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INDEPENDENT COMMISSION AGAINST CORRUPTION

THE HONOURABLE PETER M. HALL QC
CHIEF COMMISSIONER

PUBLIC HEARING

OPERATION SKYLINE

Reference: Operation E17/0549

TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON MONDAY 6 MAY, 2019

AT 2.00PM

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

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

THE COMMISSIONER: Yes.

MR CHEN: Commissioner, just before Mr Petroulias recommences his cross-examination of Mr Kavanagh, my learned friend, Mr White has raised a matter with me. Commissioner, could I ask for a suppression order in relation to MFI 53, in particularly on page 50. Commissioner, there in MFI 53 is in fact a copy of a document that is already in MFI 33 and over which a suppression order has been made by you on 16 August, 2018. The particular words that I would seek a suppression order under section 112 of the Act, Commissioner, are the second dot point after the word “friends”.

THE COMMISSIONER: Sorry, after the word?

MR CHEN: “Friends”. Just before the words “do” and ending in the inverted commas “phase”.

THE COMMISSIONER: It’s the second dot point anyway.

MR CHEN: It is, Commissioner, yes.

THE COMMISSIONER: Yes. And that’s in?

MR CHEN: MFI 53, page 50.

THE COMMISSIONER: Right, thank you.

MR CHEN: Thank you.

THE COMMISSIONER: Yes, very well. Pursuant to section 112 of the Independent Commission Against Corruption Act, I make an order preventing any publication of the material in document MFI 53, page 50, being the material contained in the second dot point of that document, appearing after the word “friends”.

SUPPRESSION ORDER: PURSUANT TO SECTION 112 OF THE INDEPENDENT COMMISSION AGAINST CORRUPTION ACT, I MAKE AN ORDER PREVENTING ANY PUBLICATION OF THE MATERIAL IN DOCUMENT MFI 53, PAGE 50, BEING THE MATERIAL CONTAINED IN THE SECOND DOT POINT OF THAT DOCUMENT, APPEARING AFTER THE WORD “FRIENDS”.

THE COMMISSIONER: That order is, as I’ve stated, made under section 112 of the Act and may be varied or removed at some point in the future. It may, in the interim, in any event, be utilised by Commission officers for statutory purposes. Dr Chen, just while we’re talking about putting suppression on material, in the event that they’ve been handwritten – I

withdraw that. In the event that there have been types versions of those recorded interviews Mr Petroulias has conducted, they should also be suppressed, I think, at this point.

MR CHEN: Yes, Commissioner.

THE COMMISSIONER: And have the printed versions of the transcript been made available?

10 MR CHEN: They're on the restricted website, I'm told, Commissioner, at the present time.

THE COMMISSIONER: So does that operate to restrict the hard copies?

MR CHEN: Yes. Just pardon me, Commissioner. I'm told by Mr Broad, Commissioner, that there's a suppression order over the contents of the restricted website so that it can't be disseminated. I wonder whether, for the sake of abundant caution, Commissioner, that a suppression order be specifically made.

20

THE COMMISSIONER: Yes, look, I think it might be as well because, on one view, although it's perhaps erring too much on the side of caution, nonetheless there are some third parties named in it in sometimes not glowing terms, and I think in fairness to those third parties and for other reasons, that there should be a restriction and I do place a restriction. It's in respect of the transcript of the recorded interviews conducted by Mr Petroulias in respect of Mr Green and Ms Dates. I make an order under section 112 of the Independent Commission Against Corruption Act restricting publication of information with respect to those documents.

30

MR CHEN: Commissioner, I wonder whether that order should actually extend to the recordings themselves.

THE COMMISSIONER: Yes. Well, all right. This restriction also applies to the recordings of those interviews. The direction, therefore, will prevent those present today, other than Commission officers and from others, from publishing or communicating information relevant to the contents of the recorded interviews. It will permit Commission officers to publish or communicate information about them for statutory purposes or by further order of the Commission.

40

MR CHEN: And perhaps with a specific exception in relation to the legal practitioners, Commissioner, for use.

THE COMMISSIONER: Yes, yes. That exception does apply to the legal practitioners who are appearing on behalf of any person or party to the proceedings. I note it is a criminal offence for a person to contravene a section 112 direction.

SUPPRESSION ORDER: I MAKE AN ORDER UNDER SECTION 112 OF THE INDEPENDENT COMMISSION AGAINST CORRUPTION ACT RESTRICTING PUBLICATION OF INFORMATION WITH RESPECT TO THE RECORDINGS AND TRANSCRIPTS OF THE INTERVIEWS WITH MR GREEN AND MS DATES. THE DIRECTION WILL PREVENT THOSE PRESENT TODAY, OTHER THAN COMMISSION OFFICERS, FROM PUBLISHING OR COMMUNICATING INFORMATION RELEVANT TO THE CONTENTS OF THE RECORDED INTERVIEWS. IT WILL PERMIT COMMISSION OFFICERS TO PUBLISH OR COMMUNICATE INFORMATION ABOUT THEM FOR STATUTORY PURPOSES OR BY FURTHER ORDER OF THE COMMISSION. THAT EXCEPTION DOES APPLY TO THE LEGAL PRACTITIONERS WHO ARE APPEARING ON BEHALF OF ANY PERSON OR PARTY TO THE PROCEEDINGS. IT IS A CRIMINAL OFFENCE FOR A PERSON TO CONTRAVENE A SECTION 112 DIRECTION.

20

THE COMMISSIONER: All right. Very good. Yes, now, yes, Mr Petroulias.

MR PETROULIAS: Mr Kavanagh, can we – where is it. Maybe we’ll talk about the actual agreements for a moment, page 32 to 33, if you can have a look, please. Now, I’m going to suggest to you that a number of parties contributed to giving you some sort of security, and this clause 6.3(f) at the bottom was one thing that we discussed, and we discussed, and also is being the subject of various emails. Now, and that’s the idea of having a lease,
10 caveats for your development costs, that sort of thing, do you agree?

MR CHEN: Commissioner, I just wondered whether, in fairness to the witness, he should be shown the prior agreement. What Mr Petroulias, as I understand it, has copied is one page of the collaboration agreement or the proposed collaboration agreement and I think, in my submission, the witness should be shown the entire agreement.

THE COMMISSIONER: Yes. What’s the exhibit number?

20 MR CHEN: It appears to be volume 14, page 154.

THE COMMISSIONER: And, Mr Petroulias, you’re happy with that?

MR PETROULIAS: Commissioner, all the emails talk about various forms of leases, caveats, security, and I’m going to just focus on that aspect. I don’t need to - - -

THE COMMISSIONER: We don’t want a whole class of documents. What we want are the relevant documents so far as this transaction is
30 concerned.

MR PETROULIAS: Or more like the relevant issue - - -

THE COMMISSIONER: No.

MR PETROULIAS: - - - which, which is - - -

THE COMMISSIONER: You’re quoting here from clause 6.3.

40 MR PETROULIAS: Yeah.

THE COMMISSIONER: Now, where do we find that?

MR PETROULIAS: Well, as you can see, it’s volume 14 of Exhibit 42, which is - - -

THE COMMISSIONER: Exhibit 42, is it?

MR PETROULIAS: Yeah.

THE COMMISSIONER: All right. Well, let's have a look at it. That's the one, is it, 5 May, 2016?

MR PETROULIAS: Yes.

THE COMMISSIONER: Okay. And the clause?

10 MR PETROULIAS: The clause is - - -

THE COMMISSIONER: Page 154?

MR PETROULIAS: Yeah.

THE COMMISSIONER: Let's have a look at that. Okay. And there it is. So you're drawing the witness's attention to that clause 6.3(f). Is that right?

