

Mark Johnson

From: Clayton Hickey <CHickey@lawlerpartners.com.au>
Sent: Wednesday, 31 October 2012 5:21 PM
To: Shalesh Gundar
Cc: 'David Wing'; cinderellacronan@[REDACTED] Mark Johnson; Scott Tobutt; Bob Bell; Hayley Keagan
Subject: FW: Draft financial statements
Attachments: AASB139.pdf

Hi Shalesh,

In response to the letter sent this morning, we note the following, and have the following queries:

1. Disclosure of subsequent events subject to legal privilege.

We note the directors decision to not to disclose the subsequent event matters below in the financial report.

- A withdrawal from mediation by NSW LALC from the denial of access to records of NSW LALC by the Land Council.
- In October 2012, an investigation has been initiated by the Minister for Aboriginal Affairs under s216 (1) of the ALRA for a period of 3 months.
- In August 2012, the Office of the Registrar issued a compliance direction to the Land Council in relations to loans issued to subsidiary entities which is yet to be rectified.

We further note the management's explanation that due to "legal privilege" the matters should not be disclosed in either the financial report or our audit opinion. We have obtained independent legal advice on this matter indicating that there is no reason why the facts cannot be disclosed in our audit opinion. We therefore wish to provide GLALC with the opportunity to further clarify what they mean by "legal privilege" and why this may require us to omit such information from our audit opinion.

2. Basis for raising matter of payments to board members employed by Gandangara Management Services.

Our report to governance has identified a potential conflict of interest. This was identified after consideration of the Land Council's policy for pecuniary interests and your noted pecuniary interest declaration in relation to Gandangara Management Services.

We are still in the process of compiling our final report to governance and will consider your comments. However, consistent with our draft report the following points are still under consideration:

- Obtaining independent advice as to whether these transactions are in accordance with the ALRA and ALRR, the various constitutional documents and related legislation; and
- Obtaining independent legal advice as to whether Lawler Partners has a duty to report any suspected breaches of legislation to a third party as part of our audit mandate.

3. Treatment of Deerubbin Local Aboriginal Land Council loan receivable

We note the documentation in relation to the invoices paid on behalf of Deerubbin Local Aboriginal Land Council and confirm that this was reviewed as part of our audit procedures. As a result of these procedures we were able to determine that the debt exists for the amount disclosed. Our assessment of the

recoverable amount for the debt was performed in accordance with AASB139 'Financial Instruments: Recognition and Measurement' for which we have attached a copy for your consideration.

We attempted to assess the expected recoverable amount by reference to future cash flows to be received and noted that there was insufficient evidence available to suggest that the amount proposed by GLALC of \$475,497. The only evidence received regarding the expected recoverable amount of the debt is a confirmation from Deerubbin Local Aboriginal Land Council of the amount for which they have the capacity and willingness to pay. We have proposed an audit adjustment to reduce the recoverable amount to this balance, being \$315,801.

Should the Land Council not accept our proposed audit adjustment, our audit report will be modified to include a qualification on our inability to determine if the amount of \$475,497 due from Deerubbin Local Aboriginal Land Council will be received in full.

Please advise.

Should you have any queries, please do not hesitate to contact me.

kind regards,
Clayton.

From: Shalesh Gundar [<mailto:SGundar@sasl.org.au>]

Sent: Wednesday, 31 October 2012 1:18 PM

To: Clayton Hickey

Cc: Scott Tobutt; Hayley Keagan; Bob Bell; Mark Johnson; Cindy Cronan; 'David Wing'

Subject: RE: Draft financial statements

Hi Clayton

Please find attached signed disclosure letter.

Regards

Clayton Hickey

Partner

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From: David Wing [<mailto:David@dixoncapital.com.au>]
Sent: Wednesday, 31 October 2012 1:21 AM
To: 'Clayton Hickey'
Cc: Shalesh Gundar; Scott Tobutt; Hayley Keagan; Bob Bell; Mark Johnson; Cindy Cronan
Subject: RE: Draft financial statements
Importance: High

Howdy Clayton

A long but productive evening...thanks.

Set out below are responses to the queries raised in your email.

Also attached is our draft disclosure document for discussion with you.

Please let either Shalesh or myself know if there is anything else that you require on these matters.

As discussed this evening, we will send further material to you later today.

