

SKYLINEPUB00417  
04/04/2018

SKYLINE  
pp 00417-00470

PUBLIC  
HEARING

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INDEPENDENT COMMISSION AGAINST CORRUPTION

THE HONOURABLE PETER HALL QC  
CHIEF COMMISSIONER

PUBLIC HEARING

OPERATION SKYLINE

Reference: Operation E17/0549

TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON WEDNESDAY 4 APRIL, 2018

AT 10.15AM

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

THE COMMISSIONER: Yes, Mr Chen.

MR CHEN: Commissioner, Mr Slee has unfortunately been delayed this morning and if it would suit you, Commissioner, I was proposing to call, so as to best utilise the time, Matthew Fisk.

THE COMMISSIONER: Yes, yes, I think we should use the time. We can interpose him. Very well, we'll proceed on that basis.

10 MR CHEN: Thank you, Commissioner.

THE COMMISSIONER: Just take a seat there for a moment, Mr Fisk.

MR MILLER: May it please you, Commissioner, my name is Miller and I seek leave to appear for Mr Fisk.

THE COMMISSIONER: Yes, Mr Miller, I grant leave. Mr Fisk, do you take an oath or an affirmation?

20 MR FISK: Oath is fine.

THE COMMISSIONER: Have an oath administered, thank you.

MR MILLER: And I'm sorry to interrupt, Commissioner, I should also say that Mr Fisk seeks a declaration under section 38.

THE COMMISSIONER: I'll deal with that as soon as he's sworn in, thank you.

THE COMMISSIONER: Mr Fisk, would you just state your full name?  
---Matthew Thomas Fisk.

Mr Fisk, I understand from what Mr Miller has said you'd like to give evidence subject to a section 38 declaration?---Yes.

- 10 Pursuant to section 38 of the Independent Commission Against Corruption Act, I declare that all answers given by Mr Fisk and all documents and things that may be produced by him in the course of his evidence are to be regarded as having been given on objection. In those circumstances there is no need for Mr Fisk to be given or make a particular objection to any question or answer or document or thing produced.

20 **PURSUANT TO SECTION 38 OF THE INDEPENDENT COMMISSION AGAINST CORRUPTION ACT, I DECLARE THAT ALL ANSWERS GIVEN BY MR FISK AND ALL DOCUMENTS AND THINGS THAT MAY BE PRODUCED BY HIM IN THE COURSE OF HIS EVIDENCE ARE TO BE REGARDED AS HAVING BEEN GIVEN ON OBJECTION. IN THOSE CIRCUMSTANCES THERE IS NO NEED FOR MR FISK TO BE GIVEN OR MAKE A PARTICULAR OBJECTION TO ANY QUESTION OR ANSWER OR DOCUMENT OR THING PRODUCED.**

- 30 THE COMMISSIONER: Yes.

MR CHEN: Thank you, Commissioner.

Mr Fisk, you're a property developer, are you?---Yes, correct.

And your background, well, I think your qualifications are you have a Bachelor of Commerce degree in Property Economics. Is that so?---Yes.

- 40 You're also a qualified property valuer, are you not?---Yes.

Are you currently employed by Luxeland, leaving aside the particular corporate entity?---Yes.

And with Luxeland you work as a property developer, do you not?---Yes.

What's the particular company that employs you in the Luxeland group?  
---It is Luxeland Development Group.

Are the directors of that company or is one of the directors Tony Zong?  
---Yes.

And is the other director, so far as you're aware, Dandan Ren?---Yes.

Are they the only two directors of that company?---Yes.

10 Approximately when did you start work for Luxeland?---I commenced working with Sunshine Property Investment Group in April 2015 which then became known as Luxeland approximately six to 12 months after.

I see. Now, I'll just touch on Sunshine. Sunshine is, or the company you were employed by was Sunshine Property Investment Group Pty Limited?  
---Yes.

And was the sole director of that company, so far as you're aware, Mr Tony Zong?---Yes.

20 And that was at all times that you were employed by that company?---Yes.

Now, Sunshine had an office, did it not, in Park Street in the city?---Yes.

The offices of Luxeland are at the same street address?---Yes.

Same level. Is that right?---Correct.

But a different suite, they're next door to each other?---No, it's, it is all one suite.

30 I see, so it's identical in every respect?---Identical, correct.

40 Could I just ask you some questions about what your duties as a property developer are? Can you tell the Commissioner generally what your role is in terms of property development now at Luxeland?---Generally my role is to identify property development opportunities. At the moment the group has a focus on residential, so I'm responsible for property acquisition, engaging the necessary development consultants, running the development approval process, engaging the necessary builders, and obviously running the sales and marketing campaigns for each project.

Was your job as a property developer the same kind of duties whilst at Sunshine as it is at Luxeland?---Identical.

And did that require you to work very closely with Mr Zong?---It did, yes.

You were, in effect, the principal adviser to Mr Zong, were you not?---Yes.

And you had a strong say in the business direction, I suppose, that the company would take or the projects it might take on?---Generally, yes.

You'd certainly be the one giving him detailed advice across a range of fields, as to whether you thought a development opportunity was good or bad?---Yes.

And I take it he had your trust and you had his?---Yes.

10 And generally speaking he would follow your advice and recommendations in terms of what was good and what was bad?---Yes. Yes.

And he adjusted the trajectory or direction of Sunshine and later Luxeland in that way?---Yes.

Now, Mr Fisk, I want to ask you some questions about a Warners Bay project which no doubt you're familiar with. Is that right?---Yes.

20 I want to ask you some questions initially about how it came about.---Sure.

So the property deal related to land in the Lake Macquarie-Newcastle area, did it not?---Correct.

How did it first come to your attention, a deal for that land?---So it was not long after joining Sunshine. Tony walked into my office and said that he'd met with some agents that he knew.

Did he identify who they were at that stage?---At that time, he didn't.

30 And what did he say?---He said that there's an opportunity for some land in Lake Macquarie. It's, it would be for a land subdivision. I said that I knew the area and we should check it out.

Did he identify at that stage who the vendors were or the owners of the land were?---Not specifically at that stage.

40 In any other less specific terms?---No. Not long after, once we obviously started to digest exactly what the opportunity was and I was asking questions obviously who the agents were and how the opportunity has come about, we then knew who the vendors were.

I'll come to that in a moment, but I just want to focus a little bit more on what else he might have said to you when he first raised this development opportunity. You've told him you knew the area and you thought it would be worthwhile checking out, is that right?---Yes.

Did you know at least a little bit more about the land before you would indicate that you'd want to check it out, in terms of its size or position?---I

think it was more broadly along the lines that there could be circa – I think the number was inflated that Tony had been given, that there was in the order of many hundreds, if not thousand-lot subdivision, the potential. And until I received more information, I let it lie. The information then soon became available quite quickly.

In any event, did Tony make contact with the agents again, so far as you understood it, to - - -?---I believe so.

10 And did in due course an inspection of the properties occur?---Yes.

Did he tell you at that stage, prior to you going to inspect the properties, who he was dealing with in terms of the agents?---Yes, he did.

And who did he tell you they were?---That it was an Aboriginal land council.

I see. Now, a site visit occurred, did it not?---Yes, it did.

20 And how long after the initial discussion you had with Mr Zong did that site visit occur approximately?---I would say it could have been within a fortnight.

Do you remember the date that you undertook the site visit?---Late May. I don't know specifically the date but it was late May.

2015?---2015.

30 Now, before you went to the site, did Mr Zong give you any other information about what it was that you were going to look at?---He did. Some information had been made available to him and it was effectively a quasi-brochure outlining the land or the various sites that were available.

I see. Do you recall reading that brochure?---I did. Yeah, I do.

I'll just bring it up on the screen if I can. Volume 3, page 40. Just have a look at this. It will come up on the screen. If you prefer to look at this in hard copy we can make it available.---No, that's okay. The screen is okay.

40 I'm sorry, it's actually 41. So volume 3, page 41. Is that the document you believe you were provided with?---That's the document.

And that's what Mr Zong provided to you prior to you going up to look at the property?---Correct.

I'm just going to ask you to have a look at the individual lots. If you look at please page 42 which will be turned over in a moment.---Yes.

You will see there's an address 14 Vermont Place, Warners Bay.---Yes.

That was one of the lots that you came to discuss when you had the site visit. Is that right?---Correct.

If you look at please page 43 you will see there's 291 Hillsborough Road, Warners Bay.---Yes.

10 That was the other one, another one?---Yes.

If you look please at page 44 you will see 295 Hillsborough Road, Warners Bay.---Yes.

That was another property that - - -?---That's the third, yes.

And if you look at the next page please, page 45, 110 Bayview Street, Warners Bay.---Yes.

20 That was another property you went to see was it?---That's another, yes. Correct.

Or certainly discussed?---Discussed, and we did make a site visit there.

I'll come to that, I will.---Yeah.

And the fifth property was 3/79 Clarence Road, Warners Bay. That might be Waratah that address.---It is. That's the incorrect address, yeah.

30 Yes. Is that also described as Braye Park?---It is. Correct.

I see. And sometimes in some of the material that's before the Commission it's referred to as Braye Park.---Is Braye Park. Correct.

So in fact the correct address is Waratah but sometimes it's called Braye Park?---Correct.

But that's the property that it refers to?---That is the property.

40 Thank you. Now, you went or drove up to the Newcastle area with Mr Zong for this site visit did you not?---Yes, I did.

And did some others accompany you in the vehicle on that day?---Yes. Correct.

Who were they?---They were the agents I think.

Who were they?--- Keith Rhee and Sammy Sayed.

And had you met either of those two before that day?---Never.

Whose agents did you understand those gentlemen to be?---I understood those to be the Aboriginal Land Council's agents.

Did they say that or you just assumed that?---I can't recall them saying it but I'd assumed that that's who.

10 Did Mr Zong tell you that he knew Mr Rhee?---Yes, he did.

And what did he say was the connection between Mr Rhee and himself?  
---That he was, he'd been a friend of Keith's.

And did Mr Zong tell you that Mr Rhee had in fact contacted him about this deal?---Yes.

Did he say anything else about - - -?---No, nothing.

20 What about Mr, did you say Sayed?---Sayed, yes.

Did Mr Zong indicate that he knew Mr Sayed?---I don't recall.

Anyway, you knew nothing of their background other than what Mr Zong had told you. Is that right?---Correct.

Now, you actually had arranged to meet not at any particular site but at the McDonald's restaurant at Warners Bay isn't that so?---Correct.

30 And so the four of you drove up together to the Warners Bay McDonald's restaurant on Hillsborough Road?---Yes. Correct.

And did you go inside the restaurant?---Yes, we did.

And when you went inside – I withdraw that. On the way up were you told that you'd be meeting certain people?---Yes, we did. We were told that we would be meeting someone from the Aboriginal Land Council and the lawyer representing the land council.