20 MR PETROULIAS: Now, can I try to explain, put, put this proposition to you, Mr Kavanagh. In a joint venture, say Awabakal contributes the land, you pay, you pay for the development costs, but for some reason or another you don't get title, so it stays with Awabakal, but your efforts in increasing, in the development costs have increased the value for them so you're saying, I've got to have some sort of compensation for my costs. Isn't that right?---Yes, that's right.

30 Yeah. I mean that's fair, isn't it, and in effect really what you're doing is giving them an interest-free loan because the most they can get, and this is why this is unsatisfactory to you, is the most that they can get, you can get, is your costs back. There's no profit margin in there and there's really no repayment date either, so in a sense you're just waiting around until, you know, you can enforce the caveat because they sell. I mean there's no, I mean there's not a lot of joy for you in this clause. Is that a correct assumption?---Not a lot of joy for us where?

40 There's not a lot of joy in security in this clause. You spend money on a development, you don't get, you don't get as much, you don't, you don't get the rezoning, you don't end up buying it, the rezoning has increased Awabakal's value and you, you've got nothing but maybe a caveat and maybe - - -?---Well, yeah, we (not transcribable)

I mean these are the kind of things we discussed in structuring security for you. Is that correct?---(No Audible Reply)

THE COMMISSIONER: Are you able to answer that?

MR PETROULIAS: This was inadequate for you. This was an inadequate security.

THE COMMISSIONER: Now, that's a long question. Are you able to answer it or not?---Can you, can you put it to me again?

MR PETROULIAS: Okay. This is an attempt to give you some security for costs that you've incurred.

THE COMMISSIONER: All right. Just pause there.

10 MR PETROULIAS: Yeah.

THE COMMISSIONER: What do you understand the security provided by a clause such as this 6.3(f)? Do you need to read it and - - -?---Not really. The overriding issue was we were not able to, the only, the only thing that was capable of giving us any form of security were the properties that we were purchasing, so there was a proposal and some discussion around caveats and, you know, 99-year leases and things like that, but once we had the hurdle of the New South Wales Land Council requiring their concurrence before anything could happen, none of these things had any
20 value. I mean it was just a waste of time.

MR PETROULIAS: Okay.---Apart from that, this document went through, you know, quite a, quite a number of I think amendments and I don't know what draft this one is.

Sure. That's correct. I think it's an early draft. I totally agree with you.

MR CHEN: It's not an early draft, it's 5 May, that's - - -

30 MR PETROULIAS: Yeah, that's right.---Well, that would have, no, well, 5 May would have been, there was nothing else done beyond the advice of Marcel Fernandes from my point of view, there was no correspondence - - -

Really?--- - - - as far as I'm aware from K&L or yourself - - -

Right.--- - - - after the advice. There was a, there was a desist and, cease and desist, that was the only thing that happened.

40 Yeah.---And apart from that there was just, we were met with, when we, when we received the advice from Marcel Fernandes, very quickly after that the deal was off again.

Right.---And it never went back on again and we didn't, there was no point in pursuing it, there was no ability to get a deal done without the New South Wales Council and we were never - - -

Can I suggest to you - - -?---We were never given any comfort that it could happen.

Could I suggest to you that you may be mistaken on that? Because if you look, for example, you continue to provide drafts after, after Ms Bakis, after, after Ms Bakis has drawn the line in the sand, if you like, you haven't had any communication from me, as you say, and yet when we look at page 62, this is a June version, we see that clause 6(f) now contains 100 per cent profit for you, profit margin built into it. So after you ceased communicating with myself and Ms Bakis, your version of the document seem to improve your position.

10

MR FERNANDES: I object to that.

THE WITNESS: I can't see the document.

MR FERNANDES: He should be taken to the page that he's - - -

MR PETROULIAS: Page 62.

MR FERNANDES: The precise part of the page.

20

THE COMMISSIONER: Sorry, Mr Fernandes, I can't hear you.

MR FERNANDES: I apologise, Chief Commissioner. The witness should be taken to the precise point of the page that he, the questions refer to.

MR PETROULIAS: Precisely. 6(f), and you see how now it introduces
- - -

THE COMMISSIONER: 6.3(f), is it?

30

MR PETROULIAS: 6.3(f) and it now introduces 100 per cent return or twice, the last few words on the bottom of the page, of the total money spent by the purchaser. So we went from recovering your costs to recovering your costs plus profit margin.

MR CHEN: Well, Commissioner, I object.

THE WITNESS: This document, this document - - -

40

MR CHEN: Commissioner, just before he answers.

THE COMMISSIONER: Yes.

MR CHEN: Commissioner, part of the reason why I have said the witness in fairness needs to be taken to these documents, and why my learned friend Mr Fernandes has risen, is this document appears to be one that pre-dates the one that Mr Petroulias is now asking the witness questions about, that is to say if one turns up volume 15, page 237, which appears to be where this

document has come from, you can see the coversheet says, two crosses, April 2016, whereas the version that Mr Petroulias took the witness to but a moment ago was dated 5 May. So rather than - - -

THE COMMISSIONER: It's the reverse.

MR CHEN: Pardon me? It's the reverse?

THE COMMISSIONER: The reverse.

10

MR CHEN: And - - -

MR PETROULIAS: (not transcribable) Okay.

20

THE COMMISSIONER: So, Mr Petroulias, the point that's been made just once again emphasises the absolute importance of accuracy. If we're relying upon some provision in an agreement, we must have the relevant version of the agreement before us. It's no good putting questions in generalities and here, from what I understand, there's been a very important mistake identified. That is you were working on the basis that one document succeeded the other, in fact it preceded I'm told.

MR PETROULIAS: There are multiple copies.

THE COMMISSIONER: Yes. Well, don't worry about other copies, I'm just dealing with these two.

MR PETROULIAS: And - - -

30

THE COMMISSIONER: No, no, no, you listen to what I say. You were putting a proposition to the witness which with respect, inadvertently no doubt, you thought it was right, but it was wrong. Now, that's why, you know, we've got to be careful here because otherwise you'll end up getting lots of answers to questions which may be on the wrong premise.

MR PETROULIAS: Okay.

40

THE COMMISSIONER: So really just try and concentrate on what version of the agreement you're dealing with.

MR PETROULIAS: Fine.

THE COMMISSIONER: Because you know, you've only got part of the agreement here and it's easy to make a mistake unless you've got the entire agreement. All right.

MR PETROULIAS: Okay. So all right. In all fairness, at page 58 and 59 there are subsequent versions done well over a month since you last spoke

to me. There are other versions that you guys have, have done. You've continued - - -?---I don't understand the, I don't understand that.

Okay. Put it this way. Who are you negotiating with?---Sorry?

In June you're continuing to make drafts of agreements.

MR CHEN: Well, I don't - - -

10 MR PETROULIAS: You're not dealing with Richard, you're not dealing with Mr Bakis and you're not dealing with me. Who are you dealing with?

MR CHEN: Commissioner, I think in fairness to Mr Petroulias, he needs to be accurate with his dates. The two documents we just looked at did not bear that date. If he proposes to put a date he should put it to the witness squarely and in any event, much of this examination, again this is for the benefit of Mr Petroulias, he's proceeding upon an assumption about Mr Kavanagh accepting an attendance at a particular meeting of which I may say, may or may not be the case.

20

MR PETROULIAS: All right. Page 59, at the top you say, "Could you please forward me the latest deal when you have a chance?"---Yes.

The only person you seem to be speaking to below is, "As below, has been accepted by Debbie today." So Andrew, and can you get the contracts and leases, whatever needs to go to Debbie for signing. So after your last meeting with me, your, the only negotiations you're doing are with Ms Dates?---What's, what date was the last meeting with you?

