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HEARING

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INDEPENDENT COMMISSION AGAINST CORRUPTION

THE HONOURABLE PETER HALL QC  
CHIEF COMMISSIONER

PUBLIC HEARING

OPERATION SKYLINE

Reference: Operation E17/0549

TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON THURSDAY 5 APRIL, 2018

AT 10.00AM

Any person who publishes any part of this transcript in any way and to any person contrary to a Commission direction against publication commits an offence against section 112(2) of the Independent Commission Against Corruption Act 1988.

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

THE COMMISSIONER: Just before we start I just want to clarify the procedures for obtaining access to material on the Commission's restricted website. The Commission maintains a restricted access portal to its public website for the purposes, firstly, of providing authorised persons, witnesses and their legal representatives and other parties deemed to have a sufficient interest in the subject matter of the investigation to warrant access with access to relevant documents and, secondly, providing authorised persons with access to relevant documents once a public inquiry has commenced including documents proposed to be made as exhibits.

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The Commission's restricted access portal is used for the disclosure of relevant documents to authorised persons for the purposes of a public inquiry. Access to the restricted website is made by making application in this public inquiry to Mr Patrick Broad, the lawyer for the Commission. Documents produced to the Commission by Ms Bakis contained in five volumes and Gows Heat Pty Ltd in eight volumes, together with the public inquiry volumes 1 through to 18 have been uploaded to the restricted website. Ms Nolan of counsel, Ms Bakis, Mr Petroulias and other relevantly interested persons have been granted access to the restricted website.

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As to exhibits that are published on the ICAC's public website, documents tendered by Counsel Assisting during the course of a public inquiry are uploaded to the Commission's public website. All exhibits tendered at the public inquiry are presently on the ICAC's public website. A transcript of the evidence adduced during the course of the public inquiry is also uploaded to the Commission's website at the end of each day of evidence. A transcript of all the evidence adduced at the public inquiry is currently on the Commission's public website.

30 Those matters have been stated in order to assist and clarify with those who are participating in this public inquiry and have been authorised as to the system and the availability of access to the portal of the public website in order to facilitate in advance access to documents therein located in order to permit the relevant authorised persons to prepare for any hearing of a particular witness. So accordingly those matters to which I've referred identify the mode and the basis upon which access can be obtained. Yes, Mr Chen.

40 MR CHEN: Commissioner, just before we resume the evidence of Mr Zong could I indicate that Mr Petroulias asked the Commission for a notice to issue to Mr Fisk in light of his evidence obviously yesterday for him to produce his notes, assuming any exist. Commissioner, a notice will issue to Mr Fisk requesting production of his notes relevantly. I should add, Commissioner, that that was a step that independently of the request that Mr Petroulias has made was to be undertaken by the Commission in any event.

THE COMMISSIONER: Thank you. Thank you, Mr Chen. Are we ready to proceed with Mr Zong?

MR CHEN: Yes, Commissioner.

THE COMMISSIONER: Yes, thank you, Mr Zong, if you wouldn't mind coming forward. Mr Zong, I think you took an oath yesterday. I'll have that administered again. Was it an oath or an affirmation? It was an affirmation. Are you happy to have an affirmation?---Yeah.

10

Good. Thank you.

THE COMMISSIONER: Yes, thank you. Just take a seat. Yes.

MR CHEN: Thank you, Commissioner. Commissioner, was the declaration required further this morning?

10 THE COMMISSIONER: Well, perhaps more of a precaution I'll deal with that. Mr Zong was called to give evidence yesterday. At his request I made a declaration under section 38 of the Independent Commission Against Corruption Act. I make a further declaration in the same terms in respect of the evidence to be given by Mr Zong today.

20 **MR ZONG WAS CALLED TO GIVE EVIDENCE YESTERDAY. AT HIS REQUEST I MADE A DECLARATION UNDER SECTION 38 OF THE INDEPENDENT COMMISSION AGAINST CORRUPTION ACT. I MAKE A FURTHER DECLARATION IN THE SAME TERMS IN RESPECT OF THE EVIDENCE TO BE GIVEN BY MR ZONG TODAY.**

MR CHEN: Thank you, Commissioner. Mr Zong, I want to just take you back to the initial meeting that you had with Mr Rhee and Mr Say involving the deal for the land in Newcastle. Do you understand?---Yeah.

30 What you told the Commission yesterday was that a real estate agent friend of yours had also had some role in bringing Mr Rhee to you. Do you remember giving evidence along those lines?---Yes.

What's the name of the real estate agent who was involved in bringing Mr Rhee to you?---Is Lawrence Brown.

Lawrence Burn?---Lawrence Brown.

Brown?---Yeah.

40 Did Mr Brown attend the first meeting with you, Mr Say and Mr Rhee or not?---Not.

Did he attend any meeting with you, Mr Say or Mr Rhee?---No.

So he was just facilitating or assisting in the introduction of Mr Rhee and Mr Say to you. Is that right?---Yes.

When you had either the initial meeting with Mr Rhee and Mr Zong or indeed before then, did they tell you who the vendor or seller of the land was?---No.

What about at the first meeting you had, was there not any discussion about who it was was selling the land?---Firstly he just bring this roughly, roughly this, this ah, describe, not remember but, but he did sell this big parcel of land in Newcastle.

10 All right. But there was no identification about who the seller of the land was at that meeting?---No, not really.

And you didn't ask?---He just said a big, big block of land is we can go have a look.

Did they tell you how they came to be involved with the party who was selling the land?---Just they are the agent, they can put all together to us.

20 Now, who said that, Mr Rhee or Mr Say?---Rhee.

And this is at the first meeting you had with them?---Yes.

In your office?---Yes.

Now, had you met Sam Say at all before the initial meeting you had with Mr Say and Mr Rhee?---No.

30 You'd never had acquaintance with him at any stage at all before then?  
---No.

Now, did you, after this initial meeting, speak to Matt Fisk about the proposal?---Yes.

Did you discuss with him the terms of what had been raised by Mr Rhee and Mr Say in this meeting?---No, at the beginning we didn't talk about the term.

40 In general terms though you told Mr Rhee I take it – I withdraw that. In general terms I take it you told Mr Fisk about what Mr Rhee and Mr Say had told you about the land in Newcastle?---Yes, yeah.

And did he indicate to you that it was worthwhile investigating further?  
---Yes, yeah.

And did you then make further contact with either Mr Rhee or Mr Say?  
---Yes.

What did you do, did you ring one or other of them?---Yeah, I talk with Rhee, Mr Rhee, ask more information.

Did you ring him up or did you meet with him?---I just rang him.

Right. And what information did you ask from Mr Rhee?---I think at beginning he just said we don't have more details. Matt want to have a look at it, he said exactly what the site. I ask them to give us more details.

10 Did you say in your answer, I'm sorry I didn't catch the middle sentence of your answer, did you say that Matt wanted to have a look, is that what you said?---Yes, yeah.

You told Mr Rhee that did you in the telephone call?---Yes.

And did Mr Rhee indicate that you could go with Mr Fisk and look at the site?---Yeah, at the beginning they tell us we can go to site and have a look.

20 When you say at the beginning, do you mean at the first meeting?---First meeting, yeah.

Right. Now, I want to try and put a date on this first meeting before I move on. You do know, don't you, that Mr Fisk ultimately, after the site visit, prepared a document which was called an acquisition proposal, which was signed with a letter on 30 June, 2015. You remember that?---Yes, yeah.

30 Now, working back from that, are you able to put a date on when the site visit was first in terms of days, weeks before then or months?---Forgot it was exactly date, is, I forgot exactly date.

All right. Can you estimate in terms of days, weeks or months or you just don't know?---Around – I'm not sure, I forgot what's the date.

All right. And are you able to say how long it was between the initial meeting you had with Mr Rhee and Mr Say before you went to the site? ---Just not, not, not long.

40 Is that days, weeks, what's not long in your view?---I forgot, I not remember, not really (not transcribable).

Anyway, you went to the site, didn't you?---Yes.

And you went in your car?---Yes.

With Mr Fisk?---Yes.

With Mr Rhee?---Yes.

With Mr Say?---Yeah.

What was the discussion at all about this land on the way up, were you asking questions about who are we meeting, who are we seeing?---Yeah, yes.

Who did you ask that question of?---This was Mr Rhee.

10 And did you ask him who are we meeting?---Yes.

And who did he tell you you were meeting?---Nick Petroulias and the Richard Green.

Did you ask him who Nick Petroulias was?---Yes.

And what did he say Nick Petroulias, what was his role in all of this?---He's the one person put our thing together.

20 I'm sorry? He's the - - -?---He's the one, he's the one show us, bring, bring our thing together.

Bring us together, did you say?---Bring all the (not transcribable) together, I think.

I'm sorry, you'll have to repeat that last word.---He, hard to remember how this said. I'm not, too long time ago. I think he's, he's a lawyer of the, of this, for this deal.

30 Did he say that he had any other role, Mr Rhee, other than being a lawyer for the deal?---He said he represent the, this deal from the council.

And was anything said about what Mr Green's role in all of this was?---No, at the beginning didn't say.

Now, you ultimately arranged to meet with Mr Green and Mr Petroulias, did you not, at the McDonald's in Warners Bay?---Yes.

40 You met Mr Green and Mr Petroulias, did you not, inside the restaurant? ---We, we went inside.

All right. Were they already inside when you turned up or not?---I forgot we get inside first or they came after.

Did you sit at a table as a group?---Yeah, we sit together.

Was there some discussions and introductions?---Yeah, I think so, yeah.

Well, you'd never met Mr Green before this day, had you?---No, the first time met Mr Green and Mr Nick.

At the McDonald's restaurant?---Yes.

And did Mr Green indicate who he was at that initial introduction inside the restaurant?---Yes, I think so.

10 What did he say?---He's, it's, that he, that he was (not transcribable) the council or something.

A board member or the deputy chairperson?---Deputy, yeah, deputy, yeah, deputy chair.

Of the council?---Of the council.

And did he indicate what council it was?---It was Awabakal Land Council.

20 And you were all sitting together at a table when this conversation happened, were you?---Yeah, I, yeah, would say the seat were, were close because the table is not that big.

THE COMMISSIONER: Can I just be clear about it? Did Mr Green introduce himself as the deputy chair or did somebody else say that he was the deputy chair?---No, somebody else. Not, not Richard Green.

It was not Mr Green. Who was it who said that?---I think the Rhee, Mr Rhee.

30 MR CHEN: And what about Mr Petroulias? Was he introduced or did he introduce himself?---No, he didn't, didn't see, he didn't introduce himself.

Did somebody else introduce him?---Rhee, Mr Rhee introduce him.

And what did he say in terms of the introduction to Mr Petroulias? About Mr Petroulias, sorry.---I think he said that he's, he's a, he represents, he's, he's the one, he's the one put all this, put all the deal. He got the deal.

40 He's got the deal?---Yeah.

Did he say anything else about what Mr Petroulias's role was or not?---No, I don't, I don't remember we talk much about who is who. More about the site.

So was anything else said about what you were to do that day or what you were going to see that day or what the deal was at that time?---At that time we just say that we go to see the site.

And did you leave with the other three who came with you at that time?  
---Yes.

And did Mr Petroulias and Mr Green leave together or separately so far as you observed?---I think it would be separate, drive separate car.

Did you go to all of the – I withdraw that. You understood that ultimately you signed an agreement relating to five particular lots of property?---Yes.

10 Did you go to all five sites?---Yes.

Did everybody, that is the five of you, go to each of the sites together, sorry, you all attended each site?---Yeah, we're all together.

At the same time?---Yes.

Was there, do you remember the order, was the Hillsborough Road properties first and then some of the other ones?---I not quite remember.

20 Did you take some photos whilst you were there?---Yeah, I did.

I'll just put up on the screen, Mr Zong, Exhibit 57, and it's page 13 first. I'm sorry, page 11 first. Is that a photograph you took whilst you were at the site?---Yeah, this - - -

Do you know what property that relates to, Mr Zong?---This one I think is beside the golf course.

