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INDEPENDENT COMMISSION AGAINST CORRUPTION

THE HONOURABLE PETER HALL QC
CHIEF COMMISSIONER

PUBLIC HEARING

OPERATION SKYLINE

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TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON TUESDAY 3 APRIL, 2018

AT 10.00AM

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

THE COMMISSIONER: Yes, good morning.

MR CHEN: Commissioner, we did – on Friday afternoon, after you adjourned – make some inquiries to determine whether it would be feasible for evidence to be taken by video link for Eleanor Swan and the next witness, Debra Swan. Unfortunately for technological reasons that could not be achieved, Commissioner, and I understand in any event that both of the witnesses were content to come back to Sydney. So subject to that matter, I'm ready to resume – subject to you, Commissioner – the evidence
10 of Eleanor Swan.

THE COMMISSIONER: Thank you, Mr Chen. Yes. Now, Ms Nolan, do you want to raise any matter before we start with these witnesses? We were dealing with the application that you made on Thursday, I think it was. Are you wanting to have that dealt with now? I think we left it, didn't we, on the basis that it would be dealt with at 2 o'clock, was it?

MR CHEN: Yes.

20 MS NOLAN: Commissioner, you directed me to provide the Commission with any submissions in reply, strictly in reply, which I've done. I think that my instructing solicitor had them forwarded to the Commission's solicitor, Mr Broad. They should be with you. If they're not, I have a copy which I can provide you if that would assist. It strictly deals with the matters in reply. It doesn't raise anything new. It addresses the matters raised by my learned friend in their submissions. There was an affidavit going to the question of what proceedings remain alive in the Supreme Court. I'm not sure whether or not it's been sworn as yet due to the public holidays, but I can assure the Commission that the only proceeding that was discontinued
30 was the Sunshine proceedings, but the cross-claim to those proceedings remains alive. So nearly the entire suite of proceedings remains alive.

THE COMMISSIONER: All right, very good. Have you an interest in these next witnesses to be called?

MS NOLAN: Yes.

THE COMMISSIONER: You do. Thank you. Very well. Well, we'll deal with the application at 2 o'clock. Thank you. Yes, Mr Chen.
40

MR CHEN: If Ms Swan could be recalled, Commissioner, I'll continue with her evidence.

THE COMMISSIONER: Yes. Good morning, Ms Swan.

MS SWAN: Hi. How are you?

THE COMMISSIONER: You took an oath, I think, didn't you, on Thursday?

MS SWAN: Yes.

THE COMMISSIONER: I'll have the oath administered again and then we'll resume.

MS SWAN: All right. No worries.

THE COMMISSIONER: Thank you. Just take a seat. Thanks, Ms Swan. Yes, Mr Chen.

MR CHEN: Thank you, Commissioner. Ms Swan, on Friday I was asking you some questions about the way that the board records its minutes. Do you remember I asked you questions about that?---Yes.

10

And as I understood it, what you told the Commission was that the minutes are recorded in a red book by hand.---Yes. Yes.

And that subsequent to that they are typed.---Yes.

Presented to the board members at the following meeting or shortly prior to the following meeting.---Yes.

20

And they're checked, and if the board members agree to it, a resolution to that effect is passed.---Yes.

And the chairperson signs those minutes.---Yes.

Now, from time to time in the course of board meetings, resolutions are passed, are they not?---Yes, they are, yeah.

And typically they're recorded in the minutes.---Yes.

30

And that is in the typed minutes that you would see at following meetings, you would sometimes see that resolutions are contained within those typed minutes?---Yes.

Were you aware at any time you were a board member that those resolutions were separately recorded? That is to say - - -?---No.

You were unaware of that fact?---Unaware of it until yesterday, the other day.

40

I see. I just want to show you some documents if I can, please. So volume 2, page 6. If it's easier, Ms Swan, a hard copy can be put in front of you. ---Yeah, no, I'm fine.

All right.

THE COMMISSIONER: Mr Chen, just before we resume, my associate reminds me that Ms Swan asked for a section 38 declaration on Thursday. Perhaps it should be renewed.

MR CHEN: Yes, Commissioner. Yes.

THE COMMISSIONER: The witness, Ms Swan, gave evidence – Ms Debra Swan – gave evidence Thursday last.

MS SWAN: Eleanor. Eleanor.

THE COMMISSIONER: I'm sorry. My apologies. Ms Eleanor Swan gave evidence last Thursday and we're continuing evidence from her today.
10 Ms Swan requested a section 38 declaration which I made on Thursday. I accordingly record that the declaration I made then applies to the evidence she has given today and accordingly I make a declaration again in the same terms as that which I made Thursday last.

**MS ELEANOR SWAN GAVE EVIDENCE LAST THURSDAY AND WE'RE CONTINUING EVIDENCE FROM HER TODAY. MS SWAN REQUESTED A SECTION 38 DECLARATION WHICH I MADE ON THURSDAY. I ACCORDINGLY RECORD THAT THE
20 DECLARATION I MADE THEN APPLIES TO THE EVIDENCE SHE HAS GIVEN TODAY AND ACCORDINGLY I MAKE A DECLARATION AGAIN IN THE SAME TERMS AS THAT WHICH I MADE THURSDAY LAST.**

THE COMMISSIONER: Yes, Mr Chen.

MR CHEN: Thank you, Commissioner. Ms Swan, up on the screen are what appears to be some resolutions of the board meeting of the Land
30 Council at the top of the page. 21 March, 2014 appears to be the first substantive resolutions. Do you see that?---Yeah.

Have you ever seen these before?---No.

And if there is some evidence before the Commission that resolutions are separately typed up and kept in a separate folder or book, you know nothing of that?---I knew nothing of it, no.

And I take it, consistent with your answer just given, during the course of
40 your time as a board member you've never had cause to have access to the resolutions passed by the board?---No. No.

You're agreeing with me?---Yeah.

Thank you. If that could just be, sorry. do you have the folder in front of you?---No.

No. Thank you. Commissioner, I tender a folder described as Additional Communications from Larry Slee.

THE COMMISSIONER: Now, will that be 54? Yes. Yes, very well. The folder of documents entitled Additional Communications from Larry Slee will be admitted and marked Exhibit 54.

10 **#EXH-054 – ADDITIONAL COMMUNICATIONS FROM LARRY SLEE**

MR CHEN: Now, Ms Swan, on Friday – sorry, I withdraw that. On Thursday I also asked you some questions about the scheduling of board meetings.---Yeah.

Do you remember the questions I asked about that?---Yeah, yeah.

20 And as at 2014, indeed the whole time that you were a board member, you were in permanent part-time employment were you not?---I was, yeah.

And of course you had to make, you had to schedule your commitments to the Land Council and as a board member around your working commitments?---I did, yeah.

30 And I asked you some questions about the scheduling of board meetings and I just want to draw to your attention a resolution – I withdraw that – a board meeting on 7 November, 2014. So it's volume 2, page 102. Now, do you recognise that as the front page of the minutes of a board meeting held on 7 November, 2014?---That's what it's saying here, yeah.

And if you just turn please to page 103 I'll just ask you to read to yourself please point 6.---Yeah. Yeah.

Do you recall raising the issue about the timing of the board meetings in those terms at that meeting?---Yeah.

40 And for a period of time following that is that what occurred namely, the meetings would be scheduled after 5.00pm or on a day that you could attend?---For a couple I think.

Thank you. I also want to show you now just a further document just on that same topic namely, the scheduling of the meetings.---Yeah. All right.

Exhibit 54 and I'm going to ask you to have a look please at page 10 which is an email from Larry Slee to Kelvin Kenney dated 12 January, 2016 sent at 0.14. Do you see that email?---Yeah.

If it's more convenient, Ms Swan, it's up on the screen.---Oh, it's on the screen. That'll be better for me, yeah, yeah.

I'm just going to ask you to read to yourself please paragraph 1. Have you read that to yourself now, Ms Swan?---Ah hmm.

You'll see there that Mr Slee was making a complaint about in particular the scheduling of and the holding of a board meeting on 11 January, 2016?---Yeah.

10

And he then purports to record that you were unable to attend that board meeting. Do you recall that being so?---(No Audible Reply)

In any event - - -?---It depends what day the 11th – Monday, yes, I wouldn't have been able to attend if it was the Monday, yes.

20

And do you have a recollection about whether or not you were given any notice and if so whether it was different from the notice that Mr Slee refers to in that email?---I can't recall, but most of the times I did not get, even get the courtesy of being informed when meetings were attending, were being called.

What was your experience then in the period from 2016 till when you ceased being a board member in July, was it the same or similar or what was it?---The process of how they let us know?

30

Yes.---We'd get a text message the afternoon before saying there was a meeting the next day, when I did get, when I did get notification, and then there were times when Nicky Steadman, who was the acting CEO, would put letters in our mailboxes the evening before the meeting.

If you didn't, or if you're not recorded as attending those meetings, is that because you were for work or other reasons unable to attend or what's the position?---Yes, for work reasons. On several occasions through myself and my sister did put in apologies and let them know that it was inappropriate with less than 24 hours' notice to have meetings.

40

All right. Thank you. Now, I just want to return to where we were at on Thursday before the adjournment. Now, I asked you some questions about a board meeting on 31 October, 2014, involving a presentation by - - -?
---Yes.

- - - a fellow who you described as being from the Torres Strait and an Asian gentleman.---Yeah.

You remember the meeting, you can't remember the precise date I take it?
---No, I can't remember that.

You remembered though being provided with the handout that was provided?---Yes.

And you were required to return that or leave it when you left?---Leave it in the office on the day, yeah.

Now, I want to draw – I withdraw that. Do you recall that after the presentation had finalised that in the absence of those gentlemen there was a discussion between the board members about what if anything to do?

10 ---Yes, we had a discussion.

Right. And was something resolved following that meeting, as far as you can recall?---We were – the only thing I can recall that we resolved was that it was to go to a members' meeting.

Would you have a look, please, just at volume 2, page 64, and do you see there on the screen the front page of the minutes of the board meeting on 31 October, 2014?---Yes, yep.

20 And it records you as attending on that day?---Yes.

And I'm just going to ask you to read to yourself, please, point 3, Development Proposal.---Yes.

Is what is contained in the minutes there consistent with your recollection of what occurred?---Yes.

All right. I'll just ask you to look now at the next page, page 65, point 7. Do you see point 7, Development Proposal? So this is volume 2, page 65?

30 ---Yeah, yeah.

If you just read it to yourself, please. You've read it?---Yeah, sorry.

Does that accord with what you say occurred at the meeting or - - -?---No.

- - - is your recollection different?---My recollection's different.

Okay. You did say earlier that it would be put to the members.---Yeah.

40 And you see - - -?---But not - - -

I'm sorry, you see there's a reference to that in the second sentence, sorry, the third sentence of the first paragraph under the motion?---Mmm.

Do you see that?---Yeah. That's the bit I don't agree with, yeah.

All right, tell us. In what way or ways is this at odds with your recollection?---The sale part. I didn't, we never, ever said about the sale

stuff. We said we'd take it to the members and see what they, what they wanted to do.

So you certainly remember, though, do you, a discussion about it involving IBU, do you, or not?---The company name I'm still having trouble with.

That's all right.---Yeah, I just remember the two gentlemen. I can't even say if it was IBU or whoever it was.

10 And what about a discussion that potentially anything that would happen in the future would include landscaping, fencing, apprenticeships, et cetera?
---Yes, I remember that part, yes. Richard dictated that to John to put into the minutes.

And do you remember any discussion then about sale to be at minimum value rate?---No, I can't remember that at all.

Are you saying it didn't occur or you just have no recollection?---I have no recollection.

20 But you do agree with the final sentence "If agreed", sorry, "put to members" but - - -?---Put to members. Not that we agreed on anything.