40 And who told you that?---It would have been either Keith or Sammy but I can't exactly recall which one.

So you've gone into the McDonald's restaurant.---Yes.

And did you meet some people inside the restaurant then?---I did. I met, there were three people there. There was a chap who introduced himself as Richard Green who said he was the deputy chair of the Awabakal Aboriginal Land Council.



And who else?---There was a chap called Nick, a chap introduced himself as Nick Petroulias.

Right.---And I understood that it was also Nick had his daughter with him.

I see.---Who would have been maybe 3 to 5 years of age.

They were sitting together at a table, were they?---I think we got there first from memory and they came in soon after.

10

Did they appear to arrive together, that is they walked in together to you? ---I can't recall them specifically walking in as if they'd come in together, but I know that they both left in separate cars.

I see. Did they, in the discussion that you had with them, appear to know each other?---Absolutely, yes.

When you say absolutely, what led you to that view?---Oh, the way that they were speaking, they certainly had known each other for some time.

20

I see. And you said that they left in separate cars, did you?--- Yes.

I see. Now, when you went there, Richard introduced himself, as you said, as the deputy chair of the Land Council. Did Mr Petroulias indicate why he was there?---He, and again I can't recall if it was specifically Nick, but it was either Keith or Sammy had said that he was the lawyer acting for the Awabakal Aboriginal Land Council and I thought it was adding a bit of genuine authority to the potential deal.

30 When this was said that Mr Petroulias was the lawyer for the Land Council, were you all sitting at a table?---Yes.

And present were yourself?---Yes.

Mr Zong?---Yes.

Mr Rhee?---Yes.

Mr Say?---Yes.

40

Mr Petroulias?---(No Audible Reply)

And you need to answer, I'm sorry.---Yes.

There was a nod.---Sorry.

And somebody who you believe was Mr Petroulias's daughter.---Yes.

And whilst you were sitting and Mr, or somebody introduced Mr Petroulias in that capacity, is that when Mr Green indicated that he was the deputy chair of the Aboriginal Land Council?---Yes.

What was the discussion thereafter in terms of what you were there to talk about and see after these introductions?---The whole intent of meeting at McDonald's was to have an introduction to effectively meet and greet. We spoke very high level about the various opportunities and we then proceeded to go on a site inspection of each of the five sites.

10

Was the fact that you had that brochure beforehand gave you a little bit of background that enabled you to talk very briefly initially when you met with them or - - -?---The only information I took from the brochure were the aerial photographs, the location maps.

20

Was there any discussion at all whilst you were still at McDonald's about how it came to be that the Land Council had ownership of these particular lots?---I can't recall if it was specifically at the McDonald's or out during a site inspection, but we were told that the Land Council had been made, had made a native title claim and had been successful in that.

Do you know who said that?---Richard Green.

30

And did Mr Green say anything else about why these lots were being or why you were being introduced to the site?---I was, or we were told at the time that the Land Council had recently secured a successful claim over the Newcastle Post Office and they were looking at selling these sites in order to use that money gained from the sale to upgrade and repair what I believed to be was a building in quite disrepair, being the Newcastle Post Office.

Did Mr Green say anything about his involvement in pursuing the native title claims for these five lots that you were to inspect, or not?---He spoke with authority and I certainly had the impression that he was active person in taking charge of the native title claim itself.

Now, was there anything else that was discussed at the McDonald's restaurant prior to you going off to visit the individual lots other than perhaps identifying which lot you'd go to first?---Not that I recall.

40

So you then proceeded with Mr Zong and Mr Rhee and Mr Say - - -?  
---Yes.

- - - in Mr Zong's car to drive to all of the lots, you say?---Yes, we did, yeah.

And did Mr Green travel with Mr Petroulias or did they travel separately to each lot?---I believe they travelled separately.

So aside from the brochure, did you have available to you any other information about the sites by the time you undertook the site inspection in late May 2017?---No.

'15, I'm sorry.---It was only the brochure that you showed on the screen.

Did you take any photos while you were at the site or did – I'm sorry, did you take any photos at the site?---I don't think so.

10 Did Mr Zong, so far as you're aware, take photos?---Possibly.

Just pardon me for a moment. So you went to each of the five sites, did you not?---Yes.

And you're familiar with, obviously, the sites now because an agreement had been signed.---Yes.

20 Do you remember which ones you spent the most time at or was it equal?  
---We probably spent slightly more time at the larger site on Hillsborough Road, immediately adjacent to the golf course.

Do you mean on the opposite side of the road? Is that when you said adjacent?---Sorry, no, no. The larger site on Hillsborough Road was immediately surrounding Charlestown Golf Course.

I see. Now, and there was another property on Hillsborough Road that was on the other side of the road of the golf course, was there not?---Correct. Correct.

30 And you inspected that?---We inspected that as well.

And that ultimately became part of the agreements that were signed?  
---Correct.

Now, did the five of you go to each site together?---Yeah.

40 And was there some discussion at the Waratah or Braye Park site about Mr Petroulias having a larger interest rather than just being the lawyer for the Land Council?---Yes. Braye Park was the last site that we visited in Newcastle and it was at that point in time that we were made aware that Mr Petroulias had already effectively put the deal together.

Now, he spoke in those terms, did he?---Yes.

And were the five of you standing around while he said that?---I believe so.

And what did he say? Using if you can, as close as you can, words to the effect.---I believe it was Sammy Say that had used words to the effect that

“Nick has already put the deal together.” And then Nick proceeded with he already has an option to acquire these five parcels of land, and it would be in fact us taking out Nick’s position or acquiring Nick’s option moving forward.

And Mr Green was certainly present at this time, was he?---Yes.

And he didn't dissent from that proposition, did he, that - - -?---Yes.

10 He agreed that that was the case?---Yes. I, yes.

THE COMMISSIONER: Sorry, who did you say advanced that proposition?---Mr Green was there so he, he, he certainly heard that, the statement.

MR CHEN: I think the earlier one, Commissioner, was Mr Petroulias.

THE COMMISSIONER: Yes, thank you.

20 MR CHEN: Just so it’s clear, initially Mr Say mentioned something about Mr Petroulias having an interest in the land or something to that effect? ---Yes. Yes.

And thereafter Mr Petroulias added his voice and said that he actually had an option over the land?---Correct.

And Mr Green was present at this stage as well?---Yes.

30 Did that strike you at that time as being somewhat unusual, that the lawyer for the Land Council would also have an option to buy the land from the Land Council?---It did.

What did you make of it?---I thought it was quite unusual, particularly that the purchase – when I asked what the purchase price was, I was told that it was to be subject to valuation.

Why is that unusual in your experience?---Typically a purchase price would usually be, would form part of an option agreement.

40 Right. A fixed price, you mean?---A fixed price that’s pre-agreed.

I see. I'll come to some discussions along those lines a little bit later. Was there any other discussion about the nature of what Sunshine would be doing other than buying out the interest, I think is what you said, of Mr Petroulias? Was there any discussion about how you would take the deal forward if at all?---If at all, given the uncertain nature of a rezoning, given that the land was not zoned for residential purposes, my view was always

that we would need a lengthy due diligence period to investigate the likely chance of a rezoning.

I just want to take you back just a step. I apologise, Mr Fisk. I think what you said earlier in evidence is that Mr Petroulias indicated that he had an option over the land.---Yes.

And that that interest would need to be bought out. Is that what you said?  
---Correct.

10

What did he say? Using as best you can words to the effect.

MR PETROULIAS: Sorry, the evidence, the evidence was that Sam Say said that there was an option, not that I said it.

THE COMMISSIONER: Just a moment, Mr Petroulias. I'm going to allow that last question.

20

THE WITNESS: During the site inspection there was never any discussion about what, what the cost would be to effectively buy out Nick Petroulias's position.

MR CHEN: Was it raised that you would need to do that, that you would need to buy that out, or not?---Knowing that he already had a position on the land, it was assumed that we would need to.

Did he say anything to that effect during the course of the site visits that you had?---Not that I can recall.

30

That's what transpired, though, didn't it?---It did.

Now, after you'd finished viewing the five sites, was there any final discussion about how, if at all, a deal would be moved forward?---We said that obviously we'd need the due diligence period and we would need to undertake a valuation of the property to determine what the market value is.

And this was all in the presence of Mr Green?---Yes.

40

Mr Petroulias?---Yes.

Mr Say?---Yes.

And Mr Rhee?---Yes.

I see. Did you have a subsequent meeting at all, prior to this deal being documented, with Mr Petroulias at all?---I don't recall personally being in a meeting with Mr Petroulias.

So far as you're aware, did Mr Zong have a meeting with Mr Petroulias?  
---Quite possibly.

Why do you say that?---I can recall that there were some meetings, and again I can't exactly recall at what point in time these were in the, during the transaction. But there were a meeting with Mr Petroulias, Mr Rhee and Mr Say, which I did not attend.

10 I see. And this is obviously in the period after the site visit?---Correct.

But before there was an agreement signed - - -?---Correct.

- - - between Sunshine, the Land Council and Gows Heat?---Correct.

Now, was there any other discussion that you were involved in involving Mr Petroulias where he identified what his interest was in these five sites that you visited?---Not that I can recall.

20 After Mr Green and Mr Petroulias left at this site visit, did you have any further discussions with Mr Rhee and Mr Say and Mr Zong about how any proposed deal would move forward?---Yes.

And what was the nature of the deal that you had in mind longer term first up following the discussions and the site visit you had?---Following that we took a view that if the site could be acquired and subject to a satisfactory rezoning, then it would represent a suitable development site.

30 And did you have some discussions with Mr Rhee and Mr Sayed about how such a deal could move forward - - -?---Yes.

- - - in the short term?---Yes.

And what was the discussion you had, and I take it this is immediately, sorry, still at the site?---Yes.

40 What was the discussion you had with them?---It was all, from my point of view it was something that we wanted to, I wanted to certainly keep it as straightforward as could be therefore requesting a lengthy DD period or due diligence period so we could investigate obviously what potential the site has. So our thinking was the due diligence period over a number of months and instructing a valuer to determine what the market value is.

And did Mr Rhee or Mr Sayed indicate anything in return once you'd had this discussion about how the deal could be moved forward?---No. They understood our position.

I see. Now, ultimately a document was prepared by you was it not that represented in essential terms a due diligence period - - -?---Correct.

- - - with an option to get it rezoned?---Yes.

As well as the payment of a sum of money?---Yes.

I'll come to that in a moment but you know that agreement was dated 30 June, 2015?---Yes.

10 And that was signed by Mr Zong was it not?---Yes, it was.

That's a simple enough document as you described it that you probably prepared on many occasions prior to that time?---Absolutely.

And it's fairly standard is it?---It's industry standard.