30 I say it as 5 May, whether you accept that, because that was, that was just after the, your counsel's opinion.---We had no meeting on 5 May, you and I.

Well, well you saw that Ms Bakis was saying there was a meeting coming, can I have, on 3 May, you're, you're trying to date it when?

THE COMMISSIONER: No, he's just simply saying it was not 5 May.

40 MR PETROULIAS: Okay. When do you say the meeting - I mean, I've tried to date it through various emails at that time. Are you, do you have another date?---Well, after receiving the advice of Marcel Fernandes.

Before that?---Before that. Because, after that, you guys ran away from the deal. You completely, you didn't answer any of that, you wouldn't answer the advice. You left it, you ran, you couldn't answer it.

I see. So let's be very precise. Who sold you what? At page 2, the only thing that Ms Bakis has told you is that she's forwarded you the Gows option and said, "Dear Dean, Gows' option has been rescinded, replaced

with one granted in favour of Solstice. The object was to meet the direct relationships which we understood was required.” So she understands that that’s what you wanted, a direct relationship. “If you, however, prefer an assignment, let us know and we’ll accommodate that.”---Where are we reading from?

Page 2 of the hard copy.---What’s the date?

10 It’s 24 November, 2015. And then the only thing you get from her is - - -?
---I had no involvement in this at that point.

Yeah, sure. So, and then the only thing we see from her, she has given no other inclination of any negotiations. Then I come in and I’ve done the, I’ve done three emails. I’ve done one at page 9 on 15 March and I’m talking to, talking about the Gows fee, costs of rezoning security caveats, that sort of thing. Do you see that? I’m talking to Sammy.---Yeah, there’s nothing, that’s not an email to or from me, is it? Nothing to do with me.

20 Well, Sammy’s forwarded it to somebody and then I’m sure we can accommodate - - -?---That might be, that’s, that’s probably before our initial meeting.

Pardon?---That’s, this probably pre-dates our initial meeting.

Yeah, no, no. I’m trying to find out what I’ve said and, and that’s one thing that I’ve said. At page 12 is another, pretty much on the same, pretty much on the same - - -

30 THE COMMISSIONER: Mr Petroulias, none of this corresponds – page 12 didn’t come from or go to this witness or he wasn’t copied in on it. It didn’t concern him.

MR PETROULIAS: Okay.

THE COMMISSIONER: 15 March. So why are we going to this page?

40 MR PETROULIAS: I’ll, okay, when you interviewed, sorry, when you examined this witness on this, on this point and you were asking where is he getting his instructions from, he, where, where’s my transcript. Oh, sorry. The witness said that, page 2934, and you said the way you’ve probably, or it is assumed, is there’s a chain where it’s Sammy to Ryan and assume Sammy must be getting it from me but you didn’t have the whole picture.

THE COMMISSIONER: This is meaning nothing to the witness. You haven’t got these documents before you, do you?---I haven’t got the transcript.

It didn’t concern him.

MR PETROULIAS: Okay. As the Commissioner asked you, who is introducing the ideas and who is doing, and you said it would have come from Ryan but then in turn from Sammy and then in turn probably from Nick. That's how you understood the instructions to flow.---In relation to what specific question?

The Warners Bay transaction and all the negotiations about the Warners Bay transaction. 2934.---So the, that doesn't make any sense.

10

MR CHEN: I think he's got to be more specific, Commissioner.

THE COMMISSIONER: It doesn't make any sense.

THE WITNESS: I can't answer that.

MR CHEN: Because the thrust of the evidence and the response given by the witness on page 2934 is responding to two different questions. So Mr Petroulias perhaps should be more specific as to in relation to what.

20

MR PETROULIAS: Well, that's actually, the point I'm trying to establish, Andrew, is, is exactly what representations I made to you and my involvement in these negotiations are because what I'm, what I'm putting to you is you make references to ongoing negotiations and they're certainly not with me and they're not with Ms Bakis, they're not with Mr Green and I'm trying to work out who you're having negotiations with.

THE COMMISSIONER: Well, Mr Petroulias, you might be trying to work it out but are you going to put a question?

30

MR PETROULIAS: Well, I'll show - - -

THE COMMISSIONER: No, just, the reason there are limits under the standard directions on cross-examination is that examination of a witness is not to be a fishing expedition where you're just trying to work out what you said, what representations you made. Well, if you don't know that's unfortunate, but he's not here to help you find out what you've said, but if there's something he said in evidence that you said that you disagree with then of course that's different, you can take him up on some piece of evidence and say I didn't say that at all or I said something different. That's different. But you can't put questions just wandering through these emails saying I want you to help me find out where I made representations.

40

MR PETROULIAS: Okay. Well, he's, he's identified that two emails that came from me he hasn't seen. The last email that I've ever written is on page 18. Have you seen that?---Dated 16 March. No, I haven't seen that.

No. Okay. Well, the only, so then the only thing I must have, is my meeting with you where I spoke about the Gows deal you say before your counsel's opinion. I tried to say it's 5 May, you say no it was earlier than that. Okay. And what, and what, and I'm now saying okay, if that's the case can we turn to that, can we turn to what you've said about that meeting. You've said that I've said that things have to be done a particular way. You agree, where is it now. The deal had to be, had to be a particular way and could not deviate to pass muster with the Council. That's at transcript 2949, line 30. And then at 2949 or 29. Then at 2929, line 20, you say
10 complications that needed some structure and you said things like pre-approved or pre-agreed parameters that had been agreed by Gows and Awabakal. Right?---Yes.

So what you get is whatever I was representing to you is that there's, it has to be done a particular way to pass muster with the Council and there are certain pre-approved parameters. Right?---So what's the question?

That's what your evidence is, is that is what I, I said to you at these meetings.
20

MR FERNANDES: I object, Commissioner. I think Mr Petroulias is seeking to paraphrase what Mr Kavanagh said on the last occasion.

MR PETROULIAS: I'm trying to trigger his memory.

MR FERNANDES: It's a bit hard for Mr Kavanagh to know what is being put to him.

THE COMMISSIONER: If you want to ask the witness about something he
30 said in evidence you should quote it back or take him to the transcript.

MR PETROULIAS: I, I thought I did. Now, the deal had to be done in a particular way and could not be deviated from to pass muster. Did I say something to that effect?---Yes.

Right. Did I say something to the effect that it had to be structured some way - - -

THE COMMISSIONER: No. Mr Petroulias, no, no, no, no, no. Don't say
40 did I say something to the effect. What you do is what I said you do when I addressed you this morning.

MR PETROULIAS: Please.

THE COMMISSIONER: If you're quoting from the transcript, is that what you're doing?

MR PETROULIAS: Yes.

THE COMMISSIONER: Right. You need to provide the witness with context. Firstly you need to put the question, and secondly you then need to put to him exactly what he said, not to the effect of what he said. Now, what do you want to put now?

MR PETROULIAS: Okay.

10 THE COMMISSIONER: Now, what's the question and then read the answer.

MR PETROULIAS: Okay. Counsel Assisting told him, "Now did Mr Petroulias tell you about his role at this meeting?" And he described - - -

THE COMMISSIONER: No, wait a minute, just calmly.

MR PETROULIAS: Right.

20 THE COMMISSIONER: Just read the question.

MR CHEN: We could bring it up - - -

MR PETROULIAS: Okay. The question was, "What did he have to say about the deal if, about what the deal was, if anything?" What did I have to say about the deal. And you've described, and you say, "We, the deal needed to stick within pre-approved pre-agreed parameters that had been agreed between Gows and Awabakal." Right?---Yes.

30 Now, and I'm making a, going to make a suggestion in a moment. "Gows was going to effectively step out of the deal and we were going to pay Gows some money to do this and then we would enter into the deal with Awabakal."