I see.---It was to go to the members for their decision.

Do you have any recollection of this motion being moved by Debbie Dates?---No, I can't remember back that far.

30 Thank you. So I take it then if a resolution is recorded in the resolution book separately from this, consistent with your evidence you would never have seen such a resolution, is that right?---No. Yeah, exactly, yeah.

Your evidence on Thursday as well was that in the course of your time as a board member you never had access to the red book where the handwritten minutes were recorded. Do you remember that evidence?---Yeah, yeah.

And you've never had any reason to have access to it at any time?---No. No.

40 I want to show you, please, the handwritten minutes.---Yeah.

It's volume 2, page 62. And it's on the screen in front of you now.---Yeah, yeah, I can see it, yeah.

And on the right-hand side, I'm just going to ask you first, does that appear to record the handwritten minutes of the board members' meeting on the 31st of October, 2014?---Sorry, what did you ask me?

Just about whether they appear to be the board minutes, the handwritten minutes.---Yeah, they appear to be, yes.

And if you look down you'll see, just across you'll see who attended.---Yes.

And apologies.---Yeah.

And beneath that you'll see the word, quote, "presentation".---Yeah.

10 And the evidence is that the next word is Cecil. End quote.---Cecil. Oh, yeah.

Does that assist you at all in identifying anybody that may have presented on that day or not?---That's the Torres Strait Islander bloke.

And you see at the right-hand side it says, "Richard Green declared interest."---From my recollection, Richard declared that he knew Cyril. That's how we got the name.

20 I see. Now, would you have a look, please, at the next page, which is page 63 of volume 2. And I want you to assume that under the scribble, which would be ordinarily the first paragraph, there commences a paragraph, quote, "Propose a contract of sale," et cetera. I want you to assume that's the handwriting of John Hancock.---Yeah.

And that his evidence was that he recorded – after the words "contract of sale" – "to IBU" and included "landscaping". Now, just assume that for the moment, Ms Swan. What he also told the Commission was that before the initials IBU, to the left of it, is what appears to be "GE".---Oh, yeah, yeah.

30 And to the right of it the word "Gows". He also told the Commission that that was not his handwriting and was not inserted by him.---Okay, yeah.

Now, your evidence to the Commission has been you've never had access to the minute books.---No.

And I take it that the insertion of those words was not by you?---No.

40 And you don't know who put it in there at all?---No idea, no.

Thank you. I want you to have a look, please, next at volume 2, page 66. In particular I'm just going to ask you to look at the top of that page, namely what purports to be a board meeting resolution of 31 October, 2014.---Ah hmm.

Do you see that in front of you now, Ms Swan?---I do, yes, yes.

Have you seen that document before?---Not until last week.

You know nothing about how that has come to be, namely who prepared it?
---No, no idea.

Nobody asked you to prepare it?---No.

You know nothing of it whatsoever?---Nothing of it, no.

10 Now, do you recall following the meeting of 31 October, 2014 there being any other discussion about progressing this proposal with the Torres Strait Islander gentleman and the Asian gentleman you talked about?---No, there was only, only that meeting was the only time I talked about that.

I'm just going to ask you to have a look, please, at the minutes, the handwritten minutes of 1 December, 2014, volume 2, page 105, and they'll come up on the screen.---Ah hmm.

20 Just assume for the moment or accept if you would, Ms Swan, that they're the handwritten minutes - - -?---That's December, yes.

- - - of the board meeting. I want to draw your attention to some particular parts. You'll see down the very bottom, the last paragraph?---Yeah.

It appears to read, "Development Proposal – IBU have accepted the, have accepted proposal."---Yeah.

Do you know anything about that?---What proposal? No, I can't recall, no, I can't recall.

30 Do you have any recollection as to who may have advised the board about that apparent acceptance by IBU?---I'm only guessing it would be Debbie and Richard.

But you don't know?---But I don't know.

Would you have a look, now, please, at volume 2, page 108, and Ms Swan, they appear to be, do they not, the minutes of the board meeting of 1 December, 2014?---Yeah. And my name's not on them.

40 I'm just going to ask you to scroll down. You see point 6?---Yeah.

It records there under the heading Development Proposal – if you just read that to yourself.---Yeah.

Have you read that to yourself now, Ms Swan?---Yeah, yeah.

Do you know anything about that, what proposal it's referring to?---No, I don't.

I'm just going to show you another, a document, I just want to assist you. Volume 2, page 105. I think you said when you looked at the typed minutes your name wasn't on there. I just want to draw your attention to volume 2, page 105.---Yeah.

The initials ES?---Yeah, I saw my name there but I didn't see it on the other one, on the typed minutes.

10 You don't have any doubt though about whether you attended or not, if you're recorded in the handwritten minutes?---I'm presuming if it's a Monday, and it's 5 past 5.00 – I'm just reading it to see if it's jogging my memory, that's all.

Well, I can probably assist you that you appear to move a motion in connection with the board members accepting the financials as being true and accurate, and that's in the typed minutes.---Okay, yeah.

20 If you just have a look in the typed, sorry, the handwritten minutes at 106, volume 2, page 106 - - -?---Yeah.

- - - you'll see just where the cursor is that you - - -?---Yeah, yeah.

- - - appear to have some role in seconding a resolution in connection with the housing policy or housing allocation policy.---Yeah, I do remember moving, seconding one of, that motion, so I must have been there, yeah.

30 Thank you. Now, would you have a look please at volume 3, page 1 and you will see they appear to be do they not the handwritten minutes of the board meeting on 28 January, 2015?---Yeah.

And you will see there that you're recorded as having been in attendance at that meeting.---Been there. Yeah.

Now, if you move down a bit you will see that there's a reference to the minutes from 31 October have been accepted as true and accurate.---Yeah.

40 You don't appear to have recorded any opposition to the minutes on 31 October – I withdraw that. At this meeting on 28 January, 2015 you don't appear to have voiced any concern about the accuracy of the minutes presented to the board relating to the meeting on 31 October, 2014, do you? ---It's not recorded that I, that I probably voiced it.

I'm sorry?---It's not recorded in the minutes, no.

Is that consistent with what you think occurred namely, that you accepted them as being true and accurate?---No, I wouldn't have accepted that it was

true and accurate. I know it's not in the document but I wouldn't have accepted what they said.

And what inaccuracy would you have drawn to the attention of the board?
---The part where it says for sale.

I see. If you just have a look please now at volume 3, page 2. I apologise. I actually want to take you to the right-hand side of that page. You will see on the right-hand side near the bottom there's a heading Hillsborough
10 Road.---Yeah.

Do you see that?---Yes, I do.

Do you recall discussion about Hillsborough Road at that meeting?---Yeah, I think so.

What do you recall the discussion being about?---I thought it was about the bloke wanting to do the retirement village, wanted the parcel of land for the retirement village.
20

Is that a gentleman called Greg Cahill?---I think so.

And did he have a business called Hillsborough Retirement Living?---Yes, I think so.

And had that been a proposal that had been before the board on a number of occasions part of this - - ?---A few, yeah, quite a few occasions, yeah.

And do you recall specifically what that property was? Obviously it gives some indication by saying Hillsborough Road but do you know the address of the property that that refers to?---No. All they said was up near the golf course. That's as much as I knew.
30

The Land Council appeared to own two lots on Hillsborough Rodd. Is that your recollection?---Only as of these proceedings. I didn't know before these proceedings.

I see. Anyway, your recollection is that particular lot was located near the golf course. Is that - - ?---Yes.
40

I see. Now, I asked you on Thursday about whether at any time during the meeting on 31 October there was any discussion about the presentation being by Gows Heat.---Yeah.

And your evidence was that you didn't recall such a reference.---Yes, I don't recall it.

And I take it during the time that you were a board member you'd never heard of an organisation called Gows Heat Pty Ltd?---No, I never.

You'd never heard of an organisation called Gows at all?---No.

Would you have a look please at volume 3, page 123. You will see there that that's described as Heads of Agreement, General Heads of Agreement dated 15 December, 2014.---Yes.

10 And if you turn to the next page please, page 124 you will see that it purports to be an agreement between the Land Council on the one hand and Gows Heat Pty Ltd on the other.---Yeah.

Have you ever seen that document before?---No. Not that I can recall, no.

Something like that would stick in your mind, would it? Or not?---Yeah, I'd say so, yeah.

20 Do you know of any other concluded agreement that had been formed while you were a board member involving the Land Council and Land Council land?---No, not that I was aware of.

THE COMMISSIONER: When you said you would have remembered it had you seen it, why do you think you would have remembered it?
---Because I was probably – trying to word this properly. I was always questioning when I thought they were doing the wrong thing. And if Richard or Debbie were to bring purchasers in for the land, I'd ask the question, "Well, how did they know we were selling the land when the board doesn't even know we were selling land?" So if I'd seen something
30 like this, I think it would have stuck in my mind.

And as at this time, in December 2014, did you have some concerns about whether things that were being put up before the board were true and correct or not?---We, yeah, we did. We started – there started to become doubts in our minds and we started – I was – that's why they were scheduling the meetings so I couldn't attend, because I, myself and John were the two main people who would question things. And then, then Larry and Deb and Micky all came on board. We were all questioning what the stuff was going
40 on.

MR CHEN: There was actually a board meeting of the Land Council on the 15th of December, 2014, which appears to be the date this agreement was executed, Ms Swan. Do you recall attending that meeting?---No, I was in hospital, I think.

At any time you were a board member of the Land Council, did Mr Green ever raise that he had executed this agreement?---Not that I can recall.

And you've told the Commissioner that it's something you would recall had he referred it to you.---Yeah, because like I said, I used to always question him about things that - - -

And I take it he'd never raised it personally with you.---No, no.

Was there ever any discussion at any time that you attended a board meeting about giving Mr Green the authority to sign such an agreement on behalf of the board?---No, there was never time I agreed to.

10

Was there ever any discussion at any board meeting you attended about delegating the authority of the board to Mr Green to execute such an agreement?---Not that I attended, no.

Again, is that something you'd remember if it happened?---I hope I'd remember it, yes.

And I take it there was never any discussion at any time when you attended a board meeting about the board entering into an agreement with Gows Heat.---No.

20

No. In your time as a board member, were you aware of any agreements or proposed agreements between the Land Council, on the one hand, and Sunshine Property Investment Group Pty Ltd involving Land Council land?---No.

In your time as a board member, were you aware of any agreement or proposed agreements of any kind involving the Land Council and Sunshine Property Investment Group Pty Ltd?---No.

30

In your time as a board member, were you aware of any agreements or proposed agreements between the Land Council and Sunshine Warners Bay Pty Ltd involving Land Council land?---No.

In your time as a board member, were you aware of any agreements or proposed agreements of any kind between the Land Council and Sunshine Warners Bay Pty Ltd?---No.

In your time as a board member, did Mr Green ever raise that he'd ever signed any agreements with these entities?---No.

40

Either at a board meeting - - -?---No.

- - - or with you personally?---No.

Did Ms Dates ever raise at any board meeting you attended that she had executed agreements with any of the two entities I've identified?---No.

Did she ever raise it with you personally that she'd - - -?---No.

- - - executed agreements involving the Land Council and the two entities I've referred to?---No.

Have you ever heard of Solstice Property Corporation Pty Ltd?---No.

10 In your time as a board member, were you aware of any proposed agreements between the Land Council and Solstice Property Corporation Pty Ltd involving Land Council land?---No.

In your time as a board member, were you aware of any proposed agreements of any kind between the Land Council and Solstice Property Corporation Pty Ltd?---No, not that I can recall.

Would you have a look at this document, please, which is folder 8, page 22. So page 22, Ms Swan. Or it's on the screen if you'd prefer it.--- Yeah. Yeah.