20 Now, before you signed that agreement – some material is just going to come up on the screen in a moment, Mr Fisk. So it's volume 3, page 121 and I'm just going to have, in fact go to 122 first so you see where this email has come from. I apologise. Could we just show you perhaps at the bottom of 121 and you will see there's an email from admin@knightsbridgenorthlawyers.com - - -?---Yes.

- - - dated 29 June, 2015 at 1.37pm to keithrhee@gmail.com.---Yes.

Sent at 1.37pm on 29 June, 2015.---Yes.

And if you just go to the next page please you will see it says "attached is the current HOA with Gows".---Yes.

30 Et cetera. And you will see it's signed off as NP.---Yes.

If we could just go back to 121 please. You will see that that's sent by Keith Rhee to tony@sunshineinterior.com.---Yes.

Tony Zong had in addition to Sunshine Property Investments and company called Sunshine Interior did he not?---Yes, he does.

And that's an email address that he used at that time?---Correct.

40 And you will see as well that he, if you look above, forwarded that on to you at about 2.21pm.---Yes.

And attached to that were heads of agreement were they not?---Yes, they were. Correct.

And if you just have a look please at page 123 you will see that on the screen is Heads of Agreement, General Heads of Agreement dated 15 December, 2014.---Yes.

And if you look at page 124 you will see that that agreement is between Gows Heat and the Land Council.---Correct.

And I take it you read that document?---Yes.

And you understood did you from it that an option had been created or in substance that permitted Gows Heat to purchase land that had been identified in the agreement?---Absolutely. Correct.

10

And if you look at page 128 please you will see that that was signed by Richard Green.---Yes.

That being the person you met at McDonald's on the site visit.---Yes.

And if you turn please to page 129 you will see there that they're the five properties that you inspected.---Yes.

20

What did you think when you received this document, Mr Fisk?---Our view is look, clearly Gows Heat had entered into a heads of agreement with the Awabakal Aboriginal Land Council and that a deal did exist.

Was it consistent or inconsistent with what you'd been told on-site?---That was, that was consistent with what we had been told.

Did you rely upon this document in moving the deal forward?---Yes.

30

Did you give Mr Zong advice based on the fact that you'd received this document?---Yes.

That it purported to be a genuine and authentic document?---Yes.

You had no reason to think otherwise?---Absolutely not.

And had it been perhaps brought to your attention that the document was not a genuine transaction at all, I take it, what, you wouldn't have proceeded?---Correct.

40

You would have told Mr Zong that it was not a - - -?---That we would, not to proceed with the opportunity.

I'm sorry, that's just come down. You would have seen the document before, but did you see a reference to Knightsbridge North Lawyers?---Yes.

And had you heard of that firm before the time that you received that email?---I had never heard of Knightsbridge North Lawyers.



And if you just have a look at the email trail, please, that leads up to it, you'll see that NP had signed off the email which is at page 122.---Yes. Yes.

Did you read that when it came in?---Yes.

And what did you take from that when you received that email?---That that was from Nick Petroulias.

10 I see. Did you think that there was a relationship between him and the firm?---Yes.

Did you think that at the time?---Yes.

Now, Mr Fisk, would you be good enough just to have a look, please, at volume 3, page 139. Do you recognise that as a letter that you – I withdraw that – that was sent by Mr Zong to Sammy Say?---Yes.

Did you draft that letter?---Yes.

20

And Mr Zong read and approved it, did he?---Correct.

And signed it.---Signed it, yes.

I see. Is that the standard way that your business works, that you would do a lot of the documentation and he would approve it and issue it?---Given I hadn't been with Sunshine for long, this was the first offer document that I prepared. So this was, so generally, yes, I would prepare the documentation with a view that Tony would read it and approve it.

30

Why was it being sent to Mr Say at Burwood Partners?---They were, I was told that they were the agents acting for the Awabakal Aboriginal Land Council.

I see. Was there – sorry, you were told that, were you?---Yes.

And who told you that?---Both Tony Zong and also Keith Rhee and Sammy Say.

40 Was that raised during the site visit or at the meeting at McDonald's beforehand?---It was certainly raised on the way to the site visit.

In the car?---Yes.

Was there any discussions involving Mr Green that included a discussion about Mr Say and Mr Rhee being the agents of the Land Council, so far as you can recall?---Yes.

Where do you think that occurred?---Again, just from, from my questioning, trying to get a better understanding of what the deal was and who the people were involved.

So whether it's at the site visit or at McDonald's, it was certainly on the day?---Absolutely.

No doubt about it?---No doubt about it.

10 So could we just have a look at the next page, please. So that's volume 3, page 140. You recognise that as the cover sheet of the proposal that you drafted?---Yes. Yes.

And if you turn to the next page, please. Do you recognise – and the next page.---Yes, I do. I recognise that.

So, to 142.---Yes.

20 And that was signed by Mr Zong and attached to the letter was it?---Yes.

Mr Fisk, you will see that within a day of receiving the email that attached the Gows heads, I'm sorry, Gows Heat heads of agreement this offer had issued. You recognise the dates obviously. The Gows Heat heads of agreement email was dated 29 June, 2015.---Yes.

And this offer is issued the next day?---(No Audible Reply)

You just need to answer that.---Sure. Yes.

30 Was there some discussion between you and Mr Zong about requiring production of some proof?---Yes.

Could you just explain to the Commission what that conversation was and when that took place?---The conversation would have taken place after the site inspection and my position would have been that if it was purported that Nick Petroulias had already struck a deal with the Awabakal Aboriginal Land Council then we'd obviously need to see that documentation in order to move forward.

40 Did you have a role in requesting that?---Yes.

And do you know who you requested it from?---I, sorry, I would have told that to Tony Zong and Tony Zong would have then requested that from either Mr Sayed or Mr Rhee.

And that was so far as you were concerned a condition for the deal going forward?---Yes.

Would you have a look please, Mr Fisk, at volume 3, page 150 which will come up on the screen. You will see that's the cover page of the, call it acquisition proposal between Sunshine and the Land Council dated 30 June, 2015.---Yes.

And if you look at the next page, sorry, if you could go to page 152 you will see that that document was signed by or appears to be signed by Mr Green.  
---Correct.

10 Do you recall receiving that document?---I do.

Do you recall ever seeing an original signature on - - -?---I don't recall ever receiving an original document.

Do you know how that came to you, was it by email or something else?  
---Via email to Tony Zong.

I see. Would you have a look please at another document dated 8 July, 2015 which is volume 3, page 146. Again the cover sheet appears to be the same  
20 as the two earlier agreements I've shown you. I'm going to draw your attention to paragraph 5 in a moment but if you just have a look at the next page please which is 148. You will see that that's been signed by, or appears to be signed by Despina Bakis - - -?---Yes.

- - - solicitor for Awabakal and Mr Zong and you will see the date is different. It's been put in as 8 July, 2015.---Yes.

Did you ever receive or see a copy of that agreement?---Yes.

30 You did. Do you know, and I can show you what appears to be the differences, but do you understand now what the differences between the first two iterations of that document are compared to this one?---I believe it was to do with the, the \$50,000 deposit.

And what's the difference so far as you can recall?---The original was 50,000, it was more a \$50,000 deposit in good faith. It would have been applied towards the purchase price but I think they came back and wanted that to be paid in part towards agents commission, legal fees and the like.

40 Just turn back a page to 149 and you will see there, just have a read to yourself for the moment, Mr Fisk, deposit, point 5.---Ah hmm.

That's consistent with what I think you - - -?---Yes, that's right.

But so far as you're aware, \$50,000 was payable – sorry, was paid to the solicitor's trust account, namely Knightsbridge North Lawyers?---That's correct.

And it was paid at the commencement of the exclusive due diligence period, was it not?---Correct.

And the \$50,000 – sorry, I withdraw that. Sunshine at no stage elected not to proceed with the acquisition, did it?---No.

It wanted at all times to proceed with it.---Correct.

10 So far as you're aware, was the money ever refunded to you?---No.

Or to Sunshine?---No.

Or to Mr Zong?---No.

Now, following the execution of this agreement, the due diligence period commenced. Is that right?---Yes.

20 And that required Sunshine, and principally you as the property developer, to engage experts to assist you in investigating whether it was feasible to proceed?---Yes.

And what you did was engage a firm called Monteath & Powys, did you not?---Correct.

And they are a well-known integrated planning, surveying, engineering consultancy firm in Newcastle, are they not?---Correct.

30 And in general terms what did you and Sunshine retain Monteath & Powys to do, in simple terms, in the due diligence period?---In simple, during the due diligence period we engaged them just to prepare a high-level overview, really an opportunities and constraints-type report, really to determine if there was a strong likelihood of securing rezoning.

Did they ultimately provide you with a report?---Yes.

And did that report become available to you in about mid-to-late September 2015?---Yes.

40 In this period Sunshine and Mr Zong expended quite a lot of money in retaining experts to investigate the feasibility of moving ahead, did he not? ---Yes.

Experts such as Monteath & Powys?---Yes.

Your own time?---Yes.

His own time?---Yes.

Was there any other expenses in that period that were incurred, so far as you're aware, that have now been lost?---Significant funds.

I'm going to make a distinction later in the evidence between monies that were expended after the heads of agreement were signed.---Sure.

But I just want to focus, if I can, on the period of what monies were expended following entry into the 30 June or 8 July, 2015 agreement. Do you understand I'm making that distinction?---Yes, yes.

10

Aside from Monteath & Powys and your own time and Mr Zong's own time, what other monies were expended by or on behalf of Sunshine and Mr Zong?---During that DD period, I can't – Monteath & Powys was the largest cost during that process.

And those accounts have been paid, have they not?---Yes. I, I, I believe so.

You've got no reason to think otherwise?---I have no reason to believe otherwise.

20

And approximately how much money was expended by Mr Zong to pay for Monteath & Powys in the due diligence period?---From memory I believe it was around 15 to \$20,000.

And in terms of your time, how much time did you spend on the project in the due diligence period?---During the due diligence period I probably would have spent a number of weeks full-time on the project.

30

I see. Now, do you recall that at some point in the due diligence period Mr Zong coming to speak to you about an aspect or possibly release of some of the deposit, namely the \$50,000?---There was the discussion that, to release part of the \$50,000.

Did he speak to you about that?---Yes, he did.

40

And what did he say to you?---He said to me that Richard Green had told him that the Awabakal Aboriginal Land Council were looking at sending a football team to Dubbo, I believe, and they were short of funds and would Tony be prepared to transfer \$2,000 that was held in trust to be either allocated to its football jumpers and/or travel and accommodation.

And what did you say to Mr Zong when this request had been made?--- Given that the \$2,000 was coming out of the 50,000 that was sitting in trust, our view, as a sign of good faith, we decided to release \$2,000.

