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INDEPENDENT COMMISSION AGAINST CORRUPTION

THE HONOURABLE PETER HALL QC
CHIEF COMMISSIONER

PUBLIC HEARING

OPERATION SKYLINE

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TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON WEDNESDAY 4 APRIL, 2018

AT 2.00PM

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THE COMMISSIONER: Yes.

MR CHEN: Commissioner, I just have a few other questions which I'll ask of Mr Fisk shortly and I'll be but a minute or two. The proposal then would be for those that wish to ask Mr Fisk further questions to do so.

10 Commissioner, through liaising with Mr Zong and Mr Slee the proposed list for the benefit of others would be that immediately following Mr Fisk's evidence Mr Zong would give evidence. Mr Slee has kindly agreed to come back tomorrow and we'll continue on with his evidence once we finish with Mr Zong.

THE COMMISSIONER: All right.

MR CHEN: Commissioner, in light of the way the list has had to be adjusted, there is hopefully going to be a revised list for Friday's witnesses put up if not tonight first thing tomorrow morning. That will depend very
20 much on the availability of witnesses for that day.

THE COMMISSIONER: Very good. Thank you.

MR CHEN: Mr Fisk, I just want to return quickly to a couple of matters. Would you have a look please on the screen, volume 10, page 135. I just want to place a time on the meetings that, you gave some evidence that there was a proposed meeting that was to occur with Mr Petroulias and others on 7 June, 2016 that was cancelled.---Yes.

30 And I think I asked you some questions and you may have agreed that the earlier meeting that you had might have been in the March/April, 2016 period.---Yes.

I just want to show you an email please now which is volume 10, page 135 and just to give you context to this email, Mr Fisk, if you perhaps turn to page 136. You can see that Ms Bakis is advising you in an email dated 18 March, 2016 at 5.46pm that the board will meet on all this and get the process going at next meeting in two weeks, et cetera.---Yes.

40 And she's asked you for a copy of the rezoning application.---Yes.

Did you send them a copy of that?---No. We didn't have a copy of the rezoning application.

I see. If you look then back up to page 135 you provided a response at 12.08pm on 21 March, 2016.---Yes.

And, Mr Fisk, does that email dated 21 March, 2016 at 12.08pm help you place when more precisely that meeting occurred with Mr Petroulias?
---Absolutely. So it would have either been late March or very early April.

Thank you. Finally, Mr Fisk, the heads of agreement which are dated 2 October, 2015 which were signed when you were away - - -?---Yes.

10 - - - were signed on the part of the Land Council by Richard Green but also by Debbie Dates.---Yes.

Have you ever met Debbie Dates before?---I've never met Debbie Dates.

Thank you. Commissioner, that's the further evidence. Thank you.

THE COMMISSIONER: Yes, thank you. Ms Nolan.

20 MS NOLAN: So you told the Commission that you've had an extensive experience in development, property valuation and the like.---Yes.

And that experience would dictate that it's necessary for somebody in your position dealing with a multiplicity of transactions and persons to take notes, and you take notes?---Yes.

And you've produced those notes to the Commission?---No, I haven't.

30 And is there any reason why you haven't produced those notes to the Commission?---Depending on what meetings I take notes at. It's not every, I don't take notes of a phone call for example.

And why do you say that?---Because I don't.

But what about meetings?---Generally, yes.

And you've taken notes of the meetings about which you've given evidence to the Commission today?---Some I may have. Some I may not have.

40 Well, did you review your notes before you came here to give evidence today?---I haven't reviewed my notes.

Pardon?---No.

So you're just giving evidence with respect to things that happened 12 months ago on the basis of your recollection, is that right?---And looking at email chains.

And those email chains are those which you've been shown or are there others?---Yes.

Are there others?---No, I believe that they've all been shown.

And do you still have your notes that you took with respect to these transactions?---I would have to dig them out.

So the answer to my question is yes?---Most probably.

10 Mr Zong had a relationship with Mr Say, you've told the Commission.
---Yes.

Yet you've been describing Mr Say as agents of the Aboriginal Land Council.---Yes.

20 Isn't it probably a better description to say that he's really an agent of Mr Zong?---No, not necessarily, because the way that they were introduced to me was obviously Keith was a friend of Mr Zong's, but it was purported to me that in fact they were – Keith Rhee was an agent of the Awabakal Land Council and the connection was made to, or the introduction was made to Tony because of the friendship there.

And who had this conversation with you? Who reported this to you?---Mr Zong.

In your experience, which I understand is extensive, is it usual for the purchaser to pay the vendor's agent directly?---It can vary deal to deal.

Is it - - ?---It's not unusual.

30 It's not unusual. So in the deed of acknowledgement and guarantee that you've been shown in Exhibit 57, pages 1 to 3, clause 2, "The owner guarantees the purchaser for any loss and damage suffered by the purchaser by continuing to proceed with the rezoning development process and project generally." And that's in the context of this investigation to which you've variously referred throughout your evidence, isn't it?---Yes.

40 That's what this deed was going to. And also in this acknowledgement there is an acknowledgement that "such loss is not limited to any payments made by the purchasers to Gows and Keeju of \$926,667 and \$250,000".
---Yes.

You're aware of that. You weren't taken to that, though, I don't think, by Counsel Assisting. Why, then, when this document is dated on 21 December, 2015, when there's an acknowledgement that payments have been made to these parties, was there an expectation – at least on your part – that monies would remain in the trust account of Knightsbridge North Lawyers?---Yes.

Why?---That was always the impression that I had.

So it's an impression, is it?---Yes.

So you've been giving evidence to the Commission with respect to your - - -
?---Well, it was an understanding that I had.

I haven't finished my question.

10 THE COMMISSIONER: Just a moment. Just a moment.

MS NOLAN: I'll finish the question.

THE COMMISSIONER: Just finish what you were saying.

MS NOLAN: Well, with respect, Commissioner, I have not finished my
question.

20 THE COMMISSIONER: No, just wait a minute. What were you about to
say?---Oh, no, continue.

All right. Okay.

MS NOLAN: Well, so the evidence that you've been giving is with respect
to your impression?---No, it's, that's incorrect.

30 Well, that's what I understood your answer to be. If the evidence is based
on something other than an impression, what's it based on?---It's based on
fact.

What fact is that?---Well, that the monies were – my understanding of the
documentation was that the money was to remain in trust account.

Well, then why, then, is there an acknowledgement here that monies have
been paid by the purchaser to Gows and Keeju in the sums that I've
identified?---I guess this is a document that I wasn't a party to agreeing or
negotiating.

40 Well, you're not a party to - - -?---So this I think ultimately is a question for
Mr Zong.

THE COMMISSIONER: Who drafted this document, do you know Mr
Fisk?---I would assume, can I see the front page? I didn't draft it.

Or anybody in your company?---No. It would have come from
Knightsbridge North by the front page.

Ms Nolan, that's the case isn't it, it has every appearance to me as if it's your client's handy work, is that right?

MS NOLAN: I can't, I can't - - -

THE COMMISSIONER: Well, you should be in a position if you want to cross-examine on this issue to know who the author of the document is, but it does have the prime facia appearance of having been drafted by Knightsbridge.

10

MS NOLAN: Well, with respect, it does but this is a document that's been produced by counsel assisting The Commission, I'm entitled to explore it, I don't have instructions on it immediately I don't have a copy of it.

THE COMMISSIONER: It doesn't matter who produced it, it's a question of who wrote it and I suggest that on the face of it your client did.

MS NOLAN: Yes I - - -

20 THE COMMISSIONER: That may not be right but that's certainly the appearance.

MS NOLAN: I'm dealing with the proposition that you've put to me with respect to my entitlement to cross-examine on a document. This is a document produced to The Commission by counsel assisting, I'm cross-examining on a document not in a position to be able to take instructions, one way or another, as to its provenance because it's not yet up in the portal and I don't have a copy of it.

30 THE COMMISSIONER: There are a couple of problems with that, normally the cross-examination proceeds on the witnesses own document or a document which was in his possession and secondly, it has to be demonstrated that it was a concluded agreement. Now - - -

MS NOLAN: No, pardon me, I think we're at cross purposes Commissioner - - -

40 THE COMMISSIONER: Just a moment. Just tell me, was this document signed by Mr Zong, do you know?---Not that I'm aware of, I'm sorry there's a signature on that.

It's got a signature on it, is that Mr Zong's signature?---That is his signature.

Now, whether the document was produced by counsel assisting doesn't matter at all, the question is, what is your interest in cross-examining on this document which, it seems, your client drafted, what's the point of the cross-examination?

MS NOLAN: I thought it was extensible, with respect, do I need to reveal that really?

THE COMMISSIONER: Yes you do because otherwise I won't permit you to pursue this line of questioning.

MS NOLAN: I've already identified it, it goes to the issue of the trust account that was fairly well contained in the line of questioning at the point at which I was interrupted, with respect, this is what I was exploring.

10

THE COMMISSIONER: But how does this document deal with the trust account issue?

MS NOLAN: Well - - -

THE COMMISSIONER: You needn't look exasperated, make noises, just deal with my questions.

MS NOLAN: No, I'm sorry, I am trying to forensically approach this task in the interest of my client and what you are asking in me Commissioner is effectively - - -

20

THE COMMISSIONER: Is how is it advancing your interest?

MS NOLAN: Yes, I will endeavour to assist you as best I can.

THE COMMISSIONER: Would you answer me, how does it assist your client's interest?

MS NOLAN: It goes to the question at the trust account.

30

THE COMMISSIONER: What question about the trust account?

MS NOLAN: As to whether or not monies needed to remain in there and I am exploring with this witness who's given some fairly opinionated evidence as to what he expected and I'm exploring with him on what basis he could possibly hold that view - - -

THE COMMISSIONER: I don't how you could describe his answers as opinionated - - -

40

MS NOLAN: - - - in the circumstances of this document?

THE COMMISSIONER: - - - evidence at all. What basis do you put that?

MS NOLAN: Well, because I've asked some question of this witness with respect to his impression and then he's asserted that it's based on fact and now I'm exploring that proposition with you.

THE COMMISSIONER: You continue and we'll see where we go.

MS NOLAN: So, my question to you was, if I can take you back please Mr Fisk, you said that there are a number of facts upon which you predicated your opinion that monies needed to remain in the trust account. My question is, well, there is acknowledgement here which you've told The Commissioner that Mr Zong has signed that there have been payments made by the purchaser to Gows and Keeju of \$926,667 and \$250,000 obviously
10 respectively, why then is there an expectation on your part that this money should remain in the trust account?---Because I was not a party to this document.

Right. But you accept that Mr Zong signed this document?---I do.

And the 21st day of December, 2015 do you have any recollection of that day by any chance?---No.

20 Would you have been overseas at that time?---No.

What period were you overseas?---Probably for a period of roughly 17 to 25 October, 2015.

17 to 25 of October. So it was only a week?---A week.

Right. Now, with respect to that just before you went overseas you had a series of conversations with BCP Lawyers didn't you?---Yes.

30 With respect to concerns I think that Mr Perry had for the transaction that Mr Zong was about to enter into?---Yes.

And you were copied to an email on 19 October, 2015 weren't you?

