

SKYLINEPUB00589  
05/04/2018

SKYLINE  
pp 00589-00645

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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 2.00PM

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**<TONY ZONG (AKA SHUXIN ZONG), on former affirmation**  
**[2.03pm]**

THE COMMISSIONER: Yes, Mr Chen.

MR CHEN: Commissioner, arrangements have been made during the luncheon adjournment with Mr Slee. Because of the prospect of Mr Slee's evidence would not in any event finish this afternoon with questions, Mr Zong's evidence I would expect to finish this afternoon in light of the estimates given yesterday by Mr Petroulias and Ms Nolan, hence the efficient progress of the hearing was thought to be enhanced by having Mr Zong complete his evidence today and Mr Slee has kindly agreed to make himself available tomorrow, so we'll ensure his evidence finishes in one go.

THE COMMISSIONER: Very good. Yes, I'm quite happy with that.

MR CHEN: Mr Zong, I want to show you a document please from Exhibit 57, page 16. It will come up on the screen and the folder will be put in front of you, Mr Zong, but I want to ask you these questions.

MR PETROULIAS: Commissioner, can I – excuse me – can I please make an application because there might be bearing on Mr Slee at the moment and the allocation of timing.

THE COMMISSIONER: Yes.

MR PETROULIAS: For me Mr Zong is obviously the single most important witness in this, in this proceedings, for the same reasons as with Mr Fisk that was articulated. I seek – there's three parts to this application, the first is seek a summons for the proof of this \$400,000 bank cheque and where it was paid from and how it then was changed into two \$200,000 which was apparently done in Newcastle. That's the first. The second is the Commission has the original documents where Mr Zong has denied signing, signing the deed of acknowledgement and the trust disbursement for 312,000. Mr Broad said he could make that available but I would, if he was to insist on that I would like to have a forensic, a witness, a handwriting expert or a forensic report done on, on those documents, those originals. And the third application is given the huge variance between Mr Zong's evidence today and the, and his statement of claim and request for particulars in the Sunshine proceedings and the chronology in documentation that is quite significant, that his cross-examination be deferred until Monday where Mr Paul Menzies QC of counsel will do the cross-examination on my behalf.

THE COMMISSIONER: Now, Mr Petroulias, as to the first two matters, you should take that up with the legal staff of the Commission. What you've said about those two matters are being taken on board and they will

be processed and you will be advised in due course as to what the position will be in relation to each of those two matters and I expect that that will be done in the near future. As to the third, the hearing this afternoon will continue. If you have some application to make next week when you have counsel in relation to the evidence of Mr Zong then it will be open to you to make an application then but in the meantime we are continuing with the hearing. Yes.

10 MR CHEN: Commissioner, I should say as well that Mr Petroulias asked Mr Broad to make available the documents that were produced by Ms Bakis into the hearing room. There is a box of material that has been brought in which is the sum total of what she has produced. Whether they're originals or not is another matter, I don't know, but it's certainly what has been produced has been made available.

THE COMMISSIONER: Well, what's proposed to be done with that pile of paper?

20 MR CHEN: I don't know. We were just - - -

THE COMMISSIONER: Well, I don't want them to be released to anyone. Have they been requested by Mr Petroulias?

MR CHEN: He did, he did ask Mr Broad.

THE COMMISSIONER: Mr Petroulias, what do you want to do with the documents?

30 MR PETROULIAS: Well, there's only the two that I mentioned, Commissioner, which was the, that deed of acknowledgement and guarantee which Mr Zong's signature was shown. He was unfortunately not shown the last page which was the most important page.

THE COMMISSIONER: Yes.

MR PETROULIAS: Nevertheless that document, the original, and the original, so we're talking about two documents, the original of the payment for the trust disbursement for the \$312,000.

40 THE COMMISSIONER: All right. Well, we'll see what we can do during the course of the afternoon about locating any documents falling into those two categories and you'll be informed. Yes, very well.

MR CHEN: Now, Mr Zong, when you sign documents do you ever use an electronic signature or not?---No.

Have you ever in the past used an electronic signature to sign documents?  
---All these document I signed is, is not (not transcribable).

And just so it's clear, an electronic signature being an image of your signature on a computer and then added on to a document.---No.

You never do that?---No.

Never have?---No.

Are you sure about that?---Yes.

10

Now, you mentioned as well that there was a meeting which I think you described or if you didn't I may have described them as the heads of agreement meeting involving Mr Petroulias before the heads of agreement were actually signed in 2015.---Yeah.

Do you remember and you said that it involved the lawyer, Mr Driscoll?  
---Yes.

20

During the course of that meeting did Mr Petroulias suggest in effect that you had to sign the agreement in the form that had been produced by Knightsbridge North Lawyers and sent to your lawyers or there would be no agreement?---At that day was not agreeing.

I understand that they weren't agreed because that was the purposes I understood your evidence earlier of why you had the meeting. What I'm asking is during the course of that meeting did Mr Petroulias say words to the effect it's either that agreement or no agreement?---This, this agreement with the variation, discuss the variation.

30

Right. When you say a variation, do you mean varying the draft agreements that had been sent to you?---Yes.

But just leave the documents aside for one moment. I'm just asking you whether Mr Petroulias may have said during the course of that meeting words to the effect, it's either these agreements or no agreements.  
---No agreement.

40

Well, I'll need to ask you again. Do you recall Mr Petroulias speaking during that meeting, do you understand the meeting I'm referring to?  
---The, with my lawyer?

Yes.---Yeah.

And do you recall during the course of that meeting Mr Petroulias saying words to the effect, it's this agreement or no agreement, or you have no recollection at all?---At the end it's agreed.

It was agreed, was it?---Yeah, yeah.

I see. Now, would you now have a look at Exhibit 57, page 16. Do you recognise that document at all, Mr Zong?---No, no.

You see that it's described as a memo regarding investment arrangements with a date of December 2015?---No.

Well, hang on, I'm just asking you to identify it at the moment. Do you see at the top that's the way it's described?---Yeah.

10

And there appears in the bottom right-hand corner to be an entry where your name appears, director, Tony Zong?---Yes.

Does that appear to be your signature?---It looks like, looks like my signature but I didn't sign this paper.

Did you authorise somebody to attach your signature to the document?---No.

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

Just have a look through it. It talks about United Land Councils, Gows Heat and Sunshine agreeing to do certain things. Just have a look at the first part, you'll see there are three points identified early on?---No, didn't.

Have you ever agreed along those lines?---No.

Anything similar to that?---No. I didn't see the United Land Council.

30 Have you ever entered any agreement with the United Land Councils at all?---No.

Have you ever entered any other agreements involving Mr Petroulias other than the ones involving the transactions for the Land Council land?---No.

You'll see a bit further down Sunshine is given the right of first refusal regarding, and there are two points made thereafter. Do you see that?---Yes.

40 Do you know anything about those two points, other than the fact that you were or did have a discussion about properties in Wollongong?---No, but Wollongong we didn't sign any paper.

Do you know the CEO of Shenwah, which I assume, is that – well anyway, have you heard of the CEO of Shenwah?---Yes.

Right. Is that the company that holds the mining licence up around the Gunnedah or Tamworth area?---Yes.

Did you tell Mr Petroulias that you knew that person?---Yes.

Did you ever have any discussions about cooperatively designed targeted opportunities in relation to accommodation and property development conducive to the mining industry?---Just talking about it but didn't, nothing happen.

10 When you say talking about it, talking about it with who?---Just mentioned with Nick. (not transcribable) just mentioned about this.

Now, you received some advice which I took you to, not in detail, from your lawyers not to proceed with this transaction in October 2015. Do you remember that?---Yes.

But you told the Commissioner you did sign the agreements.---Yes.

20 Why is it you signed those agreements if your lawyer advised you not to do so?---Because we signed this agreement with Council, Land Council. I thought that because they're with the Land Council it's, it's, I feel pretty confident with sign agreement with the Land Council.

When you say confident, what confidence did you derive from the fact you were dealing with the Land Council?---The Land Council is a government council, it can be trust. This, this is one thing I thought with (not transcribable) the worst scenario (not transcribable) we still have deal with the Land Council.

30 Did the fact that you were given a copy of the resolution influence your decision to enter the agreement?---Yes, yeah.

And was the fact that you were shown a copy of a heads of agreement earlier on, in June of 2015, did that influence you in entering into the agreement in October of 2015?---Yes, yeah.

And you actually executed the agreement with the chairperson and deputy chairperson on 23 October?---Yes.

40 Thank you, Commissioner. That's the further questions.

THE COMMISSIONER: Yes. Yes, Ms Nolan. Do you want to cross-examine?

MS NOLAN: Yes, please. Mr Zong, you just told the Commissioner that you were buoyed in your decision to enter into the Gows – I'll call it the disavowal agreement because I can't remember its name momentarily – but the rescission of Gows' interests on the basis of a resolution that you saw. Is that right? That's what you've just told the Commission?---Sorry, what?

You've just told the Commission that you took confidence in the fact that you saw the resolution, which was dated 31 October, 2014, regarding Gows' agreement with the Aboriginal Land Council.---Yes, this worries me, yeah.

Yes. And that only gave you confidence in the fact that what you were paying money to Gows for was genuine, didn't it?---More confident with, because I signed the head agreement with Aboriginal Land Council. This is (not transcribable) this is be confident that I, I signed this deal.

10

It was an agreement with the Aboriginal Land Council and Gows, wasn't it?---Yeah, all together. This is all together.

Yes, but it wasn't an agreement between the Aboriginal Land Council and Sunshine, was it?---The head agreement.

MR CHEN: I'm not sure what agreement she's referring to, Commissioner, because this witness gave rather curtailed evidence about what agreements he understood he had signed on 23 October, 2015. So perhaps it could be made or put more precisely by my learned friend as to what agreement she's referring to.

20

MS NOLAN: I thought I had and I think the witness understands me. I'm talking about the agreement that is seen on the resolution dated 31 October, 2014. Is that what you understand that I'm asking you questions about, Mr Zong?---The head agreement. I saw this head - - -

30

THE COMMISSIONER: I think we should bring it up on the screen so there's no doubt as to what document you're relying upon. That's the resolution, 31<sup>st</sup> - - -

MS NOLAN: The resolution of the 31<sup>st</sup> of October, 2014.

THE COMMISSIONER: October. That's right.

MS NOLAN: Would somebody in the Commission's Counsel Assisting be able to give the page number?

40

THE COMMISSIONER: There we are. Now it's on the screen.

MS NOLAN: Thank you. I'll have to look - - -

THE COMMISSIONER: Can you see that there? You're being asked questions about - I think you're being asked about this document, 31 October, 2014. Board meeting resolutions. "One, development proposal." Do you recall that? Just listen to the question, if you would.

THE WITNESS: Yeah, sorry. What's your question?

MS NOLAN: Well, this is what I've been talking about. You understand that?---Yeah.

Yes. And so when I was asking you questions with respect to the Gows agreement, you understood that I was referring to this 31 October, 2014 resolution?---Yeah.

10 That was my question.---If your question is I confident with this paper, not this paper. Because I confident with, I signed head agreement with Land Council.

Yes. But my question to you is this. You signed an agreement with Gows to rescind its interest in the five lots of land that you were interested in, didn't you?---Yes. Yes.

20 And you signed that agreement with Gows on the basis of, you say, you've told the Commission, seeing this board meeting resolution.---No. Not based on this.

So what made you sign the Gows rescission agreement, then?---This all together. It's all packaged together with the head agreement and his surrender agreement.

But all this resolution does is say that Gows has an interest, doesn't it?--- This he always tell us when we get all this deal together, this everything together, not just sign one and another one, everything sign together.

30 I understand that, I understand that's your evidence. My question is this. All that this resolution says is that Gows has an agreement with the Aboriginal Land Council, doesn't it?---Not (not transcribable). This, this Nick tell me.

