paragraph, GLALC is the ultimate parent entity of Gandangara Management Services Limited, do you see that?

A. I agree with that sir.

Q. Does that assist you in providing the answer to the question I previously asked as to the parent entity?

A. No sir that was one of the points that was very much in dispute.

Q. What is in dispute about GLALC being the parent entity of GMS?

A. Much sir, much.

Q. Please elaborate?

A. To the point where we were in court last year over just that Mr Baird and it wasn't resolved in court.

Q. What was the issue Mr Johnson?

A. Whether or not the entities were subsidiaries of GLALC.

Q. If you direct your attention to the second paragraph Mr Johnson on page 29, "During the course of the audit of the 20/12 financial report for Gandangara Local Aboriginal Land Council and it's controlled entities including Gandangara Management Services Limited we made inquiries of management including specific representations et cetera". Do you agree with that paragraph Mr Johnson?

A. I believe that inquiries were made yep.

Q. The following paragraph, and those inquiries included inquiries of you?

A. Yes sir.

Q. And the following paragraph states "through subsequent discovery we identified several inconsistencies from previous representations which resulted in an inability to place reliance on further management representations". Do you see that?

A. Yes sir.

Q. Do you agree with that statement?

A. No sir. I believe Lawler said that, I believe there's no foundation for it.

5

Q. And the final paragraph on that page is headed "Disclaimer of opinion", and it reads "Because of the significance of the matters described and the basis for disclaimer of opinion. We have not been able to obtain sufficient appropriate audit evidence to provide a basis for an audit opinion. Accordingly we do not express an opinion on the financial report". And it's signed by Lawler Partners including Mr Bell on 15 January 2013. Do you see that?

10

A. Yes sir.

Q. And you understood as a result of that that the auditors refused to sign off on the GMS accounts for 20/11 didn't they?

15

A. They signed off with that qualification that they wouldn't offer an opinion, but they didn't call for it.

Q. The document speaks for itself doesn't it Mr Johnson?

20

A. Mr Baird the point that was chased was the auditor failed to qualify the audit. He left it open. It's not qualified.

Q. Mr Johnson the auditor has expressly stated that he was not satisfied with the explanations that he had received in response to his inquiries as to the income being revenue for management services of \$2.509million?

25

A. Yes sir.

MFI #3 COPY OF FINANCIAL STATEMENTS ENDING 30/06/11 OF
GANDANGARA MANAGEMENT SERVICES LIMITED.

30

Q. Following from that could the witness be taken back to volume (I) A please Registrar. You will recall in that statement that I've just read to you Mr Johnson there's reference to corrections shall we say in the 20/12 annual report two matters that had previously been recorded in the 20/11 financial statements. Do you recall I read that out? Do you need to refresh your memory from the passage that I just read where the auditors they'd gone back and quoted for you. The passage that I read out through subsequent discovery "we identified several inconsistencies from previous representations", do you remember that?

35

A. Uh-huh.

40

Q. As a result of that was there a re-statement in the 20/12 financial statements of some matters that had appeared in the 20/11 financial statements?

45

A. I think so.

Q. And that's consistent with the evidence you gave this morning was it not?

A. What evidence are you referring to.

50

Q. I thought you gave an answer at one stage saying there was some

corrections to the 20/11 accounts, do I remember correctly?

- 5 A. We believe that there were some inaccuracies in '11. We have definite beliefs in 2012 to the point where 2012 was an open audit. It wasn't qualified again. Yet in 2013 without altering one figure Lawler's were able to alter their opinion of 2012 from open to unqualified. And that record is in their '13 documentation. The Lawler situation was very messy to say the least Mr Baird.

- 10 Q. Mr Johnson all I was trying to do in fairness to you was to locate documents that might be relevant to the evidence you gave this morning and when I'm showing you those documents you can express your opinion again. This is an examination Mr Johnson, could you turn please turn in volume (I) A to tab 12. In tab 12 starting at page 410 you'll see that it's the financial statements for the year ended 30 June 2012. You see that heading?

- 15 A. Yes sir.

Q. Could you please turn to page 441 in that document?

A. Yes sir.

- 20 Q. There's a heading, paragraph 18, it says "Correction of Prior Period Error" do you see that?

A. Yes sir.

- 25 Q. In the following three lines it states "During the year the Land Council identified an error in the recognition of its subsidiaries during the 2011 financial year. The aggregate effect of the change in accounting policy on the annual financial statements for the year ended 30 June '12 is as follows". And there follows three columns do you see those?

A. Yes sir.

- 30 Q. The third of those three columns - sorry the first heading is 30 June 2011 and then beneath that are three columns?

A. Yes sir.

- 35 Q. There's a previously stated amount which is a reference to the 20/11 figures we looked at before lunch, correct?

A. Yes sir.

Q. Then there's a second column being adjustments?

- 40 A. Yes sir.

Q. Then there's a third column entitled "re-statement"?

A. Yes sir.

- 45 Q. And you will see that some figures have changed in the re-statement have they not?

A. Yes sir.

- 50 Q. If you direct your attention to the tenth line down under the heading "income statement", do you see the line "net gain on sale of property, plant and

equipment”?

A. Yes sir.

5 Q. And you'll see that the previously stated amount was \$5.214million that I showed you before lunch. Do you see that?

A. No.

Q. Do you see the figure “5”?

A. I see that figure here.

10

Q. Do you see that there's been an adjustment to it of some \$844,000?

A. Yes sir.

Q. And the re-stated amount is now \$6.059million, do you see that ?

15

A. Yes sir.

Q. Does that accord with the evidence that you gave before lunch that in some respects the net surplus on the sale of the property had been reviewed and altered as a result of the further inquiries undertaken by the auditors?

20

A. I'm not sure whether that substantiates it. As I said at that time that was the information I was given. I wasn't able to confirm or deny it.

Q. This is being put to you Mr Johnson in fairness you did say in your evidence, and I challenged you on that, that some of the figures in the 2011 statements were inaccurate. Do you remember saying words to that effect?

25

A. Yes sir.

Q. And I'm now showing you the 20/12 financial statements which include the adjustments to the 20/11 financial statements?

30

A. Yes sir.

Q. What I'm asking you now is having a look at the items under the heading “Re-stated” at page 441 do you accept that the re-stated entries for 20/11 are not correct?

35

A. You have to be specific about which entry sir. Just that one.

Q. Well I'll start with just the one, “Net gain on sale of property, plant and equipment of \$6.059--

40

A. Before you go Mr Baird I really don't think I'm qualified to answer line by line issues in an accounting statement.

Q. I accept that Mr Johnson--

A. I'm going to be giving you guesses I need to pre-empt that from the outset.

45

Q. Could I deal with that as a high level. You gave evidence before lunch that there were some issues between you and the auditors in relation to the 20/11--

A. Between the board and the auditors.

50

Q. All right I accept between the board. As a result of which clearly in 20/12 there was a re-statement of the 20/11 results correct?

A. Correct.

Q. And the effect of that re-statement is stated there line by line?

5 A. The reason I have concerns Mr Baird is the level of concern of the accuracy that the board had with all its audits actually blew out in 2012 which caused the independent review by BDO. So the board believed the Lawler's audits were growing more inaccurate rather than accurate.

10 Q. My question to you then is having reviewed the items under the re-stated column at page 441 and over the page under 442, did you accept the accuracy of the re-stated figures?

A. Not necessarily no.

Q. Are you able to state in what respects you did not accept their accuracy?

15 A. I'd have to refer you to the BDO document where all of those concerns were analysed by BDO and responded to.

20 Q. In relation to the single entry that I've directed your attention to "Net gain on sale of property, plant and equipment of \$6.059million", did you accept the accuracy of that entry?

A. I can't remember Mr Baird I'm sorry.

25 Q. Was that the figure that was utilised as representing the surplus on the disposal of the two properties upon which the calculation of your bonus was based?

A. I couldn't answer that and I wasn't a party to those calculations.

30 Q. You may close that folder Mr Johnson thank you. Before lunch I was asking you about the various contractual entitlements of Waawidji, and I directed your attention to page 2324 in volume 9A which might still be there in front of you. Do you accept Mr Johnson that Waawidji was paid the amount of \$37,763.37 in the period 1 July 2012 to 30 June 2013 by GMS that it had no contractual entitlement to receive those amounts from GMS?

35 A. I agree with that.

40 Q. Is your explanation that there is a mis-description error that the journal is incorrect in referring to Waawidji as a trade creditor of GMS and it should instead be one or more of the three other companies whose contractual arrangements with Waawidji commenced on 1 July 2012?

A. That's my belief Mr Baird.

45 Q. Can I move forward from that position still in that same volume, could you turn back in the volume to page 2280. What I'm talking about here Mr Johnson are payments that were made to Waawidji for the period prior to 1 May 2010. The document at page 2280 is a copy of the cash disbursements journal for GLALC for the 2007 financial year. Do you see that?

A. Yes sir.

50 Q. Without taking you to the detail of any of that page is your explanation for the payments to Waawidji that are recorded there is that these were the

monies that Waawidji was entitled to receive under the 2007 contract?

A. I'm not sure sir, some of those would have been reimbursements clearly for expenses paid.

5 Q. Well you had an entitlement under your contract to have your expenses reimbursed did you not?

A. Yes sir.

10 Q. As I said if you want to look at any of the detail of those amounts do so but my question to you was put at a fairly high level. Are those the amounts that Waawidji was entitled to receive from GLALC under its 2007 contract to the best of your recollection?

15 A. I'm not sure sir, some of them would have been reimbursements, not necessarily for amounts spent by myself or Waawidji. You must be aware that the board had a policy in place that they wouldn't have corporate credit cards. My personal credit card was the only credit card used for many years by the entire corporations plural. I can't tell you the year that we got our first credit card but it would have been around about 2011 I'm guessing. So that credit card or credit cards were used continually and being reimbursed.

20 Q. Mr Johnson just staying with my question please. Are you satisfied that the payments that are recorded at pages 2280 and 2281 accurately record the amounts that were paid to Waawidji in the 2007 financial year?

A. I'll have to accept them. Yes.

25 Q. The reason Waawidji was entitled to be paid was because that's what your 2007 contract stipulated including that you were entitled to be reimbursed for expenses is that right?