MR MILLER: Commissioner, in fairness I think the witness should - - -

MS NOLAN: I'm going to take him to it. But you were copied to an email?---If I can see a copy I'll let you know.

40 THE COMMISSIONER: Let's go to the email first.

MS NOLAN: Volume 7, pages 5 to 6 please.

THE COMMISSIONER: Volume?

MS NOLAN: 7.

THE COMMISSIONER: Page?

MS NOLAN: 5 to 6.

THE COMMISSIONER: 5 to 6?

MS NOLAN: Yes.

THE COMMISSIONER: Could I have that volume. All right. It's on the screen. Yes, you go ahead.

10 MS NOLAN: See that email?---Yes.

So this is an email to which you were copied and it says, "Tony, I've already verbally expressed my concerns to Matthew regarding the bona fides of the AALC" - - -?---Yes.

- - - "Keeju," I think it should read as opposed to Keenu, "and Gows, given amongst other things there was a quality of documents that was a concern and apparent willingness to agree to requested amendments without proper consideration of instructions."---Yes.

20

"Urgency for no obvious reason as to get documents signed before they're finally agreed and in my opinion final form and in my opinion the conflict of Knightsbridge North Lawyers acting for multiple parties of uncommon interests."---Yes.

Now, if you read on you will see that, I think it's over the page, there's a reference here to "the requirement that the parent body, the New South Wales Aboriginal Land Council" - - -

30 THE COMMISSIONER: Sorry, what is the paragraph you're directing his attention to?

MS NOLAN: The first paragraph. So that "the New South Wales Aboriginal Land Council must among other things pursuant to section 42G give its approval with respect to a land dealing."---Yes.

You knew about this.---Yes.

40 And still settled on the 23rd.---Mark Driscoll did insert a clause into a draft heads of agreement covering the, providing for the Awabakal Land Council to secure that appropriate dealing certificate and upon my return when I saw the final form documents that had been taken out.

Well, why then were you pursuing a dealing certificate later on in March, 2016 if you were aware of the need for a dealing certificate prior to going into the transaction?---And knowing that the documents had been signed without the, with that clause being removed. Again that's a question for

Mr Zong. I wasn't privy to the final negotiations of the final form document.

Which heads of agreement are you referring to?---An earlier draft of a heads of agreement.

Is it the one that was signed?---No.

10 Right. So the heads of agreement that was signed didn't have this reference to approval from the New South Wales Aboriginal Land Council in it did it?---That's right. Correct.

Even though you were on notice of its requirement?---Yes.

Why then are you pursuing this dealing certificate in March of 2016?
---Well, knowing that it was a, that it is a requirement that that will be, in order for us to proceed at some future point in time for the transaction to finally occur that dealing certificate will be required.

20 But you knew that it was a requirement prior to.---That's right.

And you had conducted extensive due diligence you've told the Commission.---Yes.

Some 90 days.---Yes.

So only four days prior to entering into this transaction which I understand was entered into when you were overseas - - -?---Yes.

30 - - - that no provision was made at all for securing this dealing certificate?
---As I said, Mark Driscoll made appropriate allowances within a draft, within an earlier version of the heads of agreement but obviously upon my return and looking at the final form executed document that had been taken out.

40 When you were asked some questions by Counsel Assisting with respect to correspondence that you'd had with Ms Bakis about these dealing certificates, you said that there was an email which said, which effectively deferred your request until the conclusion of, I think you said the investigation. So my note is that there would be a response to the question going to the dealing certificates upon the conclusion of the investigation, and the investigation was still ongoing. Do you remember giving evidence to that effect?---Yes.

Then you were taken to the emails. No mention in those emails of this investigation, as I recall it. Sorry, Commissioner, I - - -

THE COMMISSIONER: Well, I'm not sure that's right. I thought I did see reference to the question of the investigations in one of the emails.

MS NOLAN: I'm going to ask for them to be brought up because I - - -

THE COMMISSIONER: Don't know if Mr Chen can help on that.

MR CHEN: We're just digging them up now, Commissioner. I think that's right.

10

MS NOLAN: Is it volume 12, page 288. I think that's my note. Is that right?

THE COMMISSIONER: 287 is the April 16 email. I don't think it dealt with that matter, though.

20

MS NOLAN: If you could go up, please. Thank you. I think you need to go up a bit further. Is there a page above that, please. A little bit further up just so I can be sure. Sorry. I think this is where it starts. So these are the emails to which you were taken. Do you recall these?---Yes.

Now, if you scroll down, please. "Matt, the document you attached has no relevance. Our client's not doing a subdivision or selling land." What's the document that's being referred to there, do you remember?---I think we're talking about the dealing certificate. I'm not aware of what document Despina was talking about specifically.

30

Well, it's a document that you attached. Do you recall which document she's referring to by referring to an attachment you made?---I'd need to go back and find out what attachment was on that email.

Well, there seems to be in your next email, "Hi, Despina. Perhaps I'm not being clear. For the avoidance of doubt I refer to the document attached to this email. The attachment states 'LALCs will need to seek consent from the New South Wales Aboriginal Land Council before they deal with their land.' It is a copy of this consent that we are after."---Yes.

40

Yes. And so this is the consent that you were on notice was required prior to entering into the settlement?---Yes.

But you made no further inquiries. To your knowledge there were no further inquiries made then, with the exception of an inclusion in a draft of that requirement being complied with, but it never made it through on final form as far as you understand it. That's right?---Correct.

Scroll down, please. And then Ms Bakis responds, "With respect to your asking the wrong question, only the Local Aboriginal Land Council can enter into any agreement, land dealing or otherwise. It doesn't require

permission to enter into such. We suggest you obtain proper legal advice before engaging down that legal pathway. We'll get instructions and revert to you."

THE COMMISSIONER: That's wrong, isn't it?

MS NOLAN: Pardon me?

10 THE COMMISSIONER: That's a wrong statement, isn't it, by Ms Bakis?
It says there's no permission required to enter into an agreement to sell land.
That's not correct, is it?

MS NOLAN: Well, I'm not - - -

THE COMMISSIONER: That's legally and factually wrong, as I understand it.

MS NOLAN: Well, not as I understand it. But I'm not - - -

20 THE COMMISSIONER: Oh, really?

MS NOLAN: I'm not in the position to make submissions - - -

THE COMMISSIONER: So you say that an agreement in respect of land could be entered into without the consent of the Local Aboriginal Land Council?

MS NOLAN: No, that's not what I'm saying. I'm - - -

30 THE COMMISSIONER: Well, that's what the letter is suggesting.

MS NOLAN: What I'm saying to you is that I'm going to make submissions on that in due course but I'm not in a position to do it right now because I don't have the Act in front of me.

40 MR CHEN: Sorry Commissioner, the other thing is, it's my learned friend is cross-examining in a manner which is inconsistent with what is in this email which the thrust of what is being put to the witness is stands in stark contrast to what Ms Bakis is saying, perhaps she should identify rather than say in due course what her position is, what it actually is, because it's inconsistent with her client's position as I would read that email.

THE COMMISSIONER: I think you should be in a position to state what your client's position is in relation to that matter.

MS NOLAN: I'm sorry, I'm not clear what was just said by Mr Chen because I couldn't quite hear him.

MR CHEN: Sorry, I'll say it again Commissioner.

MS NOLAN: I think he might need to stand closer to the microphone, I think that's the - - -

MR CHEN: What in fact, my learned friend is cross-examining on is, in my submission, Commissioner directly inconsistent with this email and that my learned friend really should take a position, is her client right or wrong, and if so, which position is she taking?

10

MS NOLAN: I don't understand that to be correct because what I'm cross-examining on is the assertion that dealing certificates were sought - - -

THE COMMISSIONER: Yes, I know you're dealing with the dealing certificates but the primary question is, what is your client's position in relation to this? Does she take the view, as expressed in that letter, that no permission is required from the Land Council to enter into a land transaction or is that not your client's position?

20

MS NOLAN: I can't say what the position that is sought to be expressed on the face of this email actually is because I will concede it's infelicitously expressed but the position with respect to whether or not a dealing of this nature requires a certificate is something about which I will make submissions in due course but with respect to Mr Chen - - -

30

THE COMMISSIONER: What's this issue about the certificate, it's plain that a dealing certificate was required and your client and Mr Petroulias were acting on the basis where Mr Fisk was chasing up the dealing certificate they were all the same page. You needed to have one, there were delays and leave it with me, I'll look into it, says Mr Petroulias and then it goes and on and on with no dealing certificate coming but everyone's looking for a dealing certificate, both people on your side of the record as well as Mr Fisk. So what's the issue about the dealing certificate? Everyone agrees it was necessary, it had to materialise, it was just a question of when?

MS NOLAN: No, that's - - -

40

THE COMMISSIONER: There seemed to be an endless situation that it wasn't coming although Mr Fisk was chasing it.

MS NOLAN: A dealing certificate would be required upon the dealing with respect to the land, none of this eventuated in fact, I think this witness has given evidence that the way in which they were going to provoke the presentation of a dealing certificate was by calling on the option.

THE COMMISSIONER: Well - - -

MS NOLAN: I'm not going to go into, with respect now, during the cross-examination equitable interest in land and whether or not an equitable interest in land - - -

THE COMMISSIONER: Please don't. All right, put your next question I think is the best way forward.

MS NOLAN: And then here you'll see, I think is this the response that you're referring to, I'm not querying the investigation, what are you referring to there at 4.53pm, is this, sorry, you'll need to go down further, these aren't, these are in reverse order aren't they? Could someone please go down, I think, whoever's controlling it, yes, further again. So I think the email to which I'm directing your attention is this one, at the bottom, I think it's of page 288. That's my note. So, dear Nick, further to your correspondence of 18 March and our email request we urgently seek an update on the progress status of the Awabakal Land Council board meeting, your email of the above-mentioned date, sorry, I can't read this, it's too small, just a second, stated that the Awabakal board meeting was to occur within two weeks of 18 March, 2016, as mentioned in our previous correspondence we will require the appropriate dealing certificates. I won't read to the end of that. "But I'm sure you would appreciate that in order for us to continue with the transaction and confirm appropriate assurances to our investors, this mandatory certification is required. Given that we have nothing, we are starting to seriously consider if Awabakal has in fact any legal authority to deal in this land. As you know, we've spent a considerable amount of time and money on this project, and if the appropriate certificates cannot be made available, we would need to consider our options and may include seeking to reimburse all deposits and consultant fees." That's the email to which you were earlier taken. And then the email to which you say Ms Bakis responded, "You are more than capable of contacting Mr Green direct as to the update of the investigation and such matters." That's what you were referring to, is it, when you said that there would be a response after the investigation. Is that what you were referring to?---Yes.

So do you remember the thread of these questions? There's been a few segues from it. Right. So you say that you had a telephone conversation with Ms Bakis.

THE COMMISSIONER: About what?

MS NOLAN: You've told the Commission you had a telephone conversation immediately prior to you going overseas, is that right?---Yes, correct.

Well, I'm going to suggest to you that you actually never did. What do you say about that?---Well, I disagree.