Cheers

David

David Wing | Principal | Dixon Capital
M 0419 025 166

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From: Clayton Hickey [<mailto:CHickey@lawlerpartners.com.au>]
Sent: Sunday, 28 October 2012 8:05 PM
To: David Wing
Cc: SGundar@sasl.org.au; Scott Tobutt; Hayley Keagan; Bob Bell
Subject: Draft financial statements

Hi David,

I hope you are well. To finalise the audit report and also to conclude on the matters we will discuss with governance as part of close-out of the audit of 30 June financial statements, we not been able to conclude on a number of significant transactions within the group and other parties. As identified below the transactions appear to lack appropriately executed agreements and authorisation by the Board or members.

As required by auditing standards I need to obtain sufficient appropriate audit evidence as to whether the transactions in question are bona fide. A representation by management alone does not constitute such evidence.

I have looked over our previous enquiries and queries raised; some of these extend over 12 months and remain unresolved. My most recent enquiries with Jack Johnson (below) have not received a response.

As previously discussed with you, there is a need to consider whether the issue of transactions between entities can be addressed via a disclosure in the financial statements which presents a true and fair view of the nature, purpose, and amount of transactions which have taken place. I attach a draft template disclosure for completion and acceptance by GLALC for your perusal.

In summary, my queries relate to the following to which resolution is required:

1. GMS Provision of Management Services

Background

GMS currently performs "Management Services" to other entities within and outside the GLALC Group. There are no agreements in place to establish whether these transactions are on an arm's length/commercial basis. This matter was raised in last year's Management Letter and again multiple times post. **Agreements are now in place and Shalesh has emailed these to you earlier this evening.**

Questions

- a) On what basis does Management and the Board consider that these transactions are at arm's length and therefore bona fide? **Management and Board consider these transactions to be at arm's length and bona fide as there are agreements in place setting out the services to be provided and the costs for those services.**
- a) Are these transactions subject to approval by the Board? **Yes, the agreements are signed by the Chair and CEO as per the Board resolutions. Shalesh has sent you copies of the signed Board Minutes.**
- b) Has this arrangement been communicated to the members, and are members aware of the nature of services provided and charges levied? **These arrangements have been communicated to the members in general terms i.e. as part of an overall explanation of the corporate structure.**
- c) Have the members approved these transactions? **The members are not required to approve these transactions. It is a matter for the Board.**
- d) If GLALC is of the view that the arrangement and transactions do not require Board or member approval, on what basis has this assessment been made, please advise relevant section of the ALRA that this reliance is being placed upon. **Board approval is required and has been obtained as evidenced by the execution of the agreement by the Chair. Member approval is not required – refer s52G of the ALRA. In any event, the members of GLALC are not members of GMS.**

In addition, we require appropriate supporting evidence in the form of an executed Board and Member's meeting minute. **Shalesh has sent you copies of the signed Board Minutes.**

2. Loan to Gandangara Future Fund (GFF)

Background

We note the receipt of a loan "agreement" with regards to a loan of funds from the Land Council to GFF. Loans of \$4,826,550 in funds to GFF from the Land Council and subsequent re-loaning of funds from GFF to the Land Council of \$3,446,550. We also note further funds of \$1,066,050 loaned from GFF to GMS. The loan agreement was not signed. We have been unable to ascertain whether the transactions were approved by the Board or members. The specific terms pertaining to security of the funds are not clear. In addition, we have no evidence via an executed agreement, minute, or otherwise with respect to the loan of funds from GFF to GMS. **Agreements are now in place and Shalesh has emailed these to you earlier this evening.**

Questions

- a) Are there signed loan agreements in place? If not, why not? If so, please provide. **Agreements are now in place and Shalesh has emailed these to you earlier this evening.**
- b) In your response, please provide agreements for all transfers (i.e. GFF to LALC, LALC to GFF, GFF to GMS, and any others). **Agreements are now in place and Shalesh has emailed these to you**

earlier this evening. We do not have access to a copy of the loan agreement for GFF to GMS and will need to supply this tomorrow.