30 So I just want to clear the record up. So that's Exhibit 57, page 12. That's the photograph of the property beside the golf course, Mr Zong, is that so?  
---Yeah, page 12, this is, when I went there I use my phone to locate where we are.

All right. You're looking at the hard copy exhibit, the folder now, aren't you?---Yes, yeah.

40 The numbering of that – Commissioner, just for the assistance of others, there seems to be a slight numbering issue between the electronic version of Exhibit 57 and the hard copy. Mr Zong, would you just be good enough just to pass the folder back, I'll just need to check that you have the same numbering that I do or the exhibit is the same numbering as mine.

I might just start again, Mr Zong. So what's in front of you now is the Exhibit 57, and I'll just ask you please to turn up page 11.---Yeah.

And that's a photograph you took at the site visit at the property that is beside the golf course. Is that right?---I think so is the golf course.

And is that the property that's on Hillsborough Road?---I'm not remember the road name.

If you look please at page 13 you'll see there's another shot of what appears to be the golf course.---Yeah, this the golf course, yeah.

Right. Again it's the same site?---Yes.

10 A photograph taken by you at the site visit?---Yes.

And if you look then please at page 14, another photograph that you took at the site visit.---Yes.

Again is that the same property that is the one adjacent to the golf course? ---Yeah, I think so, yeah.

20 Now, would you just have a look, please, at Exhibit 57, page 10. Do you recognise that as a screenshot of one of the locations of one of the properties that you went to inspect?---Yes.

And that's a photograph, what, that you took off your phone, is it?---Yes.

And if you look then at page 12, again is that another screenshot of an aerial photograph that you took off your phone of the properties in, or at least close to Hillsborough Road?---Yes.

30 Now, as you moved about the sites was there some further discussion about what it was – I withdraw that. By the time you were at the site did you realise that the seller of the land was the Land Council?---Yeah, at that time I think Rich said all this belong to them.

And that was in the presence of all the five who were at the site?---Yes.

And did he say what the proposal was that you were being asked to consider?---Not really but I remember this one small site, the triangle site, they said oh we can put a petrol station there.

40 But you were inspecting a number of lots and was it ever suggested by anybody that this was for sale, for joint venture, what were you looking at doing?---No, this all for sale.

And did somebody tell you that?---This Nick, Nick said this.

THE COMMISSIONER: What did he say?---This is, this is, that all the site we went to have a look this all, this, the whole package is for sale.

MR CHEN: And did he tell you or give you any more details about the terms of any proposed sale?---No, I don't think we discuss the term.

And did he say anything about what his role in all of this was?---I think is last when we in the Park this were higher, you can see the whole, all Newcastle.

Just pause there. Do you mean at the Braye Park site?---Yeah, I think the Braye Park, yeah.

10 And he said something there did he?---Yeah, he said that he, he had all the right for the, for, for the, all the property.

He has the right for all the property?---Yes.

Did he say anything more about what those rights were or explain the detail of that?---Not really that. Not really.

Did anybody else at that stage – I withdraw that. When he said that was Mr Green there with you?---Yeah, he was there.

20 And Mr Rhee and Mr Say were there as well?---Yes.

And Mr Fisk?---Yes.

And did any of the others, Mr Rhee, Mr Say or Mr Green say anything about what that right was or - - -?---No. At that time we didn't say much.

They didn't say much?---Yeah.

30 THE COMMISSIONER: Well, who was doing most of the talking during the site inspection?---Nick and Rich, Rich Green.

MR CHEN: What did you understand Mr Petroulias meant by the statement that he made?---He try, he try to sell this right to us I think.

And what did you understand the right was?---The right, he hold this right for this five land.

The right to purchase them. Is that what you mean?---Yeah. Yes, yeah.

40 Did he say that?---No, this, he didn't say, say like it was that clear because we more just see the site.

So his involvement was by his statement at the Braye Park site that he has a right to these five lots you'd inspected. Is that the position?---Yes.

Now, was Braye Park the last site you visited so far as you can recall?---I think so.

And how was it left between Mr Green and Mr Petroulias and yourself?---I think we left first, four of us we left first.

Was there any discussion with you, Mr Fisk and Mr Say and Mr Rhee separate from Mr Green and Mr Petroulias prior to you leaving?---Not really, no.

When you say “not really”, is that no or you're not sure?---No, no. I - - -

10 THE COMMISSIONER: Well, did anyone exchange contact details with you?---No. No.

MR CHEN: On the way back was there some discussion in the car about what had been discussed and what was to happen going forward, if anything?---Not much when we're back on the car.

When you say not much, what do you mean by that? Was there some?---I think Matt talk with Mr Rhee. Said any more information and what we do next step.

20

And what did Mr Rhee indicate when Mr Fisk asked that?---I think he said he will give us more information and we will have a look more details.

What was the information that Mr Fisk was asking for?---We only, before we only have this, the, the picture, the site picture. We don't have all, any more details.

Yesterday when you gave some evidence, you indicated that you recall receiving a brochure.---Yes, yeah.

30

And you weren't certain about whether you'd received that before or after the site visit.---Yeah, I think before.

Before?---Yeah.

I see. So what other information did you or Mr Fisk need or request from Mr Rhee after you'd left the Braye Park site? What else?---Yeah, because we, at the beginning we only have this (not transcribable) and the picture. I get Matt to tell whether get more, because we need to have a look at more details.

40

I'm just trying to gather what other details you need. Is it a survey? Is it a plan? What else do you need?---The site details.

The site details?---Yeah.

I see. Obviously when you got back to Sydney, Mr Say and Mr Rhee went their own way.---Yes, we drive back together.

But once you got back to Sydney, what was to happen next in terms of where you left it with Mr Rhee and Mr Say? Was Mr Rhee to get back to Mr Fisk or what was the position?---No, we're just separate.

Well, we do know that things happened afterwards. I'm just trying to work out, did you get Mr Rhee's contact details and ask him to get back in touch with you or - - -?---Yes.

10 Did Mr Rhee promise or Mr Say promise to get in touch with you? What happened?---Yeah. Mr Rhee talked to me.

And what did he say?---He said he will give us some more details.

And did eventually he give you more details?---Yeah. After he give us (not transcribable) Nick's this, all the, the (not transcribable).

The heads of agreement?---Agreement.

20 Just before I take you to that, was there any discussion at all with Mr Rhee and Mr Say about price?---Yeah, they said this (not transcribable) based on the independent valuation, value, value.

This was a discussion you either had on the way back from the site in the car to Sydney or back at Sydney, is that right?---Yeah, this later, yeah.

Is it on the same day or not?---I've forgotten.

30 Was there also some discussion about retaining Diamond Valuations to undertake such a valuation?---Yes, yeah.

That was at the same time that there was a discussion about price?---Yes.

But you're just not sure of the time of when that occurred?---Yes.

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

40 Was something raised by Mr Fisk with you about it being perhaps a bit unusual that you were retaining the valuers, rather than the Land Council?  
---Sorry, what that?

Well, I gather that the proposal was that you were to participate in retaining the valuers to provide a valuation for each of the five lots.---Yeah.

And was that the ordinary way a transaction such as this would occur, that you would retain the valuers to provide the value and therefore the price of the contract? Or would it be normally the vendor?---I'm not really sure about this procedure. This, I leave all this. Matt deal with this.

I just want to show you what you described as the HOA, please. Prior to the HOA, it's coming up in a moment, Mr Rhee, the HOA, did you request that from Mr Rhee?---He said he would send that to us.

Right. So what was the discussion you had with Mr Rhee where a discussion involved the HOA?---I think we ask how, how can you, what, how can you tell us you have the right for this, for this site.

10 And that's what you raised with Mr Rhee, or Mr Fisk did?---Yeah, Mr Rhee.

You raised it with him, did you?---Yes.

And was this back in Sydney?---Yes.

I see. And what did Mr Rhee – sorry, Mr Fisk was involved in this conversation, was he?---Not, not, no, I don't think so.

20 Right. So was this a subsequent conversation you had with Mr Rhee?  
---Yes.

Do you recall whether it was a telephone call or was it in person?---I forgot.

Anyway, you've asked Mr Rhee how do you know that they have this interest. What did Mr Rhee say?---I forgot if we ask him or he just send us direct.

30 I'm just going to show you a document now. It's volume 2, page 154. I apologise, it's 127, I'm sorry. Do you recognise that? So this is volume 3, sorry, volume 2, page 159, I'm sorry, I'm sorry, 127. You see in front of you on the screen, it's on the screen as well, Mr Zong, which you're welcome to look at it in hard copy, would you prefer to look at it in a hard copy?---Yes, this Mr Rhee sent to me.

So what you've just identified is the heads of agreement between Gows Heat and the Land Council.---Yes.

40 Dated 15 December, 2014.---Yeah.

I'll just show you these emails then. So it's volume 3, 121. Mr Rhee sent this to you by email, did he not?---Yes.

Just have a look at these if you would, Mr Zong. So if you just have a look down the bottom of the page 121, please, and you'll see – I'm just going to show you the complete history of these emails, Mr Zong.---Yeah.

So if you just go to the next page, 122, you'll see that this has been forwarded by somebody who's identified themselves as NP?---Yeah, 'cause it's from Nick.

Yes. So if we just go up, please, down the bottom of the page you'll see that it's been sent to Keith Rhee. Do you see that?---Yeah, yeah.

And then on 29 June, 2015. Do you see that?---Yeah.

10 And that he's then forwarded it to you at your email address, tony@sunshineinterior - - -?---Yeah.

- - - on the same day. Do you see that?---Yes.

And you've then forwarded them on to Mr Fisk.---Yeah.

And attached to those are the heads of agreement you've just identified. ---Yes.

20 Did you read them when you got them?---I just pass to Matt.

Right. Did you discuss with Matt what was apparently contained within the heads of agreement?---Yes, afterward.

Did you discuss what was in them with him?---Yes.

What did you speak to him, or what did he tell you was the substance of the heads of agreement, if anything?---All this five site that we have, we have seen is all in, in the, in the agreement.

30 All the five sites were in the agreement?---Yeah.

And what did you understand from your discussions with Mr Fisk was the effect of this heads of agreement between Gows Heat and the Land Council?---Yeah, this means is Gow Heat did have the right, did have, did have the agreement with the Land Council.

40 I see. Thank you. Thank you. That folder can just be returned now. Now, within a short period of time, you discussed with Mr Fisk about pursuing this deal, did you not?---Yes.

And that was, it seems, fairly shortly after you'd received these heads of agreement from Mr Rhee.---Yes.

And Mr Fisk had told you the effect of the heads of agreement?---Yes.

And you gave Mr Fisk some instructions then, did you not, to document something to submit, is that right?---Sorry, what that?

I'll use a different word. After you'd had a discussion with Mr Fisk about the heads of agreement, you decided you wanted to proceed further with the proposal, did you not?---Yes.

And did you tell Mr Fisk to prepare an offer to submit?---Yes.

10 I'll just bring this up on the screen now. Would you have a look, please, volume 3, page 139. Was it the case that you were satisfied, based on the site visit and what you'd been told at the site and the heads of agreement, that there was a genuine interest in the land that Gows Heat had?---Yes.

And you thought on that footing that it was safe to proceed further, did you?---Yes.

And that was the advice Mr Fisk had given you.---Yes.

20 Now, do you recognise this as a letter that you signed and submitted to Mr Say, dated 30 June, 2015?---Yes.

And Mr Fisk prepared that, did he not?---Yes.

On your instructions?---Yes.

And you read through it and discussed it with him, I take it?---Yes.

And you signed it and sent it to Mr Say?---Yes.

30 Why were you sending it to Mr Say?---No, I think this is, I forgot (not transcribable) I think I sent to, to Mr Rhee or Mr Say. I forgot who I send. Because they're always together.

I see. Well, just have a look what was attached to it, then, if we can, please. So behind that letter do you recognise that as the front page of what he's described as an acquisition proposal of 30 June, 2015?---Yes.