And do you have any records of that telephone conversation?---I would need to go to Telstra to get my phone record.

Did you take any records of that telephone conversation?---No, I was out of the office.

Well, Ms Bakis instructs me that she never had such a conversation with you. What do you say about that?---Well, I disagree.

10 THE COMMISSIONER: He's already denied it. He's asserted that he did.

MS NOLAN: Ms Bakis also says that she's never met you on any occasion. What do you say about that?---I disagree. Well, the lady that was purported to be Ms Bakis I met with Nick Petroulias and Tony Zong at 9 Castlereagh Street.

And Ms Bakis instructs me that at 9 Castlereagh Street there is no intercom at all.---Telephone. Telephone intercom. Not an intercom with the door. It was on the telephone.

20

So this person who purported to be Ms Bakis, now you say she purported to be Ms Bakis or she represented herself to be Ms Bakis?---With respect, you're saying I haven't met her, so - - -

Well, I'm trying to explore this proposition with you. You say that you met Ms Bakis.---Yes.

Do you tell the Commissioner that she introduced herself to you as Ms Bakis?---I, from recollection I believe Nick introduced her when she walked into the room.

30

And what did Nick say when she walked into the room?---That this is Despina.

And what did Despina look like?---Having met her for probably 20 seconds, she was a short woman. I think light, sandy or mousy colour hair.

Sandy - - ?---There was nothing – I don't recall any major features standing out that I suddenly would go, yes, she was six foot or whatnot. It was a 20 or 30-second meeting or introduction and it was purely in passing.

40

You've had a lot of conversations with this woman.---Yes.

According to you.

MR MILLER: Well, I don't think that is the evidence, Commissioner.

THE COMMISSIONER: What, that - - -

MS NOLAN: Well, he's just accepted it.

MR MILLER: Well, I think you're putting a proposition to him that, with respect, Commissioner, he said he had one telephone conversation with Ms Bakis.

THE COMMISSIONER: Yes, I think that's right.

10 MS NOLAN: Well, I put a different proposition to him and he accepted it, Commissioner.

MR MILLER: Well - - -

MS NOLAN: But if he wants to change the position in light of the objections - - -

20 THE COMMISSIONER: All right. Let's clear it up. How many conversations do you recall having with her?---I would have had probably between one and five, if - one and three. But I've clearly had a lot of email dialogue.

MS NOLAN: So you've had a lot of email dialogue and between one and three or perhaps one and five conversations with Ms Bakis, she was a person who was in your opinion wrongfully withholding dealing certificates or not producing them and you can't tell the Commissioner what she looked like?

30 MR CHEN: I object. I object, Commissioner.

MR MILLER: I object to that because that characterisation is not the evidence.

THE COMMISSIONER: Is not the evidence. I reject it.

40 MS NOLAN: Well, there was a - I withdraw the question. This is a woman with whom you've had one to three telephone conversations, perhaps one to five, a number of email conversations and there was some issue surrounding these dealing certificates and you can't tell the Commissioner what Ms Bakis looks like?---No.

MR MILLER: I'm not immediately sure of the relevance of that, Commissioner.

THE COMMISSIONER: Yes. It's not consistent with the evidence. He did give you a description although he said it was limited.

MS NOLAN: Well, I'm going to suggest you've never met Ms Bakis at all.

THE COMMISSIONER: You've put that at least twice now. I think we've drawn swords on that one. There's a clear issue of fact. Did he or did he not meet Ms Bakis on the day he's referred to. Now, besides trying to get a description of the woman what else can we do about this incident? I'm either going to believe Mr Fisk as a reliable witness or Ms Bakis as a reliable witness on that issue. What more can we do by persisting with cross-examining this witness on that issue?

10 MS NOLAN: Well, I'm going to go to that issue because if I'm going to ask you to make - - -

THE COMMISSIONER: You've already gone there but you're not getting very far. He's given his evidence. He met her for a matter of a very brief period one occasion. He's given you a description. He says I can't describe her any more. There are no other features that I can recall about. What more do you want? What else do you want to put to him?

20 MS NOLAN: Well, the reason why you can't describe her is because you're just making this up.---That is, I completely disagree with that.

THE COMMISSIONER: Now, Ms Nolan, I direct you to move on to some other issue. If you've got any other issue move to it now.

MS NOLAN: You've dealt with Mr Say haven't you on another occasion in respect of transactions involving Mr Zong, and by that I mean not the Sunshine and Awabakal transaction, haven't you?---Mr Say introduced Mr Zong to another opportunity after introducing him to the Awabakal deal.

30 Had he introduced him to opportunities earlier?---Not that I'm aware of.

And is that perhaps explained by the fact that you had only just started your employment with Mr Zong at or about the time of - - -

MR CHEN: Well, I don't think he could know that with respect either.

MS NOLAN: No, but I mean I'm just exploring. When did you start working with Mr Zong again? I'm sorry, I don't - - -?---In April, 2015.

40 Right. Can you pull up page 202 of volume 4 please. See that email?
---Yes.

What's that referring to?---Absolutely no idea.

Well, can I suggest to you that it appears to be - - -

THE COMMISSIONER: It appears to be about Mr Say's capacity as a genius.

MS NOLAN: Well, what I'm unsure of - - -

THE COMMISSIONER: It says, "Subject, I'm a genius."

MS NOLAN: Is it - - -

THE COMMISSIONER: Does that - - -

10 MS NOLAN: Is it part of - - -

THE COMMISSIONER: Does that mean anything to you?---That means absolutely nothing to me.

MS NOLAN: Is it part of this email chain of the earlier emails re Awabakal? If you go up to page 201. Does this refresh your memory at all?---Yes, I recall those.

20 Well, does this email from Mr Say informing you of his genius, does it form part of that email chain, do you know?---I don't know. I would need to go back and have a look at my computer. I would doubt it.

Yes, thank you. I have no further questions.

THE COMMISSIONER: Yes, thank you. Mr Petroulias.

MR PETROULIAS: Yes, thank you. Just so we just – two things. Remember you mentioned a business card - - -

30 MR MILLER: Commissioner - - -

MR PETROULIAS: - - - and you could recognise it?

THE COMMISSIONER: Just a moment.

MR MILLER: Commissioner, could I just ask Mr Petroulias to extend the courtesies of referring to the witness by his, by his proper title.

40 THE COMMISSIONER: I'm sorry?

MR MILLER: Could I just ask Mr Petroulias through you to refer to the witness as Mr Fisk rather than (not transcribable).

THE COMMISSIONER: Yes. Thank you.

MR PETROULIAS: Okay. Mr Fisk, can I, can I show you some business cards. If it reminds you - - -

THE COMMISSIONER: Mr Petroulias, you're here. If you've got a question, ask him a question. You're not here to make statements or make demonstrations.

MR PETROULIAS: Sorry, I'm asking - - -

THE COMMISSIONER: No, it's got to be a question.

10 MR PETROULIAS: Yeah. Do you - - -

THE COMMISSIONER: This is a question-and-answer format. I'm sure you're familiar with the court proceedings. If you want to cross-examine, you put a question. You don't make statements.

MR PETROULIAS: Mr Fisk, can I remind – you indicated that you were given a business card by me.---Yes.

20 Can I remind you whether this refreshes your memory?---Yes.

Does it?---Can I see the card?

Yeah.---And I believe the question was a name surrounding what was on the business card, which I couldn't recall specifically what the name was.

THE COMMISSIONER: You go back, Mr Petroulias.

THE WITNESS: Yes, I remember this business card.

30 MR PETROULIAS: Okay. So that's the one I gave you?---Yes.

Okay. Now, do you remember having a discussion - - -

THE COMMISSIONER: Just leave it there for the moment.

MR PETROULIAS: Can we, can I exhibit that as an exhibit?

THE COMMISSIONER: You want that to go into evidence?

40 MR PETROULIAS: Yes.

THE COMMISSIONER: Well, it will be shown to Counsel Assisting and we'll come back and decide whether it's to be admitted or not at the end of the cross-examination. Have you got any questions on it?

MR PETROULIAS: Yes. Oh, I was going to say – I didn't know whether you wanted one.

THE COMMISSIONER: Yes, just ask him any questions.

MR PETROULIAS: I was going to ask you to read, read it.

THE COMMISSIONER: Yes, I think he's read it enough.

MR PETROULIAS: Okay. So, United Land Councils on one side, Indigenous Business Union on the other side.---Yes.

10 Okay. Now, do you remember having a meeting in your office where we discussed Wollongong and you showed me the Google Maps and how you could find – you had - - -?---Yes.

You do remember the – great. That was in your office. And you had a report done from some property consultant. I think it was Monteath. I'm not sure. Is that correct?---Yes.

Yes. Now, that was about - - -

20 MR MILLER: Commissioner, it's not immediately apparent to me how this evidence, if it is evidence, deals with your terms of reference.

THE COMMISSIONER: Yes.

MR PETROULIAS: Could we please let me finish?

THE COMMISSIONER: I think you might be right. Just wait and see, Mr Miller.

30 MR PETROULIAS: Now, that was, that was the Aboriginal land at Wollongong.---Yes.

Okay. So therefore when you said there was no other Aboriginal land investments that Mr Zong was contemplating, it did have to include at least that.---Sorry? With respect to the Awabakal Aboriginal Land Council.

Yeah, but other investments that Mr Zong was considering from United Land Councils, that, it would include at least the Wollongong lands. ---Which I understand there was one meeting on that.

40

Yeah. Now, can I say to you that that happened in around March?---Well - - -

THE COMMISSIONER: Mr Petroulias, what's this got to do with anything that I'm here to decide?

MR PETROULIAS: Because what I'm suggesting is the conversation that was had – if I can allow to finish – the conversation that took place was not in, was in fact in Mr Fisk's office.

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

MR PETROULIAS: No, sorry, sorry. With respect, it is very important.

10 THE COMMISSIONER: No, no. You're here to put questions to the witness that touches or concerns your interests.

MR PETROULIAS: Yes. We had a meeting. According to Mr Fisk we had a meeting in March sometime. Is that correct? Was it your evidence that you had a meeting with me in my office?

THE COMMISSIONER: Mr Petroulias, I'm not sure if you're hearing me.

MR PETROULIAS: Yes.

20 THE COMMISSIONER: I've asked you to move on to another subject.

MR PETROULIAS: Okay. I want to, I want to ask when the meeting - - -

THE COMMISSIONER: Go on to that subject now, please.

MR PETROULIAS: So, okay. Have you ever been to my office?---Yes.

30 Could you describe it?---Well, the office that I was in was at 9 Castlereagh Street.

Yes, but can you describe the office?---There was a boardroom that overlooked Castlereagh Street, and I believe that there's a number of other - - -

So it wasn't the office, it was a boardroom?

THE COMMISSIONER: I'm going to discontinue this line of questioning or prevent you from continuing it. Another issue, please.

40 MR PETROULIAS: Okay. Okay, so let's go there.

Now, you had prepared a presentation for the Awabakal community of what Sunshine is about in about July 2015, a PowerPoint presentation?---(No Audible Reply)

Would you like me to remind you, refresh your memory?

MR MILLER: Well, Commissioner, it should be shown to the witness if that's the proposition that Mr Petroulias wishes to put to him.