- c) Has the Board reviewed the agreements and accepted their terms (please provide evidence via an executed board minute)? **Yes, the Board has accepted these agreements and their terms – this is evidenced by the execution of the agreements by the Chair. Also, Shalesh has emailed to you copies of the Board and Member minutes (including PowerPoint slides presented to Members).**
- d) Prior to the transactions occurring, has the Board approved all transfers of funds from the Land Council to GFF, back to the Land Council, and further transfers amongst other entities from the GFF (i.e. from GFF to GMS). **Yes, refer response above.**
- e) Has approval for the occurrence of these transactions been obtained from the members? If not, why not (please cite references)? **Yes, refer response above.**
- f) Prima facie, it is not clear as to whether the form of security is consistent with that put forward in GLALC's legal advice. We are unable to identify any registered charge and we do not consider the unsigned agreement to be clear (nor does it constitute audit evidence). Prima facie, we are unable to establish any approval mechanism with respect to the movement of these funds, or security on the part of the Land Council with respect to these amounts. **Refer responses above. The form of security is currently being finalised and further legal advice is being obtained.**
- g) Please provide an explanation with respect to the security arrangements and how this fulfils the requirements of GLALC's legal advice and the ALRA. **Refer response above. Further legal advice is being sought to ensure that the form of security meets the requirements of our legal advice and the ALRA.**
- h) In the absence of any formal approval of these transfers of funds, documented agreements, or security, on what basis does GLALC consider that these payments are not *ultra vires* for the purposes of the ALRA? **Not applicable. Agreements are now in place – refer responses above.**

I will call you tomorrow morning to discuss, and matters regarding completion of the audit.

Should you have any queries, please do not hesitate to contact me.

Kind regards,
Clayton.

Clayton Hickey

Partner

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From: Mark Johnson [<mailto:MJohnson@sasl.org.au>]
Sent: Wednesday, 26 September 2012 11:54 AM
To: Clayton Hickey
Subject: RE: Draft financial statements

Clayton,

(1) DLALC

I believe that I have steadfastly provided an answer, Clearly you disagree with my response[s]. I do not believe that we will get any closer to agreement by you continuing to ask the same question, ad infinitum.

(2) S221A

This matter is scheduled for negotiation with the Registrar – ALRA. I have provided this information on previous occasions. At this point it is our hope for a “negotiated settlement” (alasformal negotiatns).

(3) Land Dealings

We assume (again) that your question relates to LC6409. I confirm, re-affirm and reiterate that this matter is settled..

(4) Meeting with the Board

We note your request and will raise it with them for their consideration. I further will recommend that natural justice provides that you be given every opportunity to explain Lawlers position, in general, relating to the very poor relationship that now exists between the two organisations. The Gandangara administration, at the behest of the Board will explain its position.

For the record, I confirm that all of the above has been provided previously.

For the record I note that our Audit Report has not been received.

Jack

Jack (Mark) Johnson
CEO
Gandangara LALC (GLALC) and Sydney Aboriginal Services Ltd (SASL)
103 Moore St
Liverpool
Phone: (02) 9602 5280

From: Clayton Hickey [<mailto:CHickey@lawlerpartners.com.au>]
Sent: Wednesday, 26 September 2012 10:39 AM
To: Mark Johnson
Cc: Scott Tobutt
Subject: FW: Draft financial statements

Dear Jack,

As promised below, I have spent the evening performing my review of all GLALC responses received up until last night, to our queries first circulated earlier this month.

Post my review, I have determined the following matters require resolution:

- **Deerubbin Loan treatment.** Please refer to my email of today sent at 9.30am, and discussion we had over the phone subsequent.