And we'll just look at the next page, page 141. You'll see there's a reference to the five properties in item 1.---Yes.

40 And you'll see down the bottom in effect you're paying a deposit for a 90-day due diligence period, in effect.---Yes.

We'll just go to the next page, please, 142. And that was signed by you?---Yes.

And that was attached to the letter that I drew your attention to a moment ago.---Yes.

I just want to show you a couple of other versions, Mr Zong, of that document. That is, that acquisition proposal dated 30 June, 2015. Would you look, please, at volume 3, page 150. Do you recognise that as the cover sheet of that agreement?---Yes, I think so.

And if you look down, please, to the next page, 151 – in fact, 152 I just want to draw your attention to. Do you see that document has been signed by or appears to have been signed by Richard Green, the deputy chair?---Yes, they sent us back.

10

When you say “they”, who is they?---Mr Rhee.

Do you remember when you received that?---Forgot, I forgot which exactly date.

I just want to show you another document as well. It’s volume 3, page 146. Now, again, do you recognise that as being the cover sheet of the same agreement, dated 30 June, 2015, namely the acquisition proposal?---Yeah.

20

If you just have a look, I’ll take you first at page 148 and you see that appears to have been signed by Despina Bakis, solicitor for Awabakal and you can see in the middle of the page it has a date 8 July, 2015 entered in handwriting.---Yeah, this is they send us back and then, with the changing.

When you say “they”, who is they?---Mr Rhee.

And when did he send that back to you?---I not remember when they send but I remember only send us once.

30

Now, I showed you a document before - - -?---Yeah.

- - - that was signed by Mr Green that you said Mr Rhee had sent to you.---I had, had to check my, our file. I pretty much remember we only receive once.

Do you recall receiving an agreement that had been signed by the solicitor or not?---I not recall that.

40

I see. Just have a look at page 147 and you can see down the bottom deposit, point 5. Do you see that?---Yeah, yeah.

Just have a read of that to yourself if you would. That’s in slightly different terms to some of the earlier versions of that document. Do you understand that to be so?---Yeah, this, this, I don’t think this our version.

Did you say it wasn’t a version?---Wasn’t. We only, we only submit it once.

I see. And what about receiving, did you only receive one back or did you receive - - -?---Yes.

I see. And you think it was the one signed by Mr Green do you?---I, I not remember. I didn't (not transcribable)

Well, do you recall receiving one signed by the solicitor or not?---No, I don't remember who sign. I just pass to, to Matt Fisk.

10 I see. In any event, you will see just on page 147 there's a reference to the deposit being paid to the solicitor's trust account. Do you see that?---Yes.

And you did pay the amount did you not, \$50,000?---Yeah, I did.

And did you at any stage elect not to proceed with the acquisition following the exclusive due diligence period?---Yes.

You did proceed didn't you?---We did.

20 Yes, but you didn't indicate at any stage you weren't going to proceed?  
---No.

Thank you. Now, after the acquisition proposal had been signed, irrespective of which one you received back, there was a due diligence period was there not?---Yes.

And the effect of the agreement was that you had essentially 90 days to work out whether you could do something with the site?---Yes.

30 And that required you to retain a number of experts to give you advice?  
---Yes.

To give Mr Fisk advice?---Yes.

And so you could work out whether or not the proposal and acquisition itself would be a financially – I withdraw that – would be a proposal that you would be interested in pursuing further?---Yes.

40 Now, at that stage the company who signed the agreement was Sunshine Property Investment Group.---Yes.

But you were in effect Sunshine were you not?---Sorry, what?

You were the director and sole shareholder were you not?---Yes.

And so the steps that were taken in the due diligence period were steps that you in effect were making. Isn't that right?---Of course, yeah.

So you retained or instructed Mr Fisk to retain Monteath and Powys?---Yes.

And they were experts in planning, development and matters of that kind?  
---Yes.

And they undertook work during the due diligence period did they not?  
---Yes.

10 And they submitted bills to you from time to time?---Yes.

And you paid them did you not?---Yes, we paid.

And can you estimate now roughly what the fees were that they incurred in the due diligence period for work that you requested them to do?---I forgot exactly. I think 15,000 or 20,000, around that mark.

20 And also Mr Fisk devoted a considerable amount of his time to work necessary to see whether the proposal could be taken further following the expiration of the due diligence period?---Yeah, he spent a lot, a lot of time.

And you also spent money, did you not, in retaining the valuers?---Yes, we pay the valuer.

Do you remember how much you paid?---30,000 plus GST I think.

30 Now, after the payment of the deposit – I withdraw that. Following the signing of the due diligence period – sorry, I withdraw that. Following the signing of the acquisition proposal did you have any further contact with Mr Green in the period of the due diligence period at all?---No.

At that stage did you have his contact details?---No.

Didn't have his email address?---No.

Didn't have his mobile number?---No.

So far as you're aware did he have yours?---No.

40 And what about Mr Petroulias, did you have any contact with him during the due diligence period?---No.

Did he have your contact details?---I don't know.

But Mr Rhee and Mr Say had your contact details obviously?---Yes. During that time I only talk with Mr Rhee.

Now, at some point – I withdraw that. On 23 October, 2015, you signed a series of agreements, you yourself, didn't you?---Yes.

Involving the Land Council, Gows Heat and Sunshine Property Investment Group?---Yes.

I want to work backwards from that date, Mr Zong. At some point after you signed the acquisition proposal but before you signed the heads of agreement and the other documents, did Mr Green make contact with you about a deposit?---What's deposit?

10 Well, you paid, I think you agreed with me earlier, \$50,000 following the signing of the acquisition proposal?---Yes.

And at some point you understood that was a deposit, did you not?---Yes, yes.

And what I'm asking you is, in the period following signing of that agreement but before you signed the heads of agreement, did Mr Green make contact with you at all about a possible release of some of that money?---No, not Mr Green.

20

Did somebody else?---Yes.

Who was that?---I think Mr Rhee.

Right. And what did Mr Rhee say to you when he contacted you?---He said it's Awabakal Council rugby, rugby league they need sponsorship.

Right. And what else did he say about, other than that the Awabakal rugby league team needed sponsorship?---No, that's it, just say we need two grand for sponsorship for rugby league.

30

When he used the word we, did he identify who the we was in the conversation, did he say who he was making the request for?---No, just the Awabakal Council.

Right. Didn't mention who had made the request to him?---No.

And what did you agree to do, if anything, following that request?  
---Because this sponsor for rugby, rugby, this, this I think a lot of people do.

40

Right. And what did you agree to do, if anything, when Mr Rhee made this request, did you say yes or no?---Yes.

You agreed to do it?---I told him yes.

Now, you recall, do you not - - -

THE COMMISSIONER: What did you agree to, what did you agree to do?

---To release the two grand to the sponsorship for rugby league.

Sorry, to release?---Release 2,000.

\$2,000?---Yeah.

MR CHEN: You recall that the valuers provided you with a series of reports?---Yes.

10 And do you remember Mr Fisk sending them to you?---This Mr Rhee sent to us.

All right. But Mr Rhee sent it to you, did he, first, or did Mr Fisk draw them to your attention?---Yes.

Which one?---Mr Fisk.

I see. Just have a look if you would please at volume 3, page 228. Did you see the valuations?---Yes, I roughly look at.

20

Did you only look at the end page, namely the page that told you how much the property was valued at?---Yeah, I saw the number.

Right. For each of the properties?---Yes.

Now, I'll just show you the whole email chain. I'll start at page 229. Do you see there that it starts with an email to Sammy Say from Stuart Rowan on 15 September, 2015?---Yes.

30 And thereafter it attaches a number of reports. Do you see that down the bottom? Five draft valuation reports.---Yes. Yes.

It's then sent from Mr Rhee, sorry, from Mr Say to Mr Rhee.---Yes.

It's then sent to Nick at Knightsbridge North Lawyers.---Yes.

So 228. It's then sent to you by Mr Rhee. Do you see that?---Yeah.

On 16 September, at 12.29.---Yes.

40

And you've then forwarded them on to Mr Fisk.---Yes.

Did you have a discussion with Mr Fisk then about the valuations contained in the five reports?---Yes.

And did Mr Fisk tell you what he thought about them?---Yes. Mr Fisk feel this price a bit too high.

Did he say what he thought a fair market value of the properties were?  
---Yeah, the thought it should be around 10 million.

Did you have some discussion with Mr Fisk at that time about seeing whether you could discuss a different way of saving some money while still keeping faith with the agreement?---Yes.

10 What did you agree or what did you discuss doing with Mr Fisk about the purchase price?---I think at the beginning we said that we, because this total number, we can't change number. Just 10 million as, as cash and the 2 million as, like, the stock. When we finish, we'll give back the stock.

I see. By stock do you mean housing?---Yeah, yeah. Yeah, depending what we do.

I see. So it was cash and cash-in-kind, as it were, to make up the 12.6 million?---Yes.

20 Now, after you discussed that with Mr Fisk, did you speak to anybody else about wanting to pursue the acquisition of these properties in that way?  
---That's after we talk with the lawyer. That's after.

You saw the date of the valuation. So it's 16 September, 2015.---Yeah.

And you had a discussion with Mr Fisk about the price. Mr Fisk thought it was a little bit too high.---Yes.

30 And you had a discussion then with him about perhaps approaching a purchase of the lots in a different way.---Yeah.

By cash and what you described as stock.---Yeah.

Now, once you've had that discussion with Mr Fisk, did you speak to somebody else then about trying to negotiate a further agreement on that footing?---Mr Rhee.

You rang him, did you?---Yes.

40 And what did you say to Mr Rhee when you rang him?---We told him this value, value, price is a bit too high. We not agree.

And what did Mr Rhee say?---They said this, we have to stick on this valuation report.

I'm sorry, you'll have to repeat that for me.---We, the price we can't change. We have, this, like, this is the deal.

Yes.---This is the price. We can't change.

We can't change?---Yeah.

I see. Did you suggest to him another way of approaching the price then?  
---They did tell us we can, we can do other way.

When you say "they", at the moment you're just on the telephone with Mr Rhee, so it's only you and him talking as I understand it.---Yes.

10 So what did he say then in response? When you've told him it's a bit high, he's told you that's the price. What then has happened?---Not quite remember what's the procedure. But I think at the end they said we can half cash, half stock.

Now, when you say "we" do you mean Mr Rhee said that?---Yes, yes.

Did he say that that was an acceptable way to move forward or did he say he needed to speak to somebody before you could move forward on that basis?  
What was the story, Mr Zong?---During that time I think we organise the  
20 meeting with Nick. Nick come to our office, Sam, Mr Rhee. We discuss this, how to do.

Now, I'm just going to pause there when you've had this meeting at your office with those participants. I want to show you something because I want to put a time on this. Now you remember the valuation of 16 September, 2015?---Yeah.

Would you just have a look, please, at volume 4, page 129. Now, do you recall, that's the cover sheet of what is described as an Acquisition Proposal  
30 dated 21 September, 2015.---Yes.

Do you recognise that as the cover sheet of that proposal?---Yes.

Just have a look, please, at the next page. You will see then there's the purchase price is broken down differently.---Yes.

In clause 2 on page 130 you can see under the heading Deposit it's 10 per cent of the purchase price and it's taking into account the \$50,000 that had already been paid less the release of \$2,000?---Yes.  
40

So if you turn to the next page which is 131, please, you will see you've signed that.---Yes.

And that was an offer that you instructed Mr Fisk to prepare did you not?  
---Yes.

And that was an offer that was submitted as you understand it by you?  
---Yes.

To who?---To Mr Rhee.

So do you recall it being prepared that agreement on or around 21 September, 2015?---Not, not quite sure the dates. Yeah, I think so.

You've got no reason to think that the date on the cover sheet is incorrect in any significant way though do you?---Yeah. Not, not sure the date.