No. My question is this. All that this resolution says is that Gows has an agreement with the Aboriginal Land Council, doesn't it?---Yeah.

40 Yes. It doesn't say that you have an agreement, Sunshine has an agreement with the Aboriginal Land Council, does it?---Yes, I sign, sign heads of agreement with the - - -

That's a different question. But this resolution doesn't say that you have an agreement with the Aboriginal Land Council, does it?---Yeah, I think so, yeah.

Okay. So you've told the Commission that you had engaged Mr Driscoll of BCP Lawyers I think through Mr Perry.---Yeah.

Your relationship with Mr Perry, and you also had the assistance of Mutton & Holm's lawyers as well throughout the course of your dealings with the Aboriginal Land Council?---This is later.

Yes. But you accept don't you that you had the assistance of two sets of lawyers?

THE COMMISSIONER: I think the witness is making the point as to time.

10 MS NOLAN: I understand that.

THE COMMISSIONER: Well, I think your question should reflect that because it's an open-ended question that he had legal advice. It's a question of when he had legal advice.

MS NOLAN: Well, it's irrelevant as far as my question goes.

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

20 MS NOLAN: But I'm happy, I'm happy to tailor it, I'm happy to tailor it.

THE COMMISSIONER: I think you need to rephrase it to make it perfectly clear as to the time you're talking about.

MS NOLAN: I'm not talking about any time but I will - - -

THE COMMISSIONER: Well, you - - -

30 MS NOLAN: I'll do as you've asked me to do. You had first the assistance of BCP Lawyers in or about September of 2015. Correct?---Yes.

And then you had the assistance of Mutton and Holm's lawyer in or about the early months of 2016. Correct?---Yeah, middle, early 2016.

Right. You accept that?---Yeah.

40 And they each were separately providing you with assistance in respect of your proposed dealings with Awabakal Aboriginal Land Council, weren't they?---No. Andrew at that time is, we have trouble with all these things, bringing, Matt introduce, Andrew coming later.

You had trouble with the – sorry, I didn't hear you?---We had trouble with all this certificate and also and also the letter we a bit worried about, and Matt, Matt said Andrew is more experienced with property, that's why we bring, Andrew come in.

So I do apologise, I'm struggling to understand you. You had trouble with the something certificate?---The dealing certificate.

Oh, dealing certificate. Right. And then he's more experienced with the  
- - -?---Property.

Property. So he has more experience with property.---Yes.

Is that what you said. Right.---Yeah.

10 Thank you. Right. But you had received advice from Mr Driscoll in  
September of 2015 by email telling you that you needed a dealing certificate  
in order for the agreement that you were considering entering into at that  
time to be binding and enforceable, didn't you, he told you that?

MR CHEN: I think it's October, Commissioner, I think the date's wrong. I  
don't object to the subject matter of the question but the date I think with  
respect is wrong.

THE COMMISSIONER: It was put as September '16.

20 MR CHEN: Correct.

MS NOLAN: Did I say '16?

MR CHEN: No, I think my learned, I thought my learned friend said  
September '15 and I think the date is wrong, but I have no objection to the  
subject matter.

THE COMMISSIONER: Well, just, yes, okay.

30 MS NOLAN: Is that October, pardon me, did I say September?

MR CHEN: Yes.

MS NOLAN: Right. October, I'm sorry, it's my error. It was October 19,  
am I – I'll check it out, but is that right?

THE COMMISSIONER: This is Mr Driscoll you're talking about?

MS NOLAN: Yes. I'm content for someone to correct me.

40

THE COMMISSIONER: It's October '16.

MR CHEN: '15.

MS NOLAN: It's October '15.

THE COMMISSIONER: '15.

MS NOLAN: And it's the 19<sup>th</sup>, isn't it?

THE COMMISSIONER: Yes, that's right.

MS NOLAN: Yes. So on 19 October you've been shown an email today, and I'm happy for it to be brought up again, perhaps that could – then we're all on the same page. Would someone assist me I by bringing the 19 October, 2015 email up? I'll find you the reference. Exhibit 7 at, yeah, 19 October, 2015, and that is volume 7, page 5 and 6, volume 7, page 5 and 6.  
10 Mr Broad, if you wouldn't mind. There you go, it's on the screen. Do you see that, that's 19 October, 2015, Mr Driscoll sent you that email and you've been taken to that today.---Yeah.

And you will see if we scroll down he specifically warned you in very, very clear terms that you would need a dealing certificate, I think it's on the next page isn't it. Yes. So see that top paragraph on this page?---Yeah.

Page 6. "This should have been attached to the contracts for sale attached to the call option. For the first time I'm now aware that all subject properties  
20 have the first notation in the second schedule", and by that I think he's referring to the certificate of title, "and as a consequence for example section 42G provides among other things that the New South Wales Aboriginal Land Council must, subject to subsection 2 and any requirements of the regulations, on an application for approval of a land dealing being made by a local Aboriginal land council in accordance with this Act approve the land dealing." So he put you squarely on notice that you needed this dealing certificate prior to you entering into the acquisition proposal didn't he?---This, this, the question we discussed during the meeting with Keith and Nick. They guarantee, they said that they can get  
30 this dealing certificate.

But you were put on notice by your solicitors that you needed it prior to entering into this acquisition proposal is my question, weren't you?---They said these, we'll get this dealing certificate after.

Yes, but you were put on notice prior to entering into the transaction weren't you, Mr Zong?---This, the question we discuss before. Because we, we, he's raised this question and we discuss during the meeting with Nick, Keith and all of them. They guarantee this, this, they can get this. We sign  
40 this head agreement and with the dealing certificate definitely we can get that later.

I understand you've answered this question when Mr Chen asked it of you and I know that's the answer you gave and Mr Chen carefully explored with you when this meeting occurred and to my note you said it occurred after you entered into the acquisition proposal. That's correct isn't it?---After this, yeah.

And then after entering into the heads of agreement which is not a contract for sale you'd agree with me wouldn't you, it's a heads of agreement, that's all you entered into?---Head agreement and also the, this is the land sale contract.

By the land sale contract what do you mean?---This is all bound together with the head agreement. There was the five land, five land this is a sales contract for the five individual land.

10 And did you vary that heads of agreement?---It's all together, it's bound together.

Yes, but did you at any stage vary that heads of agreement?---Sorry, what that?

Vary it, vary the heads of agreement?---Not, not understand that.

You entered into a variation agreement didn't you?---Yes.

20 Right. It was a variation to your heads of agreement was it not?---Variation agreement this together with head agreement.

Yes. Then it was only when you had decided that you wished to proceed with the land transaction that you started to seek the dealing certificate isn't it?---Yes.

And you had the advice of a lawyer then as well and that was Mutton & Holms?---Yes.

30 And they said to you you will need this dealing certificate?---Sorry, sorry, at that time is our town planner ask, ask us we have to get the dealing certificate then we can keep dealing with the town planning, town planning. At that time we ask the dealing certificate.

So you understood prior entering into the acquisition proposal that you needed the dealing certificate?---Yes.

You understood that?---Yes.

40 And then you understood that you needed the dealing certificate in order to finalise the transaction as well?---Yes.

So at all times you knew that you needed to get a dealing certificate from the New South Wales Aboriginal Land Council?---Yes.

And you've told the Commissioner that you relied on what Mr Petroulias had to say, or is it Mr Rhee had to say, with respect to the ability to get a dealing certificate, is that right?---Yeah, at that time they said it's no

problem. They can get. And after, when we started to ask this dealing certificate, we couldn't get. This, this, the time, time (not transcribable) and spend, spend a lot of time to try get this dealing certificate.

And you know that Mr Petroulias – I'll withdraw that. You say that Mr Petroulias was represented to you to being a representative of the Aboriginal Land Council, the Awabakal Aboriginal Land Council, don't you?

10 MR CHEN: I object, Commissioner, because the evidence is more specific, actually, of this witness, that that's what he was told. My friend put a question that it was represented by others. It was more specific than that. With respect, it certainly includes that but it's not confined to that.

THE COMMISSIONER: Yes. He did give very clear evidence about that, didn't he, as to what was actually said to him, by whom.

MS NOLAN: Well, I mean, I'm not really concerned with that. That's a matter for the Commission. It's not something that I'm concerned with. I think I understand what you're directing my attention to. But,  
20 Commissioner - - -

THE COMMISSIONER: Maybe if you just reformulate the question.

MS NOLAN: Well, I'm not – pardon me?

THE COMMISSIONER: I think if you reformulate the terminology of the question, you'll overcome any difficulty.

MS NOLAN: By terminology does, is the - - -  
30

THE COMMISSIONER: Well, the way in which you express the question.

MS NOLAN: Well, I've said representative. I mean, it's a fairly oblique term. It's - - -

THE COMMISSIONER: Well - - -

MS NOLAN: I don't rely on anything else other than the representation.

40 THE COMMISSIONER: You proceed.

MS NOLAN: Thank you. You understood Mr Petroulias to have an association with only the Awabakal Aboriginal Land Council, didn't you?  
---Sorry, what that?

You understood Mr Petroulias to have an association only with the Awabakal Aboriginal Land Council.

MR BALAFOUTIS: I object, Your Honour. There's no reference to time. Mr Zong's understanding has changed depending upon the time period.

THE COMMISSIONER: I think you need to pinpoint it in terms of time. But as an additional point, Mr Petroulias had more than an association with the Land Council.

MS NOLAN: I accept that. I'll - - -

10 THE COMMISSIONER: He was wearing different hats and so on, you know.

MS NOLAN: Yes, well - - -

THE COMMISSIONER: Just how he managed to do it I don't quite understand at this point in time. But anyway.

MS NOLAN: Thank you, Commissioner. I'll try and be more specific. Insofar as you had been dealing with Mr Petroulias in respect of the  
20 Sunshine Warners Bay project, you understood that his association was with the Awabakal Land Council, didn't you?

THE COMMISSIONER: What time are you talking about?

MS NOLAN: From October – say September 2015 until April 2016.---At beginning I don't know what's his association. He just represent his, he tell us he's a lawyer representing for the council.

30 The Aboriginal Land Council?---I don't, yeah, I don't know what's his association with that.

But you say he was – in your mind, based on what you say he said to you, he was a representative of the Awabakal Aboriginal Land Council?---Yeah, he said he - - -

That's right, isn't it?---Yes. He was a lawyer. He was a lawyer.

For the Awabakal Aboriginal Land Council?---Yes.

40 Yes. At no stage ever did he represent to you that he was a representative of the New South Wales Aboriginal Land Council, did he?---Sorry, what?

At no stage did he represent to you that he was in any way representing the New South Wales Aboriginal Land Council, did he?---He said he's a lawyer for Aboriginal land council.

I'll go about it this way. Mr Driscoll said that in order to get a dealing certificate you'll need the approval of the New South Wales Aboriginal Land Council. Correct, you accept that?---Yes.

Mr Petroulias never told you that he was a representative in any way, shape or form of the New South Wales Aboriginal Land Council, did he?  
---Sorry, we're talking about Awabakal Land Council, not talking about the (not transcribable) we always, I always talking about the Awabakal Land Council.

10

No, I accept that, I know that you are.---Yeah.

And I'm just putting something that I think by the answer that you may have accepted but I'll try one more time.

20

MR CHEN: I don't think there's any evidence of this Commissioner that is said to the contrary. I mean we're cross-examining and putting with respect an affirmative proposition in relation to a matter which he's never asserted. I mean my friend can just put a proposition I suppose and it might be quicker, but - - -

THE COMMISSIONER: Yes, I accept what you say but you go ahead, Ms Nolan.

MS NOLAN: I, I, I don't intend to pursue this any further really.

THE COMMISSIONER: All right.

30

MS NOLAN: But I'll come to the point.

THE COMMISSIONER: I think there was some confusion in the witness's mind as to what land council the questions were being directed to but I think we - - -

MS NOLAN: Well, I think the confusion goes to which, which is which. Perhaps he didn't understand there to be a distinction.