30 A. Not only that sir. I begin to go back to what I've just said previously, use of credit card.

Q. No Mr Johnson--

A. And that was outside of the contract.

35 Q. Can you turn forward to page 2283 please Mr Johnson. This is the similar listing of expenses for the 2008 financial year by GLALC to Waawidji, and you see that that list continues over a number of pages from 2283 to 2286 do you see that?

A. Yes sir.

40 Q. When you get to 2286 about a third of the way down the page there's a line grand total you see that?

A. Yes sir.

45 Q. And the amount \$142,000 odd, do you see that?

A. Yes sir.

Q. Do you have any reason to think that this is not an accurate record of GLALC payments made by it to Waawidji in the 2008 financial year?

50 A. I can't think of any sir.

Q. So far as you're concerned Waawidji was entitled to receive all of those amounts from GLALC?

A. I accept that sir.

5 Q. Turn forward please Mr Johnson to the 2009 year. And unfortunately these are the wrong way around, can you look please at page 2290. I'm sorry that it's going to require a bit of neck craning to do it?

A. Yep.

10 Q. Page 2290 there is reference for the 2009 year and it's headed "GLALC check detail", do you see that?

A. Yes sir.

15 Q. And the first entry is dated 11 November 2008 and it's headed "Waawidji Pty Ltd", and then there's reference to a number of payments that are made to Waawidji do you see that?

A. Yes sir.

20 Q. Those payments to Waawidji continue through that page through the following page to 2291, 2292 and conclude at 2293. Do you see that?

A. Yes sir.

Q. And similarly with the preceding years that we've just looked at do you have any reason to disagree with the accuracy of those records?

25 A. I'll just have to accept them sir they're so old.

Q. Nextly in page 2295 there is the same exercise for the 2010 year. Do you see that?

A. Yes sir.

30

Q. The same sort of records that we've been looking at for the preceding years?

A. Yes sir.

35 Q. The total at the foot of the page is \$93,047-odd, do you see that?

A. Yes sir.

Q. There is at the third entry an item there for trade creditors of \$20,000-odd, \$20,974.59. Do you see that?

40 A. Yes sir.

Q. The description of that is trade creditors. To what does that refer to your understanding, Mr Johnson?

A. I have no idea, sir.

45

Q. It's under the heading 'payment to Waawidji.'

A. Yeah.

50 Q. You will see that most of the items have reference to trade creditors but at a constant monthly amount of \$5,871.05. Do you see that?

A. Yes sir.

5 Q. Are you able to give any explanation as to why the payment on 30 September 2009 was approximately four times greater than that, namely, \$20,974?

A. What was the question?

Q. It's four times greater than the monthly payments.

10 A. What was?

Q. The amount of \$20,000 in September 2009.

A. Okay, okay.

15 Q. I'm asking you if you're capable sitting here today to give an explanation as to why that payment in September 2009 is so much greater than all the other monthly payments?

A. No sir.

Q. You can't think of a single reason?

20 A. No sir.

Q. Did you sell something to GLALC in September 2009?

A. I've no idea, sir.

25 Q. Were you paid a bonus?

A. Can you give me a hint apart from that sir, because it's very vague isn't it?

Q. If you can't remember, Mr Johnson, you can't remember.

30 A. I can't remember.

Q. Aside from that, are you prepared to accept that the cash disbursements journal shown at page 2295 is an accurate record of GLALC for that period 30 June 2010?

A. I accept it's a record, sir.

35 Q. Do you see that last two entries on page 2295 there is an increase - if one contrasts the entry for 7 June against the entry for 6 April, you will see an increase from \$5,871 to \$8,400 in that month. Do you see that?

A. Yes sir.

40 Q. That's consistent with the increase in the payments to Waawidji that occurred upon the signing of the new contract on 1 May 2010 isn't it?

A. I have no idea, sir.

45 BAIRD: Might the witness be shown the contract of 1 May 2010.

50 Q. And while that's being located, I'm simply putting to you, Mr Johnson, you are well aware from your evidence yesterday that on 1 May 2010 two new agreements were signed. We discussed that. Please have a look at them if you so desire.

A. What am I looking at, sir?

Q The Waawidji contract. The Waawidji contract is volume (II) tab 1 and volume (II) tab 2.

5 A. Yeah.

Q. You looked at both of those yesterday?

A. Yeah.

10 Q. There was an increase on 1 May wasn't there that we looked at in the rate of remuneration?

A. Yes there was sir, yeah.

15 Q. And all I was putting to you is that that increase is reflected in the final two entries dated 7 June 2010 and 29 June 2010 on that page.

A. I'm not sure, sir.

20 Q. Can you turn over to page 2297 please. We're now in the 2011 financial year and you'll see there's a number of payments there to Waawidji at a fairly similar or consistent monthly amount of the order of \$9,900-odd. Do you see that?

A. Yes sir.

25 Q. They're payments pursuant to the contract of 1 May 2010 are they not?

A. I'm not sure, sir.

Q. You've got the contract--

A. It doesn't say that here sir, so I can't draw a line between the two.

30 Q. Mr Johnson, you're the CEO of GLALC, you're the CEO of GMS and you have in front of you the Waawidji contract. Do you need to take moment? Just have a look at it please and address yourself to my question.

A. I've read the contract, sir. Show me how you draw one from the other.

35 Q. Please have a look at volume (II).

A. I'm showing account 2.

Q. Okay. Take a moment to look at volume (II). I directed your attention to it.

40 A. Volume 2.

Q. Tab 2. In that one if you go to page 778, I directed your attention to this yesterday. Waawidji's entitlement to remuneration and GMS was a salary of \$100,000 per annum plus GST and employee superannuation of \$9,000.

A. Yep.

45 Q. Are you now prepared to agree with me that the regular monthly payments between \$9,200 and \$9,900 that appear on page 2297 reflect the payment of that remuneration to Waawidji pursuant to that agreement?

A. That may be, Mr Baird, that may be.

50

Q. Thank you, Mr Johnson. Those payments are continued to be recorded over page 2298 and as the previous year's do you have any reason to dispute any of the payments that are recorded that?

A. I'm accepting them, Mr Baird.

5

Q. Now importantly, Mr Johnson, at the foot of the page for 2011 shows a grand total of \$142,000. Do you see that?

A. What page, sir?

10 Q. 2298, the last printed entry.

A. At the foot of the page an amount of?

Q. \$142,878.

A. Okay.

15

Q. On that page I want to direct your attention to the third entry, it's the one dated 17 September 2010.

A. Yep.

20 Q. It's an amount of \$32,340. Do you see that?

A. Yes sir.

Q. It doesn't bear any resemblance to the monthly amounts of \$9,200-odd that have preceded it and followed it. Correct?

25 A. Yes sir.

Q. And someone beside that has written in handwriting the word "bonus." Firstly I take it that's not your handwriting?

A. No sir.

30

Q. Are you able to agree with that comment or not? Is the payment of \$32,340 on 17 September 2010 to Waawidji payment by GMS to it of a bonus?

A. I have no idea, sir.

35 Q. You have no idea?

A. No sir.

Q. You don't know whether Waawidji claimed a bonus payment from GMS which was paid on 17 September 2010?

40 A. Well if it did there would be supporting invoice.

Q. That's where I'm driving at, Mr Johnson. Do you recollect creating an invoice on the part of Waawidji to GMS claiming a bonus of some \$32,340?

A. Not off the top of my head, no Mr Baird.

45

Q. Would it be your normal practice to create such an invoice for a bonus?

A. It would be my normal practice to create an invoice once the finance department said that was the case because I know I've also created invoices to allow where there's been underpayments in the past at their direction, so I can't say that without looking at the invoices.

50

Q. Well we'll move down four entries to the date 23 November 2010?

A. Yep.

5 Q. Which is a matter where I did show you an invoice this morning, you'll see there's the amount of \$31,900?

A. Yep.

Q. And somebody's written beside that "vehicle"?

A. Yes sir.

10

Q. And I think we looked at that invoice this morning and you agreed that was the amount that was paid to your partner in respect of the sale of the Nissan Navara vehicle, correct?

A. It was paid to my entry and ended up in my partner, yes sir.

15

Q. So in that respect that entry and that handwritten description is accurate, is it not?

A. Yes sir.

20 Q. On that assumption do you have any reason to dispute that the payment on 17 September of \$32,340 was a payment of a bonus to Waawidji?

A. You've asked me previously not to guess Mr Baird. I'd be guessing.

25 Q. Do you have any reason to dispute the accuracy of the record Mr Johnson?

A. Well I don't know who made those notes Mr Baird, I really don't know.

Q. This is a payment of \$32,000 to Waawidji which is your company, I'm asking you what you know about it?

30 A. Mr Baird we wouldn't be having this conversation if you'd just produce the invoice from the records.

Q. Can you assume that there is no such invoice in the--

A. No I can't assume that at all. There would have been--

35

Q. Mr Johnson, please, can you assume that I and the receiver do not have such an invoice, which is why these questions are being asked? Now do you recollect preparing as such an invoice?

A. No I stated that Mr Baird.

40

Q. Do you have in your records a copy of such an invoice?

A. I would have a record of every invoice produced.

45 Q. Do you have in your possession the banking records of Waawidji which would firstly demonstrate the receipt of that amount?

A. Yes sir.

Q. And secondly show the reason for that payment?

A. Yes sir.

50

Q. Are you in a position to make available to the receiver such documents that you have in your possession which demonstrate firstly rendering of an invoice by Waawidji to GMS for \$32,340 and secondly the payment of that invoice on 17 September 2010?

- 5 A. I believe that I provided all the records but I can go back and check that specific one if you want.

BAIRD: Thank you Mr Johnson that's all I can ask.

- 10 Q. You see the handwritten notes at the foot of page 2298 Mr Johnson?
A. Yes sir.

- Q. There are, it seems that somebody and I don't suggest that it's you Mr Johnson, somebody has attempted to break down the figure of \$142,000 that is printed on that page, do you see that?
15 A. Yes sir.

- Q. And there's been attempt to put them into four categories. R which as I understand it stands for reimbursement of some \$19,000. Secondly C stands
20 for contractual payments totalling some \$59,000. Thirdly V which stands for vehicle of \$31,900 and fourthly B for bonus of \$32,340 to make up that same total of \$142,876. Did you yourself check that kind of dissection and calculation in the 2011 or 2012 year?
A. No that's the first time I've seen that.