20 You'll see up on the screen a document described as Heads of Agreement, General Heads of Agreement, with a date of 19 November, 2015. Do you see that?---Yeah. Yeah, I do, yeah.

And if you just look to the next page, page 23, you'll see that that appears to be an agreement involving Solstice, the Land Council and Gows Heat. ---Yeah, I can see that, yeah.

30 And if you move to the – sorry, just at the end of that document, you'll see that appears to have been signed by Ms Dates and Mr Green. Do you see that?---Yeah. I can see that, yeah.

Have you ever seen this agreement?---No, I haven't.

Did Mr Green ever raise that he had signed this agreement at any board meeting you attended?---Not that I can recall.

Is it something you would have recalled, had it happened?---I think so.

40 And did Mr Green ever raise that he'd signed this agreement with you personally at any time?---No.

Was there ever any discussion at any board meeting you attended about giving Mr Green the authority to execute this agreement?---No.

Was there ever any discussion at any board meeting you attended about delegating to Mr Green the authority to execute - - -?---No.

- - - this agreement or agreements of this kind?---No. We never, I've never, ever given Richard Green.

I'm sorry?---I've never, ever agreed to Richard Green doing any of this stuff.

And did Ms Dates ever raise that she'd signed this agreement at any board meeting you attended?---No, not that I can recall.

10 Is it something you would have recalled had it been mentioned?---I'm pretty sure I would have.

Did Ms Dates ever raise that she'd signed this agreement with you personally?---No.

Was there any ever discussion at any board meeting you attended about giving Ms Dates the authority to execute this agreement?---No, there wasn't.

20 Was there any ever discussion at any board meeting you attended about delegating to Ms Dates the authority to execute agreements of this kind? ---No, there wasn't.

Was there any discussion with you at any time you were a board member of a revised form of a proposed agreement with Solstice?---Not that I can recall, no.

Again, is that something you would recall had it been raised?---I'm sure I would have, yeah.

30 Now, the board held a meeting on the 8th of April, 2016 which records that you did not attend. Is that consistent with your recollection, that a board meeting at around that time you did not attend?---2016?

Yes.---Yeah, I probably didn't, yeah.

Do you know whether you were given notice of that meeting?---Not that I can recall, probably. I don't think so. Because, like I said, I hardly ever got notification.

40 That perhaps follows from the question and answer just then.---Yes. Sorry.

But I take it you weren't given an agenda or proposed agenda for the meeting at all.---Not that I can, no, not that I can remember.

Were you ordinarily, when you were given notification of a proposed board meeting, provided with an agenda?---No.

You were not?---No, you were not.

At any time leading up to 8 April, 2016, were you ever told that a gentleman called Nick Peterson would be attending and presenting?---No.

Do you know who Nick Peterson is?---Had no idea. I do know who he is now, but I had no idea then.

Do you also know him by the name of Nick Petroulias?---Yes. That's what I've been told, yes.

10

And you've seen him in the hearing room, have you?---Yes, I have, yes.

Today?---Yes.

And last Thursday?---Yes.

Had you seen him at any board meeting that you attended?---I didn't know the man until last Thursday.

20

I see. Prior to the 8 April, 2016 meeting were you ever told that Despina Bakis, a solicitor from Knightsbridge North Lawyers would be attending that meeting?---No.

Do you know if you assume that they were invited to this meeting who would have invited them?---Did you say do I know?

Yes.---No, I wouldn't have known who invited them.

30

Did you know that prior to that date, that is 8 April, 2016 that the board perhaps through Ms Dates had commissioned a company called Able Consulting Pty Limited to provide the board members with advice?---To be realistic I, we had no, the board would have been split at that time and when I was on the board it was Ian Sheriff and PKF Lawler. I didn't know about these people until my nephew come home from a Land Council meeting, maybe that meeting, and told me who these people were.

I'll come back to but who was your nephew?---Kerry Haines.

40

And when you say Land Council meeting do you mean a general meeting?---Yeah, a members' meeting.

A members' meeting.---Yes.

Are you talking about members' meetings in 2016?---I'm guessing so because we split about, after Steve got sacked.

I'm going to ask you about - - -?---Oh, sorry.

- - - the members' meeting a bit later but I'll come back to it.---Okay. All right.

I'm just at the moment - - -?---Well, no then, I don't know them, I didn't know them people and I didn't know about the being invited to meetings or whatever.

And you didn't know anything about Able Consulting Pty Limited?---No.

10 Had you ever heard of them before I mentioned it just now?---No.

On 2 June, 2016 there was another board meeting of the Land Council which records that you did not attend. Is that consistent with your recollection, you did not attend a meeting such as that?---Yes. Yeah.

I'm going to bring these minutes up. They're volume 15, page 73. They're on the screen as well, Ms Swan, if that's - - ----Yeah, yeah.

20 And you recognise those as being what appear to be the minutes - - -?
---Yeah.

- - - of the board meeting on that day, that is 2 June, 2016?---Yeah.

I'm going to ask you to just look at page 74 please and you will see at point 5 the following appears, "Despina spoke of that resolution that they would like for board to pass", and you will thereafter see a motion that purports to replace Advantage for Solstice. Do you see that?---Yes.

30 Now, prior to the 2 June, 2016 meeting I take it you've not been given an agenda?---No.

And I take it you've not been told that Ms Bakis would be attending?---No.

You had no notice of that?---I had, had no notice of the meeting at all, yeah.

And you had no notice of this proposed resolution?---No.

40 At that stage namely, 2 June, 2016 did you have any idea what that motion related to?---No, no idea.

You don't know what the Solstice, or the replacement of Advantage for Solstice meant?---No, no idea.

And you don't know what collaboration and development of Awabakal Lands Council meant in that context?---No, no idea.

And nor what the Advantage transactions were?---Yeah, no idea.

Were you ever at any stage that you were a board member ever given any information by anyone about who Advantage was?---No, no idea. No, no
- - -

Do you know today who they are?---Yeah, I think so. I think I've got an idea.

I see. Now, you mentioned earlier that you recall the name of a gentleman called Ian Sheriff who was a solicitor?---Yes.

10

During your time as a board member of the Land Council what was his role, was he the lawyer appointed?---He was our, he was our lawyer, yeah.

Had you heard of any other lawyer being retained?---No.

During your time that you were a board member had you ever heard of a firm called Knightsbridge North Lawyers?---No.

20

When did you first hear of them?---When my nephew told me.

This is at the general meeting in 2016?---Yeah. He come home after the meeting and told me, yeah.

During the time that you were a board member, was there any ever discussion at all at board level about any board member being for example dissatisfied with the performance of Mr Sheriff?---No, never.

30

Was there any ever discussion at all at any board meeting that you attended about replacing him?---No.

Was there any ever discussion at any stage with any of the board members outside of the board meetings about replacing Mr Sheriff?---No.

Was there any ever discussion with any of the other board members outside the board meetings about them being dissatisfied with his service at all? ---No, not that I can recall.

40

Was there any ever suggestion there was a need to appoint an additional lawyer to help with his workload for example?---No, never had discussions like that.

Would you have a look, please, at Exhibit 43, page 1. Have you ever seen – sorry, I withdraw that. Page 1 is a letter apparently directed to the – I withdraw that – directed to the directors of the Land Council dated 28 November, 2014. Do you see that?---Yeah, I see it, yeah.

Have you ever seen this letter before?---No, it's the first time I've seen it.

At any time you were a board member had there ever been any discussion, just referring to the first paragraph, Ms Swan, about sourcing investors, capital, equity and debt funders?---Not that I can recall, no.

Do you have any sense of what that possibly refers to at all?---No, sorry, no.

What about the balance of that first sentences, was there any ever discussions along those lines at any board meeting you attended?---No, not that I can recall, any meetings I attended nothing like this was discussed.

10

What about outside of those meetings, was there any ever discussion between you and any other board member - - -?---No.

- - - along the lines referred to in the first sentence of that - - -?---No.

- - - letter?---No.

Did you know that a request would be made for them to assist the board? ---No, I didn't, no.

20

I just want to ask you to look now, please, as well at page 2, and you'll see there that in paragraph 3 there's a reference to proposed heads of agreement entered into with Gows Heat Pty Limited.---Yeah, I can see that, yeah.

And consistent with what you've told the Commission, you know nothing of such agreement?---No, not that I can recall, no.

And would you also have a look, please, at page 4, and you'll see there it's described as a cost disclosure statement and client service agreement.

30

---Yes.

And if you turn to the next page you'll see that it appears to relate to the Land Council and the firm Knightsbridge North Lawyers. Do you see that in the top left-hand corner?---I can, yeah, yeah.

You've never seen this before?---No.

Would you have a look, please, at paragraph 20, which is on page 8 of Exhibit 43. Just read that to yourself, if you would.---Which one am I reading?

40

I'm sorry?---Which one am I reading?

Paragraph 20.---20, yeah.

I'm sorry, you've read that, have you?---(No Audible Reply)

Did you know at any time that you were a board member who Nicholas Peterson was?---No.

Was there any ever discussion about appointing him to be an agent of the Land Council?---No, not that I can recall.

Or the board of the Land Council?---No, not that I can recall.

10 You'll see then there's a reference to a gentleman called William Tofilau.
---Yeah.

Do you know who William Tofilau is?---I don't think so. I've heard the name but I don't know if it's because I've been reading this stuff or, but I can't recall him, no.

In any event, was there any ever discussion at any board meeting you attended about appointing him to be the agent of the Land Council?---No, there wasn't. No, I don't think there was.

20 Or the board of the Land Council?---Not that I could recall.

Is that something you would have recalled had it arisen?---Yes, because I would never have agreed to Richard Green ever doing it.

THE COMMISSIONER: Sorry, you would never have agreed?---To Richard Green being an agent for the Land Council.

30 What about the proposition of outsiders? By that I mean people not associated with the Land Council being made agents for the Land Council -
- -?---No, I wouldn't have - - -

- - - and being able to give instructions to the solicitors?---Yeah, no, I wouldn't have agreed to it.

MR CHEN: Had you heard of Andrew Margi?---No.

Again, no discussion about appointing him as an agent at any board meeting you attended?---Not, not once I've attended, no.

40 And no discussion outside of any board meeting with any other board member about appointing either Mr Margi or any of these individuals as agents of the Land Council for this purpose?---No.

THE COMMISSIONER: Can you recall any episode in which the board has agreed to, as it were, outsiders – that is, not Indigenous people – being appointed as agents for the Land Council in relation to business matters?
---No, not that I can recall.

MR CHEN: This agreement appears to have been signed by Mr Green, Ms Swan.---Yes.

Was there any ever discussion at any board meeting that you attended about giving him authority to execute that agreement?---No.

Was there any ever discussion at any board meeting you attended about the board delegating to Mr Green the authority to execute that agreement?---No.

10 Would you look now, please, at folder 1, page 162. I'm sorry, did you know, Ms Swan, at any time you were a board member that apparently a further cost agreement had been entered into between the Land Council and Knightsbridge North Lawyers in November 2015?---Not that I, no, not that I

Had it been raised, so far as you can recall, at any board meeting that there was a proposal to do so?---No, not that I can recall.

20 Again, is that something you would have recalled had it arisen? Or you're not sure?---I'm not sure now. You've got me confused.

Is it the questions that I've confused you?---No, no. You're not confusing me. I'm confusing myself. It's, yeah.

All right. I'm just going to show you the document. I just need a reference. ---Okay.

I might move to another issue whilst we look for that. I'll come back to it. ---All right.

30 I'm sorry. It's my error.---Yeah, you're right.

Now, I want to ask you some questions about the email that I drew your attention to earlier in Exhibit 54, namely the email dated 12 January, 2016. ---Yeah.