THE COMMISSIONER: Well, I'll just wait and see. Do you have any recollection of a presentation in July 2015?---I have a recollection of preparing a presentation.

MR PETROULIAS: Would this refresh your memory at all?---Ah, yes.

10 Okay. That presentation identified a number of properties, Gordon and Green - - -?---Yes.

None of those properties actually eventuated, did they?---Can I have a look at the document?

Certainly. If you could put it on screen, it's in the Bakis files on USB.

THE COMMISSIONER: Have you given notice to - - -

20 MR PETROULIAS: Yes, Commissioner, I have.

MR CHEN: I don't think we have a page number, Commissioner.

MR PETROULIAS: No, it doesn't have a page number, it's on a USB stick.

30 MR CHEN: Just for future reference for Mr Petroulias, as I understand it the USB stick has approximately 600 pages and it's not – the USB stick has approximately 600 pages and they're not numbered, so we'll need some assistance.

THE COMMISSIONER: Well, Mr Petroulias, you're going to have to do better than that. If there's 600 pages and no page numbering we're going to be in all sorts of strife, but anyway, let's see if we, there may not be any of the documents you need to refer to. Have you looked at those documents? ---Yeah, I've looked at that.

Okay. What's your question?

40 MR PETROULIAS: Okay, sorry. So you accept there were a number of proposals there that hadn't proceeded at that point?---There were four opportunities and one of those we did acquire.

Okay. But obviously these are proposals, this is for investors, this document?---This document was – and sorry, I'll just elaborate a little bit further, the other three were properties that we were either in due diligence or actively pursuing to acquire.

Yes. So, and who was going to fund that?---Tony Zong.

Personally?---And/or investors I believe. That's ultimately a question for Tony Zong.

10 No, I appreciate that. And you sent that for the purpose of presentation to the Awabakal community?---Tony Zong asked me to prepare this but I, there is nothing here that actually indicates that this was specifically prepared for the Awabakal Aboriginal Land Council. I don't think there's any mention in here.

That's right.---Just having a quick scan of, certainly not addressed to the Awabakal Aboriginal Land Council.

MR MILLER: Well, if that's correct, Commissioner, I query the relevance of the document at all.

THE COMMISSIONER: Can I just - - -

20 MR PETROULIAS: So you would accept that that had been forwarded by Keith for, and it actually said community presentation. Would you dispute that?

MR CHEN: Well, I object.

MR PETROULIAS: Because I can bring up the email.

THE COMMISSIONER: Just a minute - - -

30 THE WITNESS: I have no idea.

MR PETROULIAS: Okay, well - - -

THE COMMISSIONER: Okay. Well, no, we'll have those documents just marked for identification for the moment so that we've got some means of identifying them and then we can decide whether they go into evidence later. Yes, okay. Now, Mr Petroulias, move on.

40 MR PETROULIAS: Okay. Then - - -

THE COMMISSIONER: That will be MFI 10, those documents.

**#MFI-010 – SUNSHINE PROPERTY INVESTMENT GROUP
CORPORATE PRESENTATION**

THE COMMISSIONER: Yes.

MR PETROULIAS: So you did give evidence that pretty early on you got a copy of the heads of agreement with Gows, it would have been, as I understand your evidence, just after the offer was made or just before the offer was made, so you had, your lawyers had the opportunity to examine the Gows heads of agreement?---Yes.

Okay. Then there was, do you remember a meeting on – just before – you just obtained the valuations from Diamond’s?---Yes.

10

And there was a meeting in your offices. If I can just see if this assists your memory, because I made handwritten notes, I don’t know whether you did. Matt, Tony, Matt, Keith, Sam, Nick and Richard, 21/9/15. 21st. Now, okay, you talked about you had some concerns about the heads of agreement.

MR MILLER: This is Mr Petroulias’s own document he’s seeking to cross-examine - - -

MR PETROULIAS: No, I seek to – do you remember a meeting?

20

THE COMMISSIONER: Mr Petroulias, with respect, I think you’re a bit all over the shop at the moment and I think you’re firing these questions with such rapidity that it’s really very hard to keep track of what it is that you’re trying to ask the witness.

MR PETROULIAS: I’m trying to - - -

THE COMMISSIONER: So I think firstly, would you just slow down the pace.

30

MR PETROULIAS: Okay.

THE COMMISSIONER: And if you just could formulate your questions rather than making statements in the middle of each of the questions. Do you understand what I’m asking you to do?

MR PETROULIAS: I do, yes.

THE COMMISSIONER: All right. Well, let’s start again.

40

MR PETROULIAS: So would you recall a meeting just after the Diamond valuations have been obtained with all six people present that I just named and discussing - - -

THE COMMISSIONER: Just a minute. Wait a minute. One proposition at a time.

MR PETROULIAS: (not transcribable) context.

THE COMMISSIONER: Are you able to answer that question?---I recall a meeting but I believe I was called into the meeting.

MR PETROULIAS: That might be right.---I did not call the meeting per se. I think Tony Zong asked me to come in - - -

Sure. Sure.--- - - - at some point of that meeting.

10 And that's where (not transcribable) and I'm saying, suggesting to you that's the meeting where we discussed whether Awabakal liked the idea of housing, part housing/part cash?---Yes.

And in that meeting Richard gave you a, a timetable I suggest of when there would be an AGM and then a presentation, so something like on the 29th there will be a board meeting AGM and on 7 October there will be a presentation?---I don't recall that.

20 Okay. And, and you don't recall references to section 42G, 42M?---Not at that point in time, no.

Approvals. Okay. Okay. And you don't remember a community meeting and then NSWALC approval?---No.

No. Okay. Now, you then said that you, we had a little bit of a dispute about this 90 days being up and, and a renewal.

THE COMMISSIONER: Please don't make statements.

30 MR PETROULIAS: Yes.

THE COMMISSIONER: Just put a question.

MR PETROULIAS: I'm about to. And then there was a suggestion that you would resubmit a revised proposal?---Yes.

That revised proposal do you know if it was ever accepted?---Sorry, a revised proposal. Sorry, I'm talking about a revised heads of agreement.

40 Well, okay.---But after the Diamond's valuation came out at \$12.6 million there was then a revised heads of agreement that was put forward.

THE COMMISSIONER: Mr Petroulias, I think it's important that you identify particular documents. If you're referring to a legal agreement, there are so many agreements, well, purported agreements I should perhaps refer to them as that you need to identify which one you're talking about because the witness may have in mind a quite different one to what you are contemplating.

MR PETROULIAS: Yes. I'm trying to remind you of the evidence that there was a revision to the idea of 12 million into 12 million half cash/half property.---Yes.

And then you made a revised offer.---Yes.

Okay. And I'm asking you do you remember if that was accepted?---I understood that to be accepted.

10

Wasn't it in fact a reply sent back that was handwritten with some changes?
---(No Audible Reply)

Can I, now these are, Mr Broad, can we have these on the screen. So you don't remember whether that was accepted?

MR CHEN: Well, we know it's not been accepted, Commissioner. I mean the evidence is clear that there's an agreement signed on 23 October, 2015 so we really should get to the point.

20

MR PETROULIAS: No, we're talking about the 90 day due diligence period and extending it. That there was never an extension.

THE COMMISSIONER: Mr Petroulias, what's the relevance of this line of questioning?

MR PETROULIAS: I'm simply following, following the, the evidence that was given and - - -

30

THE COMMISSIONER: Yes, but a lot of the evidence that was given was simply to explain what happened, not so much concerned about each particular provision and whether it was accepted or operated. See, Mr Petroulias, your interest is not to be so much pursuing particular terms of these agreements and whether they were accepted or not, because at the end of the day what we're looking at is whether these agreements – starting from the agreement in December, 2014 – were real agreements or whether they were shams. And you're here to defend your interests, to say either they were not shams, they were valid agreements executed under the authority of the council or with the authority's permission. And they're the issues that I think you're facing, not so much looking at individual clauses or operation of a varied or revised amount in one of the heads of agreement.

40

MR PETROULIAS: The person he's contracting - - -

THE COMMISSIONER: Now, you follow what I'm saying?

MR PETROULIAS: Yes, I do.

THE COMMISSIONER: Your interest is a very clear one.

MR PETROULIAS: Yes.

10 THE COMMISSIONER: In effect, I can't anticipate exactly how Counsel
Assisting will be putting this, but as I apprehend it will be put that these
agreements were either a nullity or they were a sham, they were not valid
agreements at all, that they were part of a ruse. Now, I can't put it any more
clearly that that's what I anticipate may be put. It may not be put in that
way. But you have to keep focused as to what you're here to defend
yourself about. They're the big issues in this hearing, and you should be
focused on those issues and not on side issues which have nothing to do
with the main issues. Do you follow that? I'm just pointing these things out
so that you can - - -

MR PETROULIAS: Yeah, and in order to answer those - - -

20 THE COMMISSIONER: - - - you can defend your interests or promote
your interests.

MR PETROULIAS: Right. And - - -

THE COMMISSIONER: Otherwise you're just wasting time and you're not
making any ground at all.

MR PETROULIAS: In order to defend, to defend that position, I, I am
entitled to inquire about the things that have been put that I've agreed to or
not agreed to along the way in the, in the course of a negotiation.

30 THE COMMISSIONER: Yes, but there are a lot of matters, Mr Petroulias.
It doesn't matter whether they were led in evidence by Counsel Assisting
because many of them just form part of the factual matrix of the whole
unhappy story. The question is whether these agreements were lawful
agreements. How did the solicitor manage to act in the interests of both
parties? What advice was she giving one party and did that affect the
interests of the other party? This is a classic conflict of interest-type
situation where the question is how did these transactions come into
existence? What advice was given? Whose interest was promoted? Whose
interests were not promoted? They're the sort of issues I think you need to
40 concentrate on, otherwise you might be wasting your time.

MR PETROULIAS: Okay. So you were never – so the right of first
refusal, you said something about \$50,000 being paid on that?---I
understood that had been paid.

But you're not sure?---Tony Zong will have to confirm that.

So if I said to you it never, there was never any payment on the right of first refusal, you wouldn't dispute that?---I would have to speak with Tony Zong.

That's fine. In December there was a series of meetings with Tony Zong where, if you like, documents were signed. You were not party to those agreements?

10 MR MILLER: Well, Commissioner, could I object. Mr Petroulias should specify the time of those meetings and whether or not he alleges that Mr Fisk was actually present at those meetings.

THE COMMISSIONER: Yes.

MR PETROULIAS: Yeah. Mr Fisk, were you present at all when I met Tony Zong with Ms Bakis and Mr Green in Gloria Jean's coffee shop on 4 December near your offices?---No.

20 Were you present at the meeting with Tony Zong on 22 December in Burwood with myself and Mr Zong and Ms Bakis?---No.

MR MILLER: Can I just rise, Commissioner, and ask whether these dates are in 2015?

THE COMMISSIONER: Yes.

30 MR PETROULIAS: Sorry, 2015 I'm talking about, yes, yes. In 2015. So, so, for example, that deed of acknowledgement and guarantee that Ms Nolan was showing you, you weren't party to that at all? You weren't at any meeting where that was discussed?---No.