- 25 Q. Could I turn to the next year please Mr Johnson, that's the 2012 year which starts at page 2300? Again we're looking at the payments that have been made by GMS to Waawidji during the course of that year. The total of the payments that is made that year, as appears from page 2301 is \$476,625.82,
30 do you see that?
A. Yes sir.

- Q. The major items or the two major items apart from the monthly contractual amount are the first two items on page 2300, do you see those?
35 A. Yes sir.

- Q. Just putting them to one side for a moment, the other payments are all, have the notation beside them standing for Contractual. It's only the first two that have a different notation beside them, do you see that?
40 A. Yes sir.

Q. The first entry is \$89,038.41?
A. Yes sir.

- 45 Q. And the second entry, that first entry's on 1 July 2011 and the second entry is an amount of \$227,700 on 6 July?
A. Yes sir.

- Q. Now those two payments relate, do they not, to the bonus, that Waawidji
50 was claiming from GMS in respect of and triggered by the successful sale of

Gandangara Estate Stage 2 and Lot 101 Bardon Ridge, correct?

A. No sir.

5 Q. The triggering event for the payment of a bonus by GMS to Waawidji was the sale of those two properties was it not?

A. No sir, we've been down this track before, that's not correct.

Q. I said the triggering event?

10 A. The triggering event is a surplus at the end of the year.

Q. And the surplus is derived from the sale of those two properties isn't it?

A. Might be, but it could also be something else. But the triggering event sir listed in the contract as we've gone to repeatedly is a surplus at the end of the year.

15 Q. That is correct and that surplus was generated in large measure by the sale of those two properties?

A. That may be sir, but the triggering event is the surplus at the end of the year.

20 Q. I'll take you to the figure one more time Mr Johnson, we looked at it yesterday. The sale of Gandangara Stage 2 was some \$14,000,000, correct?

A. Yes sir.

25 Q. And sale of Lot 101 Bardon Ridge was \$2,500,000, correct?

A. Yes sir.

30 Q. So out of the income - sorry I'll title it correctly. The cash flows of the GLALC Group of Companies appearing at page 323, the net surplus on the sale of those properties accounted for some \$5.2million out of its total income for the year?

A. Quite possibly sir.

35 Q. If you need to check page 323 you can do so. Would you like to see that again, you looked at it yesterday?

A. No, I accept it.

Q. So the vast bulk of the income of GLALC in 2011 came from the disposal of those two properties?

40 A. Yes sir.

Q. And that generated the surplus in GLALC--

A. Contributed to, yes sir.

45 Q. And generated the surplus which entitled on your contract, Waawidji to receive a bonus?

A. Yes sir.

50 Q. And those two payments I put to you on page 2300 represent the crediting in the books at GMS of the payment of that bonus to Waawidji?

A. No sir, because the adjustment wasn't based on and there was an adjustment that we'd both referred to previously, wasn't based on the sale of land, it didn't vary. The adjustment was caused because of two figures that varied regarding the surplus Mr Baird. One was--

5

Q. Mr Johnson you misunderstand my question, please, we're at crossed purposes, give you benefit of the doubt. These two entries that I have directed you to on page 2300 represent the payment of a bonus to Waawidji do they not? That's what the entries represent?

10 A. 2300 yes sir.

Q. Thank you, that's all the question was Mr Johnson. Now I need to take you to the invoices which correlate to those plans. Can the witness be shown volume 9C, the page is 2879?

15 A. Yes sir.

Q. Now look at page 2879, that's an invoice on the letterhead of Waawidji, correct?

A. Yes sir.

20

Q. It's dated 1 July 2011, do you see that?

A. Yes sir.

Q. It's numbered 110, correct?

25 A. Yes sir.

Q. And it's for a total amount of \$227,700 including GST, right?

A. Yes sir.

30 Q. Did you create that tax invoice Mr Johnson?

A. Yes sir.

Q. Did you give that tax invoice to GMS?

A. Yes sir.

35

Q. On or about 1 July 2011?

A. I'm not sure about that. No it would have been much later than that, much later, but yep.

40 Q. And if you look at the stamp that appears, the stamp that contains handwriting in the middle of the page, do you see that?

A. Yes sir.

Q. And it was approved for payment on 6 July 2011, do you see that?

45 A. Yes sir.

Q. Does that, with your knowledge of the systems with GMS enable you to say that at some stage between 1 July and 6 July 2011 you submitted this invoice on behalf of Waawidji to GMS for payment?

50 A. Yes sir.

Q. And that amount is the same amount that was credited to Waawidji, the second entry on page 2300 on 6 July, right?

A. Yes sir.

5 Q. Can I direct your attention to the description that appears in the middle of the page of 2879, it's entitled Reimbursement of Expenses incurred for and on behalf of Gandangara Development Services Pty Limited during the period July 2008 to June 2011 continued, do you see that?

A. Yes sir.

10

Q. That was not a correct description of Waawidji's claim for that amount was it?

A. I wouldn't say so sir, no.

15 Q. Because it was for the bonus wasn't it?

A. Yes sir.

Q. So it was incorrect to describe the claim for \$227,700 as being reimbursement of expenses when in fact it was for part of Waawidji's bonus?

20 A. Yes sir.

Q. That was a mistake on your part right?

A. More than likely sir, yep.

25 Q. And what steps did you take to correct that error?

A. I'm not sure that I took any sir. I don't think it's been raised before this moment.

30 Q. Did you for instance tell somebody in the Accounts Department, possibly Mr Gundar, did you say to him look I'm terribly sorry Shalesh my invoices are misdescription, I'll fix it up, did you say something like that to--

A. No sir.

35 Q. Well why did you say it was reimbursement of expenses for GDS when it was in fact Waawidji's claim for a bonus from GMS?

A. You hit the nail on the head previously, it was an error sir.

Q. You are unable to give a description, sorry--

A. I made an error sir.

40

Q. You weren't seeking to hide the payment from anybody were you not?

A. No, from whom?

45 Q. Well misdescription of invoices can cause confusion can it not Mr Johnson?

A. Never Mr Baird, who was I hiding it from? The board were aware. Who was I hiding it from Mr Baird?

50 Q. Nobody would have been aware from looking at that invoice that that was a claim for a bonus would they?

A. Clearly.

5 Q. Can you then turn to page 2883 in the bundle? That's similarly an invoice from Waawidji, it's dated 30 June 2011 and it's invoice number 109, do you see that?

A. Yes sir.

10 Q. On this occasion it's addressed to Gandangara Management Services, do you see that?

A. Yes sir.

Q. And the amount is, including GST, \$89,038.41, do you see that?

A. Yes sir.

15 Q. And that's the same figure that appears on the first entry on page 2300 at volume 9A, correct?

A. Yes sir.

20 Q. And am I correct to assume that from your previous answers that this invoice also is in respect of Waawidji's claim to be paid a bonus by GMS?

A. Correct.

25 Q. And is it also correct that the description of that invoice, namely Reimbursement of Expenses incurred for and on behalf of Gandangara Development Services Pty Limited during period July 2008 to June 2011 is incorrect?

A. Yes sir.

30 Q. Because it was a claim for a bonus wasn't it?

A. Yes sir.

Q. And are you able to give any explanation as to why that misdescription occurred on the invoice of 30 June 2011?

35 A. Yes sir I'd say I'd cut and paste and repeated the error.

Q. And if you look at the stamp that's in the middle of the page and the handwriting it appears that this claim was processed on 1 July 2011 by the Accounts Department?

40 A. Yes sir.

Q. So apart from the misdescription from the invoices the situation is that during June 2011 the two properties had been sold, correct?

A. Yes sir.

45 Q. One settled on 20 June from recollection and the other on 11 June from recollection during the course of that month, do you agree with that?

A. Yes sir.

50 Q. And within one month you had submitted Waawidji's claim for a bonus to GMS, correct?

A. It would seem that way sir, yep.

Q. And very shortly by 6 July both such claims had been processed and recorded by the Accounts Department of GMS?

5 A. Yes sir.

Q. I put it to you Mr Johnson that you were well aware of Waawidji's and your claim to a bonus in the period June and July 2011?

10 A. I was well aware sir, yes.

Q. And what's more you had a calculator didn't you?

A. I knew how to derive 3% of any figure sir, yes.

15 Q. And the figures, the amounts that you have claimed there amount to just under \$316,000, sorry just over \$316,000, do you see that?

A. Yes sir.

Q. You do the arithmetic of adding \$89,227--

20 A. I didn't do the maths Mr Baird. You asked me whether I was capable in your previous question, I said yes, but I didn't do the maths on this.

Q. Mr Johnson please don't be cute. There are only two invoices--

A. I take offence to that Mr Baird--

25 Q. You created--

A. I don't like to be referred to as cute Mr Baird.

Q. It is a specious answer to say that you are incapable--

30 A. What was that word sir?

Q. --of adding the amount of two figures together so as to derive the total that I have put to you?

A. What was that word sir?

35 Q. The simple arithmetic Mr Johnson is that 227,700 plus \$89,000 is an amount of approximately \$316,700 is it not?

A. I'll take your advice on that.

Q. That's not a very difficult exercise, it's simple arithmetic isn't it Mr Johnson?

40 A. Given time, no sir.

45 Q. Now you calculated in early July 2011 Waawidji's entitlement to be paid a bonus by GMS at an amount slightly in excess of \$316,000 and submitted invoices, albeit misdescribed, totalling those amounts to GMS for payment, correct?

A. No sir.

Q. No?

50 A. No I take umbrage with the commencement, I didn't do the calculation, I'm repeating that. You just said that I calculated which I--

Q. Sir you submitted two invoices totalling \$316,000?

A. I did that sir.

5 Q. So you knew by 6 July 2011 what you thought your entitlement to a bonus was?

A. I knew when Mr Shalesh gave me a figure.

Q. I'm putting to you Mr Johnson that you made up these invoices all by yourself without any assistance from anyone, correct?

10 A. I made the invoices without any assistance from anyone. I did not do the calculations that derived the amount.

Q. How Mr Johnson in your evidence by between 30 June and 1 July were you able to calculate firstly the invoice for \$89,000 that appears at 2883 and secondly the invoice for \$207,000 that appears at 2879?

15 A. I didn't. I had the figure given to me and it caused me some grief later on, as you are aware, when we had to rectify the amounts.