MR CHEN: That's the transcript, Mr Kavanagh should be told. It's on the screen.

THE COMMISSIONER: Yes.

40 MR PETROULIAS: Yeah.

THE COMMISSIONER: Just - - -

THE WITNESS: Which line?

MR PETROULIAS: Oh, okay. 20. "Stick within approved parameters." And then, you know, 28, for stepping out of the deal.

THE COMMISSIONER: Just take your time to read that.

THE WITNESS: Okay, I understand that.

MR PETROULIAS: Yeah, and you already agreed with the words, “had to be a particular way and could not be deviated to pass muster”. And this is what I’m going to suggest to you. I don’t care, I don’t care what way you structured the deal with Awabakal. The reason why it has to be a particular way to pass muster with the, with the council is that’s NSWALC.

10 MR FERNANDES: I object.

THE WITNESS: That’s what?

MR FERNANDES: I object, Commissioner.

MR PETROULIAS: New South Wales Land Council.

MR FERNANDES: Mr Petroulias keeps saying, “pass muster,” but I can’t see that on this.

20

MR PETROULIAS: Okay, well, actually that was his words.

THE COMMISSIONER: This is the problem, Mr - - -

MR PETROULIAS: 2949.

THE COMMISSIONER: Mr Petroulias, you’re paraphrasing - - -

MR PETROULIAS: No, no.

30

THE COMMISSIONER: - - - quite often and I’ve asked you I now think three times, if you’re going to put something that the witness said in evidence you should read the question and the answer, not paraphrase it.

MR PETROULIAS: Okay. 2949.

THE COMMISSIONER: What line?

40 MR PETROULIAS: Okay, 30, see 30, then it goes to the second-last sentence, “What,” Nick would say, “What would” - - -

THE COMMISSIONER: Just let him, just let him read it to himself at the moment.

MR PETROULIAS: Okay.

THE WITNESS: From line 30, so line 30?

THE COMMISSIONER: Well, it commences about four lines above that.
---Yeah. "Pass muster."

Okay. Now, what's the question?

MR PETROULIAS: Okay. Now that you've seen that, if we go back to
2929, "Gows is effectively stepping out of the deal and we are to pay Gows
some money and then we'd go and enter into a deal with Awabakal." Now,
if I'm stepping out of the deal, I have no interest in what you do with
10 Awabakal, do I?---You being Gows?

Me, Gows. I would have no interest in it. You can do whatever you want
with Awabakal. What's it got to do with me?---I don't know, I don't know
what interest you might have in it.

Pardon?---I don't know what interest you might have in it, but - - -

No, but I mean it would be your terms to negotiate. You don't have to listen
to me.---No, no, no, no. The way, the way it was presented at that first
20 meeting when you came in late, you know, and you did most of the talking,
was that there had been a, you know, effectively a pre-arranged framework
of a deal or a, you know, a deal on foot that Gows had with Awabakal, and
if we wanted to come and do a deal with someone, we had to deal with
Gows Heat. We weren't so much dealing with the Awabakal. It was, were
effectively purchasing the right to go and stand in Gows Heat's shoes and so
we had to meet with him that, that day with the parameters we had to be
satisfied with, the Gows Heat parameters as to their deal between
themselves and Awabakal.

30 But you understand, though, that if, that, that if you pay me out and I'm
gone, I don't really care what you do with Awabakal.---Well, I didn't know
who Gows Heat was at the time. I didn't know - - -

But if, but, but as a matter of logic, if Gows is out of the deal and you are
dealing direct with Awabakal, why would I care what terms you're doing?
Awabakal can look after themselves. They've got Ms Bakis, they can, they
can sorry it out.---Can you make that question a bit clearer?

40 If Gows is out of the deal, right - - -?---So if we pay the 1.2 million to Gows
- - -

Whatever. Whatever, 50 cents, 10 million, it doesn't matter, if Gows is
gone, it's surrendered, and you say that you, we then, separate transaction,
go and enter into a deal with Awabakal, I have no interest in what deal you
do with Awabakal. Why would I be telling you what to do with Awabakal?
---My understanding of the structure was that we would take over Gows'
position in Awabakal and we required Awabakal in those early, in those
early meetings, the deal, the theme of it would be that we would purchase

the rights of Gows but we also required Awabakal to, to acknowledge that that's what we were doing so that we didn't have an issue with, you know, and we, we wanted to make sure, we were very particular in wanting to make sure that Awabakal were all in this tent, we were all in this tent together and we weren't just doing some deal with Gows that - - -

It doesn't, it doesn't follow- - -?---Can I, can I just finish?

10 Yeah.---That, that, that Awabakal was not prepared to, you know, then stand by. That was prior to us discovering the, the problems on the title.

THE COMMISSIONER: Could I ask you this, did at any point, Mr Petroulias advise you that he had, if not an interest in Gows, that he was controlling Gows?---No, he never did advise us about that.

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

Thank you.

20 MR PETROULIAS: Can I suggest to you that that doesn't follow. Now, you say the meeting was, just so we, and I'll put it to you in this way, you say the meeting was before your advice with Mr Fernandes and that before you, as you said, appreciated the significance of the qualifications of title, the gravity of them, right? And therefore, you may not fully have appreciated what I'm telling you either, which was the reason why you had to do pre-approved parameters between, and, and all the set ways, is because there were New South Wales Aboriginal Land Council guidelines as to how to do it to make sure you get approval. Now, you may not have appreciated that but that's the only thing that makes sense to me, and I, which I put to
30 you.---But by that stage we had been given draft, we had, you know, a whole lot of documentation and we had a lot of documents. You know, the, the deal was reduced down to, you know, probably five or so different documents, and nowhere in those documents did it take us to, did it, did it raise our awareness around the issue of requiring state Aboriginal concurrence for the deal. We had to just happen upon that ourselves. You never said anything about it and once I, once it was raised, I never heard another word back from you.

40 Now, Mr Kavanagh, what I'm putting to you is that that is what I said, that I said that there was an approval process and if you wanted it approved, this is what you must do under the guidelines. You must, you did not appreciate the import of that at the time, is all I'm saying.---No, that's completely wrong.

Well, you see, the problem is, you said- - -?---You, you, there was never, there was never any - - -

THE COMMISSIONER: No, please, Mr Petroulias.

THE WITNESS: - - - mention of the New South Wales Land Council. It was purely, you were there purely talking about the, the LALC. The New South Wales Land Council completely bowled us over. We had no idea up until receiving Marcel Fernandes' advice.

MR PETROULIAS: A moment ago the Commissioner asked you did you know who Nick was at this meeting and you said you didn't know that I was Gows, right?---That's right.

10

That's what the Commissioner just asked you now. That's not what you said in your transcript at 2949, line 15. "The main realisation we had was that Nick was Gows."---Yeah but that came later.

This is the same meeting.

THE COMMISSIONER: Well, which meeting.

MR PETROULIAS: This meeting that you - - -

20

THE COMMISSIONER: Bring up the transcript, please, on the screen, 2949.

MR PETROULIAS: 2949.

MR CHEN: I think as well, Commissioner, your question was directed to a different issue but anyway. It was about whether he did know that fact.

THE COMMISSIONER: Now, what part of 2949?

30

MR PETROULIAS: Okay. The question was, "When did you first become aware of the agreement or supposed agreement between Awabakal and Gows Heat?"

THE COMMISSIONER: What line is it?

MR PETROULIAS: Line 12.

THE COMMISSIONER: 12, okay. Just let the witness read it.

40

MR PETROULIAS: Yeah.

THE WITNESS: Is that from line 10?

MR PETROULIAS: Yeah. Follow through to the end of it.

THE COMMISSIONER: Can we scroll down, please. Thank you. Mr Petroulias, that's got nothing to do with the point I raised with the witness, which was whether he knew you were the person who controlled Gows.