So it's Exhibit 54, page 10. Now, you recall that this was a meeting that you did not attend?---Yes.

40 And again you with some others had some complaint about how you hadn't been adequately advised of the meeting date?---Yes.

Is that right?---Yeah.

And again is it the case that, consistent with what had happened on other occasions, you had not been given an agenda?---Yes.

Prior to that meeting had there been any discussion at all with you by any other board member at any time about ratifying the appointment of Knightsbridge North Lawyers to act for the Land Council?---Can you ask me that again. I just didn't - - -

Of course. I'll approach it another way. It might be easier.---Okay. Yeah.

I'll break it down. Would you have a look please at the minutes of the board meeting dated 11 January, 2016, volume 10, page 7.

10

THE COMMISSIONER: Sorry, you said minutes of a meeting?

MR CHEN: I did, Commissioner. Volume 10.

THE COMMISSIONER: Page 7. I'm sorry. Volume 10. Thank you.

MR CHEN: Page 7.---Thank you.

They're up on the screen now, Ms Swan.---Yes, yeah.

20

You will see that, sorry, you recognise those as being the typed minutes of a meeting on 11 January, 2016?---I do, yes.

And you will see that you're recorded as having provided an apology?
---Yes.

If you then please turn to page 8. Under the heading 5 Other Business, you will see there's a series of motions. Do you see that?---Yes.

30

There's five and then there's a reference to, I'm sorry, Mr Walsh asking about an AGM, in about the middle of the page.---Oh, yeah. Yeah, yeah.

And then you will see the next paragraph before the series of motions that are moved.---Yeah.

“Richard Green read a board resolutions that Awabakal Local Aboriginal Land Council formally ratifies the appointment of Knightsbridge North Lawyers to act for Awabakal LALC.” Do you see that?---I do, yes.

40

Had you been given any notice by Mr Green or anybody else who was on the board that a resolution of that kind was proposed at that meeting?---No.

If you had been able to attend that meeting would you have agreed to the passing of such a resolution?---No.

Why not?---Because we had Mr Sheriff. Why would we need anyone else.

I want to go back now if I can to - - -?---Okay. Yeah.

So it's Exhibit 42. Folder 1A, yes. Could I just have access – I'm sorry, Ms Swan.---Yeah.

We just have some numbering issues here. I'll just have access to the folder and I'll locate it.---All right.

10 So 162. We've just opened that up. So it's Exhibit 42, folder 1A, page 162. Have you seen – sorry, I withdraw that. In front of you is a letter directed to the board from Knightsbridge North Lawyers, dated 27 November, 2015. Do you see that?---I can, yes.

Have you ever seen that letter?---No.

Would you please turn to page 163. Do you see there what appears to be a cost disclosure statement and client service agreement between the Land Council and Knightsbridge North Lawyers, dated 27 November, 2015?
---Yes.

20 Have you ever seen that before?---No.

Did Mr Green ever raise that he'd signed this agreement with you at any stage?---No.

Was it ever raised at any board meeting you attended that he had executed such an agreement?---None that I attended, no.

30 Was there any ever discussion at any board meeting you attended about giving Mr Green the authority to sign such an agreement?---No.

And was there any ever discussion at any board meeting you attended about delegating to Mr Green the authority to execute agreements of that kind?
---No.

Would you have a look, please, at page 167. Do you see there at clause 20 instructions through your agents?---Yes, sorry. Yes, yes.

40 THE COMMISSIONER: How could those people ever be agents for the Land Council if they were agents for the other party of the contract? If they could be said to be agents of the other party to the contract.

MR CHEN: It's a difficulty.

THE COMMISSIONER: Almost to the point of impossibility, I would have thought.

MR CHEN: That may well be right, Commissioner. Ms Swan, was there any ever discussion at any board meeting you attended about appointing Mr Nicholas Peterson as an agent for the Land Council?---No.

Or the board of the Land Council?---No.

What about Mr Richard Green?---No.

10 Never any discussion at any time about appointing him an agent?---No. No.

At any time?---Not, not while I was at a meeting, no.

Was it ever raised outside of any meeting?---No, not that, not to me, no.

Now, would you also look at, please, Ms Swan, volume 15, page 162. Ms Swan, what is in front of you is a document described as Confirmation of Variation of Retainer and Engagement, dated 7 June, 2016. Do you see that?---Yes.

20 Have you ever seen that document before?---No.

Had Mr Green ever raised with you at any stage that he had signed such an agreement?---No.

If you scroll down, please, you'll see it also appears to have been signed by Ms Dates. I'll ask you to assume that if you don't know.---Yeah, I can't work out them signatures.

30 All right. Well, I just want you to assume that it's been signed or - - -?
---Yeah.

- - - appears to have been signed by Mr Dates – I withdraw that – by Ms Dates and by Richard Green - - -?---Yes.

- - - for the Land Council - - -?---Yes.

- - - for the Land Council, and on the other hand for Knightsbridge North Lawyers by Ms Bakis. Now, just assume that, please.---Yes, yeah.

40 Did Ms Dates ever raise with you that she'd signed this agreement - - -?
---No.

- - - at any stage?---No.

You know nothing of it?---I know nothing of it, no.

Did you ever receive any notice that it was to be executed by either of them on behalf of the board of the Land Council?---No, I did not receive notice.

Now, Mr Steven Slee was the CEO of the Land Council in 2014 and for at least some of 2015.---Yeah.

Do you agree?---Yes, yes.

And did you in the course of your functions and duties as a board member have cause to interact with Mr Steven Slee?---Yes.

10 With what degree of frequency?---Just in board meetings or when we, an issue would arise I'd talk to Steven about it.

And how did you find him in terms of - - -?---Approachable and understanding, yeah.

And what was your impression or opinion as to how he performed the functions of a CEO?---Yeah, he did well, yeah.

20 Whilst he was a CEO did you have any particular knowledge about how the Land Council had been functioning whilst he was in that role?---Yes, they kept us up to date and it seemed to be functioning okay.

I'm sorry, I'll just ask you - - -?---Okay, sorry.

Did you understand that there became an issue with his employment in late 2014?---Yeah.

30 And did you receive a communication, and other board members, from Mr Steven Slee about complaints that he had had?---Yes.

Volume 2, page 142. I'm just going to show you this letter now.---Yeah.

I'm sorry, I apologise, so it's volume 2, page 156.---Oh, yeah.

Do you recognise that as the - - -?---Yes.

- - - communication that you and other board members received from Mr Steven Slee?---Yes.

40 And are you aware of whether that communication from Mr Slee was ever tabled - - -?---No, it wasn't.

- - - at a board meeting?---No, it wasn't.

He appeared to have requested as much, did he not?---He did, yes.

And why was it not tabled?---Richard wouldn't table it.

Mr Green?---Yes.

Was he requested to table it?---He was requested to because it was a conflict for Debby to, to present it, so Steven asked Richard to present it.

And he declined?---Yeah, he didn't present it, yes.

10 Did any of the other board members pursue during the board meeting why he didn't table the letter from Mr Slee?---Yeah, there was a couple of us that asked how come he didn't table it.

And what was his response?---Oh god, I can't remember.

Now, Mr Slee was stood down in early 2015 wasn't he?---He was, yes.

Were you consulted about that?---No.

20 Was a board meeting called, pardon me, to discuss whether he ought to be stood down?---No.

Had a board meeting been called, would you have supported his suspension or not?---No.

No. At the time he was suspended were you ever told why he was being suspended?---No.

Did you ask?---We did.

30 I'm asking whether you did.---I did, yeah, sorry, yes, I did, yeah.

And who did you ask?---We asked Richard and Debbie.

And what was the response given by one or other of them?---“We don't know what he got up to. They've got the proof.” So I asked, “Show us the proof,” and then they didn't show, ever show us the proof.

I'll just take it back a step.---Yeah.

40 You, did you, or somebody in your company, asked Mr Green - - -?---I did.

You asked, did you?---I did, yes.

And who did you direct your question to?---To Richard.

And what did you ask Mr Green about Mr Slee and why he was suspended?---You can't suspend him unless you've got proof, and it should have went to a full board. You - - -

And what was Mr Green's response to that?---"Youse don't know what he's been up to. So, so we had no choice."

And who was he referring to at that stage, "we had no choice"?---Him and Debbie.

Was she there as well when you confronted him or not?---Yes, it was actually at a meeting, I think.

10 And did Mr Green or Ms Dates ever give you any more specific details of what Mr Slee had allegedly been up to?---No.

Did you ask for that information?---We did. We kept asking but, no, they did not provide anything.

Now, do you recall in the middle of 2015 – in fact, on 12 June, 2015 – there was a board meeting of the Land Council and a discussion about whether or not Mr Slee should be reinstated pending the outcome of some investigations?---Yes.

20

In the interim you understood that the Registrar was undertaking his own investigation into not only what had been alleged against Mr Slee but also matters alleged against Ms Dates?---Yes.

And was the idea that because that report and investigation – I'll withdraw that. Because the investigation was ongoing, that Mr Slee should be reinstated pending the outcome of the investigation by the Registrar?
---Investigation, yeah, yes.

30 I'll just show you the minutes if I can. Volume 3, page 112. Do you recognise those as the minutes of the board meeting of the Land Council on 12 June, 2015?---Yes.

And it records that you're an apology. Do you see there?---Yes, yeah.

But you certainly believe you attended this meeting?---(No Audible Reply)

I'll get you to look at something else which might suggest - - -?---Okay, yeah, yeah.

40

If you look to the next page, then, 113. You'll see that there's a discussion about the CEO position at point 7.---Yes.

And you'll see that there was a motion moved at point 8 by Debra Swan and seconded, apparently, by you.---By me. Yes.

Is that your recollection of - - -?---Yes.

- - - something that occurred at a board meeting?---Yes, something like, yeah.

And you recall, do you, that Debra Swan, your sister, suggested or moved that the board allow Mr Slee to return to work?---Yes.

And you recall definitely that you seconded such a motion?---Seconded, yes, yeah.

10 Now, the people that voted in favour of that, do you recall who they were?
---Myself, my sister, John Hancock and Micky Walsh.

And those that voted against it were who?---Debbie Dates, Richard Green, Lenny Quinlan and Jaye Quinlan.

Now, at this time Nicole Steadman was the acting CEO, was she not? Or she'd assumed a position.---Yes, that's more like it. She assumed the position, yes.

20 And she was the spouse or partner of Lenny Quinlan, isn't that right?
---That's true, yes.

And notwithstanding that matter, Mr Quinlan, according to your recollection, still purported to vote not to allow Mr Slee to return to work?
---Yeah, I'm sure Lenny was in the, yeah.

And the effect of that was to permit Ms Steadman to remain in the role. Isn't that right?---Yes, I think so.

30 Well, that's the effect isn't it?---Yeah, yeah, the effect, yeah, yeah.

Now, do you recall as well that the Registrar convened a board meeting at the offices of PKF in Newcastle on 6 August, 2015?---Yes.

And that was because the Registrar had finalised his report into the investigation involving Mr Steven Slee?---Yes.

And also Debbie Dates?---Yes.

40 Do you have some uncertainty about that or you're not - - -?---Uncertainty about the Debbie part but I know definitely Steve's part.

And you attended that meeting?---I did, yes.

And he presented or spoke orally about the findings that he had come to?
---Yes.

He didn't present his report to the meeting?---No, he didn't, no.

And in effect what he told the board meeting was that there was no evidence that Mr Steven Slee had engaged in any of the conduct which had been alleged by Mr Green and Ms Dates?---Yes.

And that he should be reinstated to his position as CEO?---Yes.

And do you also recall that Ian Sheriff was also in attendance?---He was, yes.

10

And did he also give advice to the effect that Mr Slee based on the Registrar's findings should also be reinstated to his position as CEO?---Yes.