Q. Who, as at 30 June and 1 July, who gave you this information?

20 A. Mr Gundar.

Q. In what circumstances did this occur? Did you ask him to calculate them for you?

A. No sir.

25

Q. No?

A. No.

Q. He just turned up and said oh you are entitled to a bonus, here's the right amount, is that what happened?

30 A. Look it was common knowledge Mr Baird that I was entitled to a bonus. It surprised me that it came through that quickly at the time.

Q. I'm putting to you that between the settlement of the sales in mid-June and 30 June, firstly you were aware of your entitlement to receive a bonus, correct?

A. No sir, no you're wrong.

35

Q. You were aware of Waawidji's entitlement to receive a bonus in your view?

A. I was aware of the entitlement to receive a bonus. The problem Mr Baird--

40

Q. One step at a time Mr Johnson. It is your evidence that in that period between middle of June and 30 June you asked somebody to calculate the amount of that bonus?

A. No sir that's not how it works. So I couldn't have done that.

45

Q. What then happened do you say?

A. What I believe I was given a figure. Now I believe at the time that that was the figure that was derived from the audit. I thought the audit had been completed. We had done a preliminary audit which started I think in April that

50

year and so the auditors were only left a three month period. I thought celeste

had derived the figure from the audit. Because I was well aware, well aware that the figure which is I why I couldn't do the calculations, I couldn't because I never had until the final audit report I never had an understanding of what the surplus would be. I knew it had to be derived from the audited amount. Now
5 that year I think it was Mr Gundar's first audit and it was also the first year that Lawlers had come in and done a preliminary, in other words they did the first nine months at the end of the nine month period leaving three months at the end of the year I thought it had all come through early. To my dismay later on I was advised that is not how Mr Gundar derived the figure.

10

REGISTRAR: Mr Baird is that an answer to your question.

BAIRD: No thank you Registrar.

15 REGISTRAR

Q. If I can just assist Mr Johnston, what I think Mr Baird is getting as is, what were the circumstances that led to that amount being calculated either on your behalf, on your request or by sheer accident had been given to you, okay? So
20 what were the circumstances that led to that amount of money, whatever that amount was to be given to you. Did someone approach you, did you approach someone else. What were those circumstances, that's the basis of the question?

A. Mr Gundar without me approaching him gave me that figure.

25

Q. Without any lead up conversation, without any introduction whatsoever he merely approached you with that figure saying this is your bonus for sake of a better word?

A. Yes sir. That's how it had been done in the past.

30

REGISTRAR: Mr Baird does that answer your question?

BAIRD

35 Q. There had been no bonus payment in the past to Waawidji with the single exception of the figure of \$29,000 that I took you to a moment ago which you were unable to explain, correct? This was the first time Waawidji had made a claim in respect of a sale of a property?

A. No sir there was all those Part A payments. I'm pretty sure they were
40 successful in getting Part A payments for almost every year.

Q. Leaving that aside these payments--

A. They were bonus payments Mr Baird.

45 Q. Leaving that aside the payments were of a magnitude that had never been made by you or Waawidji before?

A. I agree with that yes sir.

Q. Some \$316,000?

50 A. Yes sir.

.06/02/15

60

Q. And you got one in voice in dated 30 June which was dealt with by the accounts department on 1 July, correct?

A. Yes sir.

5 Q. And you've got the second invoice in on 1 July which was dealt with by the accounts department on 6 July, correct?

A. Yes sir.

Q. Mr Johnson you couldn't wait to get your bonus claims in could you?

10 A. Not true Mr Baird.

Q. It was absolutely at the forefront of your mind. Come 30 June 2011 Waawidji was going to get a bonus which you thought was at least \$300,000, correct?

15 A. You tell me not to guess Mr Baird. Where's your evidence.

Q. I'm putting to you that in your mind knowing all these matters it was of prime importance to you that you get Waawidji's bonus claim in quickly?

20 A. I wasn't expecting any bonuses until around about November which was when I normally got them and as I've explained previously why I thought it happened earlier this year. But no there was no pre-empting on my part Mr Baird and listen if you keep repeating it I'm going to have to take umbrage.

Q. Can you put that folder to one side for a moment please Mr Johnson.

25 There were a number of other invoices that Waawidji rendered to GMS in the 2011 and 2012 period did it not?

A. I can't remember sir take me to them please.

30 Q. Page 943 in volume (III) tab 15. The tab at 943 - sorry the document at page 943 bears the date 25 January 2010 and is numbered invoice 88, do you see that?

A. Yes sir.

35 Q. As at 25 January 2010 Waawidji did not have an agreement to provide services to Gandangara Services Pty Ltd did it?

A. No sir.

Q. So that is in error when it is an invoice submitted to GDS, correct?

40 A. No sir I think that was a direction from the board that that occur.

Q. Even though there was no agreement between Waawidji and GDS, is that what you're saying?

45 A. Yes sir. There were many as I've explained to you before pre-contractual arrangements. This was back in the very, very early days of trying to get this correct. Look sir--

50 Q. Please Mr Johnson when you attend to my questions, time is short and I don't want irrelevant speeches. If you'd look at the description of the document - of the payment it's described reimbursement of expenses and disbursements January 2010, do you see that?

A. Yes sir.

Q. In the amounts \$5,871.05?

A. Yep.

5

Q. Would you look over at page 944, 945, 946, 947 just to satisfy yourself that for the succeeding months February 2010 and March 2010 the same amount \$5,871.05 is claimed by Waawidji from GDS, do you see that?

A. Yes sir.

10

Q. Did you create all of these invoices by Waawidji?

A. Yes sir.

Q. It's incorrect to describe them as reimbursement of expenses and disbursements is it not?

15

A. Yes sir.

Q. It's payment of a remuneration is it not?

A. Contractual amount. As it says.

20

Q. Well it doesn't it says?

A. Yeah your right.

Q. It says reimbursement and expenses?

25

A. Yes sir.

Q. And that's an error is it not?

A. Yes sir.

Q. So you say that it was payment of a contractual amount, correct?

30

A. Yes sir.

Q. Can you tell me what contract existed between Waawidji and GDS that entitled Waawidji to be paid \$5871.05 in each of the months of January 2010, February 2010 and March 2010?

35

A. I believe sir I can best explain it by a pre-contractual arrangement that the Board agreed to to shift those amounts to a development services payment.

Q. Can you give a little bit more detail on how this arrangement came to be and this direction. About when do you think it occurred?

40

A. Well it had to be prior to 2010.

Q. And this was in the circumstance where there is no written agreement between Waawidji and GDS?

45

A. As I've said to you there was pre-contractual arrangements and loans in place long before 2010, long before Mr Baird.

Q. Can you turn over to page 948 where now into 30 July 2010 and the invoice 94 and it's address by Waawidji to GMS, do you see that?

50

A. Yes sir.

Q. That claims two amounts. A contractual agreement July 2010 of \$9,166.66 and superannuation of \$825?

A. Yes sir.

5 Q. Those amounts I put to you are correctly calculated in accordance with the agreement between Waawidji and GMS at 1 May 2010 are they not?

A. I assume so sir.

Q. I'm taking you to them?

10 A. Yeah okay.

Q. And they are to be contrasted with the three earlier documents that I've shown you for which there is no contract to support that, is there?

15 A. They were pre-contractual arrangements by the ..(not transcribable).. and loans in place Mr Baird.

Q. Mr Johnson pre-contractual arrangements is a euphemism for no written contract isn't it?

20 A. They're a reality at law Mr Baird may I remind you.

Q. I said it's a euphemism for no written contract, isn't it?

A. I don't know that it's a euphemism. I'm not real clear on the word. But they're a legal reality Mr Baird.

25 Q. Mr Johnson.

REGISTRAR

Q. Mr Johnson please answer the question that's being put to you?

30 A. I don't understand euphemism Mr Registrar.

Q. The question being put to you is whether or not there was a legal written agreement between the bodies you say that there was a pre-contractual arrangement between. Okay. Was it in the form of a written document or was it simple verbal?

35 A. It was simply verbal.

REGISTRAR: Mr Baird does that answer your question?

40 BAIRD: Thank you Registrar I'm satisfied with that answer thank you.

Q. You mentioned the word 'loans' a moment ago. Could the witness be shown MFI 3 again. That's loose leaf sheet of paper I showed you. Have you got MFI 3 there please?

45 A. What one sir.

Q. MFI 3 it's the sheet of paper, the GMS 20/11?

A. I don't have any sheets of paper sir.

50 Q. I hand you up a copy.

REGISTRAR

Q. Mr Johnson there was a small bundle of documents--

A. Yes sorry, yes I do.

5

BAIRD

Q. Just for the sake of fairness Mr Johnson can you turn to page 20 and MFI 3, do you see that?

10 A. Yes sir.

Q. Page 20, note 5 with the heading 'Trade And Other Receivables', do you see that?

A. Yes sir.

15

Q. Trade receivables are recorded as \$736,127 do you see that?

A. Yes sir.

Q. They are amounts that GMS is entitled to receive from its trade debtors, correct?

20

A. Yes sir.

Q. Then the immediate figure beneath that is loans to related parties and that's the amount of \$83,958, do you see that?

25

A. Yes sir.

Q. Do you have any reason to dispute the accuracy of that amount for loans to related parties?

A. Yes I do sir.

30

Q. Do you?

A. Yep. I believe those loans there only relate to external parties. I believe they don't include the loans that were internal.

35

Q. We'll come back to that Mr Johnson the document speaks for itself. What I'm putting to you is that GMS was only entitled to receive loans from related parties of \$83,958 in the year ended 30 June 2011?

A. No sir I'm not convinced of that.

40

Q. And related parties means companies within the GLL(?) Group of companies?

A. I'm not convinced of that at all Mr Baird, far from it.

Q. Now in terms of description of expenses, just give me one moment

45

Mr Johnson I think we've covered much of that. Could you turn to tab 15 of volume (III) to page 962 please Mr Johnson?

A. Volume 3.

Q. Still in volume three. Just a couple of pages further on?

50

A. What page sir.

Q. 962. So the document I'm showing you identifies and invoice from Waawidji dated 1 July 2011 invoice number 110?

A. Yes sir.

5 Q. And it's address to GHS, do you see that?

A. Yes sir.

Q. And it's described as reimbursement of expenses incurred for on behalf of GHS during the period July 2008 to June 2011 continued and the amount is
10 \$29,981.33, do you see that?