Did Mr Zong indicate to you what he was proposing to do thereafter in terms of releasing the \$2,000, did he say he would do it or not?---Yes he did, he said he would do it.

Now, did you on behalf of Mr Zong, retain the valuer's?---Yes.

And were they called Diamond Valuer's?---Yes.

Did you receive a number of - I'll withdraw that. Did you receive valuations of each of the five properties?---Yes.

10 So just going back to some of the expenses in the due diligence period following the execution of the acquisition proposal.---Yes.

These were expenses as well that were borne by Mr Zong were they not? ---Yes, yes.

Do you know how much each of the valuations approximately cost?---In total \$30,000.

20 I'm just going to show you on the screen Mr Fisk, Volume 3 page 228. I'll just show you the entire chain Mr Fisk so you can understand how this valuation comes to you. So I'm at page 229 of Volume 3 you'll see there's an email from Stuart Rowan from Diamonds Property Consultancy Pty Limited?---Yes.

He sends the five draft valuation reports to Sammy Say?---Yes.

Mr Say, sorry on 15 September, 2015.---Yes.

30 Mr Say then forwards that onto Keith Rhee on the same day at 8.34pm. ---Yes.

As we scroll up a bit further, it's then sent to Nick at admin@knightsbridgenorthlawyers.com. ---Yes.

If we scroll up a bit further back to page 228, that's been forwarded to Nick from Mr Rhee at 5.57am on 16 September.---Yes.

It's then forwarded to Mr Zong at the email address that he used.---Yes.

40 That's come to you then at 16 September, 12.36pm via Mr Zong.---Yes.

Do you remember receiving these?---I do.

And reading them?---Yes.

You were a valuer, a registered valuer at the time.---Yes.

Did you have a view as to whether the valuations were, I'm not sure how you'd describe it as a valuer whether they were reliable or inflated or what

your position was?---As a valuer I saw that they were market value, as a developer I thought they were slightly above where I would perceive market value to be but in the scheme of things, it was negligible.

Did you have a feel, at that stage, as to what you thought the properties were worth?---I thought they were probably worth about \$10 million collectively.

Did you have a discussion with Mr Zong about that you thought may be the valuations might be slightly higher than what you'd expected?---Yes.

10

Did you tell him as much?---Yes, I did.

And did you tell him what you thought was a reasonable market value in your opinion?---Yes.

I might just show you the valuation reports just for completeness Mr - you certainly remember receiving the five do you?---I do.

Do you remember they were attached this email?---Yes.

20

You're welcome to look at them but you have no doubt they were the five individual properties?---That's right.

Now after the valuations were received was there a meeting arranged between Mr Rhee, Sammy Say, Mr Zong and yourself?---Yes.

What was the purpose of that meeting?---Predominately to talk about the valuations - - -

30 And price?---And price.

Because the term of the acquisition proposal was to be fixed via whatever the valuations were?---Correct.

What was the discussion that was had at the meeting, in general terms, and I'll ask you who said what in a moment, what was the general discussion about when you had this meeting with Mr Say, Mr Rhee, Mr Zong, following receipt of the valuations?---The general discussion was along the lines, and I've had a fairly robust conversation with Stuart Rowan from  
40 Diamonds Valuations so I knew that he was fixed with his valuation of \$12.6 million collectively. So it was up to us to then look at, I thought of a different way of keeping the headline price but slightly changing the deal to be part cash in kind, which was part cash or 50% cash and 50% land to be given to the Awabakal Aboriginal Land Council upon registered.

The purpose of that being in real terms to lower the price - - -?---Correct.

- - - and costs for Sunshine?---Correct.

Now, did you speak to Mr Rhee and Mr Sayed in essentially those terms?  
---Yes.

Did either of them respond at all about whether or not a headline price was not negotiable or whether payment in some other form would be acceptable?---No, they thought that would be acceptable and they could see the merits of actually giving land back to the Awabakal Aboriginal Land Council if they intended to build houses or whatnot for their members.

10

Who was the individual, either Mr Rhee or Mr Sayed, who responded?  
---Mr Rhee.

And can you use as best you can what he said in words to the effect?  
---Words to the effect that that sounds fine. I'll go and have a chat to Nick about it, Nick Petroulias.

Is that essentially what was discussed at that meeting?---Yes.

20 Was there anything else about price or moving forward or anything else?  
---Price was the, would have been the main driver of that meeting.

Following the meeting did Mr Zong get back in touch with you about a development in that respect, about what had occurred after that meeting?  
---Yes. Yes, Mr Zong came back - - -

Do you remember when that was, now long after that meeting?---It would have been within a matter, a day or days.

30 What did Mr Zong tell you?---That the revised payment structure was acceptable to the Awabakal Aboriginal Land Council.

Did he say who he had spoken to?---He didn't but I had assumed that it was either Keith Rhee or Sammy Sayed.

And what was the revised way that the deal would be going forward in terms of payment, what was the proposal that was apparently acceptable to the Land Council?---It was that blend of part cash and part land.

40 And what was specifically do you recall the land component of the offer?  
---The land component would have been registered blocks of land with, we had always talked generically about it being from the larger parcel of land adjacent to Charlestown Golf Course, so the Hillsborough Road parcel but there was nothing specific about what exactly the specific location where they could have chosen to have taken that, that land.

In this discussion you had with Mr Zong did he indicate to you at all that he had spoken to Mr Petroulias?---I can't recall.



Did Mr Zong then speak to you about whether he thought that going forward on that basis was reasonable and should be pursued?---Yes.

What was the discussion that you had with Mr Zong at that time?---Was that it was time to obviously, if the headline, if the purchase structure had been agreed then it was time to engage lawyers to document the deal.

10 Do you remember, I'm just going to try and put some time on this. The due diligence period was to expire within 90 days.---Yes.

The end of September I think is roughly when it should expire. Is that right?---Yes.

Do you remember just prior to that Mr Zong telling you to do something in terms of renewing an offer?---The, we would have resubmitted a revised heads of agreement that would have clearly outlined the proposed structure.

20 I'm just going to show you a document, Mr Fisk, on the screen. So volume 4, page 129 and you will see there that the title page is the same but for the date 21 September, 2015. Do you see that?---Yes.

And if you have a look at the next page you will see then, I just want to draw your attention specifically really to item 2, purchase price.---Yes.

And does that reflect the substance of what was discussed with Mr Rhee and Mr Sayed?---Yes, that does.

30 And what Mr Zong had relayed to you was acceptable?---Yes.

You'll see as well that a deposit was required.---Yes.

Is 10 per cent fairly standard?---Yes.

And there's an adjustment of the amount because of the fact that 50 but really 48 had been paid.---Yes.

40 And the 2,000 that had come off was because of the contribution to Mr Green and the football team.---Yes.

And thereafter it required a deposit of just over \$1 million.---Yes.

Now, would you just look at the next page, please. And do you recall Mr Zong signing that?---Yes.

And you drafted that document, did you not?---Yes.

But at that stage you realised, did you, that it's come to the pointy end of the transaction and you needed lawyers?---That's right.

And that's to properly document the agreement?---Yes.

I see. Was that offer then submitted in those terms, Mr Fisk?---Yes.

And who did you send that offer to?---To either Keith Rhee or Sammy Say.

10 I should have asked you, did you send it or did Mr Zong send it?---I believed Mr Zong sent that.

Was there a letter that accompanied that as well, do you recall?---I don't believe so.

In any event you spoke to Mr Zong about that?---Yes.

And that reflected his instructions to you?---Yes.

20 And you've got no reason to think it wasn't submitted?---No.

Now, Mr Monteath was the principal of the firm Monteath & Powys, was he not?---Yes.

And as part of the, and during the due diligence period did he discover that there was some adjacent land that had apparently been the subject of native title claims?---Yes, he did.

30 Did he speak to you about that?---Yes, he did.

Did he notify you that was the case?---Yes.

And he's undertaken some searches of the surrounding land?---Yes.

And were you aware that in fact the Land Council had made, in fact, native title claims over land adjacent to particular lots?---Yes.

Do you remember which lots they were?---Not specific lots per se.

40 I'll just show you a document. So it's volume 4, page 111. Do you see that as an email from Mr Monteath to you on 12 October, 2015, at 2.12pm?---Yes.

And you remember receiving that?---Yes.

And based on the information contained in that email, did you have a conversation with Mr Zong?---Yes.

And what did you tell Mr Zong about what Mr Monteath had advised you?  
---Something along the lines that there was potentially additional land there  
and we should try and secure that if we can.

How do you secure that as a developer?---By way of option.

I see. Did you tell him, in effect, that he needed to try and acquire a right of  
first refusal or something to that effect?---Correct. Something to that effect.

10 Did Mr Zong tell you that he was going to do something?---Yes, he said that  
he would be in touch with Keith, Mr Say or Mr Rhee.

Did he indicate that he was going to speak to Mr Petroulias at all or not?  
---Possibly. I can't recall.

Did he in time tell you that he had spoken to somebody about what Mr  
Monteath had told you?---Yes.

20 And did he tell you who he spoke to?---I can't recall specifically who he'd  
spoken to.

What did Mr Zong tell you that he had done?---Mr Zong told me that, that  
in fact the email from Rob Monteath was correct, that a native title claim  
was in process over some adjacent land, and that the Land Council would be  
willing to provide a first right of refusal over that land should they be  
successful in concluding that claim.

30 And he didn't tell you who he had spoken to?---I can't recall who he spoke  
to.

I'll just show you another document, please, Mr Fisk. So it's volume 4,  
page 74. Do you recognise – I'll withdraw that. You'll see in front of you  
there's a document described as Right of First Refusal, General Heads of  
Agreement, 2 October, 2015.---Yes.

Have you seen that document before?---Yes.

40 Just have a look at the next pages if you would please. You'll see that that's  
a proposed agreement between the Land Council and Sunshine Property  
Investment Group?---Yes.

And if you look, in particular, the recitals a) talks about entering into heads  
of agreement and b) the parties seek the documents the right of first refusal  
of over adjoining properties et cetera.---Yes.

That's all consistent with what Mr Zong had told you.---That is.

Do you recall - I'll withdraw that. I should show you the rest of this document I'm sorry Mr Fisk. If you pause there, you'll see that there's an option fee of \$50,000?---Yes.

Was that something that was discussed or did Mr Zong tell you?---Mr Zong told me that that was the figured that was required in order to enter into the First Right of Refusal.

Just keep scrolling down, that's unexecuted as you can see.---Yes.

10

Did you ever see an executed version of that?---I don't recall an executed, seeing an executed.

Do you know how that came to be in your possession or for you to see it?  
---Mr Zong would have passed that onto me.

I see. You saw from the title page in any event that it was not prepared by lawyers you had retained.---Correct.

20

It was prepared by Knightsbridge North Lawyers.---Correct.