THE COMMISSIONER: Yes, that's right.

40

MS NOLAN: But that's not, that's not something with which I am concerned and I think that if that can be accepted then I can move on. The point I'm making is this. It's just not reasonable for you to have ever assumed that Mr Petroulias as a lawyer for the, as you say, for the Awabakal Aboriginal Land Council could in any way speak for the New South Wales Aboriginal Land Council, is it?

MR CHEN: I object, Commissioner.

MR BALAFOUTIS: Object.

MS NOLAN: Well - - -

THE COMMISSIONER: Mr Balafoutis?

MR BALAFOUTIS: Your Honour, sorry, Commissioner, a question about what's reasonable for the witness to assume is not a fair question.

10 THE COMMISSIONER: Yes. I think it's really the form of the question which is the problem.

MS NOLAN: Well - - -

THE COMMISSIONER: Reasonable for him to assume. I think what you're putting, is this right, that Mr Petroulias never said to Mr Zong that he represented the Land Council or could speak for the Land Council. Is that in effect what you're putting to him?

20 MS NOLAN: Effectively.

THE COMMISSIONER: Yes. Well, do you hear what I say? I think what's being put to you is that Mr Petroulias never said to you that he represented the New South Wales Land Council as distinct from the Awabakal Aboriginal Local Land Council.---Yeah.

Yes. I think he agrees with that proposition.

30 MS NOLAN: Mmm. So you didn't really place any real reliance on what Mr Petroulias said about being able to get a dealing certificate, Mr Zong, because he wasn't in any way associated with the New South Wales Aboriginal Land Council.

MR CHEN: I object, Commissioner. I mean that can't with respect follow the latter proposition. His evidence, if my learned friend, which I assume she's endeavouring to do is to challenge reliance, has to attack with great respect the proposition about what was said and build from there. The vice in the question really is one of form because it's assuming a fact which has never been the subject of any evidence at all. So in my submission the  
40 question needs to be more directly put.

THE COMMISSIONER: Well, Mr Chen, you may be right but I'll let the question go. Yes, go on. Yes, Ms Nolan.

MS NOLAN: Are you able to answer the question?---Sorry, what?

Pardon?---Sorry, can you repeat again?

Well, you say that Mr Petroulias said that he would be able to get you an approval, sorry, a dealing certificate, don't you?---He said, yeah, during a meeting they said they will get, they can get the dealing certificate.

Yes. And your lawyer said that that dealing certificate needed to come from the New South Wales Aboriginal Land Council, didn't he?---Yeah. They said they can get from this.

10 But Mr Petroulias never said that he was in any way associated with the New South Wales Aboriginal Land Council, did he?---No (not transcribable) we just discuss it. We didn't discuss it that much at that time because we questioned this, they said, oh, this no problem, they will, they will get, get the dealing certificate after. We didn't talk, discuss too much about it.

But Mr Zong, this is not the first property development that you've been involved in, is it?---This one was my first project.

20 It is?---Yes.

This is your first project that you've ever been involved in?---Yeah, property development. At that time I just transfer from construction from interior fit-out to the property.

You know that Luxeland was mentioned, and indeed you were mentioned, in about May of 2016 in an investigation known as the Panama Papers into your involvement in developments and inviting Chinese investors to come to Australia - - -?---Yeah.

30 - - - and purchase property here and get immigration status?

MR BALAFOUTIS: Commissioner, I object.

THE COMMISSIONER: What's that got to do with - - -

MS NOLAN: Well, I'm just challenging this witness's evidence.

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

40 MS NOLAN: Well - - -

THE COMMISSIONER: It is too remote to the issues that I'm talking about.

MS NOLAN: Well, with respect, I'm going to submit to the contrary.

THE COMMISSIONER: I mean, what are we going to do? Are you going to get records from the Panama outfit to prove anything? I mean, where does it end? That's the problem with it. It's too remote.

MS NOLAN: Well - - -

THE COMMISSIONER: Anyway, he has maintained that this was his first development. Now, if you want to establish the contrary then there will have to be some evidence about it. I don't know where that will take us.  
10 But as I understand what he's saying, he had other involvement before this project – something to do with construction and other aspects – but as a developer, as I understand it, he's saying this project, the Awabakal project, was the first development project he had undertaken. Is that right?---Yes.

Right. Okay.

MS NOLAN: Is that really your evidence, Mr Zong?---Sorry, what?

Is it really your evidence - - -?---Yes.  
20

- - - that this is the first development project that you'd undertaken?---Yes.

Nonetheless, you had lawyers advising you, didn't you?---Yes.

You had Mr Fisk advising you as well.---Yes.

And they all said to you, prior to entering into this transaction, you need a dealing certificate. I'll withdraw that. Mr Driscoll and Mr Fisk both said to you prior to you entering into this transaction you need a dealing certificate.  
30

MR CHEN: I think my friend should be more precise, really, because there are two stages, obviously, Commissioner, to this transaction.

MS NOLAN: All right. I'll be more precise. I'll withdraw the question. Prior to you entering into the acquisition proposal, you had been told by Mr Fisk and by Mr Driscoll that you needed a dealing certificate.

MR CHEN: I object. Because, Commissioner, with great respect to my friend, it's the terminology she's using which is the problem. Now,  
40 "acquisition proposal" is referred to in a number of documents which my learned friend plainly knows about, and she also knows that Mr Driscoll does not come on the scene at any relevant time. So my friend really should be far more precise. In fact, it might be an easier way, with respect, to just put a date.

THE COMMISSIONER: Yes. I think, Ms Nolan, the risk is that a question can be unintentionally unfair. Because if you're putting to him the question of having the benefit of legal advice at a point in time, which is wrong – that

is to say that the advice came later – then it’s quite inappropriate to put the question in that form. Can I just add another thing and that’s this, that whatever advice he later got, his evidence is – whether it be right or not – his evidence is that Mr Petroulias made an unqualified representation to him that he was guaranteed to get a dealing certificate. Now, whether Mr Petroulias had the ability and the power to deliver on that representation, whether he had any hold or influence on the New South Wales Land Council is not to the point. The point is that in this pre-contractual stage – so his evidence is – Mr Zong is saying he made, I think on more than one occasion, an unqualified representation to him that there would be no problem in getting a dealing certificate. He says, “I heard it. That was important to me. I acted on that.” Now, whatever the lawyers, when they come on-stream at a later point in time, were telling him and giving him advice, his case, in effect, as I understand it, is “I was told that. I believed it. That was comfort to me.” So - - -

MS NOLAN: On the 19<sup>th</sup> - - -

THE COMMISSIONER: So your line of questioning, I think, doesn't and can't take issue with that, other than to challenge him that he didn't rely upon it. He says he heard it. It was unqualified. That gave him comfort. Now, whatever the lawyers later on are coming in to say, that representation may continue, no matter what advice the lawyers were giving him. However, that's a matter that one would then have to examine and carefully come to a conclusion about if the lawyers were saying something contrary to that, as to whether he was still swayed by the earlier representation. But that's just a matter of fact-finding.

MS NOLAN: Okay. Well, I accept what you're putting to me but I need to make this qualification. On 19 October, 2015 before the ink was put on a single piece of paper Mr Driscoll made the very clear representation to which I've taken this witness. Mr Zong had not signed a piece of paper at that stage. He has given evidence to this Commission as I understand it, and I have taken notes of it, that he signed it nonetheless, that the representation upon which now he purportedly relies unqualified as you've said to me that it is was made after and he has very clearly given evidence that he has made after and my proposition is simply that the reliance, it was not real.

THE COMMISSIONER: Well, that's - - -

MS NOLAN: It was not real reliance.

THE COMMISSIONER: I mean that's open to you to make the submission but just how much more of this line of questioning is going to assist is doubtful.

MS NOLAN: Well, I'll just put the - - -

THE COMMISSIONER: I'm not stopping you. You go ahead. I think I've tried to clarify some of the issues that have arisen on the last question.

MS NOLAN: I'm grateful. I'm grateful and I am dealing with the issue now as it arises for the Commission's benefit but also perhaps for Mr Zong because I can now put to you I think squarely you didn't really rely on anything Mr Petroulias said did you?---No, Mr Petroulias help us work out the variations. The variations is Nick and Mark working in, in our, our office.

10

You've met Ms Bakis on a number of occasions haven't you?---Sorry, what?

You've met Ms Bakis, Despina Bakis on a number of occasions haven't you?---Yeah, yeah, in the office.

And you've also met her in Strathfield.---No.

You've met her more than once.---Yes.

20

And it's possible isn't it that you are confusing the occasions upon which you've met her in the evidence that you've given to the Commissioner today isn't it?---I only met her twice in, in her office.

You've met her twice in her office?---Yes.

Right. So you've told the Commissioner that you've only met her once but you're now telling him now that you've met her twice in her office.

30 MR BALAFOUTIS: I object. The question mischaracterises the witness's evidence.

THE COMMISSIONER: Sorry?

MR BALAFOUTIS: The question was you've told the Commissioner you've only met her once. Mr Zong never gave that evidence.

THE COMMISSIONER: Yes, I don't recall him giving that evidence.

40 MS NOLAN: I took a note of it so maybe I'm wrong and if I'm wrong I'm wrong but - - -?---I only said, only, sorry, I only said I met her I think.

THE COMMISSIONER: Sorry. So what's your evidence, that you met her once or more than once?---More than once.

How many times?---Twice I think.

And when were the two times?---One, one time is with, with Matt, we discuss dealing, talking about dealing certificate.

Yes.---There's another, another time when I sign, sign this 400,000 release she was there as well.

Yes, continue.

10 MS NOLAN: And you met her another time in Strathfield didn't you?---No, no.

It's possible isn't it that you are confusing what was said to you on the occasions when you've met Ms Bakis in the evidence that you've given today to the Commission isn't it?---Sorry, what that?

20 Well, you've said, and this is my note, I don't have the benefit of any transcript but my note is that you said that you attended a meeting with Mr Petroulias and Mr Fisk and you were talking about the dealing certificates and that Ms Bakis came into the room.---Yes.

And when you were discussing the investigation and Nick called her and said where are we up to with the investigation and she came in and said something with respect to the financial reports. Is that correct?---Yes.

And it's possible isn't it that you might be confusing when you had that conversation with her with when you were actually, you say you were meeting with Nick and Mr Fisk, it's possible isn't it?---No, no.

30 Is it possible?---No.

I'm going to suggest that you didn't have that conversation with her at the time when you were meeting with Mr Fisk and Mr Petroulias.---No, we didn't talk to her.

Exhibit 57, page 16. I might have the wrong document, I'm sorry. It's at Exhibit 57, page 6 and page 7. I don't know that I've got Exhibit 57. Pardon me, Commissioner.

40 THE COMMISSIONER: Yes.

MS NOLAN: I've just got to remind myself of the reference to the document. I'm sorry to take up the Commission's time. Perhaps Counsel Assisting could assist me or Mr Broad. I'm looking for the document which is purportedly the second trust account disbursement.

MR CHEN: Page 6.

MS NOLAN: That's the page 6 of Exhibit 57?

MR CHEN: Yes.

MS NOLAN: I don't have that. So if that could be brought up, please. On the portal, how is 57 described.

THE COMMISSIONER: Sorry, what's the document you're after?

10 MS NOLAN: I think it's up. But I'm making – I can make this inquiry later, thank you. So you see this. And I think you've given some evidence that you don't recall signing this.---Not, I sign the one, 3<sup>rd</sup> December. Around, around 3<sup>rd</sup> December there's a 400,000. I only sign one.

You signed this one as well, though, didn't you?---No.

You signed it in Ms Bakis's presence, didn't you?---Sorry, where?

You signed this in front of Ms Bakis, didn't you?---No.

20 And you signed it in circumstances where Mr Petroulias said that it was necessary for you to do so because otherwise the deal with Gows would be off.---This is not that. I only signed the one is the 3<sup>rd</sup> of December, and I signed it in front of Nick, not in front of Ms Despina.