MR PETROULIAS: Well, here he says - - -

THE COMMISSIONER: No, no. This is a different subject matter on the page 2949.

10 MR PETROULIAS: So are you saying that you didn't realise that I was Gows Heat?---Of course not. You know that.

Okay. How could I know that? Your communication, you say, comes from Sam. I never, you have no direct communication with me, we have no phone calls, no emails, we have one meeting.---We had one meeting and at that meeting, agreements between Awabakal and Gows Heat was discussed, right, and that would have been a good time for you to say, "Hey, I'm Gows Heat."

20 Okay. I made my notes of that meeting, have you got your notes of that meeting?---I've got pretty clear recollections of that meeting.

Well, see, about that recollections, you actually said the opposite. You said - - -

THE COMMISSIONER: Sorry, where are you reading from now?

MR PETROULIAS: Now, I'm taking you to 2935, line 1.

30 THE COMMISSIONER: Just a moment. 2935, line what, 21, is it?

MR PETROULIAS: Line 1.

THE COMMISSIONER: Line 1.

MR PETROULIAS: "You did not have the whole picture."

THE COMMISSIONER: Just a moment, just a moment. It'll come up on the screen in a moment if you give it a chance.

40 MR PETROULIAS: You were somehow - - -

THE COMMISSIONER: Just a minute, let him read it.

THE WITNESS: Whereabouts?

THE COMMISSIONER: Yes, okay. Now, what do you want to put to the witness?

MR PETROULIAS: That, so, that your, of your evidence, you noted that you didn't have the whole picture of everything that was going on. ---Whereabouts?

Oh, is it, the top line, second line. I, I, "It seems I didn't have the whole picture."---Ah hmm.

10 Right. And then at 2942 - - -?---But what precedes that? That's just - - -

THE COMMISSIONER: Yes, go back. Thank you. Scroll up, thank you.

MR PETROULIAS: Then at 2942, line 45, you made the general reference to the idea that the evidence you were giving, you were doing your best reconstruction of events - - -?---Whereabouts?

- - - from reviewing the material.

20 THE COMMISSIONER: Line 45, is it?

MR PETROULIAS: 45, 2942.

MR FERNANDES: I object, Commissioner. It's about a completely different topic.

MR PETROULIAS: No, the topic, the topic is that in giving your evidence - - -

30 THE COMMISSIONER: Just a minute. Wait a minute. Let's just read it firstly. Onto the next page. Yes, now what's the question?

40 MR PETROULIAS: The question is this. You were trying to be as frank as you could with this Commission and you did some preparation in, in, obviously in trying to assist, and read through some of the material and tried to piece together – helpfully, by the way – trying to piece together to get yourself as informed as possible. So it's, it's, it's your best reconstruction of events. It's not a precise recollection of what happened, what was actually said in a meeting. You have - - -?---Specifically what, though, is my best recollection of events?

Well, your evidence was effectively one, one meeting where I've said the, the, these things to you, and then how you came, the subsequent dealings with Debbie Dates.

MR CHEN: I'm not sure that's a fair summation of the witness's evidence. It went a little bit beyond that, but - - -

MR PETROULIAS: It's not enormous amount of evidence.---So what's the, what's that question, just so I can give a clear answer.

Okay. I've put it to you that I, that the whole point of this approval process was so that you, so talking about the approval in pre-determined ways, and there's a reference in one of the email, at page 29, from Sam, where "Nick is having a (not transcribable) again".---Seen that, yes.

A very strict - - -?---Seen that.

10

- - - way of doing things. And I'm saying, yeah, because I have told you guys that that's how you get the approval through the NSWALC guidelines and that the significance of that would have meant nothing to you at the time, especially if it's before Mr Fernandes's opinion.---Well, significant to us, but I mean, at the time I thought, are you saying you're wearing the KNL hat at that point or are you back with, with Gows hat on?

20

Well, at this point in time - - -?---I always assumed, I, I was always working on the assumption that you were a lawyer operating, you know, on behalf of Awabakal. That's how you carried yourself in that, in that first meeting and from then, and that, that's, that's certainly how I recall you behaving. You know, you were talking about deal structures and you had - - -

Sure.--- - - - a lot of paperwork there in front of you. You did most of the talking. There was never any suggestion you were there as a representative of Gows. So in my mind you were there as a lawyer.

30

Okay, that's, that's your interpretation. That's fair enough. But did it, what, did I, gave you a business card. It would have been a ULC business card. I don't have any other business card.---I don't recall.

You don't, United Land Councils? You recall that at all?---Mmm?

United Land Councils?---I don't remember whether you provided a business card.

But you do know United Land Councils?---I do know them?

40

You do know of it at the time?---Well - - -

Didn't - - -?---I assumed Richard was part of that. That was, that was part of why he was there or, you know, he was there on behalf of the United Land Council or Awabakal or both.

And - - -?---I've heard, I've heard of United Land Council.

And Sam had United Land Council business card.---I have no idea.

You don't?---I don't recall.

So you weren't aware, for example, that Sam and Ryan were down at the Cobowra Land Council in Narooma and they had received certain complaints about whatever they were doing down there?

MR CHEN: I object, Commissioner.

10 THE WITNESS: Who? Who, Ryan?

MR PETROULIAS: Yeah.

MR CHEN: I object, Commissioner. He shouldn't be required to answer that in that form in my submission.

MR PETROULIAS: Sure. Were you aware of Sam and Ryan trying to deal with another Land Council in Narooma?---And, and being down there?

20 MR WHITE: I object (not transcribable)

MR PETROULIAS: South Coast.---No knowledge at all of that.

Okay, if he's got no knowledge, you have no knowledge. So here's the odd thing, then. When you look at page 42 and Sam's trying to convince you that you should be, you should go ahead - - -

THE COMMISSIONER: It's 2942, is it?

30 MR PETROULIAS: No, no, sorry, 42 of the material.

THE COMMISSIONER: I see. Of the bundle, yes.

MR PETROULIAS: And he's doing his, doing his best here. He says, second line down, "You're not looking at the bigger picture. Down the track I will ensure you purchase, you purchase properties without paying these fees."---What was the date?

4 May.

40 THE COMMISSIONER: Yes, 4 May, '16.

THE WITNESS: So he was missing the point. He just didn't understand the advice that we'd obtained.

MR PETROULIAS: Oh, no, no. Quite agree. But he, what he's trying to sell you is that he, I've made the connections in the Aboriginal community and, and we, you can deal direct, you and I as a team, and I'm putting you ahead of any other developer. Now - - -?---The tap was off by now.

That was not, that was - - -?---The tap was off, Nick. At that point, by the 4th, having got the advice on the 3rd, there was a whole lot of desperate emails from Sammy to try and cobble this back together again, but it was never going to work. You've missed the point. The point was that we needed, we'd been deceived around, that we required New South Wales Land Council concurrence. You hadn't mentioned it. No one had.

10 Yeah.---ANL, KNL, sorry, hadn't mentioned it. We had to discover it ourself, and this was just, you know, some way to try and keep the thing, you know, on the, put it back on the rails again, but it was, it was hopeless. It had to happen prior to any deal we did.

And - - -?---Going ahead talking to you guys at the local level was a waste of time.

20 But, but what we see here is you have one meeting with me. You have a few emails with Ms Bakis telling you to go away. Where do you get, there's really not much room here for, I mean, other than a, a misunderstanding of you, of pretty complex stuff from one meeting.---So what's the question?

The question is, all we have is, we don't have any representations anywhere. There's very little communication between you, me, or you, me and Ms Bakis. So whatever, whatever's, whatever negotiations or communications you're having, it's internal and with Sam. So the best what we've got here is that you may have misunderstood me and I may have misunderstood you. Isn't that right?