10 All right. I want to go back to this meeting now and I was trying to place this meeting between this document and the valuations that you received by email on 16 September, 2015. Are you able to say when after you received those valuations you had the meeting involving Mr Rhee, Mr Say, Mr Petroulias I think you said?---Yes.

Can you say when it was?---I forgot the date. Not remember the date.

Was it days, weeks, you're not sure?---I'm not sure the date.

20 Anyway, so Mr Petroulias, Mr Say and Mr Rhee came to your office did they?---Yes.

THE COMMISSIONER: Where was your office at that time?---Park Street, number 2 Park Street.

Park Street?---Yeah.

MR CHEN: And was Mr Fisk involved in this or not?---Yes.

30 He was, was he?---Yeah.

Are you sure of that?---Not sure.

All right. Anyway, you've asked Mr Rhee have you to arrange this meeting?---Yes.

And he's brought Mr Say and Mr Petroulias with him to a meeting with you at your offices?---Yes.

40 And what did you say at this meeting in terms of why you've called it and what you wanted to discuss?---We, September was to meet - - -

Would you mind repeating that, I'm sorry, Mr Zong. Say that again.---I have to remember what's the, this, the time the meeting.

Well, I think you'd agree that - - -

THE COMMISSIONER: You were shown the acquisition proposal 21 September, 2015.---Yeah.

And that showed a breakdown of the purchase price of 10.6 million cash and stock.---Yeah.

10 So that's dated 21 September, 2015. Are you able to locate in time when this meeting took place, did it take place before that revised acquisition proposal on 21 September, 2015 or did it occur after?---Should be after, after this proposal.

Do you recall the purpose of calling the meeting?---I think term with, we not quite agree.

20 You had not quite come to agreement?---No, this, that meeting is after this, a long time after this. We, negotiation with the head agreement term not about our proposal. This is later we, the meeting we called is for the negotiation with the head agreement after we receive the, after we submitted the proposal we receive the head agreement for us. With this term we back and forth, back and forth. I call this meeting to discuss that not about our proposal.

MR CHEN: I see. So in time the meeting that you've referred to involving Mr Petroulias, Mr Say and Mr Rhee is much closer to October 2015, is that right?---Yes, yeah.

30 I see. Well, let's move on, then. You mentioned then that there was some back and forwarding, and I take it that means negotiations between the parties?---Yes.

And you called this meeting, then, did you?---Yes.

And you arranged it with who in the first instance?---Mr Rhee, Mr Say and then Nick. Matt, Matt was there.

And this was held in your office, was it?---Yes.

40 Now, earlier you said to me you weren't sure whether Matt was there. You now think he was there, do you?---I think he was. This, it's, we're not talk about the proposal. It's talking about this head agreement.

I see.---Sorry, my time is, is messed up, I think.

I want to just take you back to then. I'll come back to the heads of agreement in a moment. You had a discussion, as I understood your evidence earlier, with Mr Rhee about trying to approach the purchase price, if you proceeded forward, in a different way rather than stuck solely with the figures contained within the valuation reports. Do you remember that?

---Sorry, sorry, what, what that - - -

I'll break it down. It was very long.---Yeah.

You received the valuation reports from Diamond Valuations for each of the properties.---Yes.

10 You've already said that you had a quick look through them, presumably to pick up what the individual prices or valuations were for the lots.---Yes.

And you sent them on to Mr Fisk.---Yes.

And you then had a discussion with Mr Fisk.---Yes.

He thought they were a bit too high. He thought maybe a figure lower than the 12.6 million.---Yes.

20 You had a discussion with him about approaching the contract price, or a later contract price if it could be agreed, in a different way rather than the 12.6 million.---Yes.

And the way you thought that you could approach it, with the assistance of Mr Fisk, was to pay an amount in cash, is that right?---Yes.

As well as stock.---Yes.

And by stock you meant property, houses and lots.---Yes.

30 You raised that with Mr Rhee on the telephone.---Yes. Yes.

And he told you, did he not, as I understood your evidence, that he said that's the price that you're stuck with or that's the price that has been agreed.---Yes.

Is that right?---Yes.

40 Now, what did you say to him, if anything, about that or about approaching the purchase price, or possible purchase price, in a different way, in the way that you and Mr Fisk had thought about?---Yeah, we said the price was too high. I think he, he said, oh, we can pay some cash and pay some stock. This the way I think he's work.

Now, did he say that he would need to speak to somebody before proceeding in that way or did he just tell you it would be acceptable?---No, he, everything I think he talk, he always discuss it with Nick.

Did he tell you that that's what he was going to do?---Yes.

Now, I already showed you the acquisition proposal dated 21 September, 2015. I showed you that up on the screen.---Yes, yeah. Yes.

I'll bring it back up again. It's volume 4, page 129. Now, before that acquisition proposal was prepared, did you have any other discussions about the purchase price or the proposal with Mr Rhee?---Yes.

You did?---Yes.

10 And what else did you discuss with Mr Rhee before that acquisition proposal was prepared following the discussion you had with him about breaking the purchase price up between cash and stock?---This (not transcribable) we're talking about, I think.

Let me start again, Mr Rhee. Sorry, Mr Zong. I think we've reached the point where you had a discussion over the telephone with Mr Rhee.---Yes.

About approaching it – that is, acquiring the properties – with cash and stock. Is that right?---Yes.

20

And he told you that it was okay, more or less.---Yes.

And that he would need or would speak to Nick Petroulias about it.---Yes.

Did he come back to you then and say anything?---He said, he said okay. He said we can do that way.

Right. Is this in a subsequent discussion you had with him?---Yes, after that.

30

Right. Was that on the telephone or in person?---I telephone him.

Right. And what did he say on the telephone to you?---He just say that we can pay some cash and some stock, this, I think we draft this offer.

And following that conversation – I withdraw that. Did he tell you in that conversation that he had spoken to Nick or not?---Yes.

He did?---Yes.

40

And following that conversation did you instruct Mr Fisk to prepare the acquisition proposal dated 21 September, 2015?---Yes.

And there were no other conversations with Mr Rhee after that time before this acquisition proposal was prepared?---I not remember.

THE COMMISSIONER: Well, how did you end up agreeing on numbers? You know, the total purchase price in this acquisition proposal in September

2015 is 10.6 and it goes on to say, "In addition to the purchase price Sunshine will transfer \$2 million of completed stock." How did you come to agreement about those sort of matters, was there back and forth, back and forth negotiation or not?---I forgot a few time but we, we did, did a few time conversation. With the number (not transcribable) I think it's more likely the case that we can do that way.

10 MR CHEN: The actual valuations by Diamond Valuers valued the five lots at 12.6 million. Isn't that right?---Yes.

Or you don't know?---12.6.

Yeah.---Yeah.

That's what they came up with?---Yes, yeah.

20 So the breakdown in price is really a reduction to a component for cash and then you deciding with Mr Fisk I take it, is it, to come up with \$2 million worth of stock?---Yes. This, we, also we talk with Mr Rhee.

But the way you achieve I gather a saving to you if it went forward on that basis is that it's cheaper to provide stock than the cash. Is that it?---When we finish stock, we need to sell stock. This is our sales.

In any event, I think you've said you instructed Mr Fisk to prepare this document.---Yes.

30 And the purchase price in paragraph 2 on page 130 is based on the discussions you had with Mr Rhee. Is that right?---Yes.

And if you look at page 131 please, you'll see that was signed by you and sent did you say to Mr Rhee?---Yes.

Now, the due diligence period was at this stage still current, wasn't it, it was 90 days from the date of entering into the 30 June agreement?---Yes, at that time, yes.

And it was to end in September?---Yes.

40 And one of the experts that you agreed you retained was Monteath & Powys?---Yes.

And did you understand they did some surveying work?---Yes, they did.

And they also did some searches of adjoining properties.---Yes.

And did Mr Fisk speak to you about Monteath & Powys discovering that some of the adjoining land to these five properties had been the subject of native title claims by the Land Council?---Yes.

And did Mr Fisk give you some advice about doing something to try and secure a right to purchase those properties if those claims were successful? ---Yes.

10 And I think it was described as a right of first refusal or something to that effect. Is that so?---Yes.

And after you spoke to Mr Fisk or you discussed this with Mr Fisk, did you do anything about that?---I told Mr Rhee we need, we want get the, all this land all together.

Did you ring him up or did you meet with him?---I rang him.

20 And did you do that on the basis of what Mr Fisk had told you was a prudent step to take?---Yes.

And so when you speak to Mr Rhee you said to him, sorry, what, what did you say to him?---We want buy, buy that land once the, the Council got, got the land.

THE COMMISSIONER: Sorry, I couldn't catch that. Would you repeat it?---We want to buy the join, join land beside the land that we buy after the council get them. Because at that time this land is not belong to the, to council.

30 MR CHEN: It was Crown land but the Awabakal Local Aboriginal Land Council had made a native title claim over it, as you understood it.---Yes, yeah.

And if those native title claims were successful, you wanted the option to buy those properties.---That's right.

40 Assuming, of course, that you proceeded with the underlying transaction itself, i.e. you secured the purchase or the right to purchase these five properties.---We just draw the first right, right to refusal.

Well, I'll come to that in a moment. But you spoke to Keith Rhee. What did Mr Rhee say when you raised it with him?---They said there's no problem. This, they, the council, council is to apply this, the land.

Well, you use the word "they" but who was he purporting to speak for and on behalf of when he says "no problem"?---At that time I only talk with Keith, yeah.

I understand. But did he indicate that he'd need to speak to somebody or not? He just said it?---Yeah, he talk with Nick. Talk with Nick.

Did he say that to you, though, in this conversation, that he would talk to Nick, or not?---Yes.

And so would you tell the Commission, what did Mr Rhee say then?  
"There's no problem." What else did he say in relation to getting this right  
of first refusal or Nick?---Yeah, they, they give us the, the proposal. They  
10 said we can sign this first right refusal.

What did he say, if anything, about Nick and contacting Nick? Mr Rhee in  
this phone call.---Every time I ask him, he, he always talk with Nick.

That's what he would say to you?---Yes.

And did Mr Rhee ultimately get back to you, ring you back?---Yes. Yes.

And what did he say to you?---With this first right, first right of refusal, this,  
20 Nick, we, we work this, this first right refusal with Nick and Keith together,  
I think.

Sorry, could you say that again. I didn't follow that.---This is - - -

So this is Mr Rhee saying? Mr Rhee - - -?---No, first right of refusal, this  
also with Nick together.

Did you have a meeting with them, did you?---Yes.

30 I see. So you've raised this with Keith Rhee, and after that conversation  
you've had a meeting with Mr Rhee and Mr Petroulias, have you?---Yes.

And who else?---I forgot Sam Sayed was there or not. I - - -

I see. And where was this meeting held?---This, I think our office. When  
we talk about this agreement, this head agreement, this part of the one thing  
we're talking about.

40 THE COMMISSIONER: This is the meeting at 2 Park Street, in your  
office?---Yes, yeah, yeah.

MR CHEN: So just so I understand your evidence, you earlier today  
mentioned a meeting involving Mr Petroulias and the heads of agreement.  
---Yeah.

Is this the same meeting or a different meeting?---Same meeting.

I see. All right. Well, look, I'll just show you a document first and then I'll come to that meeting.---Yeah.

Would you just have a look, please, at volume 4, page 74. Now, up on the screen is volume 4, page 74. Do you recognise that as a cover sheet of a document you received, namely Right of First Refusal, General Heads of Agreement, 2 October, 2015?---Yes, I think so.

10 So I'll just scroll through that a bit further, please. You'll see there it refers to Sunshine Property Investment Group and the Land Council?---Yes.

Keep going, please, just to the end. It doesn't appear to be signed. Do you recall ever signing that?---No.

My question was unclear. I'm sorry.---No.

Did you ever sign it or not?---No.

20 You're clear about that, you did not sign it?---Yeah, this, no.

Part of this ended up in the heads of agreement itself did it not, this right of first refusal for the adjoining lands or you don't know?---At the beginning we want to put this with the head agreement. Later this not in altogether.