Right. But I'm suggesting to you that you did sign this.---No.

And that you did sign it in front of Ms Bakis.---No.

30 I might need to make an application with respect to this issue because my instructions are that the document is in the box of papers to which the Commissioner referred, and that there's an application, as I understand it, that Ms Bakis has made to be able to uplift that document so that we can cross-examine on it.

THE COMMISSIONER: Sorry, I just can't hear the last bit. You said that the - - -

MS NOLAN: The original of this document, I am instructed, is contained within the box of papers to which the Commission has earlier referred.

40

THE COMMISSIONER: Right. That's the - - -

MS NOLAN: Yes.

THE COMMISSIONER: The documents that were produced by Mr Petroulias?

MS NOLAN: I think they're Ms Bakis's file. And I understand that Mr Petroulias has made an application with respect to that document.

THE COMMISSIONER: Right.

MS NOLAN: I also wish to cross-examine in respect of it. I'm in the Commission's hands as to how that might be accommodated.

10 THE COMMISSIONER: Yes. All right. Have we got the document yet?

MR CHEN: The box was here. I'm not quite sure where it went, Commissioner. I'm sorry, it's behind. We'll try and dig out that document.

THE COMMISSIONER: Yes.

MR CHEN: And if there's another document that my learned friend or Mr Petroulias wants from that box, we'll endeavour to bring it out forthwith.

20 THE COMMISSIONER: Yes, all right.

MR PETROULIAS: I can do both in five minutes.

THE COMMISSIONER: See, one of the problems is that without notice it does take time sometimes to locate these documents. So I think all we can do, Ms Nolan, is to reserve the question until we've found the document and then we can determine, you know, whether there's anything further you want to raise about it.

30 MR CHEN: I have the original of that document or a document that's been tagged, whether it's the particular one I'm content to make that available to Ms Nolan in the first instance and thereafter to Mr Petroulias.

40 THE COMMISSIONER: Just hand up that folder of documents so that I can have a look at it. Thank you. Mr Chen, I'll have the folder you just handed me handed back to you. As I understand it this is meant to be the original of either page 6 or 7, I'm not sure which, in Exhibit 57. There seems to be some additional handwriting on what's called the original here which doesn't appear on the other document, so I just don't know if that indicates that that is the original document or not.

MR CHEN: I'd observe there are some differences as well which I'm not in a position to assist you with, Commissioner. I've only seen that document for the first time now.

THE COMMISSIONER: In any event, the document can be shown to Ms Nolan in the first instance. Perhaps if somebody – Mr Petroulias, you may look upon the document at the same time as Ms Nolan's got it. If you just keep the tabs on the - - -

MS NOLAN: This is – I've removed the certificate.

THE COMMISSIONER: Would you put it back on the document, please.

MS NOLAN: Sorry, it doesn't form part of, it says "original". Can I take that off and put it on the back and then return it (not transcribable)?

10 THE COMMISSIONER: Just put it on the face of the document so it doesn't - - -

MS NOLAN: Doesn't get lost?

THE COMMISSIONER: No, no, so it doesn't cover up any writing on the document. That's right.

MS NOLAN: Like so, down on the bottom left-hand, right-hand - - -

20 THE COMMISSIONER: Thank you.

MS NOLAN: My left-hand, your right-hand corner.

THE COMMISSIONER: That's fine.

MS NOLAN: Can I have this shown, please, to Mr Zong?

THE COMMISSIONER: Yes.

30 MS NOLAN: I'll just leave this here, Commissioner.

THE COMMISSIONER: Yes, that's fine.

MS NOLAN: I understand that there's another document but I'll return to the microphone.

THE COMMISSIONER: Thank you.

40 THE WITNESS: No, this is not the document I signed. I signed this early December but this is 22 December.

MS NOLAN: But you see there, you can see the signature that's on that page, Mr Zong?---Yes, it looks, looks my, my, mine, but the date is not right.

But you can see that it's written in pen.---I only signed the one for 400 but don't know what's the signature, signature's, the one, I signed it only once in Nick's office, I never been back to another time to sign another paper release money.

But you can see that that signature is in pen, can't you?---No, don't know what's put on.

Well, look at the signature, please, if you will.---Yes.

And you can see that it's, it's written in pen, can't you?---Can you ask if this is sign on 22<sup>nd</sup> or 23 December?

10 No, no, that's not my question.---No.

I understand your evidence on that. I'm asking you a different question, please Mr Zong. You can see that that signature is written in pen can't you?---Yeah, I can see here, yeah.

And you put your signature there in that pen didn't you?---Not on 22<sup>nd</sup>.

20 You put your signature on that document didn't you?---I not put on this, if, if, I confused this because I only sign the one document. I only receive once but I only went there early December to his office to sign but then now you show me the two document 22<sup>nd</sup>. I never been there 22<sup>nd</sup>.

Commissioner, my application I think is the same as Mr Petroulias's to uplift the earlier document, please, in its original form which I understand  
- - -

THE COMMISSIONER: I can't hear.

30 MS NOLAN: Pardon me. My application is the same as Mr Petroulias's to uplift the original of the 3 December disbursement authority if I might, please. I understand it's contained also within that folder.

THE COMMISSIONER: Sorry, uplift the document for what purpose?

MS NOLAN: To show it to the witness.

THE COMMISSIONER: To show it to the witness.

40 MS NOLAN: No, no, the earlier, the earlier disbursement authority.

MR CHEN: So there appears to be, Commissioner, two. One bears the date of 3 December, 2015 and there's another - - -

THE COMMISSIONER: Sorry, what date?

MR CHEN: 3 December.

THE COMMISSIONER: Yes.

MR CHEN: So it's the other one everyone wants.

THE COMMISSIONER: And then there are the other two?

MR CHEN: Yes.

THE COMMISSIONER: Both bearing date 22 December?

10 MR CHEN: Well, one refers to 3 December.

MS NOLAN: One is the - - -

MR CHEN: Anyway, Ms Nolan wants to show the witness as I understand it the 3 December one.

THE COMMISSIONER: Yes, very well. So I think if you replace the tab that you've just taken off, thank you, back onto the document.

20 MS NOLAN: I don't really remember how it was.

THE COMMISSIONER: Well, just put it back on the document.

MS NOLAN: Put it on the top.

THE COMMISSIONER: You want the witness to see that?

MR CHEN: Commissioner, could I just put onto record on my instructions, those stickers were on the documents as they were produced to the  
30 Commission.

THE COMMISSIONER: That's what I thought.

MR CHEN: Yes. And my learned friend is removing them so they should be positioned precisely how she found them.

THE COMMISSIONER: Yes. I'm uncomfortable about the so-called original documents being handled I must say, Ms Nolan, that's why I've been concerned about tabs not being removed and being replaced on the  
40 documents.

MS NOLAN: I understand.

THE COMMISSIONER: There are good reasons behind that and accordingly I ask you to replace the tab on the document. Now, you want to put that in front of the witness do you?

MS NOLAN: Yes. I can't assist you as to where it was. If somebody else can reliably assist me as to where it was before I took it off I'm happy to put it precisely - - -

THE COMMISSIONER: Well, at the moment I'm satisfied that the tab has been put back on the correct document.

MS NOLAN: Yes.

10 THE COMMISSIONER: Now, we'll just go from there. What do you want to do with the document is what I'm trying to get to.

MS NOLAN: Show it to the witness, please.---This one is not right. When, I sign the one is 400. It's not change from 712 to 400.

You can see that's got your signature on it.---Looks like, looks like my signature.

20 And it's in pen as well isn't it?---Not 100 per cent, no.

And you agree with me you signed that document don't you?---No. I sign the one is the number is 400. It's not changed from 712 to 400 because at that time he ask me to release 400 not release the 712. This I think he agree to.

THE COMMISSIONER: So, Ms Nolan, you're finished with those two documents.

30 MS NOLAN: I have, yes.

THE COMMISSIONER: I'll get my associate, then, to retrieve them from the witness.

MS NOLAN: I have. Now, to the - - -

THE COMMISSIONER: Thank you. And just before we go any further, would you get the folder back, please, and I'll have those two documents replaced back into the folder. Just refile them, in other words.

40 MS NOLAN: I think they were one behind the other. Perhaps Ms Curtin is the best person to defer to as to how they were found because she located them. I'm sorry to do this to my learned friend. I don't think I go either of them, so I'm unable to assist. Commissioner, may I address you while this is being attended to or would you prefer to wait?

THE COMMISSIONER: No, I just prefer to wait and make sure we've got it all in order first.

MS NOLAN: Please the Commissioner.

THE COMMISSIONER: It may not be possible to discern with any certainty what order the documents were in. I think the most important thing is that they be replaced inside the sleeves of the same folder. All right. Yes, Ms Nolan.

10 MR CHEN: Commissioner, we can do that. We're just looking at – we copied it, as I understand it, in the form that it was produced by Ms Bakis, and we're just checking electronically now.

THE COMMISSIONER: Yes.

MR CHEN: Commissioner, we've replaced the stickers, the Post-it note stickers, in line with what has been copied, which is in the electronic version that is on the Commission's website. I'll have Ms Curtin show Ms Nolan that now, and she can satisfy herself that it's been put back in precisely the form of which it's been produced.

20 THE COMMISSIONER: Yes, thank you.

MR CHEN: And perhaps thereafter, Commissioner, when it's returned to you it can be marked in some way.

MS NOLAN: I'm satisfied that what has been done is in the copy taken by the Commission.

30 THE COMMISSIONER: Very good. Thank you. Yes, yes. I think they will in due course be marked for identification. So if they could be handed back to my associate, with the folder handed back, and I'll have the documents marked in chronological sequence. What are the MFI numbers or what will the MFI numbers?

MR CHEN: Commissioner, for the record, would it assist if I indicated where they came from in terms of volume numbers?

THE COMMISSIONER: Yes. Yes.

40 MR CHEN: So volume D, pages 201 and 202.

THE COMMISSIONER: That's from volume - - -

MR CHEN: D for dog.

THE COMMISSIONER: D.

MR CHEN: D for dog. It's on the restricted website.

THE COMMISSIONER: Right. All right. Well, that's sufficiently identifies them.

MR CHEN: In due course obviously that will be before the Commission as an exhibit.

THE COMMISSIONER: Yes, very well. Yes, Ms Nolan.

10 MS NOLAN: I'm sorry, I just missed what Counsel Assisting said, that those documents will form part of an exhibit?

THE COMMISSIONER: The two documents have been identified as being respectively 201 and 202 in volume D, just so that the provenance of those documents will be recorded and have now been recorded.

MS NOLAN: Right. And to the extent to which I need to make an application that the Commission have before it the originals, is that something that I need to do?

20 THE COMMISSIONER: Look, Ms Nolan, I think what we'll do is we're going to finish this cross-examination this afternoon. I'll leave it to you after the hearing to discuss matters with the legal staff that should be discussed out of the hearing so that we don't lose time. So feel free to discuss it with Counsel Assisting or those instructing him, meanwhile let's get on with it.

MS NOLAN: Okay. Thank you. After, after concern was raised with respect to the investigation into the Awabakal Aboriginal Land Council, you say that you contacted Mr Petroulias in order to find out what that meant for the transaction that you had with the Awabakal Aboriginal Land Council, don't you?---Yes.

30 And I think you've been shown, have you not, a deed of acknowledgement? ---Yes.

Could that be brought up, please. Thank you. See this, you've been shown this document at Exhibit 57, page 1, deed of acknowledgement?---Yes, I talk before, Nick just show me this paper, not with a cover sheet, he showed me the second, second page, go to the second page.

40 Right. So when you say he just showed you the second page, to which page are you referring, is it this page that's on the screen now which is page 1 of Exhibit 57?---Page 2.