That Right of First Refusal, the date that appears on that document, is that consistent with your recollection of about the time that you had these discussions with Mr Zong?---Yes.

So the timing of the conversation of the date of that document is consistent in your mind.---It is.

30

Are you aware about whether anything developed in relation to the Right of First Refusal contained in that document?---I understand that the \$50,000 was paid by Mr Zong to secure that.

But you know nothing about whether the document was actually executed?  
---I've never seen an executed copy of that document.

You believe that it's been performed at least by Mr Zong?---Yes.

40

Did he seek your advice, at all, as to whether he should enter into that agreement?---Only with respect to if it was worth us seeking to enter, only if it was worth us trying to secure that land, not specifically advice about that document per se.

Did you give him advice that it would be worthwhile endeavouring to secure that land?---Yes.

And was that built on your understanding of the rights that you had secured under the Acquisition Proposal?---Yes.

As well as the Gows Heat Agreement and matters of that kind?---Yes.

Pardon me Commissioner. Are you aware that ultimately heads of agreement were entered into between Sunshine and the Land Council in late October, 2015?---Yes.

I think you were overseas when it was signed in Fiji?---Correct.

10 Did you understand that Right of First Refusal that's referred to in the document that I drew your attention to actually came or formed part of that agreement or are you not aware?---I became aware after the event.

I see. In effect then, there was one agreement that dealt with the five properties that you went to or five lots you went to inspect?---Yes.

As well as the Right of First Refusal referred to in the draft agreement that I drew your attention to that?---Yes.

20 Now, at some point prior to - I withdraw that. Ultimately, because you realised this transaction needed to be documented, did you seek the assistance through Mr Zong of a lawyer?---Yes.

And who was the firm that you sought advice from?---I said something along the lines that we needed to make sure this deal was documented properly. He said he knew a lawyer, a chap by the name of Marty Perry from BCP Lawyers, and Tony got in touch with Marty to, to meet and discuss.

30 And a specific lawyer at that firm, Mr Driscoll, then proceeded to assist you in trying to document the transaction.---That's right. That's right.

Now, I want to ask you just about the period before then. Prior to going to see BCP Lawyers or seeking their advice, did Mr Zong give you a document that purported to be a resolution?---(No Audible Reply)

You need to answer, I'm sorry.---Yes.

Do you remember when that was?---That was, I don't recall a specific date.

40 And in terms of timing, was it before - - -?---It was prior, oh, sorry.

I was going to say, was it before you first consulted BCP Lawyers to try and document this agreement?---I can't recall specifically.

It was certainly before you or Mr Zong signed the agreement, was it not?  
---Yes.

And working backwards from when you were away in Fiji, was it weeks before that, days before that, or what's the position?---More likely days before.

Do you remember what the resolution said?---The resolution was to the effect that the Awabakal Aboriginal Land Council had already granted Gows Heat consent, or the board had made a resolution to effectively sell the land.

10 And who gave you that?---Mr Zong gave me a hard copy of that.

Did he tell you where he got it from?---I believe he – it was either Keith Rhee or Sammy Say.

I just want to show you, if I can. Commissioner, could I tender a folder described as Additional Documents for M. Fisk and T. Zong?

THE COMMISSIONER: Yes.

20 MR CHEN: This is actually on the screen now. This is page 15. I'm sorry, I'll just wait until the Commissioner marks it.

THE COMMISSIONER: It's the folder of documents Additional Documents for M. Fisk and T. Zong. It will be marked as an exhibit. It will become Exhibit 57.

**#EXH-057 – ADDITIONAL DOCUMENTS FOR MATTHEW FISK & TONY ZONG**

30

MR CHEN: So the hard copy is in front of you or it's on the screen, Mr Fisk, whichever you'd prefer.---The screen's fine.

Do you recognise that as the resolution that Mr Zong provided?---Yes, I do. That was the resolution that was handed to me.

And you provided that resolution to the Commission, did you not?---I did.

40 And I take it you read it?---I have read that.

And at the time you read it, is that right?---Yes.

And relied on it, did you not?---Yes.

And what, if anything, did it do in terms of influencing you to proceed further with this transaction?---That gave us confidence that the board had

actually put this to its members and that, or put it to the board, and the board had actually agreed to transact.

Do you remember giving Mr Zong advice about that to that effect or not?  
---Yes.

Commissioner, is that a convenient time?

10 THE COMMISSIONER: Yes, it is. Mr Fisk, you might step down. We'll take a 15-minute adjournment or thereabouts.---Sure.

Just before I adjourn, Mr Slee has returned – or has arrived, I should say. It would be desirable, I think, to finish the evidence of Mr Fisk, if possible, before we go back to the evidence of Mr Slee. But perhaps somebody might speak to Mr Slee and otherwise see whether that's feasible.

MR CHEN: Yes, Commissioner.

20 THE COMMISSIONER: There's one other matter I just want to raise. Mr Petroulias, it relates to you. I did receive a report that yesterday you were seen using your iPhone camera to take photographs in and about the premises. You might just care to stand, if you wouldn't mind.

MR PETROULIAS: Oh, sorry, Commissioner.

30 THE COMMISSIONER: I want to make it very clear that you are not to use the camera or any other photographic equipment in or about the precincts or on the premises of the Independent Commission Against Corruption. Do you understand?

MR PETROULIAS: Yeah. No problem.

THE COMMISSIONER: Yes, then I'll adjourn.

#### **SHORT ADJOURNMENT**

**[11.30am]**

40 THE COMMISSIONER: Mr Chen, it's convenient to continue with Mr Fisk's evidence?

MR CHEN: It is, Commissioner, yes.

THE COMMISSIONER: I'm mindful of the fact that Mr Slee is waiting to complete his evidence. We should endeavour to finish his evidence if we can today so we'll just have to see how we go. I'm prepared to sit till 4.30 if need be today if that will make a difference.

MR CHEN: Thank you, Commissioner. I'll do my best. Mr Fisk, I want to just take you back a step and show you a document that I should have shown you before the adjournment. Would you look please at volume 4, page 56 and this is a document, an email I'm sorry, if you look down the bottom an email chain that relates to the right of first refusal. Now, you will see at the bottom of page 56 there's an email from Sammy Sayed to Keith Rhee and to Knightsbridge North Lawyers of 6 October, 2015.---Yes.

10 Above that it's sent from Knightsbridge North Lawyers to Sammy Sayed and Keith Rhee.---Yes.

And above that you can see that Mr Rhee has sent it on to Tony Zong. ---Yes.

And thereafter it's come from Tony Zong to you on 7 October, 2015.---Yes.

And having seen that now is that how you recall you received the document which was described as the right of first refusal?---Yes.

20 Thank you. Now, Mr Fisk, you gave some evidence that Mr Zong consulted BCP Lawyers.---Yes.

And do you recall in early October, 2015 receiving an email from Mr Zong or being told by Mr Zong that draft documentation had been prepared by Knightsbridge North Lawyers?---Yes.

Now, would you just have a look at some of these documents please. Volume 4, page 80. Do you recall receiving the heads of agreement in draft form initially?---Yes.

30 And would you look then please at volume 4, page 88. I apologise. I'll just show you page 89 so we fully describe the heads of agreement that were attached. It's between Sunshine and the Land Council. Do you see that? ---Yes.

And would you now look please at page 88 of volume 4 and do you see or recognise that as a draft project procurement and management agreement dated 2 October, 2015?---Yes.

40 Again this is in draft form at this stage and that's the sequence in which this all came about namely, draft documents were sent.---Yes.

They were sent on to Mr Driscoll.---Yes.

He gave some advice and in due course final documents were prepared whilst you were away.---Yes. Yes.



I'll just show you one other document please. Volume 4, page 91 and you will see there is a surrender agreement and release.---Yes.

And you remember receiving that again in early October, 2015?---Yes, I do.

And that again sought to deal with did it not the buying out of the Gows Heat interest that had been identified in the Gows Heat heads of agreement?---Yes.

10 You will see there that there's a reference to a payment sum in clause 1(a) of \$1.6 million.---Yes.

Do you know how that figure was reached?---I believe that figure was simply put to us.

I see. Had you had any discussions with Mr Zong as at early October 2015 dealing with how much money should be paid to Gows Heat for it to, quote, "surrender, release or disavow" any claims, et cetera, that it had in relation to the subject land described?---Yes.

20

And what were those discussions about first?---My personal position was that both the amount to Gows and also to Keeju were more than what I felt we should be paying.

Too much?---Correct.

In any event, would you now look at page – sorry, volume 4, page 124. You began liaising with Mr Driscoll, did you not, in terms of trying to come up with a proper set of documentation?---Yes.

30

And you assisted, did you not, and liaised with Mr Driscoll – as you can see now at page 124 – to prepare some emails that would go back to Knightsbridge North Lawyers?---Yes.

And you'll see that at an email of 12 October, 2015.---Yes.

And in fact you approved sending of that email that's referred to, did you not, in that email of 12 October, 2015?---Yes. Yes.

40 And that was sent?---Yes.

Would you just have a look at page 126 of the same volume, please. And you'll see there that there's an email from Mr Driscoll to admin@knightsbridgenorthlawyers, and you'll see it's referring to Mr Nick Petroulias.---Yes.

And again at this stage did you have any reason to think that he was anything other than associated with this firm?---No.

All contact that you had had via email was through that address, namely admin@knightsbridgenorthlawyers?---Predominantly, yes.

What was the other form of contact you had via email?---I think the, well, there was another email address. I believe it was nnp@knightsbridgenorthlawyers, which I think I'd only received one or two emails max from.

- 10 Now, over time did you have – sorry, I'll withdraw that. In the period of early October 2015 until when you went overseas on or around 19 October, sorry, 16 October, 2015, did you have reason to speak to Despina Bakis?  
---Yes.

Regularly?---Not regularly. I remember one conversation I had with Despina, I believe it was the day prior to leaving to go overseas, and it was quite a heated discussion that the deal was, amongst other things, that we'd been dragging the negotiations and that if we didn't look to conclude the documentation shortly the deal would be off.

20

I see. I'll just show you a couple of emails, Mr Fisk. Volume 5, page 344. So this is volume 4, page 358. I apologise, volume 5, page 358. Do you recall receiving that email, namely 16 October, 2015?---Yes.

From Ms Bakis?---Yes.

And is that the kind of – what you were referring to in your evidence just a moment ago?---Yes.

- 30 When you spoke to Ms Bakis on the phone, were the discussions cordial?  
---No.

And what was the issue that – or what was the problem that you had when you were discussing matters with Ms Bakis?---The problem that Ms Bakis was speaking to me about was the fact that we kept changing or seeking further amendments to the documentation.

And she expressed some dissatisfaction with that, did she?---Correct.

- 40 There's nothing wrong with that, though, is there, insofar as you would see it in the course of ordinary negotiation?---No, absolutely not. No.