A. Yes sir.

Q. What entitlement did Waawidji have as at 1 July 2011 to seek reimbursement of expenses from GHS?

15 A. I can't remember sir.

Q. There's not agreement in place between Waawidji and GHS as at 1 July 2011 was there?

A. No sir.

20

Q. Nor was there for the previous periods July 2008, 2009 or 2010, correct? That's right isn't it Mr Johnson?

A. I think so Mr Baird.

25 Q. There's no listing attached to that document Mr Johnson is there detailing or specifying the expenses for which reimbursement is claimed is there?

A. No sir.

Q. Do you have an understanding that when you submitted on behalf of
30 Waawidji this invoice to GMS on or about 1 July 2011 there was a detailed listing of the expenses for which reimbursement was claimed?

A. I can't remember them sir. That was a period of time as I've mentioned before when Mr Gundar was new and there was a lot of errors. I always went on finances figures. There was a lot of errors that need to be rectified. That
35 could be it. I can't remember sir.

Q. Mr Johnson you prepared this invoice did you not?

A. I prepared the invoice sir.

40 Q. And this invoice comes from the documents discovered by you, do you accept that?

A. Yes sir.

Q. Do you know whether or not you submitted this invoice to GHS for
45 payment?

A. I submitted I believe sir.

Q. Do you know whether or not GHS paid it to Waawidji?

A. From memory I assume they did sir.

50

Q. And if they did what was GHS' entitlement to receive--

A. I can't remember sir. I always went of figures from Mr Gundar. Now I'd have to refer to him I'm sorry Mr Baird.

5 Q. Is that your explanation that you yourself had no part in the calculation of the amount of \$29,981 and you relied on someone else to do that calculation for you?

A. As I said to you there were errors at the time. There were a large number of errors. One of them is clearly noted by BDO Mr Baird.

10

Q. Mr Johnson stopping you there because time is short and I want to ask about this invoice. I want to know what was--

A. I've answered you.

15 Q. I want to ask you this question. On the basis of what information available to you did you base the calculation of \$29,988.33 in the invoice you prepared and submitted?

A. I can't remember Mr Baird.

20 Q. I'm putting to you Mr Johnson that this invoice is a complete creation on your part, would you agree with that?

A. No Mr Baird.

25 Q. That Waawidji had absolutely no entitlement to be paid \$29,981.33 - sorry Waawidji had no entitlement to be paid by GSS in respect of expenses incurred allegedly in the period July 2008 to June 2011, would you agree with that?

A. No sir.

30 Q. I'm putting further to you that Waawidji did not in fact incur \$29,900 of expenses on behalf of GHS in the period July 2008 to June 2011 when there was no contract between Waawidji and GHS?

A. I can't remember what the basis of the invoice was Mr Baird, I'm sorry.

35 Q. GHS was incorporated on 16 April 2010 was it not the same time as GMS, correct?

A. I can't remember incorporated.

Q. You see the company search?

40 A. I'll take it as such.

Q. Sir what could possibly be the entitlement of - I'll withdraw that. What could possibly be the nature of any expense incurred by Waawidji for or on behalf of GHS in the period prior to its incorporation on 16 April 2010 Mr Johnson?

45

A. I'm not sure. It could have been the Part A bonuses Mr Baird could it not.

Q. So this description could be completely wrong is what you're saying?

A. Yes sir.

50

Q. Mr Johnson this is simply a false invoice isn't it?

A. Can you show me why.

5 Q. It is as you've just hypothesised it might be something else, it be for a bonus might it?

A. Mr Baird I truly can't remember. I truly can't remember. You're talking about an invoice dated some four or five years ago.

10 Q. I'm putting to you Mr Johnson at the end of each financial year it was your practice to make up invoices, submit them and to claim payments to which you were not entitled?

A. Incorrect.

15 Q. Turn over the page Mr Johnson to page 963. This invoice is from Waawidji to GTS Pty Ltd and it's dated 27 July 2011. It's numbered 111, do you see that?

A. Yes sir.

20 Q. Again it's described as reimbursement of expenses incurred for and on behalf of GTS Ltd during the period July 2008 to June 2011 and it's for an amount of \$29,075.75, do you see that?

A. Yes sir.

25 Q. Did you prepare that invoice?

A. Yes sir.

Q. Did you submit this invoice to GTS for payment?

A. Yes sir.

30 Q. Do you know whether or not GTS paid this invoice?

A. I believe they probably did sir.

Q. That description reimbursement of expenses is completely incorrect is it not?

35 A. I believe so sir.

Q. Because GTS was not incorporated until 16 April 2010 for a start, right?

A. I take that on advice yep.

40 Q. So Waawidji couldn't have been incurring any expenses on behalf of GTS prior to its incorporation?

A. We've agreed to that Mr Baird.

Q. I beg your pardon?

45 A. We've agreed to that.

Q. This is in respect of GTS. Do you know whether or not there was a listing of expenses attached to that invoice?

50 A. I think we've just agreed that it wasn't for expenses and that's incorrectly labelled. But sir--

Q. What other entitlement did Waawidji have to claim the amount of \$29,000 odd from GTS as at 27 July 2011?

A. I can't remember. I can offer a guess and say that it might be the Part A bonus Mr Baird.

5

Q. As at 27 July 2011 there was no agreement between Waawidji and GTS correct, no written agreement, correct?

A. Correct.

10 Q. And there was no agreement of any kind whatsoever was there?

A. Yes there was an agreement between Waawidji and GMS that was transferred later on to those entities. Look I can't remember the exact details. I'm offering that as a possibility Mr Baird.

15 Q. Is that your best evidence. There was some agreement that was transferred at some later time to some other entity?

A. Mr Baird I'm doing my best and you've called some long bows yourself today.

20 Q. Did Board approve the making of any of these payments, the two payments?

A. The Board approved all payments sir.

Q. The payments I'm referring specifically at pages 962 and 963?

25 A. The Board approved all payments sir.

Q. Did you specifically refer to the Board the payment of \$29,900 to GHS that you sought on 1 July 2011 and the payment of \$29,000 odd that you sought from GTS on 27 July 2011?

30 A. I wouldn't have Mr Gundar would have.

Q. Mr Gundar would have?

A. Yes sir. As we've stated before on several occasions Mr Gundar reported directly to the Board.

35

Q. Did you disclose to the Board that Waawidji was seeking these payments from each of GTS and GHS in July of 2011?

A. No sir I can't remember but that's what makes me believe it was part of an annual event.

40

Q. According to you Mr Johnson there was no disclosure on your part of the making of these related party payments to Waawidji?

A. That's not true sir. These invoices at the time would have been questioned because they're out of the norm.

45

Q. Well certainly you can see that the descriptions on each of these invoices, reimbursement of expenses is incorrect, that's right isn't it?

A. We've established that Mr Baird.

50 Q. And you hypothesised did you not Mr Johnson that it was possibly a

payment of a bonus, is that correct?

A. I offered that as one possible answer yes.

5 Q. And that explanation simply does not fly in the face of the invoices you had already submitted to GMS that we looked at a moment ago on behalf of Waawidji totalling some \$316,000, correct?

A. No you're absolutely incorrect. Those invoices as you've identified were clearly Part B of the bonus sheet. I said to you and refer to the transcript, if these occurred then they may possibly relate to Part A.

10

Q. Part A is contained in the written agreements that came into existence between Waawidji and GHS and GTS respectively on 1 July 2012, did it not?

A. Yes sir.

15 Q. And there's no Part A in any agreement or a date prior to 1 July 2012 for the simply reason there's no written agreement?

A. No there's no written agreement sir.

20 Q. Mr Johnson do you remember discussing these claims for reimbursement or possibly bonus as you say that are made in pages 963 and 962 with Mr Gundar in the period immediately prior to the submission of these invoices, namely July 2011?

A. I don't remember. It would have occurred Mr Baird.

25 Q. Do you remember disclosing to Mr Gundar or telling him words to that effect that these payments had been authorised by the Board, did you tell him that?

A. No.

30 Q. Because they hadn't been had they?

A. Sir Mr Gundar would not have paid them without valid reason. Now--

Q. Mr Gundar would do as you told him to wouldn't he Mr Johnson?

A. Not to that extent no he wouldn't Mr Baird.

35

Q. He would act on instructions from the CEO?

A. No he wouldn't Mr Baird, no.

Q. And you told him--

40

A. What part of no are struggling with Mr Baird.

Q. And you put to Mr Gundar that all these payments had been authorised by the Board hadn't they, that's what you told him?

A. That's a very long bow based on - what do you base that on Mr Baird.

45

Q. Do you deny that you told Mr Gundar that?

A. Of course I deny it.

50 Q. I'm putting to you Mr Johnson that you led Mr Gundar to believe that these invoices were appropriate to be paid because they had been approved by the

Board?

A. You don't know the system, you don't understand what was in place. What you're suggesting just would never have happened Mr Baird and it would never have passed the scrutiny that was in place.

5

Q. Okay I want to move to another topic in the time that remains. Would you agree Mr Johnson that it's one of the duties of a CEO to supervise contractors and subcontractors to GLALC?

A. I was responsible for them Mr Baird.

10

Q. Can you tell me how it was that Dixon Capital came to be retained to provide development works in 2007, what was your involvement in that process?

15 A. I had conversations with Mr Wing for a long time in 2007. I was trying to get my head around what was the asset base in the way of land, what it's worth was. It was an area I had no experience and Mr Wing had a great deal of experience, he assisted me.

Q. Is that what he told you?

20 A. Yes sir.

Q. And as a result of that, you received from Mr Wing of Dixon Capital in May of 2007, a submission, and if you want to check the document in the--

25 A. I remember receiving one.

Q. It's in volume (II), tab 7, page 871 and that's a submission of - could the witness be shown - the submission of 15 May 2007--

A. No, I remember I received one.

30 Q. I don't want to take a lot of time on the detail but--

A. What page sir?

Q. Volume 2, tab 7, page 871?

35 A. Just bear with me please. Okay, I have the document.

Q. You'll see that that is the proposal from Dixon Capital?

A. Yes sir.

Q. And did you accept that proposal on behalf of GLALC?

40 A. No I didn't, no. It went to the board sometime after July 2007 and the board met with Mr Wing - no it was a long slow process Mr Baird.