I see. Not in altogether?---Not in the head agreement.

I see. All right. Now, I want to go to this meeting now that you had with Mr Petroulias, Mr Say and Mr Rhee at 2 Park Street.---Yeah.

30 Now, you said that there was a meeting did you not involving the four of you at your office around the time that you signed the heads of agreement? ---Yeah, this is before we negotiation, we talking about this term of the head agreement.

So working back, you signed the heads of agreement on 23 October, 2015? ---Yeah.

40 So what's the time that this meeting is being held, and I'll give you another date. Mr Fisk was overseas from either 16 October or 17 October.---Yeah.

Are you able to then pinpoint a time when you think this meeting happened?---I think around a week or before 23 October.

So you've asked for the meeting have you?---Yes.

And who did you ask, Mr Rhee to organise it?---Yeah, Mr Rhee because at that time my, my lawyer and Nick, Nick's they can't, they can't agree with

each other. I call the meeting, let them (not transcribable) sit in the meeting room discuss all the terms.

Well, what was discussed then, I mean you will have to introduce the topic, what were you discussing, the detail, was it the price first?---No, this, at that time the price (not transcribable) fixed. All about - - -

I'm sorry, the price was?---Price is fixed.

10 Right. So was there some discussion about there being an acceptance of 10 million or \$10.6 million plus \$2 million in stock?---Not about this term. It's main about the head agreement or (not transcribable). My lawyer is not happy with the, the term Nick give to us.

I'm just trying to work out what was discussed at this meeting. I understand the background is the lawyer is not happy and I'll talk you to what your lawyer told you shortly but I'm just trying to work out what you were discussing at this meeting so - - -?---It's, it's all the document. My lawyer he say the document, it's not a professional document.

20

So how were you going to assist in this process then, Mr Zong? I take it you're not a lawyer.---No.

So what were you endeavouring to do at this meeting?---This one I get my lawyer and Nick get together.

So your lawyer attended this meeting?---Yes.

30

Who was that?---Mark, Mark, Mark from BCP.

Driscoll?---Yeah, Mark Driscoll.

So in fact who attended this meeting was?---Keith Rhee, Sam Say and Nick Petroulias.

And Mr Driscoll?---Yes.

Was Mr Driscoll at the meeting the whole time?---Yes.

40

I see. So what were the terms that were then discussed between the parties?---Is all about the detail or the word or the (not transcribable) Nick give us this head agreement. Our lawyer is not agree and then we ask them to change the (not transcribable). They said we rather we get our lawyer to draft this head agreement.

Well, Mr Zong, the heads of agreement as you know were entered between Sunshine and the Land Council. Isn't that right?---Yes.

So what's Mr Petroulias doing there at this meeting?---He said he was, he's a lawyer for the council.

He said that in this meeting did he?---Yeah, always. Always, from beginning to (not transcribable) he, he's a lawyer for the council. This, we always talk with him.

And do you recall when he first said that?---From beginning I think.

10 From the site visit you think?---Yeah, yeah.

So did you ultimately then in this meeting agree to anything or not?---Not, not really, no.

Now, prior to the agreements being entered on 23 October, 2015, were you ever provided with what appeared to be a board resolution?---Yes, we, this - - -

20 Just a moment. Just slow down. You were, were you?---Sorry, what - - -

I'm just asking you whether you received something. You did get a board resolution?---Yes.

And who did you get it from?---Nick.

How did he send it to you or give it to you? Was it in person or email?---He give it to us.

30 And when did he give it to you?---I think this during the meeting.

I see. So are you sure about that or you're not sure about whether he gave it to you at the meeting or some other time?---I'm sure he give to me but I, I forgot he, when he give it to me.

But you're certain he gave it to you? He was the one?---Yeah, he certainly give to me.

And in person or in email?---In person.

40 I'll just show you a document, please. So page – sorry, Exhibit 57, page 15. It's on the screen, Mr Zong. Are you happy to look at it on the screen? ---Yes.

Is that a copy of the resolution that he gave to you, the one dated 31 October, 2014?---Yes.

And it refers to obviously Gows in it?---Yes.

Had you requested Mr Petroulias provide that to you or did it come out of the blue?---No, he, he just give to us.

Did you read it when you got it?---(not transcribable) I thought this, he said he got approve from the board.

And then he handed you this?---Yes.

And did you give that to Mr Fisk?---Yes.

10

Did you have a discussion with Mr Fisk about what this apparent resolution meant?---Yeah. Mr Fisk said, oh, this, we got, it got approved.

You thought that heads of agreement which you'd been sent earlier, in June of 2015, was a transaction which had been approved by the board of the Land Council?---Yes.

And conferred an interest in Gows Heat? Gave them the right to purchase the properties?---Yes.

20

Which you in fact were then negotiating to buy yourself.--- Yes.

And as the transaction moved along, you had to pay some money, did you not, to Gows Heat?---Yeah, yes.

And why was that?---Yeah, because they got, they got the right for all this land.

30

Did you rely on the advice that Mr Fisk gave you about what this apparent resolution meant?---Yes.

And did you rely on it to enter into the agreements that you subsequently entered into?---Yes.

Who did you understand then Gows Heat was?---I don't know. This is, Nick said he, Gow, he, Gow is his, his - - -

His company?---Yeah, his company.

40

When did he first tell you that?---That's after we start, start talking, started talking about the, the head agreement.

So this was around October of 2015?---Yeah, around that, that time, I think.

Didn't he mention to you, Mr Zong, when you were at the site, that he had a right or an interest?---Yeah, at that time he said, he said he has a right. But didn't mention about the Gow.

I see. But when you got the heads of agreement in June of 2015, did it not occur to you then that Mr Petroulias and Gows were the same?---Yeah, this this what he, he told us. This Gow is his. Keeju, Keeju is, is Keith.

Commissioner, is that a suitable time?

THE COMMISSIONER: Yes. Yes, I'll take a 15-minute adjournment.

10 **SHORT ADJOURNMENT**

**[11.30am]**

THE COMMISSIONER: Yes, Mr Chen.

MR CHEN: Thank you, Commissioner.

I just want to take you back to a couple of points quickly, Mr Zong, about your evidence just before the break. You told the Commission that Mr Petroulias had said at all times that he was the Land Council's lawyer.  
20 ---Yes.

And was your evidence that he told you or said as much at the first meeting you had at McDonald's, or certainly at the site visit, one or other?---The site visit, yeah.

At the site visit?---Yes.

Right. And you remember him saying that?---Yeah, he acting for them.

30 But did he say that he was the lawyer, did he?---Yes.

Was that in the presence of you and Mr Fisk?---I think so, yeah.

And what about, was Mr Say there when he said this?---I'm not, not remember they're all together, no.

And what about Mr Rhee, was Mr Rhee present when he said this?---Yes.

40 All right. And what about Mr Green, was he present when Mr Petroulias said that, was he present?---I don't think he around with us.

Now, you talked about Mr Driscoll, the lawyer, having some concerns about the quality of the documentation that had been submitted on behalf of the Land Council.---Yes.

And was one of the issues that Mr Driscoll had raised with you that there might be a question mark about the authority of the Council to do certain things or to sell the land?---Yes.

Did that inform some of the matters that were discussed at this meeting with Mr Petroulias that you had with him in your boardroom?---Yeah, they said it's no problem, they, they 100 per cent they can guarantee this.

Who said that?---Nick.

Right. And that was in response to a question about whether there was authority of the Council to enter this transaction?---Yes.

10

And thinking about it now, when he provided you with that resolution was that after this meeting or before or you can't say?---I forgot what's the, I think this is approve they can get.

Right. But I'm just wanting to work out when he gave that to you.---I'm not sure. I forgot that date.

Now, Mr Fisk went to Fiji, well, he went overseas for a holiday. Do you remember that?---Yes.

20

And that you then became the person who was dealing with Mr Driscoll and the documentation prior to its execution on 23 October, 2015.---Yes.

And Mr Driscoll sent you an email about some concerns that he had with the documentation, remember?---Yes, yes.

I'll just show you one of them, please. Volume 6, page 43. So you recognise in front of you an email from Mark Driscoll to you dated 19 October, 2015 at 11.43am?---Yes.

30

And Mr Driscoll gave you some advice and expressed some concerns about a range of matters.---Yes.

You remember reading that, I take it?---Yes.

And Mr Fisk also got a copy of it, you can see?---Yeah.

And are you able to say now, looking at that email, whether you had this meeting with Mr Petroulias before or after this email?---This ah, ah - - -

40

Anyway, you're not sure?---I'm not sure. I've forgotten.

Despite the advice that Mr Driscoll had given you, you proceeded on, didn't you, with the transaction?---Yes.

And you attended the Land Council's offices, did you not, on 23 October, 2015 to execute the agreements?---Yes, I did.

Now, before you went to the Land Council's offices, did you meet with anybody beforehand on that day?---Yes.

Who did you meet with?---Nick and Rich, Rich Green.

Right. And where did you meet them?---At the coffee shop.

Right. Where at?---Just not far from the Land Council.

10 Their offices?---Yeah, not far from their, from the Land Council office.

THE COMMISSIONER: This is in Newcastle, is it?---Newcastle, yeah.

MR CHEN: Who told you to, or why was that arrangement made for you to meet those two there at that time before signing the agreements?---Sam Say.

Right. And what did Sam Say tell you about why you needed to go there rather than the Land Council office?---He drive me there, he said we need to meet Nick and Rich first.

20

Right. And did he say why?---No.

And when you got there did you meet Mr Green and Mr Petroulias?  
---Yes.

Were they already there?---Yeah, they were already there.

Did they come – sorry, when you got there what was discussed?  
---I bring the, the 400,000 cheque, Nick said no, he not agree.

30

Right.---He asked me to break the two, because at the beginning there's four, 400,000, this is for Land Council.

Right. He said that this is not right, they had to 200 for Land Council and 200 for Gow.

Right. And what, you had a cheque did you at that stage for that amount?  
---A bank cheque.

40 Right. Well, what did you say when Nick told you that it had to be split that way?---At the beginning I said this we agree that it's 400,000 for Land Council, he said no, no, this, you can't, this is not deal, you have to 200 for Gow, 200 for Land Council.

And what did you do when he said that?---I have to went to the bank, the St George Bank to split this one cheque to two.

THE COMMISSIONER: Did he or anyone at the meeting explain why it should be 200 to the Land Council and 200,000 to Gows?---They said I have to.

You had to. But did he give an explanation as to why?---They said one for, for his, sorry, for the surrender agreement.

Did he say that or did you infer that?---Yeah, he said.

10 Hmm?---Yeah, he said.

MR CHEN: And you went off and split the cheques that way did you?  
---Yes.

And did you then go to the Land Council offices with - - -?---Yeah, then we went to the office of the Land Council.

You went separately or together did you?---Together.

20 And when you got to the Land Council offices was anybody else there?  
---Debbie Date.

And who did you understand she to be?---They introduce she was the chairman.

Had you met her before?---No.

And did you then proceed to sign a number of agreements did you?---Yes.

30 And I just want to show you. You actually have a photograph of the day do you not, when the - - -?---Yes, I do.

So would you have a look, please, at Exhibit 57, and this will come up on the screen, page 9. Is that the photograph that you had taken of the day you went up to sign the agreements?---Yes.

And that's Ms Dates obviously on the left?---Yes.

40 Mr Green?---Yes.

Yourself?---Yes.

And Mr Say?---Yes.

Who took the photograph?---I think Nick.

And was this photograph taken on your phone was it?---Yes.

Is this the only photograph you had of the day?---Yeah, that's the only, only one.

Why did you take the photo?---We signed this big, big contract. I said we have to take some photos.

I'm just going to draw your attention to a number of documents, Mr Zong. Would you look, please, at volume 7, page 128.---Sorry, which page?

10 Volume 7, page 128. Just before I show you these documents, Mr Zong, I just want to ask you these further questions. Do you remember at all prior to signing or going up to Newcastle to sign these agreements there being a discussion at all about the need for a dealing certificate?---Yes.