Was there any other aspect of the conversations with her that were less than cordial or was it only relating to the changing of the terms?---From recollection it was surrounding the terms and her view was that we kept changing the terms of the deal.

Despite what is said in that email - I withdraw that. Did she identify to you at all who her client was that she was referring to in that email?---The Awabakal Aboriginal Land Council.

That's what she told you, did she?---That yes, that directions, that the board were looking to cease negotiations.

10 Despite what is said in the last paragraph of that email of 16 October, 2015, the negotiations in fact, continued on beyond that didn't they?---They did.

Now you went away on or around 16 October until 23 October at least, is that right?---Yes, correct.

But despite you were overseas you still had some email contact?---I was receiving emails at the early part of being away.

But otherwise you responded to a few, did you not whilst you were away? ---I did, I responded to a couple.

20 But other than that, did you leave it to Mr Zong?---I did.

And to the solicitor Mr Driscoll?---I did.

Now in the period that you were away, did you come to understand that, in fact, a number of agreements were, in fact, signed by Mr Zong the Land Council and others?---Yes.

30 Would you look please at Volume 7 page 136. You've seen the sweet of contracts and agreement that were apparently entered at this time?---Yes.

So do you recall seeing this document, namely, the Surrender Agreement and Release between the Land Council, Gows Heat and Sunshine Warners Bay Pty Limited?---Yes.

Now, just on that, the way in which the deal was to progress once the heads of agreement had been signed was that Mr Zong incorporated a special purpose vehicle which was Sunshine Warners Bay Pty Limited.---Yes.

40 And that's a conventional way in which a developer goes about business and developing properties, is it not?---Correct.

So far as you were aware, Mr Zong was the sole director and shareholder of Sunshine Warners Bay Pty Limited?---Yes.

But otherwise Sunshine Warners Bay Pty Limited didn't have any other assets or funds, it was Mr Zong himself?---Correct.

And all the money that was being either paid by or extensively by Sunshine Property Investment Group was paid by Mr Zong?---Yes.

And similarly, any monies that were paid by Sunshine Warners Bay Pty Limited were paid by Mr Zong?---Yes.

Now, you can see that there's a payment in Clause 1 (a) to be paid to Gows, do you see that?---Yes.

10 And earlier you gave some evidence that there was some discussion about that.---Yes.

Obviously, it had been agreed then that that would be the sum that would be paid to Gows Heat?---Yes.

There's on the next to a figure in paragraph 1 (a) (i) \$250,000.---Yes.

There appears to be a change next to it on the left hand side \$673,000 and it's been seemingly signed by perhaps Mr Petroulias.---Yes.

20

Did Mr Zong speak to you about that at all when you returned?---He did, he said - - -

What did he say to you?---He said that when, after Mr Zong had signed the document Mr Petroulias then lent over, scribbled out \$250,000, wrote \$673,000 and then initialled it. I questioned Tony on, I guess, what he did and Tony said, look, he said to Nick, what are you doing? I don't recall the response that was given but I found it very unusual.

30 All right. Would you have a look at Volume 7 page 144 and this is the Project Procurement Deed.---Yes.

You saw this as well?---Yes.

And you saw that the fees that were to be paid to Keeju were effectively of two stages, initially \$250,000?---Yes.

And then the balance upon settlement.---Yes.

40 It's a fairly hefty fee \$2.4 million for a property that you think is only worth \$10 million.---Yes.

Or land that's only worth \$10 million. Is that right?---Yes.

Are you able to offer why that figure was agreed upon?---Look I believe that the deal that was pitched being land coming via agents that was their fee so in totality you look at that what does the sum of those various payments add up to being 16, \$17 million. Provided that we could get a

rezoning and obviously the majority of those, that money was, well, 250,000 was a deposit with the balance payable subject to rezoning so whilst yes, I felt that it was excessive a lot of that was backhanded subject to satisfactory rezoning.

I see. And that was a cost that a project that could be developed could comfortably bear I gather?---Correct.

10 Now, would you look please at volume 7, page 142. I'm sorry. Do you see the variation agreement - - -?---Yes.

- - - there dated 23 October, 2015? Just scroll down if you would. You've seen an executed copy of that agreement have you?---Yes, I have.

Have you seen an original of that document?---I believe I have.

20 Would you then please look at volume 7, page 128 which is perhaps the key document and we'll just show you page 129 and you will see that's the heads of agreement between - - -?---Yes.

- - - Sunshine and the Land Council.---Yes.

And if you just look at the end page if you would please. You recognise this as the agreement that Mr Zong signed?---Yes.

30 Now, there's a number of other documents, Mr Fisk. I just want to draw your attention to them and see whether you recall ever seeing them. One is called the Call Option Agreement between Sunshine and the Land Council dated 12 October, 2015. So volume 7, page 59. Have you seen that document before? It appears to be unsigned.---Yes, I've seen that.

Have you ever seen an executed copy of that document?---No, I haven't.

Do you know whether it's ever been executed?---I don't believe it was ever executed.

40 Would you look please now at another document described as a Deed of Rescission Agreement dated 12 October, 2015 between Gows Heat and the Land Council. I appreciate that they're not entities that you have any association with. I'm sorry, did I tell you where it was. Volume 7, page 71. Have you seen that document before, Mr Fisk?---Yes.

You have. Have you seen an executed copy of that document?---No.

Now, Mr Fisk, after the heads of agreement had been signed that then meant that certain other steps needed to be taken by the Sunshine companies - - -? ---Yes.

- - - to proceed forward in terms of determining whether it could be, the land could be developed?---Yes.

And that involved evaluating whether it could be rezoned?---Yes.

Did Sunshine then retain Monteath & Powys again to undertake further work?---Yes.

10 Did it retain any other consultants or advisers to provide assistance in that respect?---From memory it was purely Monteath & Powys at that time.

Is the focus on simply pursuing the rezoning with Lake Macquarie City Council?---Yes.

Or the local council?---Yes.

And all the efforts and energies were directed towards rezoning?---Yes.

20 Because absent rezoning it's not a viable proposition. Is that right?---  
Correct.

And Monteath & Powys were retained to undertake that advice?---Yes.

Perform work?---Yes.

Did they also undertake some additional surveying work as far as you - - -?  
---Yes.

30 And they lodged bills from time to time?---Yes.

And did you assess them and approve their payments?---Yes, I did.

And so far as you're aware, they've been paid?---Yes.

Are you able to tell the Commissioner in very rough terms how much may have been paid to Monteath & Powys in the period after the heads of agreement had been signed?---After the heads of agreement, I believe it was in the order of 55 to \$60,000.

40 And what about your time? Did you spend your time in assisting in this process?---Yes, I did.

Are you able to estimate how much of your professional time you spent in looking and assessing the project with a view to trying to have the lots rezoned?---It would have equated to a number of weeks.

In the period post-execution, were a number of caveats lodged?---No.

Do you know when – I'll withdraw that. Are you aware of whether caveats were lodged over the five lots that were the subject of the Gows Heat heads of agreement?---Yes.

Do you know when those caveats were lodged?---From recollection, late 2016.

Is that at about the time that you realised that the deal was starting to founder?---Yes.

10

Flounder. Now, did it come to your attention through Mr Monteath, the principal of Monteath & Powys, that there were some concerns about the Land Council and how it was being governed?---Yes.

And did that occur in late 2015?---It did.

In general terms, what did Mr Monteath tell you was the issue concerning the Land Council?---Mr Monteath forwarded me an article that was contained within the Newcastle Herald regarding - - -

20

Did you read it?---I did.

And what's the thrust of what the article conveyed?---The thrust of it was that the Minister for Aboriginal Affairs was making an investigation into the affairs of the Awabakal Aboriginal Land Council.

Now, were you concerned when Mr Monteath sent you that and you read the article?---Absolutely.

30 What were your concerns that you had at that time?---Really where that put the deal moving forward.

Did you think there were sufficient protections in place in what had been documented?---From seeing the final form documentation upon my return from holiday, I was a bit concerned that we may not have had the full protection there moving forward.

Where was the money that was to be paid pursuant to the agreement to be kept?---In a Knightsbridge North trust account.

40

You knew that from reading the documentation, did you?---Yes.

Did that give you any sense of comfort going forward at all?---Yes.

And what did you think the effect of that was?---Effectively that that money was safe.

And what about that you were dealing with the Land Council itself? Did that give you any sense of comfort or not?---Not, knowing that it was being investigated, no.

Did you raise what Mr Monteath had spoken to you about with Mr Zong?  
---Yes.

Did you tell him about the article?---Yes.

10 Did you forward him the article?---Yes.

What did you say to Mr Zong when you raised this issue with him?---I asked Mr Zong if he knew about this, which he didn't, and he said that he'd get in touch with, with Nick and Sam, Nick and Keith to find out what's going on.

Did Mr Zong get back to you telling you that he'd done that?---Yes.

20 And what did he say – sorry, who did he say he had spoken to, if anyone?  
---I can't recall specifically, but it was either Mr Petroulias or Mr Rhee.

And what did he tell you that he had spoken to them about or one of them about?---Mr Zong didn't appear overly concerned, because it had been portrayed to him that - - -

I'm sorry, I just missed the first word you said in your answer. Mr - - -?  
---Zong.

30 Zong. Sorry.---He didn't appear overly concerned. My take on – and from what he elaborated was along the lines that it was nothing more than a standard investigation and everything will be, effectively that the Land Council had nothing to hide and that everyone, it'll be business as usual moving forward.

Did, as a consequence of the discussions that you had initially with Mr Zong and Mr Zong had with either Mr Rhee or Mr Petroulias, some other documentation emerge so far as you can recall?---Surrounding?

40 About confirmation of the agreement.---Yes. A deed was made available, a deed of some description.

I'll show you a document, so it's Exhibit 57 page 1. Now that should be on the screen or there might be a folder in front of you?---It's there.

I'll just have it put in front of you as well Mr Fisk, Exhibit 57. So if you'd have a look, if you would, at pages 1, 2 and 3 perhaps it goes on a bit further than that but key parts are - do you recognise on page 3 the signature of what appears to be the signature of Mr Zong?---Yes.



And also what appears to be the signature of Richard Green as the acting chairperson, deputy chairperson of the Land Council?---Yes.

Do you recall seeing this document?---I recall seeing a draft of the document but not the final form.

Did you understand, at all, that - I withdraw that. You've got no reason to doubt it wasn't executed though, do you?---No.

10

No. Is that your understanding?---Correct.

Just going to the execution page on page 3, do you know who the person Toni Manton is?---No, never heard of that person.

You'll see that this agreement makes reference to I think it's described as controversies.---Yes.

20

The Minister had made an announcement, I'm looking at recital (c).---Yes.

In particular the purchaser identified as Sunshine Warners Bay had expended monies et cetera in reliance upon the validity and the bona fides of the agreements?---Yes.