Pardon?---Yeah, he - - -

Page 2. He showed you this page?---Yeah, yeah, he said that he's, don't worry, he will get it or guarantee this everything be fine after the investigation. At that time I didn't sign this, this one.

Right. So if you'd show me page 3, please. But you accept that looks like your signature?---Yeah, looks like, looks like my signature.

My application is to show the witness the original of this document which I understand is housed in the files of Ms Bakis.

10

THE COMMISSIONER: Was your answer it does look like your signature?---Yes.

Well, what's the issue, why does he need to see the original?

MS NOLAN: He says he didn't sign it.

THE COMMISSIONER: I think he said the opposite, didn't he?

20

MS NOLAN: I didn't hear that, maybe I'm wrong.

THE COMMISSIONER: Sorry, what was his evidence-in-chief?

30

MR CHEN: Commissioner, my recollection is that appeared to be his signature, but I'm not, I thought his evidence was that he wasn't certain that it was an original but I don't think I can assist further because I don't have a very clear recollection about what his evidence was on that topic, but I do believe he had some uncertainty as to whether it was, but I'll ask Ms Curtin who had a note of it. Commissioner, in relation to that document, that's in the folder that - - -

THE COMMISSIONER: All right. Well, let's find that document.

MR CHEN: Anyway, my recollection was consistent with Mr Curtin's note, namely, I have no recollection of signing the document but it does look like my signature.

THE COMMISSIONER: Right.

40

MR CHEN: That was my recollection.

THE COMMISSIONER: All right. You want to have a look at the original, do you, or what's called the original by Ms Bakis?

MR CHEN: Well, Commissioner, it's in the file and - - -

THE COMMISSIONER: It's somewhere in the file.

MR CHEN: We have it here, Commissioner. I have it.

THE COMMISSIONER: You have it?

MR CHEN: I do.

THE COMMISSIONER: Okay. Can that folder then be shown to Ms Nolan. This time I think Ms Nolan we're going with everything just as it is, that is the document stays in the plastic sleeve - - -

10

MS NOLAN: I won't touch anything.

THE COMMISSIONER: - - - and stays in the folder. Yes. Now, what do you want to do with it?

MS NOLAN: I'd like to show it to the witness, please.

THE COMMISSIONER: Okay. We'll have it shown to the witness. Could that folder then be taken to the witness, open at the page.

20

MR CHEN: I think it's in a plastic sleeve, Commissioner, which is the problem. I assume my learned friend wants to show the witness a signature.

THE COMMISSIONER: Put the folder in front of the witness. Mr Zong, you've been shown a copy of the document, perhaps if you - you're at liberty to take it out of the sleeve so that you can see it. Yes, Ms Nolan.

MS NOLAN: Could you turn to the last page where the signatures appear, please, Mr Zong.---Yes.

30

And does your signature appear on that page?---Yeah, sorry, I think I (not transcribable) this one, sorry, yes.

THE COMMISSIONER: Sorry?

THE WITNESS: Yes, this one, this the one I remember this one.

THE COMMISSIONER: You remember?---This paper, I signed this paper.

40

You signed that paper.---Yeah.

Thank you.

MS NOLAN: Thank you. I have no further questions, Commissioner.

THE COMMISSIONER: Yes. Yes, Mr Petroulias.

MR PETROULIAS: Yes. Can we have – excuse me, for the purpose of this can I have a brief, volume A, Bakis, page 82. I'll pretty much follow that chronologically.

MR CHEN: Commissioner, could the document that was shown to the witness, namely what appears to be the original of the document contained in the material of Ms Bakis called the Deed of Acknowledgement and Guarantee shown to the witness be marked?

10

THE COMMISSIONER: Yes, very well. You want that separately marked?

MR CHEN: Yes, Commissioner, I think so.

THE COMMISSIONER: All right. I'll have it taken from the folder then.

MR CHEN: What I'll do, Commissioner, is, could I simply get a page reference, electronic page reference and perhaps that's the most convenient way of dealing with it.

20

THE COMMISSIONER: Yes. Well, similarly to the other two documents, yes.

MR CHEN: Yes, Commissioner, thank you, I'll do that.

THE COMMISSIONER: Mr Chen, when you've got that number could you let me know, meanwhile we might press on with Mr Petroulias.

MR CHEN: Yes, Commissioner. Sorry, could Mr Petroulias just re-state the number?

30

MR PETROULIAS: Yes, thank you. Brief volume 8, page 82. Mr Zong, can you see that?---Yeah.

Okay. Now, you've written that to Mr Sam Sayed?---Yes.

Sammy. Sammy. Now, it's at Burwood Partners. That's a real estate agency?---(No Audible Reply)

40

You understand that to be a real estate agency, Burwood Partners?  
---Yeah, he's Keith, Keith, he and Keith coming to our offices together, they are together.

Yes. But see how it says, Mr Sammy Say, Burwood Partners?---Yes, they  
- - -

You understand that to be a real estate agency?---Yeah, they are the agent.

Okay. And so whose agent did they say they were from?---Your agent.

For Awabakal?---Your, yours.

Okay. No, I understand. But you see it's a real estate agency. The normal rules with real estate agents is, is that they have an exclusivity agreement and the vendor pays them.

10 THE COMMISSIONER: I reject that. That's a statement. Next question?

MR PETROULIAS: You've dealt with real estate agents before in selling property or buying property, Mr Zong?---(No Audible Reply)

You've dealt with real estate agents before?---No, at that time we were not.

You've never dealt with a real estate agent before?---No, it's, with this one, no.

20 No, no, but generally speaking have you dealt with a real estate agent?

THE COMMISSIONER: Mr Petroulias, I'm not, I'm going to stop this line of questioning. Would you move on to something that directly affects your interest?

MR PETROULIAS: Well, it does, because it's with my agent.

THE COMMISSIONER: No, no. If you want to ask him something about this document, you ask him.

30

MR PETROULIAS: Okay. Can we now move to page 86. Now, there's an email there where Sam says to me, "My client is patiently waiting." Did you ever tell Mr Zong, did you ever authorise Sam to be your client?---No.

So he's simply saying that and that's not correct. Is that what you're saying?---It's your, you always together and I thought everything is through you, through them to you.

40 Okay. Next if we can go to page 97. Now, no, that's not the one. Yes, page 111, sorry. 111. Oh, the next page, please, the next page. Now, Mr Zong, this is a chain of emails. It has to go down a couple, a couple of pages. Can we go down one. It's come from you. Now, there's a revised offer to which you've accepted. Can we go to 118. Up one, sorry. I don't, I can't control this. Yeah, keep going. One up. That's the agreement that was signed by Ms Bakis, her version of it. Mr Zong is, do you remember?--  
-I only saw the one version. Now I just know now I have two version. I can  
---

Yes, keep going, keep going, just go up one. One more up. Keep going. (not transcribable) attached offer. Okay. So what I'm saying is the deposit was paid on that agreement.---Yes.

All right. Move on. Okay. Now - - -

THE COMMISSIONER: Mr Petroulias, we've just lost five minutes while we searched through five documents none of which had anything, you asked no questions about.

10

MR PETROULIAS: Oh, they were very significant, Commissioner. Very significant.

THE COMMISSIONER: You asked no questions about. I don't want to waste time.

MR PETROULIAS: I wanted to - - -

20

THE COMMISSIONER: No, just you listen to me. We spent five minutes going through, scrolling through the various pages which had no relevance at all to your questioning. Now, I'm not going to sit here while you ask the staff just to simply keep scrolling the screen searching for documents. You must yourself be in the position to identify documents and take the witness straight to the document. So I'm just - - -

MR PETROULIAS: Yes.

30

THE COMMISSIONER: I'm not reprimanding you. I'm just simply pointing out unless we do that we will lose an awful amount of time - - -

MR PETROULIAS: Totally agree.

THE COMMISSIONER: - - - with every topic that you want to raise with the question if we've got to go searching for the document that you have in mind but you can't identify.

MR PETROULIAS: I don't disagree.

40

THE COMMISSIONER: That's not to occur again.

MR PETROULIAS: I agree, however, sometimes there's an email chain and you have to, and you have to link the chain.

THE COMMISSIONER: Well, you should know where in the chain to take the witness if you want to cross-examine. There is to be no repeat of that, please, Mr Petroulias.

MR PETROULIAS: That, that, without (not transcribable) that document that offer document, due diligence offer document that we just saw on the screen now, that's a template isn't it that Matt Fisk uses, whenever you do an acquisition you use that template?---No, no.

No, you don't use the template?---No.

Can I have page 135, please. Okay. Here is another appears being used again with respect to Wolli Creek. Do you agree with that?---Yes.

10

Thank you. So it is a template.---We don't have like a template. All this Matt, Matt Fisk he did all this offer.

Can we go down, sorry, did you see paragraph 4, it says "100,000 paid to the vendor's solicitor's trust account"?---Yeah.

So the idea of paying into a solicitor's trust account is from your template document.---No, I don't think so.

20

So we just simply have two that happen to say it and coincidentally or not. Is that what you're saying? They just, the one that Knightsbridge signed for Awabakal and this one here for Wolli Creek are just coincidentally the same?---Yes.

Did I tell you, did I put that clause in there?---No.

Where did that clause, who put the clause in there?---No, this is the one Matt did.

30

Excellent. Thank you very much. Now, let's go, so let's go back. We had the draft valuations remember and they came in about 16 September, 2015, the draft valuation from Diamond's. So I'm trying to put you in that time frame. You had your due diligence. You got your valuation.---Yeah.

And you got the valuations back on 16 September, 2015.---I forgot the date.

No, that's fine. No problem at all. You agree or do you want me to show you?---No, that's fine. We didn't receive them.

40

Okay. Now, can I move to page 145. Now, Mr Zong, just to get the time frame correct, I'm suggesting you got the draft valuations and you called the meeting with me, Richard, Matt, Keith to discuss the valuations and how you can, and whether the price would be suitable.---Sorry, sorry, excuse me. I never called Richard or all this together.

We didn't discuss the valuations that we're saying?---No. No.

Okay. So when Richard is saying, "We had a meeting on Monday with Sunshine and their representatives. I asked Nick to help me."---No, I - - -

So Monday the 21<sup>st</sup>. Are you saying that Richard is wrong when he says that we had a meeting?---I, I, I, during, before that we, I only talk with Keith. Keith talk with you. I never talk with other people.

So you never discussed with Richard the conversion of cash to some property?---No.

10

Okay. So Richard is therefore wrong?---No, I, I never, never met Richard to discuss, discuss this, these thing.

Okay.---Only talk with Keith.

Okay, that's fine. So you're saying he's wrong. So paragraph 2. "Zong said the valuations cost him \$33,000 and he was serious about the deal." Is he right about that?---I never see, see, first time I saw this paper.

20

No, no, no. I'm just saying. Is it true about that that's what you said?

MR CHEN: Well, I don't think he's ever accepted he was at the meeting, Commissioner.

MR PETROULIAS: Did you say that at a meeting.

THE COMMISSIONER: Just wait a minute, Mr Petroulias.

30

MR CHEN: I think the witness has never accepted that he had any meeting with Mr Green, and the questioning is premised on the fact that he did have such a meeting.

THE COMMISSIONER: Did you hear that, Mr Petroulias?

MR PETROULIAS: The witness denied that, that Mr Green was at the meeting.

THE COMMISSIONER: Yes.

40

MR PETROULIAS: Yes. I'm saying that is anything else about what he says here correct. Did you ever say at any meeting that your valuations cost \$33,000?---No, we, we, we, we got, we got this the fee quotation.

Yeah, but did you tell Richard that or me that or anyone at any meeting that?---No, I didn't, I never talked with Richard at that time.

Okay.---Keith, Keith know, know, knows all the details. At that time I didn't talk to you. I only talk with Keith.

No. And having, you've never, you never agreed with Richard or anyone that Richard would go and confirm whether the valuations were acceptable to him?---I only ask Keith.

But you never spoke to Richard about the valuations?---No.