Okay. Now, you described, you described to Counsel Assisting that – well, he put it to you, I think you accepted – that the Gows agreement was, Sunshine was buying out Gows' interest.---Yes.

40 But it wasn't actually buying out Gows' interest, was it? There was no assignment to Gows or no sale to Gows. Gows was simply surrendering and walking away. Is that how you understand it? You see the difference? I'm selling you this pen as opposed to I'm just walking away and letting you do your own agreement. Do you, do you agree that it wasn't a sale?---I agree.

Okay. Now, with the, with the just the general context of the understandings, did you see, was Gows giving any warranties?---I would need to look at the documents.

But you don't recall anything?---I, I can't - - -

That would stand out, wouldn't it? I promise to do something. I guarantee something.---I - - -

THE COMMISSIONER: You've now asked him three questions - - -

MR PETROULIAS: okay.

THE COMMISSIONER: - - - in one.

10 MR PETROULIAS: All right. Did any sort of promise or representation that's in the Gows Agreement?---Can I see a copy of the agreement?

You certainly can, can he be shown a copy of the agreement.

THE COMMISSIONER: Mr Petroulias - - -

MR MILLER: The Surrender Agreement and Release, Commissioner is Volume 7 page 136.

20 MR PETROULIAS: Yes, the head of agreement we're talking about. Whilst that's happening, do you, are you aware of any obligation that Gows has taken on that it didn't fulfil?

MR CHEN: Commissioner, I think Mr Petroulias should actually identify when he refers to Gows what he's talking about.

THE COMMISSIONER: If there's something you want to put to him then put it to him in precise terms.

30 MR PETROULIAS: I'm responding to the general questioning that counsel assisting had given him about what, in any of your negotiations, is there any representation that Gows made in any document, that you can identify - - -

THE COMMISSIONER: I reject that question, far too broad.

MR PETROULIAS: All right. Well let's go through it. Can we have the heads of agreement Mr Broad?

40 THE COMMISSIONER: They're on the screen there Mr Petroulias, is there something you want to take him to?

MR PETROULIAS: Yes, the, the Awabakal and any agreement, excuse me. Any agreement, okay. Let's look at the Surrender and Release Agreement.

MR MILLER: Commissioner this document appears to be a document between Gows Heat and Awabakal.

MR PETROULIAS: Yes, that's not the one. It's called the Surrender and Release Agreement.

MR MILLER: That document, yes, it is 7, 136.

THE COMMISSIONER: 7, 136, yes.

MR PETROULIAS: Page 129. Okay. There are many versions of this agreement, you would appreciate.---Yes.

10

You've seen other versions with stamps on them?---With stamps?

Yes, can I show you one.---Yes, please.

There's not a lot of magic to them.

THE COMMISSIONER: Sorry.

MR PETROULIAS: Thank you. Now you see the major difference is the stamp and then the signature on the side there, if you can look at page five, there's a Debbie Dates signature as a witness?---Yes.

20

And that same signature appears where ever there's handwritten changes is that signature.---Yes.

Now, so having identified that there are different versions of that agreement, in other words with stamps and more signatures, can you identify, you've read this Heads of Agreement?---Yes.

30 Is there anything there that this - - -

MR CHEN: Can Mr Petroulias make it clear whether he's asking the witness about what's in front of him, which I don't believe is in evidence and I don't believe I've seen.

MR PETROULIAS: Sorry - - -

MR CHEN: Just a moment.

40 MR PETROULIAS: Sorry.

MR CHEN: And the document on the screen, I'm not, it's certainly not clear from the question whether he's purporting to ask questions about one or the other, in which case I'd like to see the document.

THE COMMISSIONER: Just will you hand the - officer, will you take the document that the witness has got and hand it to Counsel Assisting so that he can see what it is.

MR PETROULIAS: So the point to be clear was - - -

MR CHEN: Just a moment just please. Commissioner, could I ask Mr Petroulias to put onto the record where this document or what the origins of that document - - -

MR PETROULIAS: It's in the USB stick.

10 MR CHEN: Just a moment – that he handed to the witness is?

THE COMMISSIONER: Yes. Mr Petroulias, you're being asked to identify - - -

MR PETROULIAS: Yes.

THE COMMISSIONER: - - - the origin, that is the source from which this document came.

20 MR PETROULIAS: Yes, yes. It's on the USB stick that was taken from the Knightsbridge files. I've been trying to get access so that, so that with respect it can be less shambolic.

THE COMMISSIONER: So does that mean that you're saying that you understand this copy of the document's entitled Surrender Agreement and Release, came from Knightsbridge?

MR PETROULIAS: Files that are with the Commission.

30 THE COMMISSIONER: Knightsbridge files - - -

MR PETROULIAS: Yes.

THE COMMISSIONER: - - - which were lodged in answer to a notice. Is that what you're saying?

MR PETROULIAS: That's correct. And that they are on the website but that I am unable to - - -

40 THE COMMISSIONER: That's all, that's all I was asking you.

MR PETROULIAS: - - - access the website.

THE COMMISSIONER: Yes. Okay. Now, is there anything about this document, Mr Chen?

MR CHEN: No, no, Commissioner.

THE COMMISSIONER: Is it the same as the one on the - - -

MR CHEN: I haven't - - -

MR PETROULIAS: It is.

MR CHEN: I haven't had an opportunity to compare whether they are the same. I mean there's obvious differences in terms of its execution.

10 MR PETROULIAS: That's right.

MR CHEN: What is before the Commission in volume 7, 136 is a document that's not signed by Ms Dates.

THE COMMISSIONER: No. Certainly it does appear to have differences in it, in fact - - -

MR CHEN: I'm told, Commissioner, in fact that contrary to what Mr
20 Petroulias has advised you, that that document is not on the USB stick, but
Commissioner, I don't wish to take up any further time, it's something we'd
have to look at further, but my instructions are that's not the form of
agreement that is on that USB stick, but if it is - - -

THE COMMISSIONER: Then very good, we can look into that, but it
seems if Mr Petroulias wants to ask any questions about the surrender
agreement release of Mr Fisk he should work from the copy of the
document that's on the screen so that we are all on the same page as it were,
literally.

30 MR PETROULIAS: Yes. With respect I just want to put on the record that
it is, is on the USB, is on the screen and I cannot access it, and I can show
whoever needs to see it. It is, this document is on the screen.

THE COMMISSIONER: When you say you can't access it, you can access
what's on the screen.

MR PETROULIAS: I cannot. I was given a login and it just won't load, it
says it won't let me do it. I wish I could.

40 THE COMMISSIONER: Very good.

MR PETROULIAS: Okay. Now - - -

THE COMMISSIONER: I'll have this, now just keep calm, please. The
document that has been handed to me which was handed by Mr Petroulias
and in turn handed to the witness will be marked for identification as MFI
11.

**#MFI-011 – SURRENDER AGREEMENT & RELEASE RATIFIED 16
DECEMBER 2015**

THE COMMISSIONER: We can mark it as MFI 11 and then return it to the witness. Thank you. Proceed, just mark it as MFI 11, please.

10 Mr Chen, I think all we can do, we ought to allow Mr Petroulias in the circumstances in which he says he can't access the copy that's on our screen, is to put questions on the basis of document MFI 11. The authenticity of document MFI 11 can be checked out later and if you want to ask any further questions about it, then you can do so, but I think in the interests of moving on with this cross-examination I'll let him use the document, subject to it being checked out though.

MR CHEN: May it please the Commission. Yes, Commissioner.

20 THE COMMISSIONER: All right. Hand the document back to Mr Fisk. All right. Now, away you go, what do you want to ask him? Yes, now he's got the document, what question do you want to ask him?

MR PETROULIAS: Very simply, Mr Fisk, do you see any obligations in that document on Gows or any representations it made?

THE COMMISSIONER: No, I reject that question. The document will speak for itself. The witness can't add to what's already in the document. If there's obligations there, we can read them.

30 MR PETROULIAS: Sorry. I - - -

THE COMMISSIONER: It's not a question of getting it from the witness's mouth. Yes, next question.

MR PETROULIAS: Has any failure of an obligation been brought to your attention?

THE COMMISSIONER: No, I reject that question. Have you got any other questions on the document that's just been marked MFI 11?

40 MR PETROULIAS: Okay.

THE COMMISSIONER: I'm not inviting you to put questions, but if you have any in mind.

MR PETROULIAS: Okay. No, that's fine. Move on.

THE COMMISSIONER: Thank you. That document, MFI 11, can be returned from the witness, please. Thank you. Yes. Yes, Mr Petroulias.

MR PETROULIAS: Mr Fisk, you helped put together the contracts of sale that were eventually put as parts of the agreements that were entered into with - - -

THE COMMISSIONER: Sorry, which documents are you now referring to?

10

MR PETROULIAS: Just to refresh your memory, the actual contract of sale.---I instructed Mark Driscoll to prepare the necessary searches that went with those contracts.

Right. Okay. So you've had therefore the searches. You've had (not transcribable) valuations.---Sorry?

Whatever. Diamond's valuations.---Diamond's.

20

Diamond's valuations have a certificate of title attached to it. A certificate of title identifies the Aboriginal - - -

THE COMMISSIONER: I reject that. You're making statements to him. He hasn't got a clue - - -

MR PETROULIAS: No, it's a question and it was an answer.

THE COMMISSIONER: No. I reject it because it's not a question.

30

MR PETROULIAS: Okay. One more time. Diamond's had valuations that contained a certificate of title? Question.---Yes.

And you've seen that certificate of title?---Yes.

And you've seen the searches that were done by Driscoll?---Yes.

And they contained references, do they not, like all of them, to the Aboriginal land and its legal requirements?---Yes.

40

And you had between three and a half months to six months – depending on whether you look at December or not – of opportunity to examine to do with due diligence.---Well, the Diamond's valuations were made aware, were made available to us in – I'll need to look at the email chain when that was sent out.

About September?---September.

Yeah, mid-September?---Yeah.

Okay. Now, and you also had the advice of Mark Driscoll explaining to you that, the very tenuous nature or lack of binding nature of the agreements that you were just taken to?

MR MILLER: With respect, Commissioner, that mischaracterises the evidence that was led from Counsel Assisting. It was Mr Mutton who drew Mr Fisk's attention to that problem.

10 THE COMMISSIONER: Yes, thank you. Yes, it was not Mr Driscoll.

MR PETROULIAS: Yeah, there was, the email that you were shown by Ms Nolan on 19 October, 2015, which raised some doubts about the enforceability of the agreements.

THE COMMISSIONER: Well, you'd better take us to the document.

MR PETROULIAS: Okay.

20 THE COMMISSIONER: What is the document?

MR PETROULIAS: It's brief volume 7, page 5 and 6.

THE COMMISSIONER: 5. 5 and 6, is it?

MR PETROULIAS: Yeah, it's a two-page document. A series of emails. There we go.

30 THE COMMISSIONER: What part of it?

MR PETROULIAS: So Mark Driscoll has copied you in. And- -?---Yes.