30 MR FERNANDES: I object, Commissioner. Mr Petroulias seems to be trying to make submissions by putting words in Mr Kavanagh's mouth. I also note, Commissioner - - -

THE COMMISSIONER: I appreciate it's not a proper form, but I'll allow the question.

MR FERNANDES: May it please.

40 THE COMMISSIONER: And your response to that?

THE WITNESS: What did you say it could be again?

MR PETROULIAS: In the absence of any direct communication between either KNL or me, you've got one meeting where there's a lot of room for misunderstanding and misinterpretation of pretty complex stuff.---Rightly or wrongly I saw you as the, as the driving mind behind the deal, and the emails that we got, I thought they were coming from you as well in the main. Whether, whether crafted by you or prepared by you or directed by

you, they all sounded very much like you, and what more can I say about it, Nick? Talking about you as, I, I viewed you as the lawyer, you know, and Despina, I, I had it around the wrong way, I think. I, I was viewing you as the, the principal of the firm, Despina working there. I had no idea that you were somehow Gows as well.

Right. And because I walked in late and it, no proper introductions, and a whole series of assumptions.---Are you saying you made that very clear to me - - -

10

No.--- - - - that you were part of Gows?

No, I - - -

THE COMMISSIONER: Mr Petroulias - - -

MR PETROULIAS: I know where I, I know what I, as, as it appears I'm obsessed with something, with some sort of pre-approved process. I'm saying to you the pre-approved process that I seem to be obsessed with is what's going to get you over the line with NSWALC, because it's not a generic discretion - - -?---Over the line with who?

20

NSWALC, the approval process. And what - - -

MR FERNANDES: I'm not sure that he, the witness understands what the acronym that Mr Petroulias is - - -

30

MR PETROULIAS: Sorry, yeah, NSWALC, New South Wales Aboriginal Land Council, right. What I'm obsessed with is what's going to, it's not totally discretionary, there are guidelines, if you satisfy the guidelines and NSWALC rejects you, you can, you can review, you can have their decision reviewed. So it's not some wild discretion and I'm just trying to make sure that the deal satisfies the guidelines.

THE COMMISSIONER: Mr Petroulias, this has degenerated into a conversation that you're now having with the witness.

MR PETROULIAS: Sorry.

40

THE COMMISSIONER: And he, from time to time, keeps saying, so what's the question?

MR PETROULIAS: Okay. Yeah, no, no, we - - -

THE COMMISSIONER: Now, I see it's a tick after 3 o'clock. You've been going almost an hour.

MR PETROULIAS: That's it.

THE COMMISSIONER: I've given you extra leniency. I said I'd tie you down to 30 minutes.

MR PETROULIAS: Yes.

THE COMMISSIONER: Well, you've had almost double that.

MR PETROULIAS: Yes.

10

THE COMMISSIONER: Have you got any other questions for this witness?

MR PETROULIAS: No, that, that's it. Thank you.

THE COMMISSIONER: All right. Now, is there any other questions for Mr Kavanagh? Yes.

20

MR LONERGAN: Commissioner, I did speak to Counsel Assisting and I have two small areas of inquiry.

THE COMMISSIONER: All right. You go ahead, Mr Lonergan.

MR LONERGAN: If I take you to MFI 53, page 50 please, Mr Kavanagh. It'll come up on the screen as well.

THE COMMISSIONER: Can we get that up?

30

MR LONERGAN: Now, you were shown this note by Mr Petroulias earlier today, and it's not your note, however I just want to ask a couple of questions with that context. So just so I'm clear on your evidence, you're saying that there were two meetings that you had in relation to the purchase of the Awabakal land. Is that right?---As far as involving Nick.

Yes.---Yes.

And there was, to your evidence, one meeting involving Mr Green. Is that right?---He was part of the first meeting, I'm not sure whether he was part of the second. I don't think he was though.

40

And the second meeting that you say occurred, occurred before counsel gave you advice in relation to the requirement for New South Wales Land Council approval. Is that correct?---Sorry?

The second meeting that you had occurred before you received your barrister counsel's advice in relation to the New South Wales Land Council? ---Correct.

Right. And the advice that you were given was dated 3 May, 2016. Is that right?---That's correct.

So if I follow your evidence, then it was late April, potentially 1 or 2 May that the second meeting occurred?---Yes.

And how long before the second meeting do you say the first meeting occurred?---Don't recall.

10

All right. You recall your evidence previously was that there was no meeting until April 2016?---Yes.

So sometime in April 2016 is the first time that you met with Nick, and on your evidence, Mr Green?---Yes.

Right. I'll come back to the first meeting but I just want to deal with the second meeting. So do you see there that that file note says 5 May, 2016. Do you see that?---Yes.

20

So on your evidence there was no meeting that occurred on 5 May, 2016. Is that correct?---That's correct.

It's not possible that - - -?---Not involving Nick.

Not involving Nick. Yes, sorry, I should be - - -?---Sorry, there was no meeting involving Nick on the 5th.

So any meeting involving Nick occurred before the 3rd?---Prior, yes.

30

Right. And if you just have a look, I don't want to repeat the bullet points there, but take your time and look at each of those bullet points. Just let me know when you've finished looking at them.---Yes.

Are any of those to your understanding correct?---Well, maybe go through, maybe run through them.

MR WHITE: I object, I object to this, Commissioner, to the extent that some of the bullet points in my submission don't touch on this inquiry and for him to answer that deals with those points.

40

THE COMMISSIONER: I think, yes, I think there's a problem with the form of the question. I mean, Mr Lonergan, it may or may not be within the ability of this witness to say whether de facto these points are correct, to use your word. If you're seeking to ascertain whether any of these points are something about which he had knowledge of prior to, that may overcome the problem, but you're asking him to say, based on somebody else's memo, whether these matters are correct.

MR LONERGAN: Yes, it's a badly worded question.

THE COMMISSIONER: Well, many of them probably he has no knowledge about, or it's possible anyway.

MR LONERGAN: Yes. I'll withdraw that question and rephrase it. Mr Kavanagh, do you have any knowledge of any of the points that were identified in that note?---In what way?

10

THE COMMISSIONER: Well, I think what's in effect being put to you is, this is Mr Petroulias's note, it's headed up he reports on the meeting et cetera between, and your name there, underneath it, it says, "NP says," and then there's dot points. The inference may be taken from the document that he's talking about things that arose from the meeting he refers to on the first line at which - - -?---I can't, I - - -

20

- - - he says you were present and I think the point of the question, as I understand it, but Mr Lonergan will make it clear if it's not right, is whether you have any familiarity with the fact that some of these matters were discussed at the meeting in your presence and that's how you became aware of some or all of them or none of them.---I can't say anything in response to item 1, I just don't know what he's even talking about there other than what it says, that Sam and Ryan might have had some private deal between them, but I'm not aware of what that, that might have been, except to say that - - -

30

Just to interrupt to – yes, go on.--- - - - they, Sam and Ryan knew each other prior to me knowing Sam, I've known Ryan for many years, but I hadn't met Sam until this deal, but I think Sam and Ryan were known to each other for a while prior to that, I'm not sure for how long through.

40

I suppose what we're looking to is whether these dot points accord with your recollection of them being discussed or raised at the meeting. ---Nothing resonates. There's nothing here that resonates. Zong, there was no mention of Zong, I only got wind that Zong was the, yeah, like, effectively in our position prior to us coming along, he was the deal before, but there was certainly no mention of any, any, or any inference of money coming, flowing from us out of this deal and going back to Zong, never got, never got talked about. Learnt of the name Zong as part of this inquiry later through the media I think in late 2016 or 17, I forget the year now, but it was just prior to this, this Commission starting.

MR LONERGAN: Now, just taking you to the first meeting, are you absolutely sure that the first meeting occurred no earlier than April 2016? ---Yes, absolutely sure, in terms of my, in terms of a meeting where Nick was present.

And the first meeting being the one in April 2016 was the first time that you met Mr Green?---Yes, that's correct.

So you had not met him before that time?---That's correct.

Never had a telephone call with him before that time?---Never.

No email correspondence?---Nothing at all.

10 Were you aware of the existence of Mr Green prior to him attending?
---Never met him, never met him prior.

I beg your pardon?---I'd never met him prior.

No, my question was - - -?---Never heard of him, never met him. Didn't know him. Never heard, nothing at all.

20 So the name Mr Green prior to April 2016 would have meant nothing to you?---Yeah, absolutely meaningless.

Now, your evidence earlier was that the first meeting was introductory in nature. Is that the correct - - -?---The first meeting?

Yes.---It was, yes, it was introductory in nature, it's where we, we met Nick and he ran through the, you know, what was on offer, the deal, at a high, high sort of level and I think the meeting went for about an hour to an hour and a half or so.

30 So prior to that meeting, were you aware of the nature of the deal that was being sought?---Prior to the meeting, Ryan had mentioned to me that there was an Aboriginal council wanting to talk about a deal and we needed to meet at their lawyers office in the CBD.

Can I just take you to MFI 33, page 13 through to 15. It's an email chain, so you'll need to - I believe you were provided a hard copy of the document by Mr Petroulias. That might be easier for you to look at.---Yep. Which, which - - -

40 If you start, it starts at 13 and goes through to 15.

THE COMMISSIONER: Sorry, did you say MFI 53, are you talking about the bundle of documents?

MR LONERGAN: Yeah, MFI 33.

THE COMMISSIONER: 33.

MR LONERGAN: Sorry, did I say MFI 53?

THE COMMISSIONER: You said 33 but you may have meant 53, did you?

MR LONERGAN: Yes, my apologies, Commissioner, it's 53.

THE COMMISSIONER: 53.

10 MR LONERGAN: MFI 53, page 13 through to 15. Just let me know when you've had an opportunity to look at that document.---Page 13?

THE COMMISSIONER: 13.

MR LONERGAN: Yes, 13, 14 and there's a little bit over 15.---Yep. I've got that.

20 Now, you'll see on page 13, following – sorry, the bottom of 13 there's an email from Ryan Strauss to yourself where he then attaches details of, or some details of a proposal in relation to a deal with Gows.---Yeah, yes.

And then there's a reference to WB land further down on page 14. So there are details there and I'll let the document speak for itself, but I just want to take you to page 13 about halfway down where Mr Strauss says, "This is approved by Kav. See below." Now, Kav, I presume is you?---That's me, yes.

30 Is this a document that you had seen, being the email below, dated 15 March, 2016 at 8.17pm, and sorry, the following earlier being an email from Mr Strauss to yourself on 14 March, 2016?---You mean the, you mean the email from Ryan to myself on 14 March?

Yes. And then he's then re-sent it and changed the highlighted stuff below, which - - -?---The, was it already highlighted?

Well, I mean, the document as it's in front of you doesn't show any highlighting, but it might be that the lighter colour is the highlighted part, but that's not obviously from the document.---Yep, yes, I think I remember this one.

40 Right. And when you say you remember it, do you remember it being a deal in relation to the Awabakal land?---Yeah, yes. I remember that this was along the lines we talked about.

And so at this point in time you had no knowledge of any involvement by Mr Green?---Certainly my recall with Mr Green is that I was introduced to him at that first meeting, the first physical meeting at K&L in, I think, I'm pretty sure it was in my earlier evidence, but I think it's in April, early April.

But this document is before you met Mr Green, is that correct?---Well, yeah, it's, it's, an outline of an offer that Ryan, I think, had prepared and he, he sent it to me and, and then given it to them but then we've gone and then had a, a meeting, I presume, presume that he, he structured a, an indicative term sheet here and then, and then it's been followed up with a meeting in early April.

10 But an indicative term sheet that's setting out a significant amount of money to be paid to Gows and it has been approved by you.---I wouldn't call it, I wouldn't say it's approval but it's an indicative, it's, it still required, it still would require a lot of work and due diligence but it's a, it's a term sheet.

Right, so I mean, you wouldn't approve a deal that you didn't have details on prior to the approval?---When you're saying approval, it's not approval to buy it, it's not an approval to proceed. It's not an approval in any way other than that this is a term sheet. You know, that's, it's a, it's a fairly low level of approval.

20 Right, but, so are you saying that you approved this proposal or term sheet based on no knowledge of the land that you were dealing with?---Well, I hadn't been to see the land but Ryan had, I, I understood later, had, had been to see it - - -

Sorry, just stopping you here, you said later, so you weren't aware that he he'd been to see the land at that point in time?---No, that's correct.

30 So, Mr Kavanagh, you have approved a deal that you don't know that you're colleague has been to see, that you have no knowledge of, to your evidence, that is looking to pay \$2 million consulting fee and another 1.2 million dollars on exchange and another \$800,000 on rezoning. So, I mean, my maths is it's \$4 million.---Yeah, it's not uncommon that that happens. You know, and I mean the reason for that is that this, the deal would always still require due diligence but it was a sizeable deal and there was a lot of language involved in it, you know, it was - - -

40 Well, I mean, if you go further down it says the total sale - - -?---No, it was a five-year option period. I mean, you don't have to do anything other than pay, that to be certain that there's a, there's some safety in terms of the, the fees that you're paying and, and making sure that the, the transaction is, you know, legally binding and that the lawyers check it out.

Right, so - - -?---But, but apart from that, it's really an option.

Right. So, a consultant fee of \$2 million to Gows would be paid and follows 1.2 million on exchange. Exchange meaning that once you've exchanged on the contract to which the option is over – sorry, once you

have exchanged on the option contract, you're paying \$1.2 million as a fee?
---Well, you're paying, I understood, you'd be paying 1.2 to Gows to step
out of the deal so we could step into the deal.

Right. So that's not significant, \$1.2 million is not significant?---Providing
the 1.2 is safe and it's not, you know, it's not a scam and it's, it's buying us
something and the parties to it – because this, normally what happens is we,
we, if we enter into an option, we enter into the option with a party who,
who owns the property, in this case it was Gows who entered into the, the
10 option with Awabakal, and providing we could get agreement between
ourselves and Gows and Awabakal, I wouldn't see any, any problem with
that. That's, that's, that's okay. \$1.2 million is a sizeable amount of money
but for a, for a lengthy option on a significant amount of land, it's, it's not,
it's not, it's not for and away, it's, it's not exorbitant by any stretch.

All right. And the \$2 million consulting fee was payable before the \$1.2
million option, wasn't it?---Sorry?

The \$2 million consulting fee - - -
20

MR CHEN: It's all the same. I think my friend's made the error - - -

MR LONERGAN: My apologies, yes. You're - - -?---Yeah, I understood
the \$2 million was 1.2 was effectively to, to buy out Gows and then there
was an \$800,000 consulting, which I think was, was where April came into
it.

THE COMMISSIONER: Just on page 14, it's entitled Offer Outline as
follows, then it says, "Sammy, I thought we had agreed," and then you put,
30 "We'll pay for all consultants and applications in relation to any rezoning
submissions and rezoning costs," referred to in a couple of paragraphs
down. So what was envisaged at this point in time, that a rezoning would be
necessary, is that right?---Well, there, there was a, there was an offering of
land, property parcels, including the post office, so that didn't require any
rezoning. It just was rundown. The WB property was the one that, the large
one in Warners Bay that had the 1,500 proposed lots that would need a
rezone, and there was some, there was a grab bag of other things up in the
Hunter Valley area that were, were effectively freehold, houses on small
freehold plots of land.