Do you remember then there was a vote - - -?---Yes.

- - - on whether Mr Slee should be allowed to return to the position?---Yes.

And do you know who raised – I withdraw that. Do you know or recall that a motion was in fact raised as to whether he ought to be sacked?---Yes.

20

Who raised that motion?---Richard Green.

Do you know why he did that?---He wanted him sacked.

Right. Did he say to the meeting that Mr Slee should be sacked for any number of reasons?---He just kept saying he has the evidence but he, yeah, we never ever seen no evidence.

30

THE COMMISSIONER: Sorry, what did you say?---That Richard Green stated he had evidence but never ever presented any evidence.

MR CHEN: Did he say anything else other than that at the meeting as to why he was moving a motion to have Mr Slee sacked in light of the Registrar's advice to the board and the advice of Mr Sheriff?---No. No, nothing else.

Do you recall who seconded that motion?---Lenny Quinlan.

40

And the effect of Mr Quinlan seconding that motion again was to permit his spouse to remain in the position as the CEO?---Yes.

And he didn't consider that I take it by him seconding that to be a conflict of interest of any kind?---No, I don't think so, no.

Now, do you remember that a number of board members left the room prior to the vote being taken as to whether Mr Slee should be sacked?---Yes.

And do you remember the meeting reconvened and Mr Green further moved the motion that Mr Slee be sacked?---Yes.

Did he at that point give any other reasons as to why Mr Slee should be sacked?---No.

Did you ask?---We did. The same response.

I'm sorry?---The same response.

10

And do you know who seconded the motion moved by Mr Green that Mr Slee be sacked?---Was it Lenny. I think it was Lenny Quinlan again.

In any event, a number of board members voted in favour of him being sacked?---Yes.

Do you remember who they were?---Debbie Dates, Richard Green, Jaye Quinlan, Lenny Quinlan. Yes, I think that was it.

20

And do you know the balance of the board members voted for him to be, or voted against the motion which was you, Deborah Swan, your sister, and Mr Hancock?---Yes.

Did any of the other board members who supported the motion moved by Mr Green provide the board meeting with any explanation as to why they thought the sacking of Mr Slee would be justified?---No.

Did you ask?---We did.

30

And what response were you given by any of them?---The same thing. We've got evidence we just will show you at a later date.

Did they ever show you at a later date what this evidence was?---No.

40

THE COMMISSIONER: Mr Chen, is there anything in the legislation which is relevant to determining whether board members who act contrary to legal advice and act when there's no ground to justify moving a motion, which arguably could be against the interests of the Land Council, in other words you take a situation where there is legal advice to reinstate in this case and there's no basis to do anything other than follow the advice, but Land Council board members do take it into their hands, it would seem prima facie that they're not only in breach of their fiduciary duty to the Council in doing that but could attract upon themselves personal liability for, as it were, adopting that course of action purportedly as a decision of the council?

MR CHEN: It's dealt with in terms, in general terms in the legislation which we've looked at and in due course we may put submissions directed

to this particular topic on that, but more importantly, Commissioner, in the minutes of this board meeting, the very matters that you raise were raised by Mr Ian Sheriff, the lawyer of the Land Council, suggesting that there would need to be a proper basis to not act on the advice and that acting contrary to the advice could expose individual board members to personal liability.

10 THE COMMISSIONER: Right. Yes, it's more than laying the basis for a wrongful dismissal action by the affected person, but it seems to me that it would raise questions as to personal liability of those responsible for taking action in the name of the board against legal advice.

MR CHEN: Yes.

THE COMMISSIONER: Anyway, those issues might arise later.

MR CHEN: Yes, Commissioner.

20 And just finishing this topic, Mr Lenny Quinlan, despite potentially his partner being the beneficiary of the motion moved by Mr Green didn't see fit to excuse himself from voting - - -?---No.

- - - in support of the motion.---No.

Commissioner, is that a convenient time?

THE COMMISSIONER: Yes, it is, yes. We're going to take a break, so if you wouldn't mind stepping down. I'll take a 20-minute adjournment.

30 **SHORT ADJOURNMENT**

[11.27am]

THE COMMISSIONER: Yes, thank you. Would you mind coming forward again. Yes.

MR CHEN: Thank you, Commissioner. After Mr Steven Slee's employment had been terminated, did you understand he made a claim against the Land Council that he had been unfairly dismissed?---Yes.

40 And that also he had, in the course of what had transpired, been defamed by certain board members?---Yes.

And he claimed damages from the Land Council, did he not?---Yes, I believe so.

And were you aware that he was paid a substantial sum of money?---I wasn't until he'd disclosed to me one day.

You weren't consulted about - - -?---No.

I'll just ask the question. You weren't consulted before he was paid that sum of money about whether he should be paid any money?---No.

And nor, if so, how much he should be paid?---No.

Do you know who made that decision?---No, I don't.

10 Now, particularly following the issues concerning Mr Slee, did the board, I think you described it earlier, divide?---Yes.

And were there a number of factions then that appeared to develop and entrench following the issues concerning Steven Slee?---It didn't start out that way but it ended up being two factions, yes.

And when can you say for certain that these factions had developed? By what time?---Oh, yeah, pretty much after Steve got sacked.

20 Is that in August '15 or do you mean by February 2015, when he was stood down?---No, probably the August.

And were the factions on the one hand those that supported Mr Slee - - -? ---Yes.

- - - and those that did not?---Yes.

In relation to Mr Green and Ms Dates, they were obviously on the same faction, were they?---Yes, they were, yeah.

30 And prior to that time did you observe them to vote in any particular way? ---No, I didn't, actually.

What about the Quinlans? Jaye Quinlan was the sister of Ms Dates.---Yes.

Did she appear to vote in any particular way in connection with Ms Dates? ---She started off where she'd have her say. But, yeah, she eventually started voting the way Debbie voted.

40 Irrespective of what Debbie had proposed, is that right?---Yes, yeah.

And are you able to pinpoint a time as to when this was? Is this August '15?---No, I think it was pretty much all the time, but I think it was a façade that she put on that she'd make objections every now and then.

And what about Lenny Quinlan? What about him?---Yeah, he just voted with them all the whole time.

Now, you with your sister Debra Swan, Mr Hancock, Mr Walsh and Larry Slee had been quite vocal in 2015 about your opposition to the direction or what you perceived to be the direction of the board, isn't that right?---Yes.

And you had made with those others a number of complaints to the Registrar, had you not?---Yes, we had, yes.

Mr Wright.---Yes.

10 You'd also made complaints to the local members of parliament.---Yes.

And you'd actually consulted them, had you not?---We did, yes.

And you'd actually reported members to the police as well.---To the Waratah Police Station, yes.

And those complaints and opposition continued right until the end, when you finished as a board member.---Yes.

20 Now, at one point in the middle of 2015, you and the others issued a media release, did you not?---We did.

I'm just going to show you Exhibit 53, please, and in particular page 15. Do you see that up on the screen, Ms Swan?---Yes. Yes, sorry. Yes, I do, yeah.

And if you scroll down to the end, you can see that that's been signed off as including you as Ellie Swan, amongst others.---Yes. Yes.

30 And you obviously read and approved that media release being issued.---I did, yes.

And what, in simple terms, was the reason why you and the other board members issued a media release at that time?---There was other media stuff that was being said about the board, so we just wanted to clarify that it was only the other five.

You'll see in the third paragraph again that you raised that you were being given insufficient notice, amongst other things, about when meetings would be held.---Yes.

40

And you've given evidence about that already.---Yes. Yes.

Now, I want to show you as well another email, please, in the same exhibit, Exhibit 53. And it's page 9. And this email starts in about the middle of the page and appears to be an email from Debbie Dates.---Yes.

And it's addressed to you, amongst others. Do you see that?---Yes, I do, yes.

Do you recall receiving this email?---No, I didn't receive it. John received it and showed it to us.

I see. In any event, that email asserts that as at that day, 21 April, 2015, just down the bottom - - -?---Yes.

- - - that you'd vacated your position as board members. Do you see that?
---Yes.

10

Had you vacated your position as a board member?---No, we never. No, we did not.

And you'll see that Mr – I'll scroll up to page 8 of the same exhibit. You'll see that there's a response from Mr Hancock to that email. And the Registrar was copied in amongst others.---Yes. Yes.

Do you recall being shown a copy of that email as well?---I do, yes.

20

And amongst other things you contest the positions or the allegations made by Ms Dates or apparently on behalf of Ms Dates.---Yes, we do, yes.

And also didn't accept that they could be, sorry, your role as a board member could be removed by Ms Dates and Mr Green.---Yes.

Now, I showed you earlier today on a couple of occasions that an email dated 12 January, 2016, so that's in Exhibit 54, page 10 and I'll just have this brought up on the screen.---Yeah.

30

You recognise that email now in front you that I showed you earlier?---Oh, yes. Yeah, yeah.

And it's an email from Mr Slee to Mr Kelvin Kenney dated 12 January, 2016.---Yeah.

Now, I just want to draw your attention to the last paragraph.---Yeah.

40

What was the corruption and misconduct that you were discussing at that time with the other board members?---The misappropriation of the funds and, yeah, them making payments that shouldn't have been made and stuff like that.

Was there anything else that you were referring to?---Oh, they were illegally meeting as well. There was five of them meeting that couldn't be, like it wasn't a quorum so they couldn't have the meetings. They were making, making payments and agreements and whatever else. So that sort of stuff.

And who were the board members that you were referring to in particular there?---Debbie Dates, Richard Green, Ron Jordan, Jaye and Lenny Quinlan.

It also refers that you were discussing whether you would stand down as at that date, 12 January, 2016.---Yeah, no, we never ever, to my recollection I never ever was going to stand down.

And you didn't?---No.

10

And your term as a board member in any event expired?---It went, yes, it expired.

And you didn't stand for re-appointment or re-election?---No. Re-election, no.

20

THE COMMISSIONER: Just in relation to the discrepancies you said to be in the amount of \$304,000, the transactions that Debbie Dates authorised were you part of any investigation as to the discrepancies, in particular the amount of them being \$304,000?---No, I wasn't a party to an investigation.

Do you know who was?---No, I don't.

MR CHEN: Now, Ms Swan, there was a members' meeting on 29 January – I withdraw that – on 29 June, 2016. Do you recall a members' meeting at around that time?---I think so, yeah.

30

Do you know whether you went to that members' meeting?---I don't think I did.

You don't think you did?---Yeah.

There was also a members' meeting on 20 July, 2016. Do you remember a members' meeting coinciding with the date that your term as a board member expired?---Yeah. Oh, maybe that's the one I didn't attend. Maybe I did attend the first one.

40

All right. I'm just going to have put before you – Commissioner, I tender minutes of a meeting of the Awabakal Local Aboriginal Land Council members on 29 June, 2016 at 6.50pm.

THE COMMISSIONER: Yes, the minutes of the meeting of the Awabakal Local Aboriginal Land Council 29 June, 2016 will become Exhibit 55.

#EXH-055 – ORDINARY MEMBERS MEETING MINUTES FOR 29 JUNE 2016

MR CHEN: Would you just read through those quickly – I'm sorry, just read through those. You take as long as you need, Ms Swan.---Yeah, I don't think I was at this meeting.

You recall you finished as a board member on 20 July, 2016?---Yes.

And at the expiration of the terms of a number of board members there commonly is a members' meeting, is there not?---Yeah.

10

And do you recall that on the day your term expired there was a members' meeting of the Land Council?---Yes, I think there was.

Commissioner, I tender minutes of the ordinary members' meeting dated 20 July, 2016 at 6.30pm. Do you remember a meeting being held at the Croatian Club at Wickham?---No, not that I've known, no.

THE COMMISSIONER: Yes, the minutes of the meeting of Land Council 20 July, 2016 be admitted and marked Exhibit 56.

20

#EXH-056 – ORDINARY MEMBERS MEETING MINUTES FOR 20 JULY 2016

MR CHEN: Ms Swan, do you recognise those as apparently being the minutes of the ordinary members' meeting on that day?---Yes.

And would you mind just having a read of those.---Yep.

30

Having read those minutes, does that assist you in determining whether or not you attended?---Yeah, I wasn't there.

You weren't at that meeting?---No.

Do you know how many members' meetings were held in 2016?---No, I don't. I couldn't tell you.

40 Do you recall attending any members' meeting in 2016, the year that you finished being a board member?---There was one that didn't go ahead and we just went across to the park because we didn't have, Debbie and them didn't turn up to have it. That's the only one I can recall.

Do you remember being at a members' meeting when it was announced that Knightsbridge North Legal would be addressing the members?---No.

Do you remember ever attending a meeting when Mr Petroulias, who's in the hearing room now, attended - - -?---No.

- - - and addressed the meeting?---No, not, I can't recall being a meeting.

Have you ever been to a members' meeting in the time you were a board member when lawyers had been invited in to discuss legal matters?---No.

Do you recall ever being at a members' meeting where some of the members questioned the rights or the right of lawyers to be present at meetings?---No.

10

Thank you, Commissioner, that's the evidence of this witness.

THE COMMISSIONER: Yes. Are there any questions?

MS NOLAN: Yes, if it please the Commission.

THE COMMISSIONER: Yes. Yes, Ms Nolan.

MS NOLAN: You've told the Commission that you had a permanent part-time position.

20

THE COMMISSIONER: Sorry, I'm having trouble hearing you. I don't know if that microphone's working properly.

MS NOLAN: They extended it the other day but I think they've shortened it again.

THE COMMISSIONER: Yes, it might need, all right. We might have it checked at lunchtime but anyway, do the best you can.

30

MS NOLAN: You recall that you've given some evidence to the Commission that you had a permanent part-time position during your tenure as a board member. That's correct?---Yes.

And you've intimated in a number of your answers to the questions asked of you that you had some difficulty attended board meetings due to your need to attend your work. Is that right?---Yeah.

Now, you're aware aren't you that your tenure as a board member is governed by the Aboriginal Land Rights Act?---Yeah.

40

And you understand your obligations as a board member pursuant to that Act, don't you?---I do.

And you understand that if you are unable to attend a meeting that's given to you, of which reasonable notice is given - - -?---Yeah.

- - - on two consecutive occasions, that you are deemed to have vacated office. You understand that, don't you?---Yes, I think so.

And in fact that by 2 January, 2105, you had by force of that provision vacated office due to your inability to attend two consecutive meetings given two reasonable notice.

MR CHEN: I object, Commissioner.

10

THE COMMISSIONER: That requires a legal conclusion.

THE WITNESS: Yeah.

THE COMMISSIONER: You're entitled to put to her specific facts which might support a submission to that effect.

MS NOLAN: Well, I've already in my submission laid a foundation with respect to her understanding of the Aboriginal Land Rights Act, but I have heard what the Commissioner said.

20

THE COMMISSIONER: Well - - -

MS NOLAN: You failed to attend two consecutive board meetings due to your work commitments, that's correct, isn't it?

MR CHEN: Well, I object again, Commissioner.

THE COMMISSIONER: Yes.

30

THE WITNESS: Um - - -

MR CHEN: The detail really should be put.

THE COMMISSIONER: Yes. We need to have the dates so that she can address her mind to the propositions you're putting in your question. So if there are two particular meetings you rely upon you should put those.

MR CHEN: And, sorry, Commissioner, and so too should the proposition which is implicit in the question, that she was given reasonable notice.

40

THE WITNESS: Yes.

THE COMMISSIONER: Yes. Well, it depends on – so you have to have details about when the notice was given and that sort of thing.

THE WITNESS: Yes.

MS NOLAN: Certainly. Well, I'll go about it this way because I'm not in a position to be able to do that because I don't have that material available.

THE COMMISSIONER: All right.

MS NOLAN: You accept, don't you, that you were unable to attend various meetings due to work commitments, whether or not you were given reasonable notice or otherwise. Is that right?---No, I don't.

10 During the time that you were a board member you did not live inside the Aboriginal Land Council area, did you?---Yes, I do.

During the time at which you were a board member you did not - - -?
---I still live in the boundaries.

When, when you have answered some questions today with respect to your attendance at board meetings - - -?---Yeah.

20 - - - in 2016, those answers were not accurate, were they, because you ceased to be a permanent member of the board as at 2 January, 2015. That's correct, isn't it?---I - - -

MR CHEN: I object again, Commissioner - - -

THE WITNESS: No.

MR CHEN: - - - on the same footing.

30 THE COMMISSIONER: Just - - -

MR CHEN: I object on the same footing. The question is put on the basis that she potentially relinquished the position based on her apparent non-attendance.

THE WITNESS: Yeah.

MS NOLAN: I'll put it this way. By 2 January, 2015, you were not attending board meetings anymore, were you?

40 MR CHEN: Well, again - - -

MS NOLAN: It's a different question.

THE WITNESS: Yes.

MS NOLAN: Can you answer that question, please?

THE COMMISSIONER: Sorry.

THE WITNESS: I just did, yeah.

THE COMMISSIONER: Just a moment, just a minute, it was put to you by 2 January, 2016, you were not attending - - -

MS NOLAN: 2015, Commissioner.

THE WITNESS: 2015.

10

THE COMMISSIONER: '15, is it, '15, you are not attending board meetings. Sorry, what's your response?---Yeah, we weren't attending.

I'm sorry?---Yes, we wasn't attending.

Ah hmm.

MS NOLAN: Prior to that time though you accept don't you that the Aboriginal Land Council, the Awabakal Aboriginal Land Council had a Community Business Plan?---Yes.

20

And that that Community Business Plan involved as one of its necessary activities the sale of land, the Awabakal land. You accept that?---No.

You don't accept that?---I don't think so, no.

Well, assume for me that the business plan did involve the sale of land. ---Okay.

30 Right. So it's wrong to say the community then had not expressed its desire to sell the land.

THE COMMISSIONER: Well, I don't think you can have it that way. I mean if there is a business plan that has a provision in it, we should have it and that should be put to the witness rather than putting it on an assumptive basis.

MS NOLAN: Right.

40 THE COMMISSIONER: Do we have the plan?

MS NOLAN: We do. I think it's volume 1, page 28.

THE COMMISSIONER: Sorry? What's the exhibit?

MS NOLAN: Volume 1, page 28.

THE COMMISSIONER: Volume 1. Page?

MS NOLAN: Page 28.

THE COMMISSIONER: Thank you.

MS NOLAN: Can you see at about point 10 on the page number 14, you'll see there "disposal of the LALC lands".---Yes. Yes.

10 These are the long-term goals contained in the Community Business Plan.
---Yes.

So you'll accept, then, will you, that the community had expressed a desire to sell its land?---Was this presented to the, to our members' meeting?

That's not my question. My question is that that Community Business Plan, you accept, do you not - - -?---I accept that business plan, yes.

20 Right. So then you'll see at about point 14 on the page that one of the long-term goals is the disposal of the LALC lands.---Lands.

And the proposition I'm putting to you is this. It's wrong to say, isn't it, that the community had not expressed a desire to sell its lands, isn't it?---I'm just trying to work out how to answer that, that's all. I don't know how to answer that one because it still has to go to the members to be ratified if that's what they wanted.

That's not my question. My question is, it's wrong then to say that the community had not expressed a desire to sell its land.

30 MR CHEN: I don't think, Commissioner, this witness has ever said that. I'm just wondering what the basis for the question is.

40 THE COMMISSIONER: Yes. Where is this going? Because, you see, you're working from the business plan, which is talking about medium-term and long-term goals over the coming five years. A goal might be on a corporation's wish list, as it were. That is to say that they wanted to, in the longer term, dispose of lands. But where does that take us? It's not related to the sale of any particular land at any particular time. It's simply a goal. So I think if you're going to put these questions, you've got to draw the distinction. We're talking about a goal rather than a plan or a contract for the sale of specific land. So I think, you know, the concept inherent in this document, I'm not sure that it's going to take you very far.

MS NOLAN: I'll move on. Now, you've told the Commission that you never, in the meetings which you attended, agreed to any resolution that land be sold, is that right?---I think so.

In volume 3 of the brief, at pages 6 to 10, there's an example of a resolution where you appear to have agreed to the resolution to sell land. I think the police station, is that right?

THE COMMISSIONER: Volume 3. What page?

MS NOLAN: Could that be brought up, please.

10 THE COMMISSIONER: I couldn't catch the page number.

MS NOLAN: Volume 3, page 6 to 10.

THE COMMISSIONER: 6 to 10.

MS NOLAN: Can you hear me at all, Commissioner?

20 THE COMMISSIONER: Yes, I can, but I just couldn't pick up the page references that you were referring to. But I've got volume 3. So, 6 to 10. Yes, all right.

MS NOLAN: See at point 12?---Yes.

There's a resolution there by a motion of Richard Green, which is seconded by Ronald Jordan, and it was said to be carried to sell 57 James Street, Hamilton Police Station, and seek professional advice in relation to the Newcastle Post Office in regards to the development of the cultural centre. Do you see that?---Yes. Yes, I can see that, yeah.

30 Now, if you go back up, I think, to page – I think it's 3 or 4. 3, yes. 3. 4, please, sorry.

THE COMMISSIONER: Page 4?

MS NOLAN: Yes. Now, you attended that meeting on 28 January, 2015, is that right?---It says that I did, yes.

Even though you've agreed with me as at about 2 January, 2015 that you ceased attending board meetings?---No, I didn't agree with you.

40 Had you ceased attending board meetings by 2 January, 2015?---Yes, the board meetings.

And this is a minute of a board meeting?---On 28 January.

2015?---Yeah.

And it says you attended on that day?---Yes.

So if it's the fact, and I'm asking you is it the fact that you had ceased attending board meetings on 2 January, 2015?---I can't recall.

MR CHEN: Commissioner, I think in fairness to the witness, there's an ambiguity which with respect is apparent in - - -

THE COMMISSIONER: What's the - - -

10 MR CHEN: There's an ambiguity that's apparent because I think what's being put is a proposition namely, that you've in substance declined to attend meetings and it's apparent in what has transpired in the further questions my learned friend has asked that that's unclear and perhaps the witness should be specifically invited by my friend to deal with that because she's taking her to a minute now of meetings that she plainly did attend so - - -

20 THE COMMISSIONER: Well, according to the document she did attend. I thought her earlier evidence was she agreed that by, was it 2 January, 2015 that she was not attending board meetings.

MR CHEN: Well, she gave then an inconsistent answer just a moment ago to my learned friend who asked the same question.

MS NOLAN: Commissioner, I'm going to interrupt my learned friend because I actually am trying to clarify this and I'd be grateful if I could attempt to do that. It's not objectionable at the moment.

30 THE COMMISSIONER: Yes. No, nobody is stopping you from doing that. We just want to clarify.

MS NOLAN: I am seeking to clarify.

THE COMMISSIONER: Yes. All right. Well, keep going.

MS NOLAN: And that's what I was endeavouring to do when my friend rose.

THE COMMISSIONER: Yes. Well, keep going.

40 MS NOLAN: So you will see that this minute is dated 28 January, 2015. ---Yes.

And in earlier questions that I've asked of you, you appear to accept that you had ceased attending board meetings on 2 January, 2015 which is some 26 days earlier than this board meeting.---I can't remember when I stopped going to the meetings. I might have agreed with you earlier but I can't tell you with 100 per cent accuracy when I stopped attending meetings.