10 So you didn't expect him to go and confirm the valuations were appropriate for Awabakal?---No, we, we ask Keith. Keith is always, he, he, he's the, the, the agent that we talk with. We didn't talk, I didn't talk to you. I didn't talk to Richard. I only talk with Keith.

Okay. So you're saying that the meeting never happened. Okay. So, that's wrong. I understand your point. Okay. Can I have page 151. Now, at some point we get the – see how the first email says, “Keith and Sam. Vendor’s handwritten revisions attached by Despina.” So if we move down a couple of pages, we’ll see what that handwritten changes are. Okay. Do you see these handwritten changes? So you made the offer and it’s now come back to you and it says, “Total price \$12 million plus the transfer of  
20 five completed houses.” And then “Five houses will have a minimum value of 2 million.” That’s the offer that’s been sent back to you. It talks about the deposit. And then at the bottom it says, “1 million payable to Gows Heat Pty Ltd for the relinquishment of their rights on or about 8 October, 2015.”---No, we didn't, we didn't receive this.

Well, it’s very clear. You just got the email.

30 MR CHEN: Well, I'm not sure that statement – I mean, Commissioner, the witness, it can be put to him that he received it. I don't know. This is from - - -

MR PETROULIAS: Yeah, okay. Until, okay. Well, we can follow - - -

THE COMMISSIONER: You're not pressing that.

MR PETROULIAS: We can, no, we can follow the email chain if we need to prove it.

40 THE COMMISSIONER: Okay.

MR PETROULIAS: Can we go back up to see where it went. Keep going up one. Okay. That’s fine. You don’t, are you saying you’ve never seen the revised offer?---No.

Now, when you first met me in McDonald’s you said that I was introduced as the person who put the deal together and I had rights over the property. ---Keith told me.

Yes. You agree with that?---Yes.

So you understood that that meant that I wanted money to go away - - -?  
---You want, you want - - -

- - - or to give up my rights or whatever you want to call it, you understood that I was to be paid?---Yes.

10 Good. Now, and you don't have a problem with that because you were happy to pay Keith for his time?---This is the agent.

Yeah, but you were happy to pay him.---No, before the deal how come I paid him?

No, no, I'm just saying you were happy to pay the commission - - -

THE COMMISSIONER: I won't allow that question. Move on.

20 MR PETROULIAS: At page 157 there's discussion and I just want to know what was put to you by Sam or Keith about the commission structure. So okay, can we go down one, please. Okay. Do you see the discussion in the middle, "the commission is as follows". So this is on 2 October, 2015. Do you, did anything significant happen on 2 October, 2015?---No, not recall.

Do you remember that you had a meeting and designed your final version of your offer with Sam and Keith?---No, I just talk, talk with them.

Yeah, but you made an agreement - - -?---Talk with Keith.

30 That was the oral agreement of what the final form would look like. Is that correct?---Yeah, I talk with Keith. Keith is at that time - - -

Keith and Sam?

THE COMMISSIONER: Mr Petroulias, you're talking over the witness. I think as I said to you yesterday you're talking like a machinegun. It's so fast that you end up talking over the witness before he's even finished his answer so could you just slow down a bit.

40 MR PETROULIAS: Commissioner, I apologise for that.

THE COMMISSIONER: And do not interrupt the witness.

MR PETROULIAS: And I'm panicking that I might be cut out.

THE COMMISSIONER: Now, what's your question?

MR PETROULIAS: Did you have a meeting that day, on 2 October, 2015 with Keith and Sam and set out what your offer will be and what each party will get?---Yeah, I not recall but we did discuss this, this deal.

You did. Okay. Did you discuss that, do you recall that when you commenced proceedings in the Supreme Court that you filed a statement of claim that says on 2 October is when you formulated the agreement with Sam and Keith?---Sorry, I not recall that.

10 You don't recall it?---This, this is the deal we, we discuss it with Keith. Keith tell us this all the deal, the, like, 1.6 to Gow, 2, 2, 2.4 to Keeju. This - - -

Okay.---I don't know what the second, second altered one.

I understand but you're happy with the idea that the commissions would be 1.6 million to Gows and 2 million to Keeju?---This is the last our offer. You can see this - - -

20 Is it?--- - - - the final.

Okay. Fine. You agree with that. Right. I mean as the language between us went as best as you can recall we talked about commission.---Not talk with you, talk with Keith.

Fine. Okay. Now, if I can take you to page 192. Now, this is an email from Mr Driscoll of what he wants in the agreements. Do you remember him making, exchanging emails with Knightsbridge, myself about what's going to be in the agreements?---Yes.

30 So you'll see here in 5(b) that he, that he wants a deed of rescission. That's what he wants.

MR CHEN: Well, he wants it alternatively, Commissioner, I think more correctly.

THE COMMISSIONER: Yes. He's putting two alternatives forward.

40 MR PETROULIAS: Yeah, but the deed of rescission has come from Mr Driscoll.---Yeah, no, at that time it is all Matt, Matt Fisk. He and Mark talk with, talk with Keith about this.

Yeah, no, that's fine. Okay. Now, can I take you to 17, page 197, and there's E41, apparently the agreements by your solicitor, your solicitor wanted were scanned and sent, and see how it says in the middle, "From Sam, he needs original, please refer attached." Below it says, "It's the original between Gows and Awabakal." He wanted the original agreement to examine it. Your solicitor.---(not transcribable)

Okay. Now, is it fair to say without wasting too much time that there was a lot of exchange between our solicitors, between the solicitors if you like, admin and Knightsbridge and Mr Driscoll about various versions?---Yeah. At that time it was between Mark and you because you come there together.

Hold on, hold on, we'll get to that. Okay. You do accept that Mr Driscoll kept wanting changes?---Yes, yeah, he not happy with your document.

10 Yeah, but continually, not just once, many, many times?---Yes, you back and, back and forth many times.

Very good. Now, can I show you page 234? And there's an email on 16 October by Ms Bakis where she says, "Where my client is fed up with the process. Either we settle these or, you know, just at 5 o'clock we consider it an end of the agreement." We're sick and tired of all these changes, 5 o'clock, last version, and that's it. Do you agree to that happening?---Yes.

20 Okay. Now, there's a couple more things like this. I accept, do you accept or do you want me to take you to them, do you accept that there's a lot of this kind of stuff saying I'm sick of it, either finalise it or go away?---Yes.

Okay, good. Now, and at page 232 we have, "Gentlemen, please be advised that discussions in respect of the matter of Awabakal lands are concluded. Our client no longer wishes to receive any further correspondence or communication." So we want out. See you later. Bye bye. Is that what you understand?---Yes.

30 Okay, good. Now, then at 237 Keith is trying to resurrect the deal and that you had left a voice message, a voice message on my phone apologising and asking that it be reinstated. Do you remember?---Yeah, maybe, yeah.

Okay.

THE COMMISSIONER: Mr Petroulias, what's the point of taking him to these emails - - -

MR PETROULIAS: I'll get to that.

40 THE COMMISSIONER: - - - when the emails speak for themselves?

MR PETROULIAS: I'll get to that.

THE COMMISSIONER: What's the point of getting him to read it and say is that what the email says?

MR PETROULIAS: Because it fixes, because it fixes the time frame and then when these - - -

THE COMMISSIONER: No, but the document fixes the time frame, it's got a date and it's got a time.

MR PETROULIAS: Yeah, and then, and then, okay, I'm getting there, I'm getting there.

THE COMMISSIONER: There's not much point in taking him a document just for the sake of taking him to a document because the document speaks for itself.

MR PETROULIAS: Okay. Now, you agree that in any event, to try to make it work, you called me and Mark Driscoll together at your office - - -?---Yes.

- - - to try to simplify an agreement?---Yes.

And we produced together with Mr Driscoll a deed of variation?---Yes.

20 Okay. That deed of variation says absolutely nothing about a dealing certificate.---I not recall, it just between Mark and you and Keith.

You simply relied on what Mr Driscoll said. You have no independent memory of a dealing certificate?---Yes, yeah.

Okay. Right. Now, can I see if I can refresh your memory. This is 22 October, this was late at night, and the idea was if you agree with me, that the next day we would go to Awabakal to settle?---Yes.

30 Okay. So you agree with that. And overnight Mr Driscoll made another change, made more changes, even after we agreed that this was the final version. Do you remember that?---That's, the final (not transcribable) that we bring to (not transcribable).

Okay. Now, you gave evidence that you brought a \$400,000 cheque.---Yes.

Now, you mentioned to Ms Nolan over here that there was a bundle of agreements as a package, is that correct?---Yes.

40 So deed of rescission, surrender Gows, heads of agreement with Awabakal. A package of agreements.---No, it's surrender and a head agreement.

Yeah, but there's also a deed of rescission that your, that your solicitor wanted done, isn't that correct?---Not the 23<sup>rd</sup> of October.

You're saying it was signed earlier?---No, I don't, at that time we only, only did head, head agreement and the file contract sales of the land and your surrender.

So you're happy that it was signed earlier, the rescission agreement?  
---Rescission agreement, I, I, I'm not recall about that one.

You don't remember anything about the rescission agreement?---Not remember that.

But you saw that Mr Driscoll wanted it.---Yes.

10 Okay. Now, now, so, so now you're driving up to Newcastle on the morning of 23 October.---Yes.

With Sam Sayed.---Yes.

You receive a phone call, do you remember, from me.---Yes.

And it said, "Do you have money?"---Yes.

20 And you said what?---Yeah, I said it's - - -

No, you didn't have money.---No, we got. Got \$400,000.

No. But you had no money. You had no cheques with you on the way up there.---No, we, I got. I got a bank cheque.

No, no. You then, I said to you the deal is, because if we disagree, then we disagree. But didn't I say to you, "If you have no money, go back. The deal's off"?---Yes, yeah, did say.

30 Good. And then you went and you, and, and you, before you came to Newcastle brought two cheques.---No. I only bring one bank cheque.

You only bring one to Newcastle.---Only bring one.

Is that correct?---Yes.

That's your position?---Yeah, I did this. At the beginning we agreed. This is (not transcribable) and you said, yeah, we have the separate cheque.

40 Okay. Do you see anything in any agreement anywhere that says that you must bring \$400,000?---This you told Sam we can use it, we can bring this 400,000 to exchange contract and - - -

No, no - - -?--- - - - we pay, we pay the rest later.

No, no. Wait a second. Wait a sec. We just spoke with your lawyer, didn't we?---No, at that day, no.

Yeah. Can I, can I show you the two cheques?---Yeah.

THE COMMISSIONER: What do you want to show him?

MR PETROULIAS: The two cheques so that we're clear about what we're talking about.

THE COMMISSIONER: No, no. No.

10 MR PETROULIAS: No? Okay.

THE COMMISSIONER: No. Let's press on.

MR PETROULIAS: Sorry, sorry. So where are we up to.

THE COMMISSIONER: Nothing to do with anything. Whether it's two cheques or one cheque - - -

20 MR PETROULIAS: Oh, it is. Because they're different parties, and different parties have different agreements.

THE COMMISSIONER: Well, it may have some significance, actually, for you.

30 MR PETROULIAS: Yeah. So, Mr Zong, is there anything in that agreement, in those suite or package of agreements that tells you if you come with \$400,000 cheque to give to Awabakal, everything is sweet, everything is okay? Is there anything in that agreement, in any of those agreements, that says to you 400,000 to Awabakal, we're all good?---No, that's you tell Sam we can exchange the contract with this \$400,000 bank cheque.

Good. But it's not – that's what you say now, but that's not in any agreement, is it?---No.

40 No. Okay. So what you're saying is here I am trying to make money from the beginning. You come with a bank cheque for Awabakal and I say, sweet, no problem at all. I'm going to get nothing. Is that what you're saying?---No. When we get to, get to Newcastle it's, you, when you see the one bank cheque, said no. This, no, this not (not transcribable). Can't do that. I have to go to the, the, the bank to split this one bank cheque to two bank cheque. One 200 for Gow. 200 - - -

Where did you do that?---Sorry?