Okay. So it's brought to your attention. You said you, in your evidence, that you also had your own doubts and needed the dealing certificate for anything to be binding.---And instructed Mark Driscoll to insert the appropriate clauses into the heads of agreement.

Terrific.---Which, upon my return from my holiday, had been taken out of the final form document.

40

That's fine. So that was a matter then for Mr Zong.---Yes.

As to how and why that was taken out.---Yes.

If it was, if in fact taken out. Okay. And you, in your, you remember the claim that was brought in the Supreme Court which you've given evidence on?---Yes.

In, in that it refers to you and Mr Zong meeting with me to authorise a payment of 400,000 in 4 December.

MR MILLER: I object.

MR PETROULIAS: Do you remember that?

THE COMMISSIONER: Reject that. You can't put a question on the basis of - - -

10

MR PETROULIAS: No, no, that's fine. I want to, general first. Do you remember coming to my offices on 4 December to authorise a payment of 400,000?---I did not attend your office on 4 December to authorise that payment.

Okay. Okay. So if that appeared in a statement of claim, you would be surprised, wouldn't you?

THE COMMISSIONER: I reject that question.

20

MR PETROULIAS: Now, you were unaware what Keith and Sam were, were saying, they never relayed to you meticulous instructions of every conversation they've had with Mr Green and myself?---No.

And you understood them to be Awabakal's agents not Mr Zong's agent? ---Correct.

Even though the project procurement agreement you're paying them to procure a project?---Correct.

30

That, isn't that inconsistent?---No, it's not inconsistent. It was just, it was the way that the deal was struck.

Okay. So in your experience a real estate agent for example is paid by the, by the purchaser - - -?---Yes.

- - - for procuring a project that he's, that he's touting?---Yes.

40 And that happens to be Mr Zong's friend?---That would be a question for Mr Zong.

Yes. Okay. And because you're the expert who is advising Mr Zong that's why he engaged him. Isn't that correct?---Correct.

And why wouldn't you want to see some sort of evidence of an agency agreement?---(No Audible Reply)

Did you ever see any agency agreement?---I never saw an agency agreement.

Okay. Now, there's a lot of doubts that are starting to pile up by about October, 2015?

MR CHEN: I object. I object, Commissioner.

10 THE COMMISSIONER: Mr Petroulias, what doubts are you talking about?

MR PETROULIAS: About the validity of the agreement, the validity of the Gows agreement. You've just seen the advice by Mr Driscoll again.---Yes.

You said you've been given the Gows agreement. He wasn't terribly impressed with that agreement, Mr Driscoll. You're receiving representations from Sam and Keith but you never saw any underlying agency agreement of who they were representing.---No.

20 No. But then you used Sam for the Wolli Creek deal in around August. Is that correct?

MR MILLER: Commissioner, could I ask the relevance of that particular question.

MR PETROULIAS: Well, it's inconsistent with Mr Sayed being the agent of Awabakal if he was also acting for them on other, on other property deals.

30 THE COMMISSIONER: Mr Petroulias, even if it is it's not going to have any bearing on the issues that call for determination.

MR PETROULIAS: I can't even imagine how they couldn't be. Anyway, so do you remember, recall having a discussion with yourself in your offices about Wollongong again?---Yes.

Yes. Did you not prepare another sort of advice from Powdry & - - -?
---Monteath and Powys?

Yes.---I believe a very high-level location map and - - -

40 Exactly.--- - - - whatnot had been proffered.

Yes.---Yes.

And didn't I then call on my phone to, we discussed the investigation about Awabakal generally?---I don't recall that.

And I spoke on the phone, you don't remember, to Ms Bakis?---I don't recall.

Okay. So can I suggest to you that the meeting that was set to happen in March was actually in your offices with me and not in Ms Bakis's office?
---No, that's, I disagree with that.

Okay. So I'll get to that in second. Okay. And you were shown the deed of acknowledgement document by Ms Nolan.---Yes.

And it records the payments to Keeju and Gows.---Yes.

10

Now, do you know if there was other payments other than the payments that were referred to, like Mr Zong paid about 1.2 overall, 900, 900 to Gows, 250 to Keeju. Do you know whether there was other payments as well?---I don't know.

You don't know. So if they were all the payments that he made and all the payments went out then logically Knightsbridge couldn't hold any money could it?---I was not a party to that document so again I'm speculating on Tony Zong's behalf.

20

MR PETROULIAS: I understand. I understand. As regard to the role of Richard and that sporting sponsorship you say.---Yes.

Did you keep a record of the sporting sponsorship, make a note of it somewhere?---There was nothing on our behalf to actually make a note of.

Well, for example - - -?---It was question of do we agree to releasing \$2,000 which was held in Knightsbridge North's trust account.

30 Yes.---And it was a yes.

Now you didn't follow up from him, Richard, you weren't concerned that your logo wasn't asked for to put on the supporting T-shirts?

MR CHEN: I object Commissioner. This is not really, with respect, that Mr Petroulias could ever have any knowledge about have any interest in.

MR PETROULIAS: With respect, I was there.

40 THE COMMISSIONER: Did you ever get to hear incidentally what happened to the \$2,000?---No.

MR PETROULIAS: On page 140 Mr Broad, this is the Sunshine bundle, it's page 140 of your documents, it's in the Knightsbridge USB stick, bundle.

THE COMMISSIONER: The problem may be Mr Petroulias is that if the pages aren't numbered it might be very difficult to - - -

MR PETROULIAS: No, there ones are, that's why it's 140.

THE COMMISSIONER: We'll just see if we can find them.

MR CHEN: I think Mr Petroulias will need to show us the document, page 140 according to Mr Broad's searches of the valuations on that memory stick.

10 MR PETROULIAS: To save time, can I hand the witness a hard copy?

MR CHEN: Commissioner, it'll need to be done in hard copy. Mr Broad can't locate that by the searches that he's undertaken.

THE COMMISSIONER: All right. Well, we've got the hard copy, then.

MR PETROULIAS: Just, I notice for the record the MFI 11 just came up on the screen.

20 MR CHEN: Well, I'll just correct the record. It doesn't have the seal on it, which is the point of - - -

THE COMMISSIONER: Perhaps if I could just have a look at those documents.

MR CHEN: I'm sorry, Commissioner, can I just clarify what I was responding to? Mr Petroulias made a remark or a comment that MFI 11 came up on the screen.

30 MR PETROULIAS: Yes.

MR CHEN: There is no doubt that on the USB stick there is what appears to be a second version of the surrender and release document. Our point is that so far as we're concerned that does not have a seal on it, which is what MFI 11 does have, Commissioner. That's the point of distinction.

MR PETROULIAS: I'm just trying to indicate that in fact it does. Just right now.

40 THE COMMISSIONER: You want to ask, you want to - - -

MR PETROULIAS: Yes. Okay. Can we give them a hard copy?

THE COMMISSIONER: That's all right. He's just provided a copy. Just hand it to the officer.

MR PETROULIAS: Yes.

THE COMMISSIONER: Now, Mr Chen, you don't have a copy?

MR CHEN: No, I don't, Commissioner. I've seen it.

THE COMMISSIONER: All right. I think you'd better have the copy, then.

MR CHEN: Thank you.

10 THE COMMISSIONER: The only other copy we have. And you can follow what's going on. Yes, all right, Mr Petroulias.

MR PETROULIAS: Certainly. The front page, if you notice, it comes from Keith Rhee and it's to admin@knightsbridgelawyers.---Yes.

And it says, "Dear Nick, give the Land Council a \$2,000 scholarship out of the 50,000 trust account."---Yes.

20 From Keith. And then there's a handwritten thing. It says, "Des, this is Richard's men's group" at the bottom of that first page.

MR CHEN: Well, Commissioner, I don't know whose writing that is and what's being put.

MR PETROULIAS: We're just identifying it.

THE COMMISSIONER: Well, we'll just see how we go with these other documents first, I think.

30 MR CHEN: Well, the version, Commissioner, the material that's being produced by Ms Bakis, which is described as volume A, is on the screen, Commissioner.

THE COMMISSIONER: Right. Okay. Well - - -

MR CHEN: But what Mr Petroulias has handed to the witness, namely the document that appears at page 138 which is on the screen now, doesn't contain the handwriting that Mr Petroulias is - - -

40 MR PETROULIAS: That's because the document on the screen isn't the only document and if you see the number on it, it says 139, 138, so if you keep going two more pages - - -

THE COMMISSIONER: Just see if you've got - - -

MR CHEN: It's on the screen now, Commissioner.

MR PETROULIAS: There we go. Okay. And so there's a handwritten notation, "Des, this isn't Richard's men group." And then I'm taking you to the next page and there's a file note.---Yes.

Now, do you remember anything about a men's shed and I think that's the label they use, men's group run by Richard, "Richard said he'd been meeting at his place and needs to furnish the shed for regular meetings to get the boys off ice, Tony offered to contribute as a measure of goodwill? ---That is inconsistent with what we or what Tony had agreed to give the
10 \$2,000 for.

Yes. Do you have notes of what you made the record of?---No, I don't.

Okay. Do you have notes of the conversation with me and the dealing certificate, remember how we were disputing where it took place, I say it was in your office, you say it was in my office. Do you have a record of where that, of that meeting at all?---I don't, and from recollection it was because I don't.

20 Well, let me understand this. \$1 million has gone out of your account to various people. You wouldn't want to keep a record of what's, what's about to transpire about a dealing certificate? This is now pretty serious now, forget about the early stages, now, this is you say March 2016 and you're chasing me for a dealing certificate, you come to a meeting, I say it's at your offices, you say it's at my office - - -

THE COMMISSIONER: I reject all of this. This is just a jumble of statements by you.

30 MR PETROULIAS: Okay. So this meeting you didn't think was serious enough to take a record of, the meeting in April 2016 about a dealing certificate?---The meeting had been arranged, yes, it was a serious meeting, but it was a very short meeting.

Short or otherwise you didn't keep a record?---We, Tony and I - - -

THE COMMISSIONER: Mr Petroulias, would you stop interrupting the witness when he's trying to answer your question?

40 THE WITNESS: We arrived, we spoke about the dealing certificate, you introduced us to Despina, we were told that there were delays because of the financial statements that were required to go to the government and that was the crux of the meeting.

MR PETROULIAS: Yeah, but then you never, for example, you didn't take any notes of that meeting?---No.

There was never an email follow-up saying hi, Despina, nice to have met you, about this dealing certificate - - -

THE COMMISSIONER: No, Mr Petroulias - - -

MR PETROULIAS: - - - nothing like that?

THE COMMISSIONER: - - - I'm shutting you down. Move on to some other topic. You've absolutely exhausted this one.

10

MR PETROULIAS: I really haven't started, but okay.

THE COMMISSIONER: Yes, you have, you've more than exhausted it. You're getting repetitive.

MR PETROULIAS: Next page, trust account authorisation, if we can have that on screen. And it says in handwritten sort of blue-ish on the right-hand corner, "Confirmed trust disbursement \$2,000 cheque to Richard Green in a trust account," signed by Tony Zong.---Yes.

20

Okay. And then there's a cheque that follows that, because it says, "To Richard Green."---Yes.

And the next page is the actual cheque itself from the trust account.---Yes.