So it may be that you've attended this meeting. Is that right?---May, yes.

You just can't remember?---No.

And that's the case is it not with respect to most of the meetings about this time isn't it?

MR CHEN: Well, I object to the generality of that.

10 THE COMMISSIONER: I'm sorry, I am having trouble hearing you from time to time. It's not your fault, Ms Nolan, it's just that the system is not tuned apparently to pick up everything you're saying. Sorry, what was the question?

MS NOLAN: At about this time, so I've directed the witness to the date, 28 January, 2015.

THE COMMISSIONER: Yes.

20 MS NOLAN: Her recollection with respect to the board meetings she did attend is poor is effectively the tenor of the question.

THE COMMISSIONER: Is faulty?

MS NOLAN: Is poor.

THE COMMISSIONER: Is poor. Yes.

30 MR CHEN: I think it's been circumscribed slightly by my learned friend. It was a wider proposition in the question. I have no objection if it is being put on that basis.

THE COMMISSIONER: All right.

MS NOLAN: At or around the time of January, 2015 your recollection as to the board meetings you did in fact attend is poor isn't it?---Yeah.

Could you please bring up volume 2, page 63 which are the board minutes of the October 31 meeting.

40

MR CHEN: Could I ask my learned friend as well, Commissioner, through you to identify or I seek a direction that she identify what her positive case is. She represents KNL Lawyers and Ms Bakis, Commissioner.

THE COMMISSIONER: Yes. All right. Well, let's get the page up and then we'll firstly see. These are the board minutes of the, what's the date again?---31st.

MS NOLAN: 31 October, 2014.

THE COMMISSIONER: That's right. Thank you. 31 October.

MS NOLAN: I'm coming to the positive case and I prefer not to have to identify it. I only have a very short suite of questions remaining.

THE COMMISSIONER: Well, we'll just see how we go. You start with your first question.

10

MS NOLAN: Now, you will see this board minute you've been taken to earlier on in questioning from Counsel Assisting is dated 31 October, 2014?---Yeah.

Now, your recollection as or about January, 2015 with respect to the board meetings that you cannot recall that you attended is, you've accepted from me is poor and you will accept also won't you that the board meetings prior to that, even those in 2014, October, 2014 is also poor won't you?---What was that again, sorry?

20

You've accepted that your recollection with respect to the board meetings that you attended in January 2015 is poor. You've accepted that.---Yes.

You will also accept, won't you, that your recollection as to the board meetings that you attended in 2014 – for example, this October 2014 board meeting – is also poor, won't you?---Yes.

30

THE COMMISSIONER: Could I just ask you on that. Your attention was asked concerning the entry on those minutes. Richard Green declared an interest and you said that he did declare an interest because he knew.---Yes. He knew the person, the Torres Strait Islander bloke.

Now, is that based on your recollection of what he said?---Yes, my recollection. What he said, yes.

MS NOLAN: You'll see in that October 31st board minute that you're recorded as voting in favour of selling land. Do you see that?---Just got to come down.

40

THE COMMISSIONER: Your attention is being drawn to that part of it underneath the deleted first three lines on the page. Is that right?---Oh, yeah. Yeah, yeah, yeah.

So if you just read that to refresh your memory.---Yeah. Yeah, yeah.

Okay.---Yeah.

Yes, the question? Just put the question again.

MS NOLAN: You'll see that the whole board is recorded as being unanimous in selling land in that section to which the Commissioner has directed your attention. You see that?---Yes, I'm looking at it.

You see that?---I see it, yes.

10 You've told the Commission that – and do you remember being one of the unanimous members of the board agreeing to sell the land, as recorded there?---Not to selling the land. We said it had to go back to the members, so, so, yeah, I can see what you're saying. Yeah. I know it says it there, but we didn't agree to sell the land. I do remember that much.

So did you do anything in a subsequent meeting to identify that that's not an accurate record of what you say happened?---I objected, I objected quite a few times. That's not put in the minutes. So it's my word against theirs, virtually.

20 What, if anything, have you ever done about the fact that your objections have never been recorded in the minutes?---Kept objecting.

You seem to have been active with respect to other aspects of the board's actions, like issuing media release and the like. Why have you never done anything about something which you have a very distinct interest in ensuring went to the members? Why have you never said anything other than sitting in the witness box here today?---I did say it at the meetings, but I obviously didn't follow through with it. That's my bad and I just didn't do it. I objected in the meetings but I didn't carry through with following it through.

30 But you're a board member.---Yes, I understand that.

And you're representing the interests of the community that you say should have been given the opportunity to consider this.---Yes, I agree.

And you never did anything about it.---Well, we did. We eventually went and tried to do things.

40 Could it be, in fact, the case that this resolution was passed?---Not to my recollection.

I have no further questions.

THE COMMISSIONER: Yes, Mr Petroulias.

MR PETROULIAS: Yes. Ms Swan, if I can lay the scene correctly. In this period, early 2014, Kelvin Dates was still on the board?---I think so, yeah.

And the Dates family you believe had half the board seats?---They had a majority, yeah.

And in the community they represent more than half the community?

---Yeah, maybe.

Yeah, okay. So I don't want to hassle you with the community - - -?---No, yeah.

10

Were you present when Steven Slee gave evidence?---No.

Okay, that's fine. In your view, just trying to understand it, are you saying it's premature for, premature to be selling land because you still hadn't determined your priorities yet - - -?---Yes.

- - - as a community?---Yes.

20

And so for example, the options you still wanted to consider were how much of the land you wanted to use for cultural, is that right, cultural facilities?---Yes, that's right, yeah.

Commercial?---Yeah.

Housing?---Yeah.

Okay. And that Richard and Debbie took it upon themselves to progress the property development side?---Yes.

30

And did you ever oppose Richard and say why are you bringing all these developers to us?---Yes, I did.

And that's, and you're saying that never went anywhere?---It never went anywhere, no.

And in 2015 when you were complaining about the conduct of Debbie and Richard - - -?---Yeah.

40

- - - you never thought to raise that with the Registrar, and by the way, they're trying to sell our land?---We did, we approached the Registrar, we tried to keep the Registrar, we requested meetings with the Registrar, the Registrar chose just to meet with Richard and Debbie.

Yes, but in the media releases and all the emails I didn't see anything there that says anything about, and the bastards wouldn't, were trying to sell our land without telling us.---We didn't want to air the dirty laundry, we were

- - -

That's okay.---In the media releases we were addressing what they'd already stated in one of the, in one of the papers about us not attending meetings and stuff, that's all we were trying to address in that.

Okay. Now, we've heard evidence that the Land Council gets between 140, \$150,000 a year from NSWALC as its funding, right?---Yes.

The CEO salary is about 120.---Yes.

10 Now, add the on-costs of salaries, add the other staff, there was at least another four, then there was a Green Team, how was it going to survive each year? It would be in loss at least a quarter of a million each year, wouldn't it?---The Green Team was to regenerate their own money.

Yeah, but they weren't doing too well.---And I know that, but that's what they were to do.

20 Yeah.---The other, like Candy was a trainee, she only had a traineeship, she wasn't employed, she had a traineeship, so yeah, that's as much as I know about that stuff.

Okay. I accept that it was too premature - - -?---Yes.

- - - to talk about land, but you didn't seem to have anything else in there like you weren't saying, oh, we're going to make beads, didgeridoos, hold cultural dancing seminars or something to generate income. There's nothing like that in the minutes, is there?

30 THE COMMISSIONER: No, I reject that question. I reject that question.

MR PETROULIAS: Well, is there anything in any minutes that you recall that would look for alternative sources of income to make up for the deficiency the Land Council were - - -

THE COMMISSIONER: Mr Petroulias, how does this affect your interest, whether the Council had adequate funding or didn't have enough funding to get by?

40 MR PETROULIAS: Because it was inevitable they had to sell the land. It wasn't an option.

THE COMMISSIONER: No, I won't allow it.

MR PETROULIAS: Do you remember a board meeting approving 750 and then 500 to Richard and Debbie to investigate what they believed were the problems, the allegations against Steven Slee?---No, I wasn't at that meeting, no.

Okay. Well, that's all, thank you, Commissioner.

THE COMMISSIONER: Thank you. Yes, nobody else? All right. Thank you.---Thank you.

You may step down, Ms Swan. You're excused.

THE WITNESS EXCUSED

[12.33pm]

10

THE COMMISSIONER: Yes.

MR CHEN: Commissioner, I call Debra Swan.

THE COMMISSIONER: Do you take an oath or an affirmation?

MS SWAN: An oath.

THE COMMISSIONER: Thank you.

THE COMMISSIONER: Yes.

MR CHEN: I'm not sure whether the witness wants a declaration, Commissioner.

10 THE COMMISSIONER: Yes. Could you just state your full name, your name?---Debra June Swan.

Ms Swan, you may have been given some advice but in case you haven't I'm just making you aware of the fact that if you choose to give evidence under objection you're entitled to do that. The purpose of the objection is to afford some protection against the future use of your evidence in other proceedings should there ever be any, such as criminal or civil proceedings or any other proceedings, and if you do then I can make a declaration that all the answers you give are to be taken as on objection. Do you understand essentially what I'm referring to?---Yes.

20

Do you wish a declaration to be made or not?---I do. I do, yes.

I make a declaration pursuant to section 38 of the Independent Commission Against Corruption Act. I declare all answers given by this witness and all documents and things that may be produced to her during the course of the evidence are to be regarded as having been given or produced on objection. Accordingly, there is no need for her to make objection in respect of any particular answer given or document or thing produced.

30

I MAKE A DECLARATION PURSUANT TO SECTION 38 OF THE INDEPENDENT COMMISSION AGAINST CORRUPTION ACT. I DECLARE ALL ANSWERS GIVEN BY THIS WITNESS AND ALL DOCUMENTS AND THINGS THAT MAY BE PRODUCED TO HER DURING THE COURSE OF THE EVIDENCE ARE TO BE REGARDED AS HAVING BEEN GIVEN OR PRODUCED ON OBJECTION. ACCORDINGLY, THERE IS NO NEED FOR HER TO MAKE OBJECTION IN RESPECT OF ANY PARTICULAR ANSWER GIVEN OR DOCUMENT OR THING PRODUCED.

40

THE COMMISSIONER: Thank you, Mr Chen.

MR CHEN: Ms Swan, are you currently in employment?---No, I'm not.

In the time that you were a board member of the Land Council were you in employment?---No, I wasn't.

Have you been a member of the Awabakal Local Aboriginal Land Council since about the mid-1990s?---Yes, I was.

Did you become a board member of the Land Council in around that time?
---I did in the '90s, yes.

And you held the position as a board member and indeed treasurer for a short period?---Yeah, that's correct, yes.

10 Did you cease then becoming, or cease holding the position as a board member but then reassume a position on 4 December, 2014?---Yeah, that's correct. I moved back to Moree my home town for a couple of years and then I returned and then, in 2014 and then, yeah, and then I was asked to, if I'd run for the board.

And did you remain a board member until 20 July, 2016?---I did, yes.

And you're the sister are you not of Eleanor who has just given evidence?
---I am. Yes, I am.

20

Now, Ms Swan, when you were a board member and a meeting was called how did you receive notification of those meetings?---At that point I was staying on and off with my sister and it was the same thing. We'd get a text message or we'd get a letter dropped in the mailbox like probably the day before.

Did the way you were notified or given notice of meetings affect your capacity to attend?---No, because I wasn't working at that time.

30 I see.---Except I was looking after two of my grandchildren and I did have to be home at a certain time to pick them up from school.

But otherwise you - - -?---It was, otherwise, yeah.

But otherwise you were available to attend?---I was, yes.