Q. At some stage did the board resolve to accept this proposal--

45 A. Yes it did.

Q. --and to authorise you to enter into it or sign it on behalf of the council?

A. Yes sir.

50 Q. And are you familiar with the fees that appear on page 875 that Dixon Capital proposed to charge?

A. Yes sir.

Q. A success fee of \$2,500 per lot, do you see that?

A. Yes sir.

5

Q. And then on 875 there was a monthly retainer of \$5,000 per calendar month, do you see that?

A. Yes sir.

10 Q. What was your understanding as to the reasonableness or other of those fees in May 2007?

A. I found them reasonable sir.

Q. And what was the view of council insofar as you were aware of it?

15 A. Of what sir? The view of--

Q. The view of the council?

A. The Board?

20 Q. The Board or the council?

A. They spoke to Mr Wing on several occasions and approved it.

Q. And that was to your knowledge?

A. Yes.

25

Q. I will take you to the next agreement down the line, can you go forward to tab 10 please which is 8 August 2010 and I just want you to satisfy yourself by contrast if you need to, with the document at tab 7, that this is a continuation of the same project advisory and development retainer agreement?

30 A. Yes sir.

Q. You've seen that document at page 881 tab 10 before haven't you?

A. Yes sir.

35 Q. If you turn to page 883 you will see there the fees proposed to be charged--

A. Yes sir.

Q. --in relation to success fee, do you see that?

40 A. Yes sir.

Q. And the preceding page, 882, you can see the council monthly retainer, do you see that?

A. Yes sir.

45

Q. The fees increased on 8 August 2010 did they not?

A. Yes sir.

50 Q. Did you agree with the proposed increases brought by Mr Wing on behalf of Dixon Capital?

A. Absolutely.

Q. Why was that?

A. There was enormous increase in the amount of work.

5

Q. He was being paid for the work that he did, correct?

A. And that increased enormously.

10 Q. I'm not asking about monthly retainer fee, the monthly retainer fee is referred to from 882 and goes up on 883 to 12,000 a month, do you see that at the top of 883?

A. It goes from what to what Mr Baird?

Q. Sorry. If you read page 882--

15 A. You tell me the figures Mr Baird.

Q. From page 882 it increases from \$5,000 per month to \$12,000 per month, do you see that?

A. Yes sir.

20

Q. And you gave an explanation a moment ago as to why you agreed to that increase, what was that?

A. The workload had increased enormously.

25 Q. Would you then direct your attention to the success fee appearing in the middle of 883?

A. Yes sir.

30 Q. And there is a reference there to a success fee if you look at subparagraph A(i)(i) for developments of 21 to 50 lots a success fee of \$3,500 per lot, do you see that?

A. Yes sir.

Q. That's an increase from \$2,500 per lot under the previous agreement ?

35 A. Yes sir.

Q. Now why was that increase appropriate in your view?

40 A. Sir the amount of work that Mr Wing had - the increase in the amount of work that Mr Wing had undertaken had grown enormously. The beauty of Mr Wing's agreement in my mind was, he worked on a very minimal retainer in my opinion, when you take into consideration his expenses and the work he did and the bulk of the money owing to him wasn't due until the Land Council or the end of his doing the work received the funds from the final product. So it
45 matched our cash flow situation. Remember sir, we are a very unique organisation. When you - no you have to--

BAIRD: Registrar may I stop this at this please. I asked a question as to the appropriateness of the fee.

50 DEPUTY REGISTRAR: Mr Johnson please answer the question that is being

put to you.

WITNESS: I have done so I believe now. I just added to it I'm sorry Registrar.

5 BAIRD

Q. What I want to put to you Mr Johnson is that in August of 2010, the increase in Dixon Capital's retainer from \$5,000 per month to \$12,000 per month was sufficient remuneration for the increase in workload--

10 A. I don't believe so, no, and neither did the board.

Q. There was no good reason, when the end was in sight, for the success fee to increase from \$2,500 to \$3,500 per lot, do you agree with that?

A. No.

15

Q. And did you make known your views to the board?

A. Absolutely.

Q. And did the board approve the acceptance of the proposal contained in Dixon Capital's letter of 8 August 2010 appearing at page 881?

20

A. They had some questions but they unanimously agreed.

Q. Was there a competitive tender process undertaken to ensure that these prices were in line with the market?

25

A. Not by that state, well we knew what the market was asking.

Q. How did you know what the market was asking?

A. Because we were using consultants to provide us with information. We were using other consultants in that area.

30

Q. There was no competitive tender process undertaken on 17 June 2009 or otherwise, was there?

A. No sir, not for what Mr Wing was doing.

35 Q. Nor on 15 May 2007?

A. No he had well and truly established his credentials with us sir, well and truly.

Q. Why wasn't a competitive tender process undertaken--

40

A. Don't make me repeat - because he had well and truly established his credentials with us. The board - and they're a difficult group to work with and understand, had complete confidence in him and he was able to work well with the board and within the interesting confines of the Aboriginal Land Rights Act.

45 Q. Could I ask you Mr Johnson to turn to tab 11. Tab 11, I identify at page 886 is a proposal from EMC to Mr David Wing dated 20 February 2009?

A. Yep.

Q. Firstly do you know which person represents EMC?

50

A. Most of the - well we dealt with all of their partners but most of the time it

was with a gentleman by the name of Chris Perkins.

Q. Had you had any involvement or relationship with Mr Perkins prior to February 2009?

5 A. No sir.

Q. Had you had any relationship with Mr Wing prior to May 2007?

A. Yes sir.

10 Q. What was that?

A. I had worked for him.

Q. When was that?

A. At Gadens law firm.

15

Q. In Sydney or in Brisbane or somewhere like that?

A. Brisbane.

Q. When was that?

20 A. Prior to February 2007. I started doing a law cadetship with them.

Q. Is that how you first met Mr Wing?

A. Yep.

25 Q. At Gadens?

A. Yes sir.

Q. Was he a lawyer there or something else?

30 A. No. I'm not sure whether he had that title then but he ended up becoming the COO of Gadens Brisbane.

Q. I beg your pardon, I misheard?

A. Chief Operations Officer, COO.

35 Q. Thank you and was your relationship purely professional or did a personal friendship arise later?

A. I have the utmost respect for David Wing. I hold him in high regard that few others equal. I have never socialised with David.

40 Q. Did you ever socialise with Mr Chris Perkins?

A. No sir.

Q. How was it that Mr Perkins is sending this letter at tab 11 to Mr Wing on 20 February 2009, do you know?

45 A. Yeah, I do.

Q. How did that occur?

A. We had been looking for someone to provide us with media advice for several years. We were growing--

50

Q. Is that a view that you held or members of the board or someone else?

A. All.

Q. Please continue?

5 A. And we looked at several companies and people. We were struggling to get someone that we believed we could work with and that understood our difficulties.

Q. Did you see the document that appears at 886--

10 A. Yes I did.

Q. --February 2009?

A. Yep.

15 Q. Did you have some discussions with Mr Wing about it?

A. Yep.

Q. What did you say to Mr Wing and what did Mr Wing say to you about this proposal?

20 A. Look, the media agreement from day 1 was always a matter of constant conversation and analysis. I always struggled with it Mr Baird.

Q. Was one of the topics the quantum of the fees that Mr Perkins wanted to charge?

25 A. Absolutely. We were constantly trying to negotiate with Mr Perkins. Look I'm a deductive person, I struggled to get my head around valuing the type of work that they did, constantly struggled. It was one of those issues where you pay if you don't have it but it's always hard to determine its worth. How much worth does an advertisement bring you--

30

Q. Mr Johnson please, it's not a debate. The proposal that's encapsulated in the matter of 20 February 2009, was that firstly submitted by you to the board for approval?

A. Yes sir.

35

Q. Was it approved by the board?

A. Yes sir.

Q. Were you authorised on behalf of the board to accept that proposal?

40 A. Yes sir.

Q. How did you manifest that acceptance?

A. I'm not sure, I can't remember, did I sign the agreement?

45 Q. Please turn to page 8, I'm sorry, there appears to be no signed agreement, that's why I asked that question. Did you for instance, send--

A. It was agreed to Mr Baird, I have no doubt in my mind.

Q. Doing the best you can recall, was that acceptance communicated in writing, for instance by email or--

50

A. I can't remember Mr Baird.

Q. You can't remember?

A. No.

5

Q. As we move through, just quickly look at tab 12, page 889 which you will see is the second iteration of this proposal, do you see that dated 22 May 2009?

A. Yes.

10

Q. On this occasion it is addressed to you at GLALC, do you see that?

A. Yes sir.

15 Q. Was a competitive tender process ever undertaken by you on behalf of GLALC in relation to these media proposals?

A. Not a tender process because I doubt that we could have defined what we wanted tenders for Mr Baird. It was so - in my mind and even today, so obtuse, so ethereal, I would have struggled to define what we wanted tendered. We spoke to many people in this field trying to get someone and identify someone who had some worth to us, who could tell us how we could grow our brand, our profile and create one. We spoke to a lot of people in the field.

20

25 Q. And what was your opinion of the prices that Mr Perkins proposed to charge. For instance, those set out on 891 as at May 2009 in comparison to--

A. In comparison to all the people we'd spoken to, they were very realistic, in comparison.

25

Q. So are you saying that you informally tested the market to compare--

30

A. Absolutely. We spoke to many trying to get many prior to EMC.

Q. If you look at page 890 you'll see that the strategic communications retainer was \$6,000 per month, do you see that?

A. Yes.

35

Q. And there was also a media relations package of some \$2,000 per month, do you see that?

A. Yes sir.

40 Q. And doing the best you can at this stage, what was your opinion of the value of the services provided by EMC in the period May 2009 to December 2009?

A. I always had no problem with the quality of the service, I always had a problem quantifying it Mr Baird.

45

Q. By quantifying it, what do you mean?

A. Putting a price value on it.

50 Q. In other words, you were unable to form a view as to whether \$6,000 and \$2,000 respectively per month was reasonable remuneration?

A. I said that before Mr Baird.

Q. Briefly, the next document at tab 13 is the next iteration of that agreement. If you are starting at page 893, you will see it is dated 2 December 2009 and the retainers are still 6,000 a month and \$2,000 a month for the strategic communications retainer and the media relations package, do you see that?

A. Yes sir.

Q. Turning over the page to page 897 at page 14 you will see there is a proposal there in relation to Heathcote Ridge project?

A. Yes.

Q. That proposal did not proceed in that form did it?

A. I can't remember Mr Baird.

Q. Isn't it the case that you preferred to receive an all-up proposal instead of separate proposals?

A. Yeah, look as I said, I really struggled with this--

Q. That is not unreasonable Mr Johnson, I'll move on. Can you turn to tab 15 and the document at page 901 that might assist?

A. Yes.

Q. So starting at page 901, the proposal that we are looking at is dated 4 November 2010 by EMC and you will see on page 902 there is reference to the original retainer and some changes?

A. None.

Q. And if you look at the foot of the page, page 2, internally numbered 2, page 902, there is reference to GLALC partnering with Deerubbin and La Perouse and EMC has been asked to perform all the same services for the additional two LALCs. What services were they Mr Johnson?

A. The same type of services we were after from EMC. Again very difficult for me to describe.

Q. Why was it that GLALC was going to pay for the services that EMC was going to provide to Deerubbin and La Perouse?

A. GLALC wasn't GMS was. Both Dixon Capital and EMC required that.

Q. Required what, that GMS paid--

A. That they contract with GMS not with the other ..(not transcribable)..

Q. Why was that Mr Johnson?

A. They clearly had no faith - it started off being with Deerubbin, they had no faith in the Deerubbin management and they were proven very right in the long run and they had faith in GMS.

Q. Well why was it that GMS was going to pay its monies to EMC and you say Dixon Capital for work performed by EMC and Dixon Capital for Deerubbin and secondly La Perouse?

A. We made that arrangement with the land councils.

Q. Can you just tell me more about those arrangements then?

5 A. Can I just be excused for a couple of minutes, I just need to dash upstairs.
I am old and a cancer patient, my prostrate is--

DEPUTY REGISTRAR: You may go, we will go off record.

SHORT ADJOURNMENT

10

DEPUTY REGISTRAR: We are going to go back on record Mr Baird.

BAIRD: Thank you Registrar, I'll be as brief as I can.

15 Q. Mr Johnson we've just broached page 902 in tab 2, the topic of services being performed by EMC for the benefit of Deerubbin and La Perouse, and the arrangements that existed for GMS or GLALC to recover the value of those services or a portion thereof from those entities?

20 A. Mm hm.

Q. Now you mentioned that there was some arrangements or agreements in place for GMS to make recovery, are you able to give me some more detail on what those arrangements were?

25 A. We - with both of them?

Q. Well let me get them one at a time because it's fair. Let's start with La Perouse, it might be straightforward?

A. Okay.

30 Q. Did EMC do work for La Perouse under this proposal?

A. I believe so.

Q. Did in turn GMS, firstly pay EMC in respect of those services?

35 A. I can't remember those details. That would have been between the CEO of Lapa and Celeste and EMC.

Q. Who was the CEO of La Perouse?

A. Chris Ingray.

40 Q. And did, in due course GMS submit invoices to La Perouse in respect of these and any other amounts that were paid out on La Perouse's behalf?

A. Yes sir.

45 Q. And was payment of those invoices conditioned upon La Perouse successfully completing a development?

A. Yes sir.

Q. And did La Perouse--

50 A. Or sale of land, one or the other.

Q. Or a sale, yes and did La Perouse achieve that sale or development?
A. Yes sir.

5 Q. And has La Perouse paid those invoices to GMS?
A. In full.

10 Q. Now on that same line, turning to Deerubbin, did GMS submit invoices to Deerubbin in respect of monies and works performed by it for the benefit of Deerubbin?
A. Yes sir.

Q. And was that in relation to developments being undertaken by Deerubbin?
A. Yes sir.

15 Q. Had those developments been completed by Deerubbin?
A. One has.

20 Q. One has?
A. Yes sir.

Q. And under your understanding of the arrangement, is Deerubbin liable to pay those GMS invoices?
A. Yes sir.

25 Q. With whom at Deerubbin were those arrangements entered?
A. The CEO and the board.

30 Q. Who was the CEO of Deerubbin?
A. Kevin Cavanagh.

Q. And did he have some discussions with you personally about that matter?
A. Yes sir.

35 Q. And what was the tenor of those discussions?
A. He started the discussions, it started off by Kevin wanting us, because of our mapping services and skills, to ensure that he had claimed all of his claimable land. It started off with that and went second place, payable on their receipt of funds from developments and it grew from there.

40 Q. And can I put this to you, Ms Cronan has given evidence that Mr Cavanagh from Deerubbin actually attended at GLALC and signed GMS invoices to confirm his acceptance of the amounts for those services, do you have a recollection of that event yourself?
45 A. There was a system in place where Mr Cavanagh approved every invoice paid whether it be personally or by email.

50 Q. According to your understanding of that arrangement, is Deerubbin now liable to pay the amounts of those invoices to GLALC - sorry to GMS?
A. Absolutely, yes.

Q. Has Deerubbin made payment of those amounts to--
A. Not one cent.

5 Q. Do you know whether Deerubbin has the capacity to pay those amounts to--
A. They have had in the past.

10 Q. Is that a bone of some contention between GLALC and Deerubbin?
A. Absolutely.

Q. In relation to Walgett LALC, I know Walgett is not referred to on that page, but as I understand it, did not a similar arrangement come into existence in relation to Walgett a little later, possibly 2012?
15 A. I'm not sure of the time, but yes. No it wouldn't have been that late, no, I believe it would have been earlier.

Q. A bit earlier than 2012?
A. Yes.

20 Q. But certainly coming after 2010?
A. Yep.

Q. Again was that a similar proposal whereby GMS would provide services not only itself but also its contractors for the benefit of Walgett?
25 A. It was similar but there were some fairly unique caveats and understandings that had to be considerably ..(not transcribable).. by the board.

Q. And what were they?
A. It's an extremely remote place, they use a very dynamic - drought can
30 devastate the value of property, it is a really unique place.

Q. In summary, is it fair to say there were a number of conditions attached to repayment by Walgett to GMS of any amounts that GMS had spent on Walgett's behalf?
35 A. There were a number of conditions, it was fairly simple but the risks were a little bit higher with Walgett.

Q. Have those conditions, in your view, been satisfied?
A. No. Well all the land claims were made creating a value but no
40 developments have been - we just weren't able to keep going. The administrators stepped in.

Q. So in your view is that a fair summary, that the time for Walgett to repay any amounts to GMS has not yet arrived?
45 A. No sir, what it boils down to, I disagree with that, what it is in my opinion is, the agreement was repayment would be based on development, there has been no development so there is no loan.

Q. The arrangements with Walgett insofar as GLALC and GMS were
50 concerned to your knowledge, did the board of GLALC approve this

arrangement?

A. Yes sir.

Q. Who in particular at the board?

5 A. The board as a collegiate mind.

Q. Were you present at any meeting of members of the board where the arrangements that you've discussed with Walgett were approved?

A. Yes sir.

10

Q. Could I turn your attention back in the document now to a document at tab 901 and in particular, page 903 and you will see that the retainer for strategic communications retainer is now \$15,000 a month, previously \$6,000 a month, do you see that?

15 A. Yep.

Q. And the media relations retainer was now \$10,000 a month, previously \$2,000 a month, do you see that?

A. Yes sir.

20

Q. That's a fairly substantial increase in retainer, is it not?

A. Yes sir.

Q. Now in your mind, did you agree with the increase in EMC's retainers to \$25,000 per month as set out on page 903?

25

A. In my mind Mr Baird, I never - I understood without doubt that there was an enormous increase in workload and responsibility from what they were doing because of Heathcote Ridge. I really had troubles quantifying it Mr Baird.

Q. It was a big increase to \$25,000 a month?

30

A. A huge amount of work variation, huge.

Q. The Heathcote Ridge project was being--

A. Absolutely.

35

Q. --was coming on line so to speak, was it not?

A. Well it had been on line for several years but the opposition to Heathcote Ridge had ramped up to the point where it could have gone either way and it's a project that will either happen or it won't, there is no grey area and the opposition had ramped up from the environmental perspective which is always a typical thing to fight, and we needed everything going for us that we could marshal.

40

Q. Well as at November 2010, did the board of GLALC approve the acceptance of this proposal which starts at page 901?

45

A. Yes sir.

Q. What, to your knowledge, discussions took place at board level about the increase in the retainers sought?

50

A. A lot.

Q. And were some members of the board opposed to that?

A. Like me they questioned(?) me they had trouble quantifying it.

5

Q. And what was the outcome of the board discussions?

A. Very similar to mine. The risk of losing Heathcote Ridge was straight and in my mind we couldn't afford to lose it.

10 Q. Can I take you forward from November 2010 to August 21? I'll need another volume to be shown to you which is volume (V) tab 14 page 1283? Page 1283, the reason I'm showing you this page is because you can see this is an invoice from EMC for amounts different from the \$15,000 and the \$10,000 retainer that we've been looking at in the 4 November 2010 proposal?

15 And if you need to satisfy yourself of that fact just turn to the previous page which is page 1282 where you will see for the same period 31 August 2011 there appears an invoice for the two retainers of \$15,000 and \$10,000. And then on the same date there's reference to at least two more retainers on 31 August, one's a Stakeholder Relations Management of \$12,500, do you see that?

20

A. Yeah.

Q. And then there's an additional ten hours a month approved by David Wing consist reducing backlog due at December of some \$2,300 per month. And then there's two items each of \$5,000 in relation to the Heathcote Ridge website retainer for July and August 2011, do you see that?

25

A. Yeah.

Q. Why was it that EMC was entitled to a Stakeholder Relations Management fee of \$12,500 in the month of August 2011?

30

A. Oh they were questioned quite hardly(?) about all of that, Mr Baird. And again we could see the need for the work, there was no doubt about that. What was always an issue, and I make no bones about it, is trying to quantify the value of that work, because it's such an ..(not transcribable).. thing.

35

Q. Well could I just do a simple bit of mental arithmetic if you wouldn't mind, Mr Johnson? If you look at the two amounts on page 1282 they total 25,000 odd dollars, correct? That's 15 and ten, correct?

A. Yep.

40

Q. And if you add to that the \$12,500, the \$2,300 and the two amounts of \$5,500 that appear there that according to my simple arithmetic comes to \$49,800 in the months of August 2011 alone?