To Richard Green.---Yes.

Not to Awabakal.---That is what the cheque says.

30 And the authorisation is to Richard Green, not to Awabakal.

MR CHEN: Well, it's not his document, Commissioner.

THE WITNESS: I've never seen this document.

MR PETROULIAS: No, no, I, I - - -

THE WITNESS: So what's the question?

40 MR PETROULIAS: Well, I'm saying is that - - -

THE COMMISSIONER: Mr Petroulias, I'm going to say it once more.

MR PETROULIAS: Yes.

THE COMMISSIONER: You're not to ask any more questions on these four documents you've got in your hand now. Now, if you've got another question, put it.

MR PETROULIAS: Okay, I'll move on.

THE COMMISSIONER: Just while he's thinking up his next question, we'll have those documents marked for identification. Would you hand those, please, to my associate. Would you get the documents, please. MFI 12, those four documents.

10 **#MFI-012 – 4 PAGES RELATING TO \$2000 SPONSORSHIP GRANTED TO ALALC**

THE COMMISSIONER: Yes, Mr Petroulias.

MR PETROULIAS: Yes, sorry to jump around. You've never seen a payment direction signed by Mr Zong?

20 THE COMMISSIONER: About what? About what?

MR PETROULIAS: A payment direction by Mr Zong out of the Knightsbridge trust account to Gows.

THE COMMISSIONER: In relation to what? In relation to what amount?

MR PETROULIAS: To any amount. Have you ever see one?---With all the investigation going, yes, I have since seen one. But I hadn't seen one at that point in time.

30 Okay. That's (not transcribable). And you justified the project procurement deed, which Mr Keith Rhee was to obtain \$2 million in the light of the valuation of Awabakal as commercial, as a commercial figure?---No, that's not what – I disagreed that it was a commercial figure.

You think it's uncommercial?---I thought, I thought that was an excessive figure.

Excessive figure. I agree.---Yes.

40 Yes. And this is a person who you say is the agent of Awabakal?---Yes.

And you're paying the agent of Awabakal 2 million?---Yes.

Even though this is a friend of Mr Zong's?---Yes.

Okay. And I never represented to you, you said at the meeting that you first had – you said the evidence to, the evidence that was led from you earlier today was that when you first met us at the McDonald's in 2014 - - -

THE COMMISSIONER: I reject that question.

MR PETROULIAS: The representation to you that I was a lawyer of Awabakal was from Keith and Sam. That was your evidence earlier today. Is that correct?---Yes.

Okay. Not from me?---No.

10 Can I suggest to you that these meetings that you say occurred you haven't got a record of at all?

MR MILLER: I object.

THE COMMISSIONER: I reject that.

MR PETROULIAS: Do you recall that there was an issue during the course of the litigation where your barrister advised that a lot of documents had been destroyed or lost?

20

MR MILLER: Well, I object.

MR CHEN: I object. I object, Commissioner.

THE COMMISSIONER: I reject it.

MR PETROULIAS: Have, has Sunshine suffered loss of documentation during this period?---Not that I'm aware of.

30 Okay. So can I challenge you to actually produce any of these records, file notes, handwritten notes?

THE COMMISSIONER: I reject that. It's not a question.

MR PETROULIAS: Will you be able to produce any handwritten notes of these meetings?---I would need to go and locate those.

Okay. Do you undertake to do that?

40 MR MILLER: I object to that.

MR CHEN: I object, Commissioner.

THE COMMISSIONER: Yes. Yes. I reject that.

MR PETROULIAS: Can you produce them?

THE COMMISSIONER: Mr Petroulias, if you've got any requests for information, you pass those requests through to the legal staff of the Commission and they'll look into it.

MR PETROULIAS: Certainly. Oh, Hussein Faraj. You mentioned his name earlier.---Yes.

10 Okay. Now, did you, were you ever told, because, were you ever provided a copy of the briefing notes that were between Knightsbridge and Awabakal that concerned Sunshine? Have you ever received a copy of them?---No.

Now, if I suggest to you that Mr Zong certainly did at some point, has he ever shown them to you or has anyone shown them to you?---No.

Okay. You accepted Counsel Assisting's suggestions that, that the same sale to Sunshine was also being sold to somebody else.---Yes.

20 If I were to suggest to you that in fact provision had been made to carve out the Sunshine Group with advantage, would that be inconsistent with anything that Mr - - -

MR CHEN: I object.

THE COMMISSIONER: I reject that. Again, Mr Petroulias, the best evidence of that will be the agreements themselves. They will speak as to what the position is. You don't need to get from another witness his understanding of what the legal agreements say. You follow what I'm saying?

30 MR PETROULIAS: Okay. Can I be shown, can the witness be shown – it's a document on the Knightsbridge files. It's page number 309.

THE COMMISSIONER: What's this going to?

MR PETROULIAS: This goes to the consistency with the Sunshine Group being resurrected as well as the Advantage Group. They can exist side by side, they're not inconsistent.

40 THE COMMISSIONER: I repeat myself. It's to the legal agreements we look to see what the legal effect was on any of these agreements.

MR PETROULIAS: Yes.

THE COMMISSIONER: It's not a question of looking at other documents.

MR PETROULIAS: Okay.

THE COMMISSIONER: Agreements as you would well understand, I think you said you had lots of years of legal experience. You would understand that the agreements are the documents that constitute the evidence from which we can determine rights and liabilities.

MR PETROULIAS: Okay.

THE COMMISSIONER: Is that right?

10

MR PETROULIAS: Yes. When, that's fine. Mr Fisk, when Counsel Assisting was putting propositions to you that, that the same deal was being sold to other people you agree to that or you deny you weren't aware of it. Do you have any specific knowledge about whether in fact that occurred or not?

MR CHEN: Well, I object, Commissioner, because he never accepted - - -

20

THE COMMISSIONER: This is just another way around trying to again get into evidence through a witness what the documents will tell us. I reject it. I see the time, 20 to 4.00. Time, Mr Petroulias, for you to wind up.

MR PETROULIAS: Yes, well, if I can't ask any questions. Yes, thank you.

THE COMMISSIONER: All right. Do you have any questions?

MR MILLER: I do have a couple of questions if I may.

30

THE COMMISSIONER: Yes, Mr Miller.

MR MILLER: Mr Fisk, both Ms Nolan and Mr Petroulias asked you about your belief that there was money retained in the Knightsbridge North trust account.---Yes.

Could Mr Fisk be shown the variation agreement which is at volume 7, page 142.

40

THE COMMISSIONER: Yes.

MR MILLER: If that could be blown up and if I could direct your attention to paragraph 4 of the variation agreement, Mr Fisk. By way of background when did you first become aware of this agreement?---Upon my return from my holiday.

And you had no part in drafting the agreement did you?---None.

You will see at the bottom of paragraph 4 there's a direction in relation to the option fee of \$712,000, 400,000 of which is released to the vendor, the Awabakal, and with the balance of 316 which must be a typographical error to be held in the vendor's solicitor's trust account. Does that variation agreement inform your belief that the money, that at least some part of the money was being held in the Knightsbridge North trust account?---It does.

10 Thank you. Finally, in relation to that trust account issue could Mr Fisk be shown volume 17, page 149. This appears to be a letter from Knightsbridge North to Mr Mutton who was instructed by the Sunshine Group and if you go over the page there's a trust account disbursement instruction. That seems to be the document that you referred to when you were responding to Mr Petroulias about the trust account authorisation.---Yes, that's right.

When did you first become aware of that document?---During, when we were considering commencing litigation.

20 And so Mr Mutton has been sent this document under cover of the Knightsbridge North letter of 7 September, 2016.---Yes.

Is that around about the time you first became aware of it?---It would have been, yes.

Thank you, Commissioner. I have no further questions.

THE COMMISSIONER: Yes, thank you. Yes.

30 MR CHEN: Mr Fisk, I asked you some questions about whether you'd heard of United Lands Council.---Yes.

And you said that you'd seen a business card with United Lands Council. ---Yes.

That was your evidence when I asked you some questions.---Yes.

Mr Petroulias showed you a card which had that name on it.---Yes.

40 Is that still in front of you that card or not?---It's - - -

I'm sorry, I have it do I. Would you have a look at that please. Do you recall that the card that you were shown by Mr Petroulias had another side to it?---Yes.

It did, did it?---Yes.

And do you recall did it have Indigenous Business Union on it?---Yes, it did.

And do you recall when it was that Mr Petroulias gave you that card?---My recollection it would have been in early 2016.

MR CHEN: Yes, thank you. Commissioner, I tender that business card.

10 THE COMMISSIONER: Yes. Yes, can I have a look at the card? Thank you. Yes, the card with the name “Indigenous Business Union Limited – Nicholas Peterson” on one side and “United Land Councils Limited” with “Nicholas Peterson” on the other side will be admitted. It will become Exhibit 58.

#EXH-058 – DOUBLE SIDED BUSINESS CARD FOR INDIGENOUS BUSINESS UNION LTD & UNITED LAND COUNCILS LTD

MR CHEN: They were the only questions, Commissioner.

20 THE COMMISSIONER: Yes, thank you. Very good. Thank you, Mr Fisk. You may step down. You're free to go.

THE WITNESS EXCUSED

[3.46pm]

MR MILLER: May I be excused?

30 THE COMMISSIONER: Yes, certainly, Mr Miller.

MR CHEN: Commissioner, before we move to the next witness, the proposed list of witnesses for tomorrow, as I indicated just after lunchtime, was Mr Zong and then Mr Slee. And, Commissioner, we had proposed to call a number of witnesses, all of whom are from the Newcastle area, on Friday. Commissioner, it would be of some assistance in terms of organising witnesses if we could have some indication from Mr Petroulias, Ms Nolan or whoever else intends to ask questions of first Mr Zong and Mr Slee how long they anticipate being, because we're concerned, Commissioner, that we'll have a number of witnesses who will be kept
40 waiting on Friday, and we want to minimise, of course, the inconvenience to those witnesses as much as possible.

THE COMMISSIONER: Yes. Well, we might ask. In relation to Mr Slee, he's already given quite a bit of evidence. Ms Nolan, are you in a position to help on how much time you might require with Mr Slee, firstly?

MS NOLAN: I had a note of some questions that I was accumulating throughout the course of his evidence. I'll just remind myself of that. There are about five topics, so probably around, you know, 10 to 20 minutes.

THE COMMISSIONER: All right. Thank you. Mr Petroulias, are you able to assist with Mr Slee, as to the matters he's given evidence about and may give evidence about, how long you might be?

10 MR PETROULIAS: Well, maximum of 20 minutes.

THE COMMISSIONER: All right. Thank you.

MR PETROULIAS: But my problem is documents. Can we sort that problem out?

THE COMMISSIONER: Yes, certainly.

20 MR PETROULIAS: Can I ask you to make a direction that I, that I can actually - - -

THE COMMISSIONER: Well, I don't think there's a need for that. But if there are any particular documents Counsel Assisting can foreshadow that he may be going to tomorrow with Mr Slee, then we'll try and assist you by getting you a list of what documents will be referred to. Mr Chen, is that possible?

MR CHEN: I can. I can tell those in the hearing room now.