And prior to signing the document who raised that first with you?---Matt.

Matt Fisk?---Matt Fisk.

20 And do you remember approximately when that was in relation to the signing of the agreement?---I forgot when, what time.

Anyway, it was before was it?---Yeah, before, yeah.

And when he told you about it what did you understand the issue to be? ---We ask, I ask Keith. He said that this is no problem.

Just pause there. I'll come to that.---Sorry.

30 What did you understand you needed?---We need to get approve.

You needed a certificate of some kind did you?---Yes, yeah.

And you spoke to Keith Rhee did you?---Yes, yeah.

By telephone?---I think this during the meeting. I forgotten when we talking about. We did talk about it.

40 When you say at the meeting, do you mean that you possibly spoke or raised this issue during the meeting that you had at your offices which you've described as the heads of agreement meeting with Mr Petroulias, Mr Say, yourself and Mr Driscoll?---Yes, I think so, yeah.

And Mr Rhee?---Yes, yeah.

But you're not sure whether you raised the dealing certificate issue at that stage or perhaps at another point?---I'm not sure.

Anyway, you certainly raised it did you?---Yes, yes.

And you certainly remember speaking to Mr Rhee about it do you?---Yes, yeah.

And what did you say to Mr Rhee?---I said we, we need to get approval from the Land Council, national Land Council. They said this, this is no problem because Richard have download.

10 I see. And did that alleviate any concerns you had about it?---He just guarantee, they say they can get it.

Now, I'll just return to these agreements now, please, Mr Zong. So before you is volume 7, page 128. You recognise that as the cover sheet of the heads of agreement that was entered?---Yes.

And if you just have a look at the execution page. You recognise that as being your signature do you? That's page 134.---Yes.

20 And was Ms Dates' and Mr Green's signatures added to it whilst you were there?---Yes.

You saw them sign it?---We, yes, we sign together.

Now, there's a reference as well to Sunshine Warners Bay, you'll see on the right-hand side. The idea going forward was that that would be a company formed as a special-purpose vehicle to, in effect, conduct the development, is that right?---Yes.

30 And that company was incorporated or formed, wasn't it?---No, just, just, I'm still director of the company.

Yes, but you registered the company or started a company up in that name, didn't you?---Yes, yeah.

Yes. And you were the sole director and shareholder of it?---Yes.

And any funds that were paid by Sunshine Warners Bay Pty Ltd were still, in effect, paid by you?---Yes, yeah.

40 So I just want to show you some other agreements. So volume 7, page 142. Do you recognise that as the variation agreement?---Yes.

And you'll see then that one of the things that occurs by that agreement was that Sunshine Warners Bay was to be substituted for Sunshine Property Investment Group.---Yes.

And there's also some references in clause 4 about where money is to be paid and how much. Do you see that?---Yeah, yes.

I'll come to that later. But you recall signing that agreement, do you? I'm just showing you now page 143.---No, this not with, I'm not, not sure about this one.

You've taken 20 or 30 seconds to respond to that. What seems to be the issue that you've got or concern you have about that document?---I remember just sign this, the head agreement.

10 You don't recall signing this document?---So the variation, that's inside, inside this head agreement. I forgot I signed this separate one.

Do you have no recollection of it or do you deny signing it?---We did discuss this variation for this, the variation. We didn't, we, we, I did see this.

You did see the document?---Yes.

20 And is it the case that you do not recall signing it or you deny signing it?---I forgot.

So would you look, please, now at volume 7, page 136. Do you recognise that as the surrender agreement and release?---Yes, this is the one I signed with Nick.

And if you just go to the bottom of that, please. You see now it's page 140. You signed that?---Yes.

30 And who signed the bottom?---Nick.

And did he sign that on the 23<sup>rd</sup> of October at the Land Council offices?  
---Yes, we signed together.

If you go, please, to 136 again, you'll see there's some changes under clause 1A(i), where a different amount has been inserted, 673 instead of \$250,000. Do you see that?---Yes. This - - -

40 How did that arise, Mr Zong?---At beginning we agreed the 250 for release to Gow, and when after we signed this, this, this document, and Nick he changed, changed this amount. I said, no, you can't change this, and he just change, change it. You see this just his own signature. I didn't sign this.

THE COMMISSIONER: Were you happy about that situation?---No.

Did you say anything or do anything about it and say what are you - - -?---I told him. I, I told him. I said you can't, you can't, you can't change this. This is what we agreed. And he still change it.

MR CHEN: You told Mr Fisk about what had happened in relation to this, didn't you?---Yeah, when we come back, I tell him.

Would you look, please, now at volume 7, page 144. So this is the project procurement deed, dated 2 October, 2015, between Keeju and Sunshine Warners Bay.---Yeah.

And if you look at the end of that, please. That's your signature there, is it?  
---Yes.

10

And was that signed on 23 October, 2015 as well?---Oh, I think this is after I signed with Keeju.

Did you meet subsequently with Mr Rhee, did you?---Yes.

Now by that you were agreeing to pay the sum of \$250,000?---Yes.

And a very substantial fee was to be paid to them if the transaction settled, isn't that right?---Yes, it's a big amount.

20

Why did you agree to such a large amount?---Because this is when we, at the beginning when we do the feasibility, this, all the cost is all together. When we do the feasibility this, the cost is not only 12.6, it's plus all the Gows' cost and the Keeju's cost. The feasibility we have done is still pretty good.

THE COMMISSIONER: It's a rather huge amount though, isn't it?  
---This is the deal, we have to do this otherwise there's no deal.

30

Why did you have to do it?---Otherwise there's no deal, this is the case they took to us. This is all, this the deal is together.

MR CHEN: Anyway, you had a feasibility, that is an assessment as to whether the project was viable - - -?---Yeah.

- - - from a financial perspective.---Yeah.

And even adding that amount in, you still thought it was a viable proposition, the deal, did you?---Yes.

40

Mr Fisk gave some evidence yesterday about a lot of the payments would be back-ended. Do you understand what that term means?---Not, what's the, what's the - - -

Well, you don't actually have to pay the money until the transaction is at the stage of settling.---Yeah, you can say this is 250 at the beginning. All the rest is once we said settle, settle each land and we pay the, the (not transcribable). If we not settle, we would not pay them.

Now, would you look please at volume 7, page 59. Have you seen – I withdraw that. That’s a document described as a call option agreement dated 12 October, 2015, and on page 60 you’ll see that that’s an agreement apparently between Sunshine and the Land Council. If you just go – do you see that in front of you, Mr Zong?---Yeah.

If you just go to the end, please. Do you recall ever signing this document?  
---No, we only since the one head agreement, we didn’t - - -

10

So you never signed this document?---No, we, we only sign one, one document, the head agreement, this is the only one we sign.

I’m just going to take you to some more. I appreciate you say you only signed the one document.---Yeah.

20

I just want to show you them as well, please. So volume 7, page 71. That’s a document described a deed of rescission dated 12 October, 2015, and if you go to the next page, please, you’ll see that’s apparently an agreement between the Land Council and Gows Heat. Pardon me. I appreciate that doesn’t involve you, but have you ever seen this document before?---No.

Would you look, please, at volume 7, page 75. A document described as a put and call option agreement dated 12 October, 2015, between Gows, I’m sorry, between the Land Council and Sunshine. Do you see that?---Yeah.

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

30

Right. You don’t believe you ever executed it?---No.

Now, on the day was there any other discussions about what was to happen going forward in terms of this deal?---After - - -

Well, you’re all at the Land Council, it’s a big moment, you’ve taken a photograph, you’ve signed an agreement, was there some discussion about, well, what’s to happen now between you, Mr Petroulias, Ms Dates, Mr Green and Mr Say?---Yeah, after that we engage the town planner start our rezoning process.

40

Right. I’ll come to that. I just want you to focus on 23 October when you’re in the Land Council offices.---Yeah.

Was there some discussion about what’s to happen in terms of the project moving forward or was there any discussion of any kind?---Yeah, I told them, I said we need help to, for our rezoning process.

And who were you speaking to when you were talking about needing help for your rezoning process?---Nick and Rich Green.

And were all the people I've identified, Ms Dates, Mr Green, Mr Petroulias, Mr Say all present when you were talking about this?---Yes, yeah.

And did somebody respond to your request?---Yeah, yes.

Right. And who was that?---Nick and Rich Green both of them said.

10 And what did they say?---They said there's no problem, they will, they will help.

Right. And did you discuss any more about what the effect of the agreement would mean in terms of going forward?---No, not, not really, no.

Was there any other discussion at all about what the deal meant for the Land Council?---No, no, I not remember.

20 Well, at the moment you've just turned up, signed a document, taken a photograph, said you needed some help with the rezoning process, is this a meeting that took a few minutes or longer?---It's pretty quick. It just 15/20 minutes.

And there was no other discussion about what this meant in terms of the collaboration between you and the Land Council or anything at all?---Yeah, so (not transcribable) because there is a lawyer there.

And who were you referring to the lawyer, Mr Petroulias?---Yes.

30 I see. Now, Mr Fisk has returned from holiday and you've told him I take it you've signed these agreements?---Yes.

And you re-engaged or asked Mr Fisk to re-engage Montearth & Powys did you not?---Yes.

And they provided with you some preliminary work necessary for a town planning proposal to be submitted?---Yes.

40 And they undertook work throughout the rest of 2015 did they not?---Yes, yeah.

And into 2016?---Yes.

And they invoiced you from time to time did they?---Yes.

Now, whether it's Sunshine Property Group or Sunshine Warners Bay you ended up paying the money did you?---Yes. The last payment I still haven't, haven't paid them.

Are you able to tell the Commission approximately how did you pay in terms of fees to Monteath and Powys after you signed the heads of agreement?---I forgot. 20 something.

And did you pay for any other experts to provide any other work?---Not really, no.

Mr Fisk spent his time though did he not assisting in this process?---Yes.

10 Was he working largely on this project in the balance of 2015?---Yes, and '16.

Now, at some point did Mr Fisk make contact with you by email suggesting that Mr Monteath from Monteath & Powys had become aware of an article in the Newcastle Herald?---Yes.

And did that occur in the latter part of 2015 so far as you can recall?---I forgot which, what's the date but he did tell us.

20 Did you understand the thrust of the issue was that there was an investigation into the Land Council?---Yes.

And you discussed that with Mr Fisk?---Yes.

And did you have some concerns about the deal knowing there was an investigation on foot?---Yes.

And what did you do about it?---I, yeah, I talk with Nick. I said what do we do, what's going on there.

30 Did you ring him or did you meet with him?---Yeah, I, yeah, I talked to him.

And what did you say to him?---I said what's happening with this consult, this investigation because they all, they signed this contract.

And what did he say?---He said that this, this is no problem, don't worry.

40 And did that alleviate your concerns?---Yeah, we still concerned. He, and he, he give us the warranty, this, this warranty. Said that this, don't worry. Everything, after this investigation everything is still on track.

He told you he'd get such a document did he?---Yes, yeah.

I'll just show you, so it's volume, sorry, Exhibit 57, page 1. This will come up on the screen. Do you recognise that as being a deed of acknowledgement and guarantee dated 21 December, 2015 between Sunshine Warners Bay and the Land Council?---It's just a page not, the one

he showed me is not a cover, there's no cover, I don't think there's a cover page.

I'll just move down there a bit further. Do you recognise that as being, would you prefer to look at this in hard copy, Mr Zong?---(No Audible Reply)

Exhibit 57, page 2.---Sorry, which page?

10 So if you have a look at page 3 where the agreement or the execution part of the agreement is. Do you see your signature or what appears to be your signature there?---Yeah. The one, I met Nick in his office - - -

THE COMMISSIONER: Was this soon after you were told about the Newcastle Herald article?---Yes.

Within days?---Oh, it's a few days.

20 MR CHEN: And is this your signature that appears here?---It's my signature but I don't, I don't remember I signed this paper.