Where did you do the splitting?

THE COMMISSIONER: Just pause there. Just pause there. I'm not going to let you pursue this line of questioning on this cheque business. It's quarter to 4.00 now. How much longer are you going to be?

MR PETROULIAS: Quite a bit. There's a lot to cover.

THE COMMISSIONER: How much are you going to – how long?

MR PETROULIAS: Maybe an hour.

10

THE COMMISSIONER: See, by going over and over issues like these side issues - - -

MR PETROULIAS: Oh, no, no.

THE COMMISSIONER: - - - you're just completely wasting time.

MR PETROULIAS: No, I can assure you, Commissioner, this is not - - -

20

THE COMMISSIONER: Now, I - - -

MR PETROULIAS: This, please indulge me on this one.

THE COMMISSIONER: No.

MR PETROULIAS: This is not a waste.

30

THE COMMISSIONER: No, no. I'm going to sit until quarter past 4.00 and we'll resume at quarter to 10.00 tomorrow. You will have half an hour tomorrow to complete this cross-examination. You understand what I'm saying?

MR PETROULIAS: Okay.

THE COMMISSIONER: You've got half an hour now and you've got half an hour starting at quarter to 10.00 tomorrow morning. Mr Chen, does that place you in any difficulties?

40

MR CHEN: Not at all, Commissioner.

THE COMMISSIONER: Counsel?

MR BALAFOUTIS: No, Commissioner.

THE COMMISSIONER: Now, move on to another topic.

MR PETROULIAS: Yes. You understood that the heads of agreement with Awabakal said that the Gows Agreement is getting rid of the Gows

Agreement or having a rescission of Gows is a condition precedent, that means that has to happen first?---No, altogether they said this one would bring the head agreement and the (not transcribable) agreement this would sign altogether.

Right. But you understand there's two different functions. For Gows, you go away and for Awabakal you're dealing with Awabakal from now on.--- You're the lawyer you're always - - -

10 No, no, what do you think you're doing? Do you think - - -

THE COMMISSIONER: I reject that question.

MR PETROULIAS: Do you understand that once Gows is satisfied and leaves the picture, then you are then to deal with Awabakal, directly, no interference?---No, you always say you will deal with them, you never said that you after (not transcribable) you always said that you would deal with them.

20 Yes, but you've got an agreement with Awabakal now.---Yes.

Now you do understand that if you change the agreements with Awabakal they might not like it?---Oh, within - - -

Just because you paid me over here to go away, does that mean that you can do anything you want with Awabakal.

30 THE COMMISSIONER: I reject the question. Get on with it Mr Petroulias and ask some focus questions that deal with your interest otherwise I'll have to place other restrictions on you. Just focus and think about what you're asking questions about.

MR PETROULIAS: I'm very focused Commissioner.

THE COMMISSIONER: Yes, well, that's debateable. I want you to focus on the issues that are before this Commission and focus on only those issues that affect your interest and try and again.

40 MR PETROULIAS: Mr Zong, you understand that, why do you think, you understand that there was a problem with this concept of cherry-picking?

THE COMMISSIONER: I reject that question?

MR PETROULIAS: Do you understand that Awabakal was unhappy with the concept of cherry-picking, in other words, you pick one option and not all of them as a bundle?

THE COMMISSIONER: I reject that question. Who's Awabakal, who are you talking about? Who's understanding?

MR PETROULIAS: Okay. Have you, has it ever been brought to your attention that as far as Awabakal Local Aboriginal Land Council is concerned, that they were dis-satisfied with cherry-picking?

THE COMMISSIONER: I reject that question.

10 MR PETROULIAS: I'm happy to change it.

THE COMMISSIONER: Cherry-picking is a word that can be applied in many different senses and many different situations.

MR PETROULIAS: I'm using that word because that was the word, do you understand that there was a discussion about, that they did not like the idea that you could take one or two options of the five, you had to take altogether?---We did, sign the five.

20 So you agree that you intended that it would be all five?---Yes, we did the five.

And not one, not two, but all five or nothing?---

MR CHEN: Commissioner, that's I mean that's a matter for legal discussion and submission in due course.

MR PETROULIAS: No, it isn't, it isn't.

30 THE COMMISSIONER: The agreements will speak for themselves.

MR PETROULIAS: No, it's got nothing to do with agreements.

THE COMMISSIONER: Move on, next question.

MR PETROULIAS: And, because later on, okay, can I take you page 264. Now, this is an email about building and land in Wollongong and you accept, don't you, that we were talking about Wollongong but you ultimately didn't want to do it?---I think it says this (not transcribable)

40 No, no, I understand but we were talking about, we were doing work on the idea that there would be land available for Wollongong for you to acquire if you wanted?---Yes, you did show me.

Good. Thank you. At 269 I discussed with you other property portfolios and you can see from that email that I had trouble trying to send you something and I said, "I have tried several times to send you property portfolio sample, have you not received it?" See how it finishes, "we need

to get together to settle the Newcastle issue, I'm hoping tomorrow." This is in December, '16.---Yes, you did after we sign this this head agreement, you did bring more site to us.

Yes. You saw that there was, so you were given more property samples?

THE COMMISSIONER: I reject it.

10 MR PETROULIAS: You agree that you were sent a property portfolio?

THE COMMISSIONER: A sample was it? A sample of a property portfolio?

MR PETROULIAS: Yes. Well, it's actually quite extensive but – and on page – did you agree or not agree?---You, you did send us something, some  
- - -

20 Yes. And we were supposed to meet again to settle, in other words there's something not finished about Newcastle. Do you agree with that?---No, no, it's separate, no, not (not transcribable)

Okay. So where I'm saying let's get together urgently, urgently, to settle the Newcastle issue, and I say I am hoping tomorrow, you're saying to yourself, you must be wrong. Is that what you're saying, I must be wrong? ---Sorry?

THE COMMISSIONER: I reject that question.

30 MR PETROULIAS: What do you think I mean then?

THE COMMISSIONER: I reject that question.

MR PETROULIAS: Did you reply to that email?

THE COMMISSIONER: I reject that question.

40 MR PETROULIAS: Can I move to page 270. "Yes, Nick, I got the portfolio, please let me know when we're able to catch up. I am good tomorrow morning and Friday." So you were making an appointment for a meeting with me in late December, aren't you?---Yeah, but this, this is a different, different project, not (not transcribable) with Newcastle.

I said, "To settle Newcastle," and then you replied, "Yes, tomorrow or Friday."---No, we didn't say to settle Newcastle, how, how can we settle Newcastle?

Because Newcastle was not finished.

THE COMMISSIONER: Move on, Mr Petroulias.

MR PETROULIAS: Now we get to, jump ahead and we get to the Braye Park. So 294. Now, so you wanted to exercise the option on Braye Park. Is that correct?---Yes.

Only Braye Park?---Yes.

10 Isn't that now contradictory to what you just, that it was going to be one whole package?

MR CHEN: I object to that, Commissioner.

THE COMMISSIONER: Yes, I reject it.

MR PETROULIAS: The witness understands that the deal, the agreement he entered into with Awabakal was that it would be a complete package. He gave that evidence.

20 THE COMMISSIONER: This is a separate property.

MR PETROULIAS: Yes, and Braye Park is one of those, one of those five, which is you can't, you can't buy it as a package and then only pick one.

MR CHEN: Well, Commissioner, there's a couple of things about that. The first is the agreement provides for separate options being exercisable in relation to particular lots. That's the first proposition. The second is the witness has given evidence about explaining why he chose to exercise an option at a particular meeting, as did Mr Fisk yesterday, and it relates to a particular issue which I'm sure, Commissioner, you're familiar with this issue by about March of 2016 had raised its head about progressing the transaction for the legal reasons.

30

THE COMMISSIONER: Yes, yes. Mr Petroulias, I won't allow that question in that form.

MR PETROULIAS: Okay. Have you ever been told, whether through myself, Ms Bakis, Mr Green, anybody, that Awabakal was not prepared to accept an agreement that allowed you to pick and choose one and not the whole lot?---No. On our agreement we can, we can settle one by one. (not transcribable) agreement they said once one ready and we settle. We can see on your fee proposal this is one by one.

40

Oh, so you're now saying it wasn't a whole package, it was one by one? ---No, we signed the whole package but we settle, with rezoning we don't know this the five all together we can get the rezoning together or get the rezoning one by one.

Okay.---Once the rezoning finish we settle one.

Okay. Now, do you remember that I approached you in around October 2017 and wanted to talk to you about what I thought was a misunderstanding and we should talk about this case?---Sorry, what happen?

10 Do you remember me approaching you and your lawyer together by email to arrange a meeting to discuss what I saw as misunderstandings in the case?  
---Yeah, you did come in, want talk with us.

Okay. Mr Broad, you know the emails about the settlement, could that be made, put on the screen? So, thank you very much. So this is the context in which I approached yourself and your solicitor and we had a discussion, do you agree?---I, I'm not, at that time I leave everything to my lawyer. I didn't  
- - -

20 Yeah, but we were present in a meeting together.---Yeah, you came out to our office.

Yes. And do you remember we had a discussion and we said, "Tony, they were never going to agree on, on separate and one bundle. It was going to be one bundle." And you said to me, "No, no, no. But we intended it was going to be one bundle."---No, I don't think we discuss about that.

We didn't discuss it?---At that time, at that time it is only Andrew, my lawyer, talk with you. I'm just - - -

30 THE COMMISSIONER: Mr Petroulias, it doesn't matter what people assert, whether in the emails or not, it comes back to what the agreement provided for, doesn't it?

MR PETROULIAS: With respect, no.

THE COMMISSIONER: If there was a package with options within the package, then the - - -

MR PETROULIAS: No.

40 THE COMMISSIONER: - - - then it can be dealt with one by one. But how does this email determine the meaning of the contract, the agreement between the parties as to whether there was an option or not?

MR PETROULIAS: Basically, the contracts were a shemozzle. They were inconsistent, contradictory. And the agreement that, that I, that we had with Mr Zong and Ms Bakis confirmed to Awabakal is if you like Mr Zong's agreement, we are confident that we can resurrect it and re-state it in a way that everyone is happy.

THE COMMISSIONER: But, look, if the agreements were made – even if they were a shemozzle, as you say – somebody writing, asserting what they understood the agreement to mean doesn't assist at all, does it?

MR PETROULIAS: Yes. Except that these are all void agreements. The objective is to get something approved by the New South Wales Land Council. To do that we needed the board to be happy and we needed the community to be happy.

10

THE COMMISSIONER: Why do you say the agreements were board? On what, on what basis?

MR PETROULIAS: It's a matter of, it's a matter of the Land Rights Act. Division 4A.

THE COMMISSIONER: Sorry?

MR PETROULIAS: It's a fact of the Land – it's a legal conclusion. That is, that is the effect of division 4A of the Aboriginal Land Rights Act.

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THE COMMISSIONER: In any event, you're seeking to use this email to get an understanding as to how the agreement was to operate, is that the point?

MR PETROULIAS: And how we could fix it.

THE COMMISSIONER: Yes. No, I won't allow that. I won't allow that. You, in your legal experience – as you emphasise in your submissions seeking leave to appear – would understand that the parties to a legal agreement, the rights and interests are to be determined by the terms of the agreement, is that not so? Unless there's something by way of a variation of the agreement subsequent.

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MR PETROULIAS: Yes, but Counsel Assisting - - -

THE COMMISSIONER: And my point simply is it doesn't assist if you're turning to correspondence – be it settlement discussions or whatever it is – to try and divine what the meaning of the terms of the agreement are. You go back to the terms of the agreement, whether you call them a shemozzle or not.

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MR PETROULIAS: Counsel, okay, I'll - - -

THE COMMISSIONER: You see, if it's of no utility to go down this exercise, it's just chewing up the time that you've got available to deal with any other issues that you want to deal with.