You read this document at the time, did you?---Yes.

Did you carefully read through the recitals?---Yes.

30

What did it do in terms of persuading your concerns that had been raised by Mr Monteath in the article?---It certainly alleviated any concerns moving forward that that effectively guaranteed the monies that we'd spent to date.

Did Mr Zong tell you that he had signed that document?---I don't recall him saying that.

40

THE COMMISSIONER: Was there any questions ever raised up to this stage about whether Mr Green was in fact an authorised officer or had delegated authority?---We'd always based it, given that he was the deputy chair, we always based the assumption that he was an authorised person.

MR CHEN: You had the resolution as well, by this stage, had you not? ---Correct, correct, yes.

You'd been at the site with him.---Correct.

He never suggested, at any time I take it, that he wasn't authorised to do what he had done?---No.

Now, I want to move forward chronologically to early 2016, do you recall that you became concerned about potentially another or issue that arose about the possibility of needing a dealing certificate?---Yes.

How did that arise, Mr Fisk, that you became concerned about that?---We first became aware of that probably in the week leading up to me leaving to go on holidays.

10 What were you told?---That a dealing certificate was required by the New South Wales Aboriginal Land Council in order for the local Aboriginal Land Council to transact in its land.

What, if anything, did you do at that time when you received that advice? ---I spoke with Mr Rhee and said that we need the appropriate dealing certificates.

20 So when was this, I just want to get the timing of this right, this is before you went away?---It was before I went away, so it would have been mid-October, 2015.

You spoke to Mr Rhee, and what did you say to Mr Rhee?---He then said that he'd spoken to Nick Petroulias and Richard Green and that there was no issue in moving forward in securing a dealing certificate.

Did you speak to Mr Zong about that?---Yes.

Did you tell him what you had been told?---Yes.

30 Did you or Mr Zong engage a firm Mutton & Holm?---Yes.

And did that occur in January or approximately January 2016?---Yes.

And did you get some advice from the solicitor there Andrew Mutton? ---Yes.

And was that to the effect that you needed a dealing certificate?---Yes.

Was it you who sought that advice or was it Mr Zong?---It was myself.

40 And when you received that advice, did you speak to Mr Zong?---Yes.

Did you tell him the advice you'd received?---Yes.

And did you tell him that you would need a dealing certificate from the New South Wales Aboriginal Land Council?---Yes.

Otherwise the Land Council could potentially walk away from the deal? ---Yes.

What did Mr Zong say when you told him that you'd received that advice?  
---He said that he would get in touch directly with Nick Petroulias and seek the dealing certificate.

Did you subsequently speak to Mr Zong about whether he had taken that step to get in contact with Mr Petroulias?---Yes.

10 Did he tell you that he had done so or not?---He said that he was attempting to meet with Nick Petroulias to discuss that.

Did in time Mr Zong tell you that he'd ever been successful in getting in touch with Mr Petroulias?---No.

Did Mr Zong tell you that he endeavoured to speak to Mr Green?---Yes.

Did Mr Zong tell you that he actually was successful in getting in touch with Mr Green at about this time on this issue?---No.

20 Well, so you've reached the point, Mr Fisk, where you've been given advice. Did you ring or attempt to ring Mr Petroulias?---I attempted to, I believe I, I, from recollection I did try and call Mr Petroulias to make a meeting, to make a time to meet with him.

Now, this is still early 2016.---Yes.

Did you manage in that time period to speak to him and arrange a meeting?  
---No.

30 Did you try and get in touch with Richard Green?---No.

In this time period what were you doing, then, in terms of trying to speak to somebody by or on behalf of the vendor to get a dealing certificate?---I was emailing Despina Bakis at Knightsbridge North Lawyers and progressing the dealing certificate via that channel.

And were you given – well, did she give you any response as to whether she would give you a dealing certificate in this period of January 2016?---No.

40 THE COMMISSIONER: Well, what was Bakis's response?---Sorry, the, sorry, the response wasn't no. The response was the investigation was still ongoing. We needed to wait a little longer until the Minister's investigation was complete, and then Mr Green would be in a position to progress the dealing certificate.

MR CHEN: Was a dealing certificate or an indication that one would be forthcoming eventuate in the weeks and months following this?---Yes.

And how did that first arise that a dealing certificate would be forthcoming?---So we eventually, Tony Zong and myself eventually managed to meet with Mr Petroulias in person.

When was this?---From recollection I believe it was around April 2016.

And how was this meeting arranged?---Tony Zong had arranged it.

10 And where did you arrange to meet?---We met in an office, which I believe was Knightsbridge North's offices, at 9 Castlereagh Street in Sydney.

And did you go to that meeting?---yes.

With Mr Zong?---Yes.

And who else was present at that meeting?---It was myself, Tony Zong and Mr Petroulias.

20 And did you or Mr Zong say something to Mr Petroulias at that meeting about the dealing certificate and the need for one?---Yes.

And was that you or Mr Zong?---I can't recall specifically who.

But what was the thrust of what was, or the effect - - -?---The general tone was that we were progressing with Monteath & Powys. We were certainly well advanced with survey work and preliminary site investigations. However, we were still – of critical importance was the dealing certificate moving forward.

30 And did Mr Petroulias respond?---Yes. He said that the – he then got on the intercom and I believe it was Despina Bakis that he spoke with, and he queried how the financials were progressing because apparently Despina Bakis was preparing or was liaising with an accounting firm on the financial statements that were requested by the Minister.

I just want to take you back a step if I can.---Sure.

40 Do you remember at about this time giving Mr Zong some advice about potentially exercising an option?---Yes.

Now, do you know over what particular lot or property you proposed to exercise the option?---Braye Park.

Now, why was it that at that time, sorry, when did you seek to exercise that option?---Within the first half of 2016.

And what was the purpose behind you giving Mr Zong advice to exercise that option?---With the continual pushback on the dealing certificate I put it

to Mr Zong that in order to really flush out and see what was happening with respect to a dealing certificate let's exercise our option on the Braye Park site and ultimately that would force the Awabakal Aboriginal Land Council's hand into security a dealing certificate or not and the reason why I chose Braye Park it was the cheapest of the five sites.

In terms of property value?---In value. Correct.

10 And did it have some potential to easily subdivide or - - -?---It did. There were three existing lots there which I thought even for \$1 million under the call, under the price we could probably transact and do a deal there without future subdivision and ultimately get our money back on that particular play.

I see. Now, I'm going to take you back in a moment to the discussions you had with the meeting with Mr Petroulias but could you link when you decided or you spoke to Mr Zong about exercising the option over Braye Park, was it before this meeting or after?---It was before the meeting.

20 Did you raise during the meeting that you wanted to exercise the option - - - ?---Yes.

- - - to Mr Petroulias?---Yes.

And what did he say if anything to you or Mr Zong when you indicated you wanted to exercise the option over Braye Park?---He said there was no problem with that.

30 I think I interrupted you that Mr Petroulias said at this meeting that, well, he got in touch with Ms Bakis over the intercom?---Yes.

And I think he was saying or was there some issue about accounts did you say?---Correct. So the, the accounts still hadn't been finalised and given to the Minister and as a result of that and as the result of us wanting to push the exercising our call option Nick Petroulias then said give it a couple of weeks and then we'll progress the, the dealing certificate.

40 Did he mention at all during any of the conversations getting the assistance of Mr Green to get that dealing certificate?---Yes, he did.

What did he say in that respect?---It was something along the lines that Richard Green had been doing this for some length of time and there will be no issues at all with him doing that.

When Mr Petroulias spoke with Ms Bakis over the intercom could you hear what was being said?---Yes.

And did she come into the - - -?---She then walked into the meeting and that was the first and only time I've met Ms Bakis.

Did she say anything else?---Something along the lines that the accountants were hopeless, they're taking forever and then she walked into the room.

Was she in the room at any point during which Mr Petroulias said that Mr Green could get the dealing certificate?---I don't believe so.

10 You never did get a dealing certificate from Mr Petroulias did you?---No.

Did you follow him up?---Yes.

Did you do it in what way?---Via email to, via Despina Bakis.

So far as you're aware did Mr Zong endeavour to do so as well?---Yes.

Did Mr Zong tell you that he had been chasing Mr Petroulias?---He did.

20 Were you told by Mr Zong that he had in fact managed to secure another meeting with Mr Petroulias - - -?---Yes.

- - - after that meeting you've discussed?---Yes.

Do you remember when approximately that was to occur?---It could have been, it would have been probably within a month or two after that meeting with Mr Petroulias in his office.

30 I'm just going to show you some emails. The meeting never occurred though, did it?---It didn't, it was cancelled at the last minute.

By who?---Mr Petroulias.

Just have a look, if you would, please Mr Fisk at Volume 15 page 165. The orders of these are slightly out so I'll have to just show you them to complete the transaction. Do you see that's an email from you to Knightsbridge North Lawyers and you've copied in Mr Zong - - -?---Yes.

- - - on 27 May, 2016.---Yes.

40

You there, refer to a phone conversation between Nick and Tony a few moments ago?---Yes.

Did Mr Zong tell you what that conversation was about?---From recollection Tony had, no it was purely to line up a meeting with Mr Petroulias.

If you now have a look at - is this a meeting now that you've seen this email that it was actually to occur on 7 June, 2016?---The was the following - - -

Sorry, you're quite right. You had the initial meeting where Ms Bakis came in at the last minute but this was the subsequent meeting.---Yes.

That's the meeting that you refer to in your evidence that was cancelled?---Correct.

10 So it was supposed to be on 7 June, 2016.---Correct.

So I'm just going to take you through this trail, so if you go back a page to 164 you'll see that this has been forwarded on and if you go up then into the middle of the page you'll see there's an email, and you did refer to earlier that there was sometimes an email address that you did get - - -?---NNP.

Is that the one you're referring to?---That's the one.

But otherwise it was through - - -?---Admin.

20

Right. So you see the email of 7 June, 2016 at 10.28am.---Yes.

I take it you remember reading that.---Yes.

If you just scroll up a bit further you'll see that that's come to you or it's been forwarded onto somebody else, that's irrelevant to this time period. Would you just then look please at Volume 15 page 88 and you'll see at the bottom an email from Keith Rhee to you of 6 June, 2016.---Yes.

30 And at the top you'll see then the meeting appears to have been confirmed and you've sent that email to Mr Rhee and Sammy Say.---Yes.

Now, you obviously, did you go to the meeting on 7 June or was it cancelled before then?---That was cancelled, I believe it was cancelled on the morning of.

Was that communicated by Mr Petroulias to you or to Mr Zong?---To Mr Zong.

40 And he told you that did he?---Yes.

Did Mr Zong tell you the reason why Mr Petroulias cancelled that meeting? ---From recollection Mr Petroulias had to go to, had to drive to Newcastle to see the Awabakal Land Council for some urgent matter.