Now, you did go to a number of meetings during the course of 2014 and '15 did you not?---No, because I didn't get voted in, I think it was December
- - -

40

Correct.--- - - - 2014 and, and then a couple of incidents happened with particularly Steven Slee that then sort of split the board so I didn't, I didn't really, I turned up to meetings on a regular basis before then. I think there were two meetings and I think I turned up to two more after that.

And that was the sum total of your attendance was it?---Yes.

Now, when you were, when you attended the meetings did you observe that the minutes of the business of the board were recorded in a book?---Yes, I did.

And when you were attending or when you attended meetings were the minutes taken by anybody in particular?---Yes, by John at that time.

John Hancock?---Hancock, yes.

10 In the course of you being a board member did you ever have access to the minute book?---No.

And I take it you've never seen inside it. Is that right?---No, I haven't.

You've never made any entries in a minute book at all?---No, I haven't.

You've never been asked to make any entries in the minute book?---No.

20 Would you have a look, please, at volume 2, page 62. You see there they appear to be the handwritten minutes of the board meeting that occurred on 31 October, 2014.---Yeah.

I take it, well, you weren't a board member then, but - - ?---No.

You've never seen them before?---No.

You're agreeing with me?---No, sorry.

30 You've never seen them before, have you?---No.

Did you understand that at board meetings resolutions would sometimes be passed by the board members?---Yes.

And they would be recorded, would they?---To my understanding at that time it was as part of the minutes. I didn't understand that there was a separate book for resolutions to be placed in.

40 So if a resolution had been passed by the board, what, you expect that the record of that would be contained in the record of the minutes, do you?---Of the minutes, yes.

Now, the minutes would be obviously typed after the meeting.---Yes.

And they'd be presented to a following meeting?---Yes.

And they would be discussed and, if approved, signed by the chairperson?---Yes.

And when you say resolutions would be recorded, do you mean recorded in the typed minutes? Is that what you're referring to?---Well, no, I wouldn't suggest that. I would expect them to be in the minute book as well as on the typed minutes.

Handwritten and typed?---Yes.

10 But other than that, you were unaware of whether the board kept a separate log of resolutions passed?---That's correct. But I did notice that they weren't in the minute book and I, and I actually made a suggestion, excuse me, that we actually needed to, as a board, have some work, training workshops on how exactly a board runs.

How did you know they weren't in the minute book if you've never accessed it?---Because when, the second meeting we had there were things that weren't noted that were said the meeting before.

20 I see. Now, would you have a look, please, at volume 2. Or, sorry, just before we leave that, I should ask you – for completeness – if you just have a look at the next page, volume 2, page 63. You've obviously never seen that note before?---No, no.

Would you look, please, at volume 2, page 6. If you just assume for the moment they are what appear to be the board resolutions, at least starting from 21 March, 2014 onwards. You've never seen them before?---No, because I didn't join till the end of 2014.

Sorry, my question was unclear.---Sorry, yeah.

30 That's okay. It's my fault. You've never seen resolutions recorded in that way separately?---No.

Now, I take it again, consistent with that, if the resolutions are separately recorded and held in a book in the Land Council's offices, you've never had access to them at all at any stage, is that so?---Yeah, that's correct.

Would you have a look, please, at the same volume, volume 2, page 66. Have you ever seen that resolution before?---No.

40 Do you know who prepared such a resolution?---No, I don't.

Would you have a look, please, at volume 3, page 1. Do you recognise that as what appears to be the handwritten minutes of a board meeting held on that day?---Yeah.

Do you see in attendees the initials DS?---Yes.

That appears to record you, does it not?---Yes. Yes.

Do you recall attending this meeting?---Yes.

And if you just have a look, please, if you just have a look at the second page, namely page 2. And on the right-hand side you'll see there's a reference to Hillsborough Road. Do you see that?---Yeah, yeah.

Do you recall a discussion at that meeting, a property at Hillsborough Road?---No, I don't recall.

10

Do you recall there being any discussion at any board meeting you attended about selling the property at Hillsborough Road or agreeing to - - -?---No, I don't remember being, talking about selling any land in that meeting.

Do you recall there being any discussion about a property at Hillsborough Road involving a developer who was interested in it? Or not?---I'm not sure if it was that meeting but I do remember that Richard Green did say that he had some people who were interested in buying land. And I remember saying to him that if we're selling land has it gone before the members?

20

Because, you know, all, all land that's being put up for sale has to go before the members. And I also remember saying to him and if we are going to sell the land, we need to put it out to tender, not have people who he's just asked to come to, to prepare a bid, I guess, for the land. I said that to him in two or three different meetings.

Are you able to be more specific when you think you may have raised that? ---That, that would have been the second meeting. So it would have been in that meeting.

30

I just need to go back for a moment. You became a board member in December 2014.---Yes.

Do you remember the date you became a board member?---No, I'm not sure of the date.

The minutes seem to record you as attending a meeting on 15 December, 2014, but - - -?---I was voting, voted in at the members' meeting before that meeting. I don't know if it was the 1st of December.

40

I just want you to assume, Ms Swan, that there are typed minutes of a meeting on 1 December, 2014 that do not record you attending. Is that consistent with your recollection, that you would not have attended a board meeting on that day?---A board meeting or a members' meeting?

A board meeting on 1 December, 2014.---As soon as – I'm not sure about 1 December.

Now, during your time when you were on the board, was there any discussion of an agreement between the Land Council and a company called Gows Heat Pty Ltd?---No, I never heard of them before.

10 Would you just have a look at volume 3, page 123, please? Do you recognise – I withdraw that. What appears on the screen, Ms Swan, is a document called Heads of Agreement, General Heads of Agreement, with the date of 15 December, 2014. And at page 124 of volume 3 you'll see that there is a – that the agreement is between Gows Heat Pty Ltd on the one hand and the Land Council on the other. Do you see that?---I do, yeah.

And you can see down the bottom there's an initial. At least one initials are "RG". Have you ever seen this agreement before?---No, I haven't.

And when you were a board member, had anybody ever raised with you that such an agreement had been entered into between Gows Heat and the Land Council?---No.

20 Did Mr Green ever tell you that he had done so?---No, not that I can recall.

Is it something you would have recalled?---Would, I would have recalled it.

Why is that?---Like I said earlier, there was two occasions at meetings where Richard talked about selling of land, and on the two occasions I said the same thing – that if it hasn't been before the members for us to sell things or do anything, then I, I will not even talk about things until that's been done. And that also, if we do, if the members do agree to sell, then we need to put it out to tender. We don't favour people.

30 THE COMMISSIONER: Do you recall how Mr Green reacted to your statements to that effect?---Yes. He got angry and raised his voice and walked out for some fresh air on the one occasion. The second occasion I did a tele-link from Canberra and this is hearsay but I was told when I did it to him that day he actually walked out of the meeting and skidded off in his car.

What, in apparent reaction to your statement?---To my statement, yes.

40 MR CHEN: Thank you, Commissioner.

I'm now showing you volume 3, page 128. Do you see that appears to be a signature of Richard Green?---It appears, yeah.

At any time that you were a board member was there any ever discussion by the board about giving Mr Green the authority to sign such an agreement? ---No.

Was there any ever discussion at any time you were a board member of delegating the authority of Mr Green to sign such an agreement?---No.

Was there any - - -?---Can I - - -

- - - discussion at any time between you and Mr Green or any other board member about an apparent agreement with Gows Heat Pty Limited?---No. Can I just say something else?

10 Sure.---Because I've been on a few boards and to me that role would be the CEO's role, not a board member. I would expect that the CEO would do that stuff for us, not one of the board.

THE COMMISSIONER: Sorry, just to be clear about it, the CEO would do what?---To investigate whether we have, whether we're going into any agreements or stuff and it would be the CEO who would present it to us, not another, another member of the board.

MR CHEN: Whilst you were a board member of the Land Council, had you
20 ever heard of an entity called Sunshine Property Investment Group Pty Limited?---No.

During your time as a board member were you aware of there being any agreements or proposed agreements between the Land Council and Sunshine Property Investment Groups involving Land Council land?
---No.

Were you aware of any agreements or proposed agreements whilst you were
30 a board member between the Land Council and Sunshine Property Investment Groups of any kind?---No.

In your time as a board member were you aware of any agreements or proposed agreements between the Land Council and an entity called Sunshine Warners Bay Pty Limited involving Land Council land?---No.

In your time as a board member were you aware of any agreement or proposed agreements of any kind between the Land Council and Sunshine Warners Bay Pty Limited?---No.

40 Is that the type of thing that if it had been raised with you, you'd remember?
---Yes. Like I said, I addressed it on two occasions about us selling land, not going before the members and also then calling for tenders not having just people bring names to the, to the board, to the board before it had to be released by tender.

Did Mr Green ever raise at any board meeting you attended the fact that he had executed agreements involving those entities?---No.

Did he ever raise with you that he'd signed agreements with those entities with you personally at any stage?---No.

Did Ms Dates ever raise that she had signed any such agreements at any board meeting you attended?---No.

Did she ever raise with you personally that she had signed such agreements with those entities?---No.

10 Again is that something you would have remembered if they told you?
---I would have, yes.

Have you ever heard of Solstice Property Corporation Pty Limited?
---No.

In your time as a board member were you aware of any proposed agreements between the Land Council and Solstice Property Corporation Pty Limited involving Land Council land?---No.

20 In your time as a board member were you aware of any proposed agreements of any kind between the Land Council and Solstice Property Corporation Ltd?---No.

Would you just have a look at folder 8, page 22 please, Ms Swan. Do you see there in front of you is a document described Heads of Agreement, General Heads of Agreement 19 November, 2015?---No.

Can you see it on the screen?---I can, yes.

30 And if you just look at the next page, folder 8, page - - -

THE COMMISSIONER: I'll give you those back. Thank you.

MR CHEN: There appears to be, it appears to be an agreement between Solstice, the Land Council and Gows Heat Pty Ltd.---Yeah.

I'll just show you the end of that document as well. Do you see there that that appears to have been signed by Ms Dates as chairperson - - -?---Yeah.

40 - - - and Mr Green as deputy chairperson?---Yeah, I can see that, yeah.

Had you ever seen that agreement before, have you ever seen that agreement before?---No.

Did Mr Green ever raise with you that he'd signed such an agreement?
---No.

Was it ever raised at any board meeting you attended?---Not that I can recall, no.

Is that something you would have recalled had it happened?---I think I would have recalled that, yes.

10 THE COMMISSIONER: As a board member if you were shown this agreement that's on the screen now which concerned the sale of land, Aboriginal Land Council land and you hadn't heard of it before, what if anything would you have done?---I would have said the same thing, was this presented to the members for this to happen and again we should be putting it out to tender because it should be a fair and equitable process that occurs and to my understanding that's what was supposed to happen, is that any land that we decided to sell that we put it out to tender, we didn't favour particular groups to put in proposals until a tender went out.

MR CHEN: Was there ever any discussion at any board meeting you attended about giving Mr Green the authority to execute that agreement? ---No.
20

What about Ms Dates?---No, not while I was on the board.

Was there ever any discussion at any board meeting you attended about delegating the authority to Mr Green to execute such an agreement?---No.

What about Ms Dates?---No.

Was there any discussion with you at any time you were a board member of a revised form of an agreement between the Land Council and Solstice Property Corporation Pty Ltd?---No, not that I can recall.
30

Again is it something if it had been raised you would recall?---Yes. Like I said before, there was two instances where they brought up no, no names, but they were only about the post office and the police station. It wasn't about any other land while I was on the board.

Is that a suitable time, Commissioner?

40 THE COMMISSIONER: Yes. We're going to take a luncheon adjournment so we'll resume at 2 o'clock.---Okay.

All right. You may step down. You're free to go.---Okay.

Yes, I'll adjourn until 2 o'clock.

LUNCHEON ADJOURNMENT

[12.58pm]