MR PETROULIAS: I appreciate that, and it's - - -

THE COMMISSIONER: But if you want to keep chasing a particular issue and use the time up in that way, that's entirely your judgement.

MR PETROULIAS: Okay. But it is particularly significant. To that email I attached some briefing papers. Mr Zong, do you remember seeing them? ---I, I didn't, at that time I leave everything to Andrew Mutton.

10 And we had no discussion?---I was, I, this is a matter (not transcribable) Andrew. (not transcribable)

Okay. You heard Counsel Assisting ask you whether you understood that this, this Gows or, sorry, this agreement was being sold to someone else. You heard that?---Later we know, we know the, you, you - - -

Yes.---You take our money and the same time you sell the property to other people.

20 No, hold on a second. Did you not also – wasn't it not also put to you, did you not hear from me that there were efforts made for your parcel and your agreements to be rectified?

MR CHEN: Well, can I ask Mr Petroulias to identify more precisely who he says took those steps and what his involvement in fact is? Because this is very generally put. It seems to be put in the context of October 2017. And if contrary to what had been asserted by others earlier in time – that the agreements were void and unenforceable and they don't propose to be bound by them, that in fact Awabakal or Mr Petroulias or Ms Bakis was  
30 trying to rectify it – then we should know precise details of that, in my respectful submission, Commissioner.

MR PETROULIAS: Certainly, attached to that email Mr Zong is, to deal with, attached to that email are certain attachments and one is a fifth of, 5 April, can we have that on screen. Now this was sent to your lawyers and to you and if we keep going down a little please, to find the exact reference, keep going, okay, Sunshine Group. Now the discussion in Awabakal is that they have a problem with you cherry-picking and in particular taking those two properties and leaving the rest. Now, keep going down - - -  
40

MR CHEN: Commissioner may I, with respect, I mean, this is, I think what should be identified is where this has come from, who's document it is because it's not apparent.

THE COMMISSIONER: Well, I certainly agree with that.

MR CHEN: And a number of statements have been made on the way through that you received this and then it's passed over with another

statement. I don't think the witness has said anything of that sort and perhaps it should be, in fairness, put in that way.

THE COMMISSIONER: What do you say as to the utility of going into this area?

MR PETROULIAS: Can we look at the last sentence?

10 THE COMMISSIONER: Mr Chen, what's your position on that?

MR CHEN: I'm not certain of what the utility is, we've gone from October, 2017 now back to April, 2016 and it's potentially relevant, there's a hint that it's chronological fit somewhere within what's occurred in terms of the dealing certificates but at the moment, I don't know Commissioner.

MR PETROULIAS: Okay, please, just the last sentence - - -

20 THE COMMISSIONER: Mr Petroulias, if you're going to use any of this material such as the pages on screen now entitled, Sunshine Group, firstly, who's document are we looking at?

MR PETROULIAS: It's on the front page.

THE COMMISSIONER: No, no, just answer my question. Who's the author of this document?

30 MR PETROULIAS: This is Knightsbridge to Awabakal and it's a briefing paper on the various property proposals available to them and identifies that the concern is cherry-picking where she says, "we think that we can confidently, very confidentially reapproach Sunshine to remove the concerns."

THE COMMISSIONER: So this is Ms Bakis' document, is that right?

MR PETROULIAS: Well, Awabakal's document now.

THE COMMISSIONER: Who is the author of this before - - -

40 MR PETROULIAS: Ms Bakis.

THE COMMISSIONER: That's what I thought. That was sent to Awabakal - - -

MR PETROULIAS: And it was attached to Mr Zong in the email that I sent him.

THE COMMISSIONER: It was sent it's entitled Briefing Paper on Potential Property Agreements for Board Meeting 8 April, 2016.

MR PETROULIAS: That's correct.

THE COMMISSIONER: So this was intended to be, in effect, a submission to the board was it?

MR PETROULIAS: That's right.

10 THE COMMISSIONER: By Ms Bakis to consider Sunshine - - -

MR PETROULIAS: Sunshine.

THE COMMISSIONER: - - - property arrangement that might be made to satisfy Sunshine.

20 MR PETROULIAS: The board is considering arrangement with a possible purchasers. Ms Bakis is saying to her, I understand that you don't like Sunshine because of the cherry-picking but don't worry, we can confidently fix that if you want us to.

THE COMMISSIONER: I really don't see how this is going to advance anything in this inquiry - - -

MR PETROULIAS: Because at the same, it's been put by counsel assisting that I am, I, Gows, is trying to sell the same arrangement to other people.

MR CHEN: Well, I don't know how Mr Petroulias knows of these documents at this stage - - -

30 MR PETROULIAS: I'm at attendance of the board meeting.

MR CHEN: I don't know how Mr Petroulias knows of this document, he hasn't established that at all as at April, 2016 and the email that he referred to Commissioner, a moment ago is October, 2017.

THE COMMISSIONER: Yes. I think Mr Petroulias, there are too many unanswered questions about this document and the use you're seeking to put it to.

40 MR PETROULIAS: With great respect, Commissioner, I was at the meeting, counsel assisting has been cross-examining for a week now. I was at the board meeting on 8 - - -

THE COMMISSIONER: Well, you'll be able to give evidence about this.

MR PETROULIAS: In fact, much fun was made of, that I was actually contributing to the board meeting. These are the board papers. So I was at the meeting, at the board papers where this discussion occurred.

THE COMMISSIONER: All right. What I'm going to do is this. You can put in a short written submission as to the relevance of this material, we'll reserve that and quarantine it for the moment, and I want you to use what little time you've got left to deal with the other issues that you want to raise with this witness. If I come to the view, having read your short submission, that you should be allowed to further cross-examine on these documents which seem to be quite lengthy, that you've been seeking to ask questions about, then I'll grant you leave, if I conclude that it's relevant and you should be permitted further right of cross-examination. So now you've got 10 minutes more today, you've got 15 more minutes in the morning to complete your examination of this witness, so I suggest you move on to the next topic.

MR PETROULIAS: Okay. Can I have page 245 of volume A. Okay. Now, Mr Zong, this is now 23 October, 2015. This is the morning of the exchange in Awabakal in Newcastle, just to give you a time frame. Even after the variations had been made with myself and Mr Driscoll, Mr Driscoll is still telling you that he has doubts about you entering into this agreement. ---Yeah. This, this about because we sign head agreement with Aboriginal Land Council, this is why I still go ahead with the change the contract.

So he's telling you even after me and him worked on, worked on something that everyone would be happy, he's still telling you don't do it, on the 23<sup>rd</sup>. ---Yeah, he's still very concerned, very concerned. This, this (not transcribable) because we sign the head agreement with the Awabakal Land Council I felt safe with them.

Yes. He was concerned on the 17<sup>th</sup>, we went through a whole process of redrafting, even me and him personally working that night, he still tells you, notwithstanding that, he's still not happy and he's telling you that he's still not happy with you to sign it, and you did anyway. Is that correct?---Yes, we, I did.

Good. Okay. Now, now, one of, one of the – can I go back to the issue of the agents. When, when you say that Sam and Keith were Awabakal's agents, who told you that?---No, he said, he, he bring this, the whole deal to us.

No, no, but who, who - - -?---He represent to you.

Who told you that they're your agents?---Keith, Keith, Keith, not, not Awabakal, is your, your, he bring you to us. He - - -

Oh, so Keith is my agent, not Awabakal's agent?---No, I don't know what's the relationship between him and Awabakal, but he's, he's bring, the whole deal you, is your deal and he bring your deal to us.

Okay. I never told you that he's my agent, did I?---No, you always, we always, he, I always talk with, through him to you.

No. You saw Mr Say say that he considers you his client. I never told you that he's my agent?---No, you're, you're always, you're always together.

Okay, that's fine. Did Richard ever tell you that either Sam or Keith are his agents?---No, he didn't talk, talk anything about them.

10 Okay. And you've never looked for an agency agreement at all?---No, we have the agreement with Keeju.

Okay. Oh, the project procurement agreement, is that what you're talking about?---The agreement with Keeju, because this is a, this is a whole package, the whole package, the agreement with Keeju, agreement with Gow and the head of agreement.

Okay.---I do everything all together.

20 Hopefully very short issue. I think you gave evidence that I rang you or Keith, no, you said that Keith rang you about Richard's sponsorship money. Is that correct?---Either you or Keith, I not recall.

Your evidence was that Keith did.---No, I think more like you. I forgot, I forgot this.

Okay.---I, I think it's you.

30 I rang you and said Richard needs money?---It's not Richard, said that Awabakal, Awabakal's rugby league sponsorship.

Okay. Now, let's have a look at that. Okay. Page 140. Okay. You see Mr Rhee sends an email to Ms Bakis, but he says, "Dear Nick," admin@knightsbridge. "Please give the Land Council \$2,000 sponsorship of this 50,000." So if you spoke to me, why would Keith send me that email?---Maybe to get approval. I forgot this. I forgot it's you (not transcribable) you call me for the sponsorship.

40 Right. So you go back to Keith.---No, I've got, I, I, I not recall this.

Okay. At the bottom – see if this refreshes your memory – at the bottom there's a notation. "Des, this is Richard's men's group."---I didn't see this email.

But you don't remember anything about a men's group?---No, I don't know.

Okay. Keep going. Next one. Now, there's a discussion. You're not part of the discussion, but has anyone told you anything about Richard having a

men's group, a shelter where he's trying to get the kids off drugs and your sponsorship was for that?---No.

Okay. Next one down. Do you remember signing – there's an original of this if necessary. Just a little bit down. It says, "Confirm trust," in blue at the bottom, "\$2,000 cheque to Richard Green." And that's your signature. ---No, this, no, never see this.

You've never seen that either?---No.

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Okay. Well, we'll pick that up tomorrow. Can I have, can we have the original of that, Mr Broad? Yeah. Shall we pick that up, Your Honour, in the morning.

THE COMMISSIONER: Yes, very well.

MR PETROULIAS: Thank you. Sorry, we're adjourning? Is that what you said?

20

MR CHEN: No.

THE COMMISSIONER: Sorry?

MR PETROULIAS: Are we adjourning till the morning, then?

THE COMMISSIONER: No, no.

MR PETROULIAS: Oh, no, no.

30

THE COMMISSIONER: I'm giving you until quarter past 4.00 to finish today's cross-examination.

MR PETROULIAS: Okay. Yeah, is that available?

THE COMMISSIONER: And you can have a look at that document before we resume at quarter to 10.00 tomorrow, and then at 10 o'clock I'm moving on with another witness.

MR PETROULIAS: Okay.

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THE COMMISSIONER: So you can either – if you want to look at the document now, I'm happy to wait for that to occur.

MR PETROULIAS: Yes. Yes, please.

THE COMMISSIONER: Or you can have a look at it in the morning.

MR PETROULIAS: Yes, please, let's finish this topic. This is the last.

THE COMMISSIONER: Mr Petroulias, I think if you just go back it will be brought to you.

MR CHEN: Commissioner, we can't readily pick it up, where it is in the folder.

THE COMMISSIONER: All right.

10 MR CHEN: It may be if Mr Petroulias can move on to another topic, we'll make sure it's made available after you adjourn today.

THE COMMISSIONER: Yes. Very well. Well, Mr Petroulias, you've heard what's said.

MR PETROULIAS: Yes.

20 THE COMMISSIONER: Mr Broad will search for the document overnight and it will be available to you just before we resume at quarter to 10.00 tomorrow.

MR PETROULIAS: Certainly.

THE COMMISSIONER: All right.

MR PETROULIAS: Are we finished?

30 THE COMMISSIONER: Yes, we are. Very good. I'll adjourn till tomorrow, 9.45.

**THE WITNESS STOOD DOWN [4.14pm]**

**AT 4.14PM THE MATTER WAS ADJOURNED ACCORDINGLY [4.14pm]**