After that time, had you had any other contact with Mr Petroulias?---I don't believe so.

There might have been one passing moment where he came into your office but aside - which I'll take you to in a moment - but aside from that, did you ever have any other discussions with him?---I don't believe so.

No other emails were received from him?---I don't believe so.

Now, did you have any other contact by email, telephone conversation or otherwise with Richard Green after this time period?---No.

10 Did you endeavour to get in contact with him?---I didn't, I believe Tony Zong did. Just for the record, I've never had Mr Green's contact details, either email or phone.

Now, at the start of your evidence, you gave some evidence that the offices of Luxeland were formally the offices of Sunshine?---Yes.

But it was obviously rebranded was it?---Rebranded, yes.

20 And do you remember at one point Mr Petroulias turning up one day to the office?---Yes.

Do you remember approaching him?---Yes.

So far as you could work out, did he recognise you?---No.

Did you speak to him?---Yes.

30 And what did he tell you why he was there?---I saw, we were passing in the lift corridor and I recognised Mr Petroulias, and I said, "Oh are you to see Tony?" He said, "No." And he pointed into our foyer and there was a chap standing there and he said, "I'm here to see that person." We just continued walking.

All right. And who was the person in your foyer?---Since transpired it was a chap called someone Faraj.

Hussein Faraj?---Hussein Faraj.

40 And was he in the offices of Luxeland, was he?---For a meeting.

And who was he there to meet?---He was there to meet one of the fund managers that works for a company called Tyche Asset Management, which is a wholly owned subsidiary of, I believe, Luxeland – or the directors of Tyche are Diana Ren and Tony Zong.

I see. And was the fellow that Mr Faraj was there to meet Neil Shelswell? ---Yes.



And did you speak to Mr Faraj or Mr Shelswell about why Mr Faraj was there?---I had earlier had a conversation with Mr Shelswell and he had come into my office and said that he had an investor who was looking at investing in a student housing development in Newcastle, and it was something to do with either – from the way that it was put to me, it was developing student accommodation on Aboriginal land to assist with Aboriginal students.

And was that a proposal that you were ever interested in?---No.

10 Were you ever approached to be a part of it?---I was, yes.

By Mr Shelswell?---Yes.

And did you express any interest in pursuing it?---No.

What about Mr Zong? Was Mr Zong ever approached, so far as you're aware, to pursue that?---I don't believe so, and my comment at the time was I wouldn't waste your time approaching Tony on this given the history that we've had with the, with the current deal.

20

Mr Zong, so far as you've known him, has never had any particular ideological reason to invest, say, in Indigenous or Aboriginal housing or developments at all, has he?---Never.

This was a one-off opportunity that arose, is that right?---Yes.

And there's been no other pursuit by him so far as you're aware?---Never.

30 Now, when you met with Mr Petroulias in I think it's the kind of March/April period 2016. Is that about right?---Yes.

Did he ever tell you that he was negotiating with another entity called Solstice Property?---Never.

Did Ms Bakis ever tell you – I'll withdraw that. When you were liaising with Ms Bakis via email, at any stage did she ever mention to you that she'd been drafting contracts involving the very same land that Sunshine had apparently acquired with another entity called Solstice?---Never.

40 You had email contact with her, didn't you, all throughout the early part of 2016, including April 2016?---Yes. Yes.

Was there any mention at all at any time that she was documenting other agreements involving the very same land to others?---Never.

Did she ever tell you that she was proposing or she was documenting an agreement that purported to sell once again the Gows Heat heads of agreement interest?---Never.

Did Mr Petroulias ever tell you that?---Never.

What about Mr Say?---No.

What about Mr Rhee?---No.

10 Would you have a look at this email, please, Mr Fisk. Volume 12, page 287. And you recall in about April of 2016 having some email communications with Ms Bakis – that I think you've referred to – about securing a dealing certificate?---Yes.

So just have a look at these emails if you would, please, at – you might need to go perhaps to 288 first. And you can see that you've sent an email to Ms Bakis.---Yes.

And you're seeking an update.---Yes.

20 And you've given some evidence to the Commission about that. And there's the response from Ms Bakis at page 287 at 5.08pm, an email of 28 April, 2016. Do you see that?---Yes.

And again if you just move up a bit further, please, you'll see there's another email where you were seeking a copy of the consent.---Yes.

Did she ever provide you with any such consent?---Never.

Either from the Land Council or anywhere else?---Never.

30 Did she ever provide you with any dealing certificate?---No.

Did she ever tell you or communicate with you by email that in fact by this stage according to the minutes of the Aboriginal Land Council the board had resolved not to pursue an agreement with Sunshine?---No.

Did you know that?---No.

Did she ever tell you that?---No.

40 Did she ever disclose to you that she was actually involved in a meeting with the Land Council on 8 April, 2016 where that very resolution was passed namely, that the deal that you had entered or Sunshine had entered with the Land Council should not be pursued?---No.

Now, who did you understand paid the deposit to Knightsbridge North Lawyers, was it Mr Zong?---Mr Zong.

Was there anybody else so far as you were aware?---Possibly Diana Ren.

Were there any other Chinese investors involved so far as you're aware?  
---Not as far as I'm aware.

Is that something that in the ordinary course of your work as a property developer with Mr Zong you would know about - - -?---Yes.

- - - if there were other investors?---Yes.

10 And, Mr Fisk, there is a reference in an email which is at volume 12, page 288 where you do refer to investors.---Yes.

Or our investors. This will just come up on the screen now. Would you just have a look at that. You will see there's an email of 28 April, 2016.---Yes.

And you will see in the second-last paragraph, second line "assurances to our investors", et cetera.---Yes.

20 Are you able to tell the Commission what are you referring to there, who the investors are and why that's in that email?---I was under the impression that moving forward when we did look to conclude this transaction obviously post rezoning that in order for us to go to investors to seek to raise equity to conclude the transaction that we would obviously need the appropriate dealing certificates at that point in time to confirm to them that we have a deal but that was for a future point in time.

30 I see. Now, you ultimately received did you not advice from Knightsbridge North Lawyers – I withdraw that. You ultimately received an email which attached advice from a firm of solicitors called Jackson & Associates did you not?---Yes.

Dated 21 June, 2016?---Yes.

The effect of which was to provide an opinion to the Land Council that the agreement that had been entered was unenforceable?---Yes.

And do you recall receiving that?---Yes.

40 And did you receive it about that time or - - -?---Yes.

- - - perhaps early July, 2016?---Yes.

Now, following that did Mr, I take it you gave that advice did you to Mr Zong?---Yes.

Did you speak to Mr Zong about it?---Yes.

I take it he was not overjoyed with that news?---No.

He consulted lawyers didn't he?---Yes.

And he gave them instructions about what to do in relation to moving forward?---Yes.

Were you involved in assisting in instructing the lawyers?---Yes.

10 And you were there while Mr Zong gave instructions?---Yes.

And he instructed lawyers did he not to issue a letter of demand?---Yes.

Requesting the immediate repayment of the deposit moneys that had been paid?---Yes.

And that was because at all times he had invested in good faith in this proposal?---Yes.

20 And he'd feel that he'd been deceived?---Yes.

The money that he paid as a deposit was not an investment in some organisation called the United Land Councils was it?---No.

It wasn't a donation to Mr Petroulias or anything, or any business that Mr Petroulias had so far as you're aware?---Definitely not, no.

Again in the course of you being the professional adviser to Mr Zong that would be something that he would have discussed with you I take it?---Yes.

30 And at no stage did he suggest that that money was a donation to Mr Petroulias or the United Land Councils?---No, never.

Had you ever heard of the United Lands Councils?---I can't recall that specific name but I recall being given a card by Mr Petroulias that had a, look I don't specifically recall what that name was.

Did you know anything about the business?---No.

40 What the purported business of United Lands Councils?---No.

Anyway, Mr Zong wanted his money back and instructed the lawyers to commence proceedings, didn't he?---Yes.

And are you aware that those proceedings have not continued?---Yes.

Are you able to – were you involved in the process of giving instructions to the lawyers not to continue those proceedings?---Yes.

What lay behind that decision, Mr Fisk, as far as you're aware?---The fact that ultimately there was no more money within the solicitor's trust account. That we would, or that Mr Zong was spending a considerable amount of money on legal fees. And the likelihood of actually recouping money and the time, potentially years it would take to go through litigation, together with potential press that with that, was something that Mr Zong didn't want to proceed with.

10 THE COMMISSIONER: What happened about the cost of the proceedings, do you know?---The - - -

Upon the discontinuance of the proceedings - - -?---Yes.

- - - do you know what the position as to the cost of those proceedings?  
---Total cost?

No. Was there any obligation for anybody to pay costs in those proceedings?---No, nothing. Nothing.

20 MR CHEN: The order was that each party would bear its own costs.---Bear their own costs.

Yes. But you were ordered to pay the Land Council's costs. Do you know anything about that?---No.

I just want to ask you another – onto another topic now, Mr Fisk. You referred in your evidence just a moment ago that there was no more money in the trust account of the solicitor.---Yes.

30 That's your understanding of the position?---Yes.

And did Mr Zong tell you that, did he?---Yes.

Did Mr Zong ever tell you that he had authorised the release of any of the monies to be disbursed from that trust account?---No.

You never had a discussion with him at all?---Never had a discussion.

40 Commissioner, I notice the time.

THE COMMISSIONER: Yes. I gather you're almost at the end of your examination. Or not?

MR CHEN: Aside from whatever I can think about over the adjournment, Commissioner, that'll be it.

THE COMMISSIONER: Yes. Yes, now, Ms Nolan, do you want to ask any questions thus far on the evidence of Mr Fisk?

MS NOLAN: Yes, I do.

THE COMMISSIONER: And if so, can you give me some sort of time estimate?

MS NOLAN: I can't imagine that I'm going to be particularly long, but I will need to just pursue a couple of issues. The issues are only four in number at present, but I need to take some instructions myself.

10

THE COMMISSIONER: Thank you. Mr Petroulias?

MR PETROULIAS: Quite a few.

THE COMMISSIONER: Well, how long would you estimate?

MR PETROULIAS: An hour and a bit. Depends on how many documents we need to contradict the statements, to pull, to pull up.

20

THE COMMISSIONER: All right. Well, yes, Mr Chen, you might give some consideration as to how we're going to proceed from this point in terms of whether or not we continue with Mr Fisk until the end today or whether he is required to come back on another occasion and we finish Mr Slee. I'll leave it to you to work out what is the best arrangement.

MR CHEN: Thank you, Commissioner. I'll do that over the break.

THE COMMISSIONER: Thank you. I'll adjourn till 2 o'clock.

30

**LUNCHEON ADJOURNMENT**

**[12.58pm]**