30 THE COMMISSIONER: Right.

MR CHEN: I would be proposing to go through the balance of the minutes, be it handwritten or typed minutes, of the board meetings for 2016. I think I got up to 8 March, 2016 yesterday. I'd be going through the balance until at least the time the administrator was appointed at 13 October, 2016. Commissioner, there was also a separate bundle of documents which contained the balance of emails that Mr Slee had produced to the Commission, and they are in Exhibit 54. Commissioner, as I stand here now, that's the material. But to the extent there are documents outside of
40 that, they would be limited.

THE COMMISSIONER: Now, are those documents accessible by Mr Petroulias on the system?

MR CHEN: Well, the board minutes, Commissioner, are in the public brief and I - we'll just check that, Commissioner. If not, we'll make a copy of it available to him.

THE COMMISSIONER: You'll make copies available. All right. So, Mr Petroulias, in answer to what you've just raised, you've heard what Counsel Assisting said.

MR PETROULIAS: Thank you, that's very, that's very helpful.

THE COMMISSIONER: All right. Thank you. Now, Mr Petroulias, just while you're on your feet.

10 MR PETROULIAS: Yes.

THE COMMISSIONER: So far as Mr Zong is concerned, have you any idea how long you might be with him?

MR PETROULIAS: Assuming the document problem is sorted, access, then it, it won't be that long. But otherwise it'd be the same time we had with Mr Fisk, except that Mr Zong this time is the person who, you know, Mr Fisk deferred to Mr Zong so it would be the same questions but to Mr Zong.

20

THE COMMISSIONER: Well - - -

MR PETROULIAS: What he signed, what he authorised, et cetera.

THE COMMISSIONER: Yes. All right. Ms Nolan, are you able to say with Mr Zong whether you'll be - - -

MS NOLAN: As much as I would like to I'm really not able to assist you at this point in time.

30

THE COMMISSIONER: Thank you. Well, I'll leave it to you I think, Mr Chen, to make a judgement call on what you do. It's undesirable to have witnesses travel from Newcastle if we're not going to get to them. If there's a real risk that we won't then perhaps some reprogramming might have to be done.

MR CHEN: We'll take that into account and I'm grateful for those indications, Commissioner.

40 THE COMMISSIONER: All right. Nothing else?

MR CHEN: I'm content to start now with Mr Zong if that would, it's a matter for you, Commissioner.

THE COMMISSIONER: All right. We might as well make the start, yes. Thank you, Mr Zong. Yes.

MR BALAFOUTIS: Commissioner, I seek leave to appear for Mr Zong during the course of his evidence. Balafoutis.

THE COMMISSIONER: I grant leave.

MR BALAFOUTIS: Thank you.

10 THE COMMISSIONER: Just take a seat or just stand there for a moment, Mr Zong. Do you take an oath or affirmation in order to give evidence? Do you take an oath on the Bible or - - -

MR ZONG: Affirm. I take affirm.

THE COMMISSIONER: Sorry?

MR ZONG: Affirm.

20 THE COMMISSIONER: Affirm. Thank you. Just firstly, would you state your full name.

MR ZONG: Shuxin Zong, Tony Zong.

THE COMMISSIONER: Thank you.

THE COMMISSIONER: Just take a seat. Yes.

MR CHEN: Is there any application?

MR BALAFOUTIS: Yes. Mr Zong wishes to have (not transcribable) declaration.

10

THE COMMISSIONER: Yes, very well. Mr Zong, I understand you wish to have the benefit of the section 38 declaration in relation to your evidence so that your evidence can't be used in other proceedings. Is that right?--- Yeah.

20

PURSUANT TO SECTION 38 OF THE INDEPENDENT COMMISSION AGAINST CORRUPTION ACT, I DECLARE THAT ALL ANSWERS GIVEN BY MR ZONG AND ANY DOCUMENTS OR THINGS THAT MAY BE PRODUCED DURING THE COURSE OF HIS EVIDENCE ARE TO BE REGARDED AS HAVING BEEN GIVEN UNDER OBJECTION AND ACCORDINGLY THERE IS NO REQUIREMENT FOR HIM TO MAKE INDIVIDUAL OBJECTIONS TO QUESTIONS, ANSWERS OR DOCUMENTS OR THINGS PRODUCED.

THE COMMISSIONER: Yes.

30

MR CHEN: Thank you. Commissioner. Mr Zong, are you currently a director of a company known as Sunshine Property Investment Group Pty Ltd?---Yes.

Did that company incorporate in approximately 2014 or 2015?---You mean it start?

Yes, start.---Yes.

40

And from that time have you been the sole director of it?---Yeah, yes.

And sole shareholder of it?---Yes.

Prior to that time did you run your business through a company called Sunshine Interiors?---Yes.

And is that a commercial fitout and building company?---Yes.

Is that company still operating?---Yes.

Does Sunshine Property Investment Group Pty Limited still operate?

---Yes, still there, yeah.

Does it still conduct business?---Yeah, it's just set up for property developments.

Sunshine used to have offices, did it not, in Park Street in the city?

---Yes, that's the new office.

10

Right. And has that been the case since the company first started?

---Sunshine Investment Group.

I'm sorry, would you repeat that?---Sunshine Investment Group - - -

Yes?--- - - - is the office in Park Street.

And is Sunshine Investment Group's group related in any way to a company with the name Luxeland?---Luxeland is later, we form Luxeland is later.

20

I see.---At that time no Luxeland.

Is the corporate name of it Luxeland Group Pty Limited or are there a number of corporate entities with that name Luxeland?---No, Luxeland only is this, we just form Luxeland last year.

And are you a director of Luxeland?---Yes.

Are you a shareholder of Luxeland?---Yes.

30

And is the other director a Dandan Ren?---Yes, yeah.

And is she the other shareholder?---Yes.

There are a number of various company names, are there not, that you're associated with, with the name Luxeland though, aren't there?---Yeah, the Luxeland only me and Dandan Ren.

40 All right. Do you conduct all your property business with Ms Ren through that company, Luxeland?---Yeah, it's now, not before.

Now, you've heard Mr Matt Fisk give evidence, have you not, before the Commission?---No, I haven't heard, I'm not here.

You weren't in the hearing room?---Yeah, I wasn't here. I just came in.

Well, Mr Fisk used to be employed by Sunshine Property Investment Group, did he not?---Yes, yeah.

And he was a property developer with some experience and qualifications in that area?---Yes, he has (not transcribable) experience.

And he now is employed by one of the Luxeland companies. Is that so?
---Yeah, that's Luxeland we formed last year, we restructure, this one he's become the Luxeland employee.

10 In the time that you conducted the business through Sunshine, was the only employee of Sunshine Mr Fisk or were you also an employee?---At that time it's only, only himself.

I see. And was his function or job to give you and assist you with property developments?---Yes.

And in 2014 what type of developments was Sunshine interested in pursuing?---We just start looking for, for the development site.

20 Of any particular kind, was it residential, commercial or no particular description?---We mainly look for the residential.

Now, in 2014 did you have some contact with a gentleman called Keith Rhee?---Yeah, Keith Rhee is, he, through my another friend that he bring him to our office.

You'd known Keith Rhee for some years prior to him approaching you about a possible development. Is that right?---Yeah, he come to us and he bring this deal to us.

30 Right. But he was a, you'd known him in social circles had you not, before that time?---Yeah, at that time we just know him but we don't know what he, I don't know what he doing.

Right.---I just know him.

Anyway, you say he came to your office, did you?---Yes, he and Sam come, come, come to our - - -

40 That's Sam Say, is it?---Sam Say, yeah.

Right. And do you remember when they came to your office approximately the date?---Not sure the date, is early 2015 or I forgot is exactly date.

All right. In any event, they came because they had a business proposal to put to you. Is that right?---Yeah, my friend, my friend is also another real estate agent and he's, he bring them to come in, he said he have good deal, 'cause at that time we were looking for the site, looking for a deal, and he come in and he said he had a good deal.

All right. So who's he, Keith Rhee said this to you, did he, or your friend that's a real estate agent?---Yeah, Keith Rhee, Keith Rhee, Keith Rhee said it.

I'm just going to ask you, just listen to my questions if you would. We seem to be talking over which is probably as much my fault as it is yours.
---Yeah.

10 So we'll just slow down and just so we don't talk over each other. Who's the person that said it was a good deal, was it your friend the real estate agent or Keith Rhee?---Keith Rhee.

All right. Keith Rhee came to your office with Sam Say, did he?---Yes.

And what did they say or each of them say was the proposal they wanted to put to you?---They said they have, they have a good deal in Newcastle.

20 Did they say what that deal involved?---Not really, they, they show, they give us some, some picture, there's a big land there.

They showed you some pictures, did they?---Yeah, yeah.

Were they ground level or aerial shots, what, what type of pictures were they, did they show you?---Just, I think just the land, just the land picture.

I'll come back to that. Did they tell you anything else about the land, the size of it, more precisely where it was located, things of that kind?
---Not exactly, this, this – he said that he got more document he will give us later but not - - -
30

Did they say how they came to know about this deal or opportunity?
---They said, they just tell us there's a good deal, maybe we should have a look at.

All right. But did they tell you how they came to know of this good deal?
---Sorry?

40 Well, I'll put it a different way, Mr Zong. Did you ask them how they came to bring this deal to you?---No, I didn't ask that.

Did they tell you anything more about the nature of the land, the size, the address, the zoning, matters of that kind?---Not, no, not really, no.

What else if anything did they say to you at that initial contact you had with them that led you to believe it was worthwhile pursuing or investigating further?---I remember they said they bring some picture this, this land, they said that it's good opportunity, we should go to there have a look.

And how many photographs did they show you?---Later Sam, Sam Say sent me the email about all this, four, four picture about land and also all the document about, about this, this land.

I'll just show you an email. This is after this initial meeting, Sam Say sent you something, did he?---I think so. I'm not quite sure. I think.

10 All right. And is this, you ultimately went to the site, didn't you?---After we went to that.

So when did this document that Sam Say sent to you, was it before you went to the site or after?---I forgot when. I think before he sent it after some document.

Just so I understand what you said, he sent you this information before you went to the site. Is that what you said?---I think so, I'm not quite sure.

20 All right. Well, I'll just get you to have a look at something on the screen. On the screen now is - - -?---Yeah, that's the one.

That's it, is it?---Yeah.

So that's brief volume 3, page 41. There's a number of pages contained in it, but if you just scroll to the next page, please. Do you recognise the descriptions of the various lots that were on offer?---Yeah, yeah, that's the one, this is one email he sent to me.

30 And this is what you had before you went to the site?---I forgot I got this one before or after, but I did receive this email.

If you got it after the site visit, how long after the site visit do you think you may have got it if you did get it then?---Very close, it's just a few days, I think it's just very close.

Commissioner, is that a suitable time?

THE COMMISSIONER: Yes, it is.

40 Mr Zong, we'll continue with your evidence tomorrow morning.---Okay.

I'll adjourn.

THE WITNESS STOOD DOWN

[4.02pm]

AT 4.02PM THE MATTER WAS ADJOURNED ACCORDINGLY
[4.02pm]