A. Yep. And that was the situation on one side of the scales. On the other side of the scales ..(not transcribable).. that was driving us was the figure the return from Heathcote Ridge 2 billion. Now, you know, we were weighing those things up and continued to weigh them up continually. It was at a very, very high risk, there was a change in government element, there was all sorts of issues at the time in part 3A developments, and it was a part 3A

45

development, that we got to that point very rare, it was high risk. You're doing

50

..(not transcribable).. finding \$9,000 in this month 2,000,000 at risk. This carries a lot of weight, Mr Baird.

5 Q. Was Mr Perkins providing for instance lobbying services in addition to the items--

A. Oh yes.

Q. --mention there?

A. Oh yes.

10

Q. Did you attempt to quantify the value of the lobbying services provided by Mr Perkins?

A. Yep. It was probably the easiest thing to qualify, lobbyists are a dime a dozen. Media people that you can relate to and understand the intricacies very, very different issue.

15

Q. Did the board - maybe I'll go back a step. We do not have any proposal in relation to the Stakeholders Relation Management that relates to the amount of \$12,500. Are you aware of any written proposal that existed in relation to that?

20

A. I think you'll find those things were thrust on us very quickly as part of the Department of Planning process. They had decided after some four years of work on our part and well over \$3,000,000 invested in this, it was part of the loan that you say don't exist. Those investments and taken place and they had fast tracked it for us--

25

Q. Mr Johnson--

A. Exactly what we wanted.

30 Q. --my question was simply are you aware of a written retainer agreement in relation to the Stakeholders Relation Management?

A. I don't think we had time to do that, Mr Baird.

35 Q. Do you know whether or not the retention of EMC for Stakeholders Relations Management was approved by the board of GLALC

A. Yes it was. All of those things were constantly - they were mentioned at every board meeting.

40 Q. And was a resolution to your knowledge passed by the board GLALC approving the retention of EMC for a Stakeholders Relations Management at a fee of \$12,500 per month?

A. I'm not sure whether it was done that way or through by delegation, but the board got fully informed of the ..(not transcribable)..

45 Q. By the board to you and Ms Cronan?

A. I'm referring to the collegiate mind of the board.

Q. Did that occur at a meeting of the board?

A. Yes, sir.

50

Q. So if we looked at the minutes of the board for July and August of 2011 we would see a minute approving the acceptance of this retainer would it not?

5 A. Let me repeat what I've just said to you. I'm not sure whether that occurred formally or whether it occurred under my delegation. I repeat what I've just said.

Q. That's what I'm seeking to explore? If it occurred under your delegation what authority did you have to enter into that retainer?

10 A. I had authority to ensure that Heathcote Ridge was approved.

Q. And subject to the approval of the board?

A. No I think you'll find that the delegation was subject to the board being kept fully informed.

15 Q. And I've just asked you how the board was kept fully informed?

A. Every meeting, I told you it was an item of agenda.

Q. Therefore if I looked at the minutes of the meetings of the board for July and August I would see an approval, should I not?

20 A. You'd see it on the agenda item as ..(not transcribable).. spoken about.

Q. Do you have a recollection as you sit here as to whether or not there was either in July or August of 2011 a meeting of the board of GLALC that approved the Stakeholder Relations Management retainer of EMC--

25 A. I know EMC's arrangements were mentioned at almost every meeting and questioned very diligently, Mr Baird.

Q. And did someone make known their opposition to you that the idea of EMC charging another \$12,500 per month for Stakeholder Relations Management?

30 A. I'm not sure whether it was opposition, but it was questioned, I tell you. They had as much trouble as I did quantifying it.

DEPUTY REGISTRAR: Mr Baird, I just simply note the time.

35 BAIRD: I'm just about on the final topic, Registrar. I accept and I'm grateful.

Q. Mr Johnson, what property do you own, your property?

A. Outright I don't own any, sir.

40 Q. Do you not own a property in [REDACTED]?

A. I'm part owner.

Q. You own together with Michele Therese Hall the property which is in folio identifier [REDACTED] in [REDACTED], correct?

45 A. I see(?) if I said I owned it the bank might question that. I have an equity in that, Mr Baird.

Q. I will withdraw that question and I'll put it this way. Together with Michele Therese Hall you are recorded as the registered proprietor are you not--

50

A. Yes, sir.

Q. --of the property in the folio identifier I just gave?

A. Correct.

5

Q. And what's the street address of that property?

A. [REDACTED].

Q. How do I spell [REDACTED]?

10

A. [REDACTED].

Q. And on the title of that property is recorded a mortgage to National Australia Bank Limited, that's correct isn't it?

A. Correct.

15

Q. For how much did you purchase the property at Oakdale?

A. I can't remember, sir.

Q. You bought it in July of about 2007, do you agree with that?

20

A. Well I guess yes, sir, I think.

Q. Are you stating at this stage you don't remember how much you bought it for?

A. No I really can't.

25

Q. Do you have an understanding at this stage of how much is owing to National Australia Bank under the mortgage of the property?

A. No I don't.

30

Q. You have no idea?

A. I ..(not transcribable).. no.

Q. You do not know how much you owe your mortgagee under the mortgage over your property?

35

A. No, sir.

Q. What did you do with the moneys that Waawidji received of 316,000 odd dollars in 20/13 that we've looked at?

A. Many, many things, Mr Baird.

40

Q. Such as?

A. Many expenses.

Q. Did you pay down the mortgage over the property for a start?

45

A. The mortgage was paid off, yeah, in regular instalments.

Q. And did you use those moneys to acquire other assets?

A. Assets were acquired.

50

Q. Well let me ask you questions about the assets? Do you own any shares

in any public companies?

A. No, sir.

Q. Apart from Waawidji do you own shares in any companies at all?

5 A. No, sir.

Q. Apart from the property in [REDACTED] do you own any other properties?

A. [REDACTED].

10 Q. [REDACTED], I apologise. Apart from the property in [REDACTED] do you own either in your name or together with someone else any real property?

A. No, sir.

Q. Does Waawidji own any real property?

15 A. No, sir.

Q. Do you have a bank account, Mr Johnson?

A. Yes, sir.

20 Q. How much do you have in that bank account as at today's date?

A. I don't know, sir.

Q. You don't know?

A. No.

25

Q. Would it be a large amount or a small amount?

A. Small amount.

Q. Do you own any other investments apart from cash at bank and shares?

30 A. No, sir.

Q. What about Waawidji, what other assets does it - firstly, does it have a bank account?

A. Yes, sir.

35

Q. With whom is that bank account?

A. St George.

Q. And with whom is your personal bank account?

40 A. Commonwealth.

Q. And the Waawidji bank account do you know how much is in that account at the moment?

A. Not off the top of my head no, sir.

45

Q. Approximately a large amount or a small amount?

A. A small amount, sir.

Q. Does Waawidji have any other investments?

50 A. No, sir.

Q. Do you have a superannuation fund to which you contribute, Mr Johnson?
A. Yes, sir.

5 Q. And what balance is standing to the credit of your superannuation fund?
A. I have no idea, sir. It's a small amount.

Q. Have you completed your tax return for the year ended 30 June 2014?
A. No, sir.

10 Q. Have you completed your tax return for the year ended 30 June 2013?
A. I think so, sir. I think you have a copy of that.

Q. Do you have a recollection of your income during the 2013 financial year?
A. No, sir.

15 Q. Do you have a recollection of how much you earned during the 2014 financial year?
A. No, sir.

20 Q. What income are you currently receiving, Mr Johnson?
A. It's variable, Mr Baird, depending on the amount of work I get.

Q. By whom are you employed?
A. I'm not employed. I work as a - well I ..(not transcribable).. - provides
25 consultancy fees.

Q. To whom does it provide those services?
A. Generally Aboriginal organisations, Mr Baird.

30 Q. Has Waawidji lodged its tax return for the 2014 financial year?
A. No, sir.

Q. And has it lodged its tax return for 2013 financial year?
A. I think so, sir.

35
BAIRD: Registrar, I have no further questions and I am grateful for the time the Court has indulged. What I would like to do is for this adjournment for examination to standover generally to a date within six months to be relisted upon application by the Receiver. But in connection, Registrar, I would also
40 like to have the Court's leave to issue a further order for production - or two further orders for a production, one addressed to Mr Johnson and one addressed to Waawidji Pty Ltd in relation to the matters that have been traversed in the last two days, Registrar. And for liberty to approach you in chambers to obtain a return date for those orders for production in a
45 reasonable period four or six weeks hence.

DEPUTY REGISTRAR: When those orders for production have been prepared--

50 BAIRD: They've been drafted and if we could have your leave, firstly, to

submit them to you in chambers, Registrar.

5 DEPUTY REGISTRAR: If they are here and now I will take them now for consideration, have them promptly returned to you. If there is going to be an issue that there's further discussions that need to be taken place I'll call you from chambers for someone to appear in chambers and we can discuss it at that point in time.

10 BAIRD: Thank you. I think the better proposal would be if we sent an email to your chambers in the next day or two attaching a draft of the order that had been settled, because I'd like to settle it myself properly, Registrar, if we could. Then if we could have liberty to approach you in chambers for the making of those orders and for a date convenient to the Court and to Mr Johnson for it to be made returnable. Probably not less than four weeks, it will take four weeks
15 reasonably for that to occur I would have thought, Registrar.

DEPUTY REGISTRAR: Something along those lines, yes. Mr Johnson, I will stand your examination over generally for liberty for it to be restored upon giving you 14 days' notice. If it's not restored within the next six months it is
20 then concluded, do you understand?

EXAMINEE JOHNSON: Yes, sir.

25 DEPUTY REGISTRAR: In accordance with the orders I made yesterday I directed you to sign a copy of the Court's transcript of your examination yesterday and today. 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. Do you also understand that?
30

EXAMINEE JOHNSON: Yes, sir.

<THE WITNESS WITHDREW

35 STOOD OVER GENERALLY

DEPUTY REGISTRAR: So you don't have those orders of production now?

40 BAIRD: Not at the moment, Registrar.

DEPUTY REGISTRAR: Okay. I will await your email. They can be sent to me. I will leave the MFI's for your solicitor's collection. They will include the bundle of folders that comprise MFI 1, Confidential MFI 2 and MFI 3 which is marked this afternoon. They will all stay in your custody as is the normal
45 practice of the Court. I will return a copy of s 52D of the Aboriginal Land Rights Act for you. Nothing further?

BAIRD: I am grateful, Registrar.