You remember receiving it, though?---Nick just showed me this paper. At that time there's no signature. He said he will get, get it signed.

I see. So just to be clear what you received. You said what he showed you was not the cover sheet.---Yes.

30 You're agreeing with me? That was not shown to you?---Not the cover sheet but (not transcribable).

What about what appears to be page 2 of the document?---I didn't read through. He, he only explain what's, what's this. He said he guarantee there's no, no issue with the investigation.

And, what, you don't recall ever receiving a copy of that document from him or - - -?---No, he, he give, he give me this document.

He did?---Yeah, he did.

40 THE COMMISSIONER: Has it got your signature on it?---At that time there's no, no signature. What I got is just a plain, plain document.

MR CHEN: Did you ever get a copy that has what appears to be the signature of Richard Green on it?---I don't think so.

THE COMMISSIONER: Is that your signature also on the document, is it? ---Yeah. Yeah, it's my signature but I, I not remember I sign this paper.

You don't know when you signed it?---Yes.

You can't recall?---I can't recall this.

MR CHEN: I'm sorry, Commissioner. I talked over you then. Or whether you signed it?---I'm not remember I signed this paper.

THE COMMISSIONER: Well, does it appear to be your signature?  
---Looks like my, looks like my, my signature.

10

Looks like yours?---Yeah.

MR CHEN: Anyway, Mr Petroulias explained to you that he would give you such a guarantee, or warranty as you described it?---Yes.

And did you understand that would confirm that the deal would be going ahead and safe?---Yes.

20

Now, you obviously had his contact details, Mr Petroulias, by this stage.  
---Yes.

And you had his email address, no doubt.---Yes.

And his mobile number.---Yes.

And you'd use that frequently, I take it, when you needed to contact him.  
---Yes.

30

Now, you also realised that there was another issue concerning a dealing certificate in January 2016, don't you? You remember that?---Yes.

Do you remember retaining some solicitors called Mutton & Holm to provide you with some advice?---Yes.

And they gave you some advice, perhaps through Mr Fisk, that there was a need for a dealing certificate. Do you remember that?---Yes. Yes.

40

And the thrust of the advice that they gave to you, or that Mr Fisk conveyed to you, was that unless you had such a dealing certificate, it was possible for the Land Council to walk away from the deal.---Yes. Yes.

And obviously that was a concern for you, was it?---Yes.

Did you do something about that?---Yes. We met and start talk with Knightsbridge to ask this certificate.

And what did you do?---At that time it's Matt, it's just Matt, Matt Fisk do, do all these things.

At some point after you signed the contracts in October 2015, did you meet with Mr Richard Green in Sydney?---Yes.

Did you have dinner with him?---Yes.

Did you only meet him on the one occasion in Sydney? Or more than one?  
---Yeah, he, he came, came, just I think after a week he came in Sydney.  
He's, he's called me. He said he's here. He said can we go out for dinner.  
10 I said, yeah, that's fine, come.

And did you go out to dinner with him?---Yes.

Did you discuss the deal at all?---No.

And did you have any other contact with Mr Green? I'll withdraw that. Did you pay for dinner or did Mr Green pay for dinner?---I pay for dinner.

For everyone?---Yes.  
20

Who else attended other than you and Mr Green?---I don't know. There's two other people. I don't know them.

They didn't come with you, obviously.---No, no, no.

So did you meet with Mr Green after that as well in Sydney?---No. This, not, the one or two times.

And what was the purpose of you meeting with Mr Green?---The one time  
30 we with Nick altogether. It's because after they want bring us more deal together.

What, something unrelated to the - - -?---Yeah, unrelated to Newcastle. It's (not transcribable) Wollongong.

In Wollongong?---Yeah.

And Mr Green and Mr Petroulias came together to make a joint pitch to you, did they, about this opportunity in Wollongong?---Yes, yeah.  
40

Were you interested in that or not?---Yeah, I said we can have a look.

Did they give you some information about it?---Yes, yeah.

And did you proceed further with it?---We ask all the document, they drive me there, we look at the site.

And nothing further happened with it. Is that right?---No, we didn't (not transcribable).

Were they so far as, were they running what appeared to be a business together, Mr Green and Mr Petroulias, at this time?---Yeah, they're, they're together show me all the site and also Nick give me the four contract of the site, but we didn't, we didn't go ahead.

10 They appeared to be very familiar with each other's company, didn't they?  
---Yeah, of course, yeah.

And they seemed to have a good relationship between them, so far as you could see?---Yes.

And a business relationship as well?---Yes.

20 Now, what was the other occasion that you said that you met with Mr Green, perhaps in Sydney, you said after the dinner you met them on one or two occasion, you've said one was to go and have a look at the site in Wollongong, what was the other occasion?---Oh, this, not, the one time is only one time he came here, we just had coffee.

All right. So where was that, in the city or somewhere else?---City.

All right. And what was the purpose of you meeting with him in the city to have coffee?---Nothing, he's just, didn't talk much, nothing.

30 Right. He got in contact with you to tell you he was in the city?---Yeah, yeah.

And he offered or you offered to meet up with him and that's what you did?  
---Yes. So he's in city, I said I'll come to see you. At that time we're talking about this rezoning process.

You talked to him about the rezoning process?---Yes.

For the land, for the Land Council?---For the Newcastle, yeah.

40 Right. And what were you telling him about the rezoning at that time?  
---Oh, just our planner is doing the rezoning.

And what did he say about that, if anything?---Oh, he didn't talk much, he not, not talk about.

Now, you also said – sorry, could you put a time, Mr Zong, on when this meeting that you had with coffee discussing rezoning with Mr Green was?  
---I forgot the time, this, this should be early '16.

Now, you also said that Mr Fisk was following up the dealing certificate so far as you understood it with the Knightsbridge North Lawyers?---Yes.

And the fact is you never got a dealing certificate in the beginning of 2016, did you?---No.

Or at all?---No.

10 Now, you had been told though, had you not, that there would be no problem getting that dealing certificate?---Sorry, what that?

You said earlier that you'd been told that you'd have no problem getting a dealing certificate.---Yes.

And but you hadn't managed to secure one despite your efforts.---Yeah.

Is that right?---Yeah, we tried.

20 Yes. And Mr Fisk had tried?---Yeah.

And by this stage a good number of months had passed since you'd signed the contract.---Yeah, it is after.

Yeah. But were you still pursuing it yourself, a dealing certificate, in the early part of 2016?---Yeah, we, because at that time the town planners tell us we need to get this approved before the rezoning.

30 Right. But what other steps were you taking to pursue a dealing certificate in 2016 after you got that advice and after you got the advice from Mutton & Holm that you needed one?---I told Nick, told Nick we, we went to his office.

Do you remember when that was?---I forgot the date.

And where were his offices?---Castlereagh, Castlereagh.

Castlereagh Street?---Yes.

40 And did you go there with Mr Fisk or just on your own?---With Fisk.

And was at the meeting you, Mr Fisk and Mr Petroulias?---Yes.

Was there anybody else?---No, there's just three of us.

And did you ask for the meeting?---Yes.

And Mr Petroulias agreed to it obviously.---Yes.

And when you got to the meeting, what did you say?---Yes, we discuss what's the procedure to get this certificate.

And what did Mr Petroulias say if anything about that?---He said it's no problem, because at that time the investigation of the Council still haven't finished he said just need to be a bit more time, after finish they will get the certificate.

10 Did you also speak to or have a discussion prior to this meeting with Mr Fisk about exercising an option over Braye Park? ---Yeah, because we, we chase this certificate, we couldn't get anything, we thought that maybe we just process with this exchange (not transcribable)

And did you tell Mr Petroulias at this meeting that you wanted to exercise an option over Braye Park?---Yes.

And what did he say about that?---He said that's fine, no problem.

20 At this meeting did – I withdraw that. Have you ever met Despina Bakis? ---Yes, at that meeting.

That meeting you met her, did you?---Yes, yeah.

Was she involved in all of it, some of it or a little bit of it?---No, she just came in because we questioned why did it take so long for the investigation. Said that just some document is not ready or something. Then Nick call, call Despina and she came in and just, came in and just show some document. Or she just came in very short time.

30 THE COMMISSIONER: What did she say?---She said this - - -

Firstly, did somebody introduce you to her?---She just call, call her in. Nick didn't introduce her.

He did or did not?---He, he didn't.

What did she say?---She, she just said this, the accountant is very slow. This, they need more time.

40 Sorry, I just missed the first part of that answer.---Yes, she said that this, the accountant, some accounting document is not read.

MR CHEN: Did you say accounting?---Yeah.

I see.---They said they need a bit more time to get this accounting document ready.

THE COMMISSIONER: Were you starting to get worried by this time?

---Yeah, we started to get worried.

MR CHEN: Anyway, Mr Petroulias has told you that it shouldn't be a problem, but you never did get a dealing certificate, did you?---No.

And after that meeting did you try and follow him up to see whether he'd make good his promise to give you a dealing certificate?---Yeah, after that I try text him a lot and then he blocked my number. I couldn't get him.

10 Did you try ringing him multiple times?---Yes, many times.

Did you send him emails as well?---I, I (not transcribable) just the call (not transcribable).

I see. Did eventually you manage to tee up a meeting in June of 2016 with Mr Petroulias?---Yes.

20 And I'll just show you an email. Volume 15, page 88. In any event, a meeting had been teed up. Do you remember that?---Yes.

And we'll just go down to the next page, if you would. Do you see there there's an email from Keith Rhee to Matt Fisk?---Yeah.

It actually starts at the top of the page, I apologise. So it's Matt Fisk advising that there's been a meeting teed up.---Yeah.

With Mr Rhee indicating he would go see you tomorrow morning.---Yeah.

30 And if you turn to the earlier page. I apologise. Just bear with me a moment. In any event, that meeting was cancelled, wasn't it?---Yes.

Do you know who cancelled it?---Nick. Last minute he said he can't, he couldn't come.

Did he ring you and tell you that?---Yeah, I, I ring him and I said (not transcribable). He said that he has to drive to Newcastle to do, do some, something urgent.

40 After that time did you ever meet with Mr Petroulias again?---No.

Did you ever manage to speak to him again at any stage after that?---Yeah, I tried to ring him. Couldn't get him.

What about Mr Green?---Did you ever meet with Mr Green at any stage in 2016?---No, no.

Did you try ringing him?---No, we didn't ring, ring Richard Green about this deal.

THE COMMISSIONER: Did you ever get an explanation, verbally or otherwise, from Mr Petroulias as to what had happened about the dealing certificate and your request?---Sorry, what?

After this time the meeting was cancelled by Mr Petroulias, did he ever contact you to explain the position about the dealing certificate?---No.

10 Did Ms Bakis ever make contact with you to explain what was going on about the dealing certificate after this meeting was cancelled?---At that time Matt always talk with Despina.

Sorry, talked?---Matt with, talk with Knightsbridge.

Matt did?---Matt Fisk, yeah.

This was after this meeting was cancelled?---Yes.

20 Well, did you ever get an explanation from Ms Bakis as to what happened about the dealing certificate?---No.

Either through Matt Fisk or directly?---No, not really, no. This we start to worry, worry about who is ask to, to, to exchange the one, one, the, the one land.

Sorry, I didn't get that?---This why, this why we, we said we exchange, settle one land to test what's going on.

30 MR CHEN: You mean exercise the option over Braye Park?---Yes, yeah.

THE COMMISSIONER: I see. Yes.

MR CHEN: Now, when you met with Mr Petroulias in 2016 did he ever tell you that he was also involved in the negotiations to sell this apparent interest that Gows Heat had to another company?---No.

40 Did he ever tell you that Ms Bakis had drawn up an agreement in November of 2015 just after you'd signed the agreements with the Land Council purporting to negotiate and enter a transaction with Solstice?---No.

Did Ms Bakis ever tell you when you came to the office in Castlereagh Street that she'd been involved in any negotiations with Solstice to sell the Gows Heat interest in the Land Council land?---No.

Did she say that she'd drawn up an agreement with them or a draft agreement with them in November of 2015?---No.

And that she'd drawn up revised agreements in April of 2016?---No.

Did Mr Petroulias ever say that revised agreements had been drawn up in April of 2016 involving Solstice?---No.

Did they ever tell you that they were negotiating with other parties notwithstanding these agreements had been signed?---No.

10 Did Mr Green or Ms Bakis ever say to you, Mr Zong, that in fact on 8 April, 2016 the Land Council had resolved not to proceed with your agreements?  
---That is after we request to exercise the, the land.

After you requested or you told Mr Petroulias you wanted to exercise the option - - -?---Yeah.

- - - your evidence earlier was that he said there'd be no problem with that.  
---Yeah, before everything is all fine. It's after we, we request the exercise the land and a few days later we, we receive the email say that our proposal was reject.

20 Can I suggest to you that in fact that the timing of that is actually wrong, is that you probably didn't find out that your proposal was rejected until either late June or early July, 2016. Do you agree with that or not?---Yes, yeah.

And in fact what you got was an advice apparently from a firm of solicitors called Jackson & Associates which either Ms Bakis or Mr Petroulias forwarded to you saying that the agreements were amongst other things vague and unenforceable.---No.

30 You don't remember receiving that?---No.

Now, moneys were paid either to Knightsbridge North Lawyers' trust account. Is that right?---Yes.

By you?---Yes.

Or to Gows Heat?---Yes.

Or to Keeju?---Yeah.

40 The money for those payments came from you did it?---Yes.

And who else?---One my partner.

Who is that?---Diana Ren.

Was there any other investors that contributed to any of those payments?  
---No.

Now, in December of 2015 were you asked to sign a disbursement instruction authorising the release of moneys?---Yes.

And do you recall signing one on 3 December, 2015 that authorised the release of a sum of \$400,000?---Yes.

Now, at this stage, Mr Zong, you knew that the agreement was between the Land Council and Sunshine didn't you?---Yes.

10 Now, whether it's Sunshine Warners Bay or Sunshine Property Investment that's who the contract is with?---Yes.

And you understood did you that the moneys – I withdraw that. Was it your understanding that the moneys that were to be paid were to be paid for the benefit of the Land Council?---Yes.

So the deposit or the monies that you were contributing, at least in part, were Land Council money?---Yes.

20 And did you understand they were to be held in the trust account or not? ---Yes, yes.

So, Mr Zong, would you look, please, at Exhibit 57, volume 8. Sorry, page 8, I apologise. That will come up on the screen as well. And do you recognise that as a trust account disbursement that you signed?---Yeah, that - - -

30 If you'd just answer my question. Did you sign that or not?---Yes, but a different paper.

I see. What's different about it?---It's 400,000. It's not cross the (not transcribable).

But is that your signature on the document or what purports to be your signature?---Yeah, looks like my signature.

Yes. Do you remember signing something that said \$400,000 without it being crossed out, is that right?---Yes.

40 Now, at the time you signed the document, was there any of the handwriting on the right-hand side?---No.

Now, it says in the instructions, "For reasons agreed between the parties, part payment to Gows are instructed to be made," et cetera.---Yes, I'm not - - -

So what was the reasons agreed or what was the discussion that lay behind you signing this, Mr Zong?---I not remember this, what they write on the

paper. They only say that, at that time they, Nick called me to his office. He said, he give me two option. One is the deal fail. He give me, give me back the - - -

Sorry, did you say “deal fail”?---Our contract was terminate.

This is probably my fault – no doubt it is, in the way I've asked you these questions – but do you remember you went to Mr Petroulias’s office, did you?---Yes.

10

And was that in Castlereagh Street in the city?---Yes.

And he asked you to go there, did he?---Yes.

Did he ring you and ask you to go there?---Yeah, he ring me.

Did he tell you why?---He ask me to, talking about this, because at that time this, the deal we worry about. He’s come, he ask me come in to, he said this, give me two option. One is that I have to release the 400 or it’s, he  
20 give me this, the money back. It’s, the deal isn’t, no deal.

So you either had to sign the release of the money or the deal would be off?  
---Yes.

Are you able to say when that was? Was that in early December or late December?---Early December.

Would you agree, is it the 3<sup>rd</sup> of December?---I think so, yeah. Around  
30 then.

And so when it records “for reasons agreed between the parties”, what it’s really referring to is that Mr Petroulias said you either pay the money or the deal is off.---I don't know what's this “the parties”. It’s only between me and him. He ask me to release this, this money.

And you agreed to it?---Yeah, I had to. This is his two option.

Did you not ask why at that stage, why he was suggesting what in effect was an ultimatum when you had a signed agreement?---I didn't ask too much.  
40 He’s a lawyer, so - - -

But did he explain to you why, as a lawyer, he was saying the deal would be off if the money was not paid to Gows Heat, which you understood at that stage was his company?---No. He just like, you have to. This is two option. (not transcribable) the deal fail (not transcribable) only the rest, the, the money in the trust account. And then he said even the money I pay the Gow and the Keeju, I can’t get back, get it back. He tell me, at that time he even

tell me, oh, you can sue me. Give me this money back. You can sue me and all the rest.

Now, do you recall signing another, what is described as a trust account disbursement instruction?---No, this the only one I sign.

10 Have a look, would you, please, at volume, sorry, Exhibit 57, page 6. And I want to show you, just for completeness at the same time before I ask you questions, also page 7. They appear to be the same document. One has a sticker over the top of it. Now, do you recall signing a document, they appear to be the same except for the add-ons, namely the blue Post-it sticker that appears to have been copied at page 6 and the writing on the bottom right-hand corner, but did you sign this for the trust account disbursement instructions?---No, this, this not. The, the date is 22 December, not - - -

It appears to be your signature though, does it not?---It looks, looks, looks like my signature but I didn't sign.

20 Did you have a meeting at all on or around 22 December, 2015 or after the meeting on 3 December, 2015 to discuss the further release of moneys with anyone?---No, no, this is the only one.

Never had a discussion with Mr Petroulias about it?---Never.

Never had a discussion with Ms Bakis about it?---No.

And you can't provide any explanation as to how your signature's appeared on those documents?---No.

30 But your evidence is you didn't sign it.---No.

And you didn't authorise orally or otherwise the release of any further moneys?---No. I only signed the one 400.

And that was in early December?---Yes.

Did you ultimately come to speak to Ms Bakis in the middle of 2016 at all, Mr Zong?---No.

40 Did you ever have a conversation with her where she told you that there was no agreement?---No.

Aside from meeting her or seeing her at that meeting that you referred to earlier, had you had any other discussions with her?---No.

Now, ultimately it came to your attention by some means that the deal wasn't proceeding. Isn't that right?---Yeah, this after June or July.

Right. And you obviously were not happy about that.---Yes.

And you thought you'd been, thought you had an entitlement for the transaction to proceed?---Yes.

And you'd entered it in good faith I take it?---Sorry?

Sorry, I'll withdraw that. You'd entered it into believing that it was a legitimate transaction?---Yes.

10

And you wanted your money back, I take it, did you?---Yes.

And you instructed lawyers to issue a letter of demand?---Yes.

And Mr Fisk assisted you in giving some instructions and advice to the lawyers?---Yes.

And ultimately that demand for money did not result in any repayment of money to you, did it?---No.

20

In fact what happened is, Knightsbridge North Lawyers insisted on the payment of, at least in correspondence, of the \$1.6 million from Gows, didn't they?---Not 1.6, is, this is the deposit we're putting.

Anyway, do you recall any correspondence where Knightsbridge North Lawyers were actually asking for payment of the full sum of \$1.6 million, possibly less what they had already received?---Yeah, I think so, this - - -

30

So they were certainly asserting on the one hand that there was a proper transaction that had been conducted between your company and Gows, so far as you understood it?---Sorry, what that?

Knightsbridge North Lawyers, I think you'd agree with me, had sent a demand or a request that your company pay Gows Heat the balance of moneys that it was owed?---Yes, yeah.

So on the one hand they were asserting that there was a legitimate transaction that your company had with Gows Heat, weren't they? ---Yes.

40

But they were contesting that there was any valid agreement between the Land Council and your company, they were disputing there was an enforceable agreement. Do you know that or not?---Sorry, I not understand you.

I'll move on. Now, you instructed your lawyers to commence proceedings, didn't you?---Yes.

Because you thought you at the very least should get all your money back?  
---Yes.

Including all the wasted expenses that you'd incurred over the year or so  
that you'd been involved in this transaction?---Yes.

And ultimately you decided perhaps recently to discontinue those  
proceedings?---Yes.

10 Why is that, Mr Zong, that you decided to discontinue them?---I took the  
recommendation from my lawyer.

And what was the effect of the advice you were given?

MR BALAFOUTIS: Objection. I object.

THE COMMISSIONER: Well, if he's maintaining his privilege.

MR CHEN: I'll approach it another way. Was there a number of issues that  
20 you were concerned about in going forward, namely costs, how much it  
would cost you to pursue litigation?---We spend a lot of money.

And was that a concern for you?---Yeah, that's one thing.

Did that influence your decision not to proceed?---No, this (not  
transcribable) my lawyer said this, we will spend a lot of time, a lot of  
money, but maybe we'll get nothing.

30 And were you concerned about the reputation of the company, Sunshine or  
Luxeland, as well?---No. No, we, we did, we didn't do anything wrong.

Now, have you had any further contact with Richard Green after the  
proceedings had been commenced?---No.

Have you had any further contact with Mr Petroulias since the proceedings  
had commenced?---No.

No phone contact at all?---No.

40 No discussions at all?---No. Sorry, he, he, he talk with us, with our lawyer  
together about - - -

This is Mr Petroulias?---Yes.

I see. But aside from that, those discussions, you've had no other  
discussions with Mr Petroulias about this transaction?---No. No. No.

Now, Mr Zong, I've asked you some questions about you wanted to recover all the moneys that you'd paid across as well as the wasted expenses. Do you remember I asked you some questions a moment ago about that?---  
Yeah.

Because you as you've just said a moment ago didn't think you've done anything wrong?---Yeah.

10 You certainly weren't paying those moneys to Mr Petroulias as a donation were you?---No.

You weren't paying or contributing those moneys as part of a joint venture with Mr Petroulias in some grander scheme that he and you had in mind?  
---No, no.

You weren't involved in an organisation or participating in a venture with Mr Petroulias called the United Lands Council?---No.

20 You didn't have any particular – I withdraw that – any particular interest in investing or developing Aboriginal lands or Aboriginal property at all did you?---No, no.

And you didn't have any ongoing desire or interest in pursuing development of Aboriginal land across New South Wales at all?---No.

And you didn't want to do any further business with Mr Petroulias in relation to the Wollongong land did you?---That time we not proceed.

30 But you didn't decide that you wanted to enter into any further transactions with him at that time?---No.

And you'd had no advice from Mr Fisk that you should do so, he didn't tell you that you should be changing the course of your business to work in with Mr Petroulias did he?---No, nothing we work with him anymore.

Commissioner, I think that's essentially my examination but could I have the indulgence of the luncheon adjournment?

40 THE COMMISSIONER: Yes. Mr Chen, I am concerned about Mr Slee.

MR CHEN: I'm very concerned as well, Commissioner.

THE COMMISSIONER: It appears to me that it may be necessary for Mr Zong to return and we should move on with Mr Slee who has been back and forth from Newcastle more than once and we may need all the time we have today to finish Mr Slee.

MR CHEN: I think that's likely to be so.

THE COMMISSIONER: That may occasion some inconvenience to others but it's really something that's got to be considered I think.

MR CHEN: Could we take that on board, Commissioner, and liaise with the various interested individuals.

10 THE COMMISSIONER: Yes, I think you should do so. So, Mr Balafoutis, if you could speak to Mr Chen and try to work out a formula that works for everyone.

MR BALAFOUTIS: Yes, I'll do that.

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

**LUNCHEON ADJOURNMENT**

**[12.59pm]**

20