- **Completeness of contingent liability disclosures: please note we are referring to legal cases, matters in general.** Gandangara has represented previously that there are no contingent liabilities in play at 30 June. As auditors, we are required to corroborate all material representations with audit evidence, hence our continued requests on this matter (we are following mandated rules). Accordingly, I would like an explanation please on the following “matters”, some of which I consider require disclosure (and have noted as such below):
 - Anne Thatcher dismissal: a previous email from Gandangara indicates that there is no Anne Thatcher that has been employed by GLALC. However, your general ledger has legal fees paid to Baker MacKenzie totalling more than \$20,000, with a narration stating “Anne Thatcher - no grounds termination allegation termination retaliatory”. This needs to be clarified please.
 - NSWALC Section 221A(2) dispute: from previous discussions we were of the understanding that there is injunctive action being taken against NSWALC in relation to their request of records held by the Land Council. A review of your general ledger has also revealed that legal fees in excess of \$70,000 have been incurred in relation to the matter. We require explanation on the current status of this “matter” to determine if it is likely that any further legal or other costs will be incurred. This also needs to be disclosed in the statutory financial statements.
 - NSWALC Land Dealings: from previous discussions we are of the understanding that action is being taken against NSWALC in relation to their approval of Land Dealings. I understand that the intention is to ensure that NSWALC approves land dealing applications in accordance with the ALRA to prevent any refusals or hold ups in relation to land sales. We need to understand if there is any current disputed matter with NSWALC in relation to land dealings with the Land Council. Is this case still in play?
 - Caveats over Robinson Street properties: the solicitors representation letters returned identified an ongoing matter in relation to caveats over two properties held by the land council. While the solicitor represents that the matter is likely to be settled, we need to determine if this has since been resolved and the caveats lifted or if the land council may continue to incur legal costs in relation to the matter.
 - Any other matters under dispute: as you can see from the list above, we have identified several matters which we require additional information on. Is there anything else?
- **Service and loan agreements between entities:** we have copies of some service agreements between entities. As disclosed in the GLALC Management Letter last year, and discussed at the closure of the audit last year and post, we required loan agreements to be put in place in accordance with your legal advice obtained on the structure. In addition we made it clear that service agreements outlining the structure of how different entities transacted amongst one another, including relevant charges between entities, be included and signed off. It was agreed this would be done by June 30. Our team attended site for final audit during August at which point these agreements were still not drafted. Mikael drafted these “on the spot” and added numbers from the accounting ledger, the agreements are silent on detail of how entities are charged, etc. The agreements were then given quickly to Cindy to sign. Our audit team sighted this process. Has there been any attempt to present these agreements to the Board proper, have them explained and approved? Have revised agreements been prepared in accordance with what was initially discussed?

With regard to loan agreements, we have asked for the loan agreement between GLALC and Future Fund. This has been received, unsigned. In addition, we also require some explanation with respect to security, which is a requirement of the legal advice you have obtained. We will obviously need a signed agreement, and I would like your view on the issue of security.

With respect to all of the above, Gandangara are within their rights to disagree with our position on any of these matters, however this will result in a qualification of our audit opinion. I do note however, that Gandangara is able to disclose its reasonable position within the financial report. Based on our phone discussion just now, I understand you do disagree with our position on treatment of the DLALC loan, and we will opine accordingly.

Given the issue of timing, and the period of time over which we have been attempting to resolve the above matters, my suggestion would be that the financials be presented at the meeting, based on my understanding only, that it is necessary that the members "receive" the accounts, and subject to them not changing post the meeting, are able to pass them. I have seen this done in the past. However, it would be my strong recommendation to the Board that they are not signed until I have had the opportunity to address them personally and discuss their content and the matters within. I consider this a point of good governance, and very necessary for them personally having regard for their role as being charged with governance.

Could you please carbon copy your Board so I can evidence they are aware of this position.

As discussed, I will call you to go through this, having regard for your surgery this morning.

Regards,
Clayton.

Clayton Hickey

Partner

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From: Scott Tobutt

Sent: Tuesday, 25 September 2012 4:32 PM

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To: Mark Johnson
Cc: Clayton Hickey; Hayley Keagan
Subject: Draft financial statements

Dear Jack

I have attached financial statements for your review.

Specific areas that you need to confirm/consider/review in particular are:

- After balance date events page 2 – please confirm that there have been no events or matters since 30/6/2012 that would affect the numbers disclosed in these accounts.
- consolidation wording – accounting policy page 9, key judgement page 16 – awaiting confirmation that wording has been accepted by his clients from David Wing, then this will be updated.
- KMP and related party disclosures note 19 pages 29 to 31 – please review for accuracy and check it is in line with your expectations.
- Contingent liabilities and assets – note 21, page 31 – please review wording for accuracy.
- Operating lease commitments – note 23, page 31 – please review and confirm no lease commitments, or otherwise.
- Capital expenditure commitments – note 23, page 31 - please review and confirm no lease commitments, or otherwise.

There are not yet any disclosures included, in regards the Deerubbin loan, and Clayton will be considering this further. In addition we are still finalising note 24 in relation to the parent entity.

Any questions please let us know.

Kind regards

Scott

Scott Tobutt

Principal

Lawler Partners Chartered Accountants

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