40 So in terms of a commitment, I'm talking a legal commitment here,
knowing that you'd have to get a rezoning for a number of the lots, the
individual lots that were part of this deal, whether you'd get a rezoning as
sought, of course, would depend upon various variables.---Yes.

How is one to read this offer outline in terms of going ahead with a
commitment which would involve financial commitment, having regard to

the need, firstly, for a rezoning, et cetera?---Well, we, we were, we understood we'd be paying the costs of consultants and, and other expenses.

How does it bear upon what you described as taking an option from Gows?
---Well, because Gows had an option on, on these properties, the post office, the Warners Bay land and the other grab bag of things up in the Hunter Valley area, but there was still a need to go and get a rezone on the Warners Bay property, and we, we were the ones that had to be in charge, had to agree to be the ones in charge of getting the rezone.

10

The price of an option is something, in property transactions, a developer might be quite happy to pay because it's, well, a limited amount and you're not - - -?---Well, it was 1.2 million - - -

Until you exercise the option, you're normally not facing a huge liability other than forfeiting the option fee, perhaps, if you don't exercise the option.---Well, it's looked like it had, you know, looking at it here again, it was a five year plus a further three, so it was eight years in return for a payment of 1.2 on, on about 16.2 of headline purchase price. So it was an option fee that amounted to about 7 per cent for, for an eight-year option.

20

MR LONERGAN: Sorry, Mr Kavanagh. I'll just take you down the page a little bit, where it says the option fee will be \$50,000, or 50K, for the purchase of the 16.2 million.

THE COMMISSIONER: Yes, that's right.

THE WITNESS: Yeah, that's right.

30 MR LONERGAN: So what's, what's the option fee? Is it the 50K, \$50,000, or the 1.2 million?---Well, the document, the way it would be documented would be the option fee would be 50,000. But to me, as far as when I'm looking at the risk associated with what is an option, my risk money is what I call the option fee. That's the sum of the 50 and the 1.2.

All right. And you understood what the 50K would be – paid to whom?
---Well, the, the guarantor. So that would be - - -

40

Well, being who?---That would be, well, that would be Gows.

Then what's the 1.2 million?---That, well, that's covered in the third paragraph, so that would be Gows as well.

Well, it's not covered in the third paragraph, with all respect. What is the \$1.2 million for?---Well, it's (not transcribable) - - -

Are you saying it's a consultant fee?---It's documented as a consultancy fee, but - - -

THE COMMISSIONER: I see.

THE WITNESS: It's documented as a consultancy fee, so it would be, it would be documented that way. But to, to, to somebody who's effectively purchasing an option, that's your risk money.

MR LONERGAN: Right. But what is a consultant fee in this context?

10 ---Well, Gows had, you know, we hadn't met, we hadn't met anyone at this point. I hadn't met Nick at this point, so, you know, there hadn't been any ability to really ground truth, ground truth who were we dealing with, and we hadn't, hadn't had any documentation, any purchase documentation that we could then go and get legal advice upon. But at the time I, I felt the deal was a legitimate deal. Didn't realise later that it was really just an attempt to, the deceit was - - -

Yes, okay, I - Mr Kavanagh, you've - - -?--- - - - the, the, the attempt to get, the attempt to get the 1.2 million and deliver nothing because they could never get state concurrence.

20

So let me just understand this. You didn't know who Gows was at this point in time?---Well, they were, they were a party to the, to what we were told was an option.

Who told you it was an option?---Well, my, my point of contact here at this point was Ryan, so it would have been Ryan.

30 So you don't know who Gows are, I'm talking about you, and you're going to pay them a consultant fee of \$1.2 million for this deal.---We're not going to pay them anything until we've done enough due diligence to be satisfied that we're getting value for our money. So, but, but in principle I was happy to, to, with the outline here, subject them to, to receiving, you know, a full suite of documents and obtaining any advices that we might have then needed. But for the sake of, you know, what is just, you know, an in-principle offer outline, I was happy with that, yeah.

Just point me to where in the document these caveats were in there.---Sorry?

40 You just said subject to a bunch of, well, a number of caveats.

MR O'BRIEN: (not transcribable) it's the last paragraph.

MR LONERGAN: No, not a caveat as in a caveat over property.

---Parameters and - - -

Parameters, yes. Preconditions.---Yeah. Well, it's implied. I mean, you know, we've run, we offer a term sheet to, to a seller and then the ball's in their court. They then issue, you know, contracts and documentation, which

they did, and then it's, it's up to, then it would be up to us to, to vet that documentation and, you know, obtain legal advice if we were unsure of something.

So is it your position - - -?---Before we, before we then hand over any money.

10 So it's your position that you would not hand over a cent until you've got legal advice, is that correct?---For a deal of this size, yes. I think that's, I think that's the truth of it, yes.

I have no further questions, Commissioner.

THE COMMISSIONER: Is there anything particularly unusual about this transaction?---Oh, it was, it was, it was unusual. It was an unusual transaction.

20 In what sense? What made it unusual?---Where, where would I start? I mean, the documentation. The documentation didn't look, you know, wasn't – it all had a slightly different look about it, you know, the, the different people. Normally when you deal with things, you deal with a vendor and their lawyer. You know, we had a cast of a fair number of people, which sometimes you can have, but it was just, it was, it was a little bit unusual. It struck me as unusual. It's more unusual after the event, but it was still a little bit unusual at the time.

All right. Thank you.

30 MR CHEN: Commissioner, I just had some questions, if I can, to re-examine the witness on. Mr Kavanagh, at any of the meetings that you attended, whether they be in April or May of 2016, was there any discussion by anybody about the need for an approval by the New South Wales Aboriginal Land Council?---No.

At any of the meetings you attended, whether they be in April or May 2016, was there any discussion or was it ever raised by anybody that there needed to be a deal in conformity with guidelines published by the New South Wales Aboriginal Land Councils?---Never.

40 Was there any discussion by anybody that there needed to be some approval by the New South Wales Aboriginal Land Council for your deal to proceed?---Never.

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

THE COMMISSIONER: All right. No other questions? Then, thank you, Mr Kavanagh for your further attendance here.---Thank you.

You're excused.

THE WITNESS EXCUSED

[3.29pm]

MR FERNANDES: May I be excused, Commissioner?

10 THE COMMISSIONER: Yes, certainly, Mr Fernandes. All right. Now, Dr Chen, what's - - -

MR CHEN: Commissioner, in light of the fact that there is the application to be dealt with in the morning involving the use of the transcript and audio recordings, it would be my submission, Commissioner, that it's probably more appropriate for the commencement of Ms Dates's evidence be deferred, particularly as my learned friend Mr O'Brien may need to take instructions not only on some matters that arise therefrom but some of the documents that were made available to him as well. So it'd be my application, Commissioner, for the hearing today to be adjourned until the morning.

20

THE COMMISSIONER: Mr O'Brien, does that occasion any inconvenience to Ms Dates or yourself?

MR O'BRIEN: No. Ms Dates had made arrangements to stay in the city tonight, so I don't expect it will make any difficult, that will make it difficult for her. I have received a hard copy of the transcript this afternoon, for which I'm grateful, and I've made my way through it, but I haven't yet received the documents that have been referred to it but I understand they're on the restricted website, so I'll endeavour to look at those later this evening.

30

THE COMMISSIONER: Very good. Thank you. All right. Nothing further. All right. Then we'll adjourn till 10.00am tomorrow. I'll adjourn.

AT 3.31PM THE MATTER WAS ADJOURNED ACCORDINGLY

[3.31pm]