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INDEPENDENT COMMISSION AGAINST CORRUPTION

THE HONOURABLE PETER HALL QC  
CHIEF COMMISSIONER

PUBLIC HEARING

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TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON MONDAY 13 AUGUST, 2018

AT 10.00AM

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

THE COMMISSIONER: Good morning, Dr Chen.

MR CHEN: Good morning, Commissioner.

THE COMMISSIONER: Ready to proceed?

MR CHEN: Yes, Commissioner.

10 THE COMMISSIONER: Thank you, Ms Bakis. Yes, I'll get you to  
administer the oath again.

THE COMMISSIONER: Yes.

MR CHEN: Thank you, Commissioner.

Are you ready, Ms Bakis?---Yes, I am.

10 Ms Bakis, last Friday I asked you some questions about the second heads of agreement, the Gows Heat heads of agreement that was at volume 8, page 59. Would you like me to show you them on the screen?---No, it's okay.

You remember me asking you questions about them?---I do.

And you also remember, do you, that that heads of agreement formed at least initially part of a number of documents that went together as part of an attempt to do, or an attempt to effect a land dealing with Solstice in November 2015. Do you remember that?---Perhaps an attempt, yeah.

20

Well, I'll show you the documents, Ms Bakis, if you like.---Yes, please.

I was trying to use that expression in a neutral way, but I'll just show it to you and you can satisfy yourself as to what it is. It's at volume 8, page 22. Do you see that the front page at volume 8, 22, on the screen now?---Yes, I do.

30

And if you look at page 23 you can see that that is a proposed – I withdraw that – that is described as a heads of agreement dated 18 November, 2015, involving those three parties?---Yes, yes.

And you remember, don't you, that within this document was, as an annexure to it, the Gows Heat agreement which I showed you last Friday at volume 8, page 59.---Okay.

40

I'll have that brought up on the screen, Ms Bakis. And you can see by the execution of that at volume 8, page 64, that that's been signed at least on the part of the Land Council by Ms Dates and Mr Green. Do you see that? ---Yes, I do.

And I think your evidence was last Friday that you remember both of those individuals appending their signature to this document.---I didn't say that.

Right. What's the position? Did they sign this or didn't they?---Can you, sorry, can you scroll up to the top again? Is this November '15?

No. Just so it's clear, Ms Bakis, this is the - - -?---Oh, sorry.

- - - Gows Heat agreement.---Okay, yeah. Yes, I did, yes, I did see those people signing that document, yes.

At or around 15 December, 2014. Is that your evidence?---Yes.

And you can see as well, and perhaps we'll just complete identifying this document, the document described as a Solstice heads of agreement, that is the document commencing at volume 8, page 22, if that could just be brought up.---Yes.

10

That also was a document that – I'll just show you volume 8, page 28. ---Yes.

That document also has signatures and names of Ms Dates and Mr Green. Do you see that?---I do.

And did they sign that document?---I don't recall seeing them sign this, but that doesn't mean they didn't sign it in front of me. I don't remember.

20

Well, it would have been presented to them in any event once it was in its final form presumably I take it. Is that so?---Yes.

And who was it from the Land Council you were taking instructions from to document this agreement, Ms Bakis?---I don't remember. No, I won't speculate. I don't remember.

Does that fact that it's been signed by both of them assist you at all, Ms Bakis, or not?---No, because I know Debbie had been suspended around this time so that's why I'm hesitating.

30

Well, Ms Bakis, there's an absence, at least on the review of the file that you produced to the Commission, of dealing with the detail of how this transaction has come about. Do you agree?---I agree.

And there are in fact very few references at all to Solstice in any of the file notes that have been produced by you to the Commission.

MS NOLAN: I think my friend needs - - -

40

MR CHEN: Is that a fair summary of what's been produced?

MS NOLAN: I think it's Gows you're referring to. Sorry, you said Solstice. Is it Gows or Solstice?

MR CHEN: I'm sorry. I think that proposition I put was correct but I'll put it again if there's confusion. Ms Bakis, is this fair is that there are very few file notes produced by you in the material to the Commission that deal with or even mention Solstice?---Are you including my briefing papers or what

do you refer to as file notes? I think there are a few files notes. I'm sure I saw some earlier this morning.

What I put to you is there's not many. That's the question I put to you.  
---That, that could be correct. Relatively speaking, that's probably correct.  
I, I wasn't dealing directly with these people.

Who was?---Mr Petroulias.

10 And when you say, "These people," as well, are you meaning Solstice as well or are you meaning simply Ms Dates and Mr Green?---No, I mean Solstice.

But you drafted the agreement, I take it, did you not?---The 2015 agreement?

Yes.---I think so.

20 Well, it's on your file, Ms Bakis. Doesn't that suggest to you that you did draft it?---That doesn't suggest that at all. There's a lot of things on my file that I didn't draft.

THE COMMISSIONER: If it wasn't you, who else would have been the likely drafts person or the only other drafts person?---Well, the obvious is Mr Petroulias.

Did he from time to time draft agreements relevant to the Awabakal Land Council matter?---He would occasionally draft agreements.

30 MR CHEN: Would they not be approved or at least reviewed by you prior to submission to the Land Council prior to them executing, Ms Bakis?  
---Generally they were but I have some doubt.

Well, just coming back to this agreement, what is the position that – did you or did you not draft this document?---Can you scroll back to the top for - - -

Of course.---Sorry, just to refresh my memory. I don't remember drafting this. That doesn't mean I didn't.

40 And is this the position, you don't recall presenting this to Mr Green and Ms Dates for their execution or you do?---I don't remember.

You're not denying you did?---I'm not denying it.

Or disputing you did, you just don't have a recollection one way or the other?---That, that's right. Yeah.

But you do know that a transaction was attempted between, or involving Solstice, don't you?---Oh, yeah. Over a few months, yeah.

And consistent with that is the fact, presumably, that at least there was the preparation of this document to facilitate discussion moving forward. Is that not a likely scenario, Ms Bakis?---When I was dealing with this about a month or two after, this document didn't pop up again. So, I don't know what happened to it. Obviously I, I just don't have a recollection of this.

10 Well, Ms Bakis, I want to show you something now just in relation to this agreement.---Sure.

Just pardon me for a moment, Ms Bakis.---Sure.

Now, Ms Bakis, on the screen now is a blank cover page you can see describing heads of agreement of 19 November, 2015. Do you see that? ---Yes.

20 It's volume D, page 327 of the Bakis material, for the record.

THE COMMISSIONER: Which volume?

MR CHEN: Volume D for dog, Commissioner.

Now, Ms Bakis, if you have a look, please, at page 328, you can see that this is a document that is going through what you would no doubt know is revision via mark-up. Do you see that?---Yes.

30 And if you have a look over the next couple of pages, in particular at page 330, you can see that there's been some marked-up changes to clause 2.2 and 2.3 and following. Do you see that?---Yes, I do.

Do you recall doing these changes, Ms Bakis?---I don't recall.

Reading them now, are they familiar to you, these proposed changes, or not? ---No, they're not.

40 Are you able to explain how or why changes such as this are being made to this document?---Is this the same document I was looking at previously? Sorry, I'm not, I'm not avoiding your question, I'm just - - -

No, no, I'm happy to answer. It's not the same document obviously because one has marked changes and one does not, but it is referring to the same Solstice proposed agreement - - -?---Okay.

- - - of either 18 or 19 November, 2015.---I, I don't recall this document at all.

And you can't explain who's made the changes?---It probably was Mr Petroulias.

Is it the case that you're denying that it was you or are you saying that because you don't have a recollection?---I'm saying that more because I don't have a recollection.

10 Right. Now, if you have a look please again, I'll show you this for completeness, 331, you can see there's some other changes. What's the position in relation to these changes, Ms Bakis? Are they you or you don't have a recollection?---I don't have a recollection.

Well, Ms Bakis, what I also want to show you is, if you have a look at 334, this is a marked-up document, but you can see that somehow Ms Dates and Mr Green have signed it. Do you see that?---I do.

20 How has it come to be that Mr Dates and Mr Green have apparently signed this marked-up document?---Could be that someone didn't print the final before asking them to sign it.

THE COMMISSIONER: I'm sorry, I can't hear that.---Sorry. It could be that someone didn't print the final before asking them to sign it.

MR CHEN: Well, was that person you?---That's not the sort of thing I would do.

30 Ms Bakis, this document I should tell you from your file is sequentially numbered but not stapled, and it's sequentially numbered as in pages 1 to 7 but not stapled together. Is another explanation, Ms Bakis, that in fact this is just a standard execution clause and these are electronic signatures? ---I don't think so.

On what basis do you say you don't think so?---I just don't think that would happen.

Right. Well, it shouldn't happen, should it?---Well, absolutely not. Well, look, I mean can you, sorry, can you scroll back up?

40 Sure. Which page would you like?---Just, I don't know, just – okay, you can stop there. It could just be that someone was in a hurry.

Well, Ms Bakis, these changes can I suggest to you are in fact not in the version that is in the public brief that I initially drew your attention to today, so with that additional fact, Ms Bakis, how has it come to be that a draft marked-up version of an agreement involving Solstice has come to have signatures of Ms Dates and Mr Green upon it?---So the document you showed me at the beginning is different to this document.

That's so.---And it's not from my file?

Sorry. This document that I'm showing you now is from your file.---This one is, but the one you showed me earlier?

Well, that is the, what I'll suggest is the final draft version of the agreement that's in the public brief. I'll be able to confirm shortly whether you had a copy of that on your file.---Um - - -

- 10 But my question is directed to this draft document in mark-up with these signatures on it that's different from that other document.---So could it be that the draft was changed?

Well - - -?---The terms were changed.

- 20 There's no doubt there are differences in terms of the text of the agreement, Ms Bakis, let's accept that for the moment. My question to you is how does, or how do these signatures appear on this document?---I'd say they've signed them. I, I don't know. I'll be honest, I don't know. I can't answer that. I - - -

So that should be an original signature, should it not if - - -?---It should be.

- - - it's on that document?---Should be.

Just have a look if you would, Ms Bakis, at the original that's been produced by you and you'll see it's got a bulldog clip around it.---Oh, thank you.

- 30 Ms Bakis, I'll just ask, if you do remove that bulldog clip I'd just invite you - - -?---I haven't removed it.

I'm sorry?---I haven't removed it.

No, I wasn't suggesting you did.---No.

I was just suggesting if you were proposing to, to please replace it.---Okay. Sorry, did you have a question for me?

- 40 I did.---Sorry, I've forgotten.

I've been asking you, well, let's first up, you've identified the agreement in hard copy on your file, have you not?---Well, I assume it was on my file, yeah.

Well, that's your file that I've handed over to you, is it not?---Yeah, but, well, I don't know, assuming, I assume it is, yeah.

And you have identified the document which I've shown you at least in electronic form on the screen?---Yes.

And you accept, don't you, that the signature that appears on page 7 of Ms Dates and Mr Green are not original signatures, are they?---No, they're not.

They are electronic signatures, aren't they?---Isn't it just a photocopy?

Is that the position, that - - -?---I don't know.

10

You can't provide any explanation for it, Ms Bakis, at all?---No, I actually, I actually can't. I can't explain why this copy of this document was on this file.

THE COMMISSIONER: Sorry, you can't explain?---Why - - -

20

MR CHEN: Why the document is on the file?---Why there is, well, it's a copy, to me it looked like a copy. I didn't even assume that it could be photoshopped or anything like that, but now that, now that I look at it, you're probably right.

What am I right about, Ms Bakis?---I, I don't understand, sorry, I just, I can't explain this.

THE COMMISSIONER: Sorry, what part of Counsel Assisting's statement do you endorse as correct?---I just don't know how this document got here.

You said you don't know how the document got there?---No.

30

Is that right?---Yeah. I, I, don't know, I don't, I don't understand this. I'm, I'm trying to think.

But I think if you just focus in on the point that's been put to you, there may be other puzzling aspects that are occurring to you, but let's see if we can just focus on the specific point that's being examined at the moment. Perhaps if we put it again?

40

MR CHEN: Well, I think you accepted, Ms Bakis, that a proposition I put to you was right and the Commissioner asked you, as did I, what did you accept was right.---That it's strange.

Well, the other thing is, is that at least on the version you've got, it's either a photocopy of the signatures, that's one suggestion you've raised in your evidence, isn't it, Ms Bakis?---Yes.

Or the other is that Mr Green and Ms Dates have somehow decided to sign a draft document?---Yes.

But you're unable to say whether you were involved in that at all, is that right?---Well, I did say that it would be very unusual for me to ask anyone to sign a draft document that hadn't, changes hadn't been finalised.

Well, the other explanation is that these signatures have just been added, isn't that right?---Well, that could be another explanation, yeah.

That is to say that neither Ms Dates or Mr Green actually signed this document?---That's an explanation, yep. Possible.

10

And when you say, this may not be your precise description of it, puzzled by why it's on your file, why are you puzzled about it? Or if there's another word you prefer to use, please do.---I am puzzled that the, I don't remember drafting this, that, but that's not unusual. Like, I may have but – I, I, just, it, it looks like a strange document. It's - - -

THE COMMISSIONER: Strange in what sense?---Well, it's not final. It's signed.

20

MR CHEN: Ms Bakis, the language used, for example, in clauses 2.5, 2.6, 2.7. So, you can have a look at the hard copy if you like.---Yes.

Is that the language that you use when you draft or is that the language that perhaps Mr Petroulias might use?---That, well, could be Mr Petroulias. It's a bit longwinded.

30

So, is this the position? Is your assessment at least of the clauses on page 331 – so clauses 2.5, 2.6, 2.7 – appear to you to at least be language consistent with the language that Mr Petroulias had used in the way in which he would draft a document such as this? Is that right?---Yes, but I mean it's hard to, I mean, they're fairly standard type clauses that - - -

Well, Ms Bakis, I'm really trying to get to the bottom of who has drafted this or who had prepared it, because as I understand you to say, you're a bit surprised that a document such as this either, A, existed with signatures on it or, B, was actually on your file.---Yes.

40

So, I'm really trying to get to the bottom of it and to see whether you can proffer an explanation as to why it might be, that's all. And I'm taking it up with you that if it's not yours, it's got to be Mr Petroulias' then, does it not? ---Yes.

So it's either you or him that's prepared this document, is that right?---Very likely that's the case, yes.

And if it's him, what's the explanation as to why that then comes onto your file?---Because he helped me putting these files together.

What do you mean?---Well - - -

To produce them to the Commission?---Yes.

Right. And where would he have got this document from if it wasn't on your file?---I've got no idea.

10 THE COMMISSIONER: He frequently worked in your office, didn't he? Very frequently.---Well, at the time that I produced these documents to the Commission, I would have been working at home.

I'm talking about 2015, that year. He was frequently working in your office, wasn't he?---No.

He was not?---'15?

2015. That's the year of these agreements that you're being asked about. The November 2015 agreements.---I wouldn't say often.

20 Well, whenever he was there - - -?---There were occasions but not often.

And whenever he was there, he had free access, didn't he, to records held in your office?---Well, when he was there, yeah, if they weren't in archive, yeah, that's right.

Yes. That is, any files in the office – your office, that is – could be accessed by him.---Yes.

30 And were.---Yeah.

MR CHEN: And at this stage as well, Ms Bakis, you were still the solicitor for Gows, weren't you?---Yes.

You were still acting for them in relation to this other agreement, this other attempted transaction, isn't that right?---This one?

Yes.

40 THE COMMISSIONER: We're talking about Solstice.

MR CHEN: I'm talking about Solstice, yes, Commissioner.---Oh. I, I don't recall Gows having a big involvement in that transaction.

THE COMMISSIONER: No, but that's not the question. Just try and stay on course if you can.---Yes. No-one else was, so presumably I was.

Acting for Gows in relation to Solstice transaction?---Gows, yeah. Yes, but I don't recall doing work for Gows on the Solstice transaction, so - - -

And you regard yourself as the solicitor for the Gows transaction with Solstice but you don't recall specifically doing work on it, is that what you're saying? And if you're not, what are you saying?---I'm saying that I don't recall Gows having a big involvement in the Solstice transaction. I don't actually remember Gows doing any work, having – I don't recall myself doing any work for Gows on the Solstice transaction so perhaps - - -

10 I think the question – go on.---So perhaps I was still the solicitor for Gows but I don't recall me stepping into that role for that transaction.

MR CHEN: But to the extent that there was a need to become involved in that transaction, you were still dealing with Mr Petroulias, were you not? ---Assuming, sorry, assuming that I was acting for Gows, then assume that I was, yes. All those assumptions are correct.

20 And you were still dealing regularly with Mr Petroulias in relation to these Land Council transactions, weren't you, in the latter half of 2015 and into 2016, isn't that right?---Yes.

And you were still representing, were you not, Gows throughout late 2015 and all through to at least April of 2016, isn't that right?---Yes, yes.

Now, Ms Bakis, you understand, don't you, that there are – I'm sorry, I'll stop there. I'll tender that agreement, Commissioner, which is a - - -

THE COMMISSIONER: It's the - - -

30 MR CHEN: I think the description would be - - -

THE COMMISSIONER: In D, page 327? Is that the one we're talking about?

MR CHEN: Correct, Commissioner.

THE COMMISSIONER: Yes, the heads of agreement, 19 November, 2015, contained in volume D, 327, will be admitted as a separate exhibit, as Exhibit 101. 102, thank you. It will be marked as Exhibit 102.

40 **#EXH-102 - KNIGHTSBRIDGE NORTH LAWYERS HEADS OF AGREEMENT DATED 19 NOVEMBER 2015**

MR CHEN: Now, Ms Bakis, I'll just have that file closed up and brought back. The bulldog clip is still on that document, is it, Ms Bakis?---It is. I put it exactly where it was.

Thank you. Now, Ms Bakis, you know, don't you, that in relation to the Gows Heat agreement that involved the five lots of properties, that that was executed by Mr Green. Isn't that right?---I think that's right.

And the representative of Gows, as I think you said last week, was Mr Petroulias obviously.---Yes.

But he didn't sign the document, did he?---I think he did.

10 But he didn't sign it in his name of course, did he?---No, no, he signed it in the name of the director.

And how did you know that that person was the director?---How did I know at the time?

Yes.---I, I didn't check, I just assumed that Mr Petroulias was, had done all the checks on that.

Right.

20

THE COMMISSIONER: And we're talking about Mr Latervere.

MR CHEN: Yes, this is Mr Latervere. You see, Mr Petroulias signed the agreement as Jason or Johan Latervere. Isn't that right?---Yes.

And - - -?---Signed for him or, yeah, I don't, I don't know what he did, yeah.

30 Well, initially he just signed it, didn't he, that name. Isn't that the case? ---I think that's right.

And after that time an attempt was made to have it notarised, or something to that effect, to somehow cure the fact that in fact Mr Petroulias was purporting to execute the agreement for Mr Latervere based on power of attorney. Is that your understanding?---Yes.

40 You seemed to hesitate on that. Is that you're not sure or what's the position?---I, it's the detail that I forget, but generally that's, that's what's happened, yes. He's, he's signed for him and then realised he should have signed as himself under a power of attorney.

When was the last time Mr Petroulias spoke to you about Mr Latervere though, Ms Bakis?---I don't know.

Well, in relation to this agreement, did you not ask Mr Petroulias why is he signing it or why are you signing it under a power of attorney?---I knew there was a power of attorney.

You did, did you?---Yeah.

THE COMMISSIONER: How did you know?---I, I don't know.

You don't know how you knew?---No. I mean we're going back four years here. Um, I remember it being an issue.

MR CHEN: What was the issue?---Mr Petroulias was looking for Mr Latervere.

10

Well, the fact is, Mr Latervere was deceased. Isn't that right?---That's right, yeah.

And he'd died, as you know, in May of 2013. Isn't that the case?---Oh, I didn't know that, but yeah. I didn't know the date, but yeah.

Well, you certainly came to know that he'd passed away. Isn't that right? ---Yes.

20

And when did you find that out, Ms Bakis?---Oh, I'm not sure. I honestly don't know. It was after that, after this thing was signed.

THE COMMISSIONER: Sorry, it was?---It was after this document had been signed.

MR CHEN: And are you able to say when?---No.

Well, was it prior to the arrangements that were put in place between Gows, the Land Council and Sunshine or - - -?---No, I said it was after that.

30

Right. So it's after 2015. Is that right?---I don't remember. I really don't remember.

And who told you that Mr Latervere was a director of this company?---Mr Petroulias.

And did he tell you how or why Mr Latervere came to be a director of this shelf company?---No.

40

Not at all?---No.

You didn't ask?---I didn't ask, no. I know that they were doing things a few years prior to that.

THE COMMISSIONER: What sort of things?---I'm not sure. I said this the other day, I don't, I know they were doing some sort of business ventures. I, I am not quite clear on what that was.

MR CHEN: Anyway, there's no doubt in your mind that Mr Petroulias told you that Mr Latervere was a director of the company, correct?---Yes.

And properly appointed, presumably?---Yes. I think so.

Now, you know don't you, the solicitor, Rosita Luk?---I do.

And you know that she has acted for Gows Heat from time to time?---Yes.

10 And she certainly acted for Gows Heat on the instruction of Mr Petroulias, isn't that so?---Yes.

And Mr Petroulias has known Ms Luk for a number of years, hasn't he?  
---Yes.

Approximately for how long has Mr Petroulias known Ms Luk?---Maybe eight years, could be longer.

20 THE COMMISSIONER: Mr Chen, just to interrupt for a moment. I notice that Mr Petroulias is not in the hearing room. Do we know the circumstances of - - -?---He actually rang me at 9.45 and said, "Why aren't I there? Has something happened?" And he wanted to be here, so - - -

Well, we should have enquiries made and he'll need to be provided with a transcripts of what's occurred thus far. I signed an order for him to be here today, so it's a bit puzzling. I think we might continue. Mr Broad's not in the hearing room either but perhaps when he returns if you could interrupt the flow of things to have him make that enquiry. You continue at the moment.

30

MR CHEN: Thank you, Commissioner. Now, Ms Bakis, as I understand how this arrangement with Gows Heat first came to your attention was through Mr Green, on the part of the Land Council, and Mr Petroulias, on the part of Gows, speaking to you about it, is that right?---Yes.

And each of them, as I understood it, had said to you words to the effect that there'd been some agreement entered into – I withdraw that. There'd been some agreement that there would be, involving Gows purchasing these five lots of land. Is that generally the subject of what was discussed or raised?

40

---Yes, yes.

And at the time that you spoke with Mr Green, you had not met any other board member of the Awabakal Local Aboriginal Land Council, is that right?---Oh, I think that's right. I can't remember, no, that's right. Yep.

And he came to see you, did he, in your office, is that the position? Or did you go to see him at the Land Council offices?---To discuss this agreement?

Yes.---No, I didn't go to the Land Council offices. I recall being up there on a weekend to talk to Richard. I had met Richard prior to this.

Well, just so it's clear, you came to act for the Land Council through Mr Green, is that the position?---Well, via Mr Green, yep.

Yeah. And Mr Petroulias had prior dealings with Mr Green, isn't that right?---Yes. There'd been some, they were, they'd been talking about a few things, yes.

10

And when you said you went up to Newcastle, did you go to Mr Green's house or did you go to the Land Council offices after you'd been told that there'd been some agreement reached?---It wasn't the Land Council because it was a weekend, so - - -

So was it Mr Green's private residence?---No, I think, I think we met at a coffee shop or a café somewhere.

20 Who made the arrangements for you to come along to that meeting?---Mr Petroulias.

THE COMMISSIONER: Sorry?---Mr Petroulias.

MR CHEN: And did he tell you that he wanted you to be the solicitor to assist in documenting this transaction?---Yes.

And you agreed to that, I take it?---Well, yeah, well, he, he told me the Land Council wants someone to draw up a contract. Yes.

30 Commissioner – I'm sorry, Ms Bakis, for a moment – I'm told that it's being chased up and once we hear further I'm sure that - - -

THE COMMISSIONER: All right. Well, if Mr Broad gets an update we could interrupt the hearing to find out the position.

MR CHEN: I'll do that, Commissioner. And is this the broad – I take it Mr Green was at this meeting that you had, where Mr Petroulias said that they needed somebody to, or the Land Council needed somebody to document this transaction?---Was, sorry, was Richard there at that?

40

Yes.---No, those discussions happened before that.

I see.---Yeah.

So this is Mr Petroulias telling you the Land Council wants someone to document this transaction. That's step one, is that right?---Yes.

And you agreed to do that?---Yes.

And you also agreed, presumably at this stage, to act for Gows, is that right?---I think I had been acting for Gows up until then.

And thereafter you went and met with Mr Green, did you, at a café on the weekend, is that the position?---Yeah, I'm not sure where but, yeah, that's right.

10 And presumably prior to meeting Mr Green, Mr Petroulias told you how it had come about that there was this agreement that had been reached that required documentation, is that so?---Yes.

And what did he tell you was the position?---Oh, gosh. He, he, there'd been a whole heap of discussions with IBU, Cyril, Richard, and they'd all come to an agreement that – well, not all of them.

20 THE COMMISSIONER: Sorry?---Sorry, I'm just trying to remember. Yeah, they'd been talking about doing various things with Indigenous lands up until that point, and then Nick suggested, well, he had investors, why doesn't Gows purchase the, the Awabakal land.

MR CHEN: So Mr Petroulias is the one that's suggesting that he purchase the land?---Well, no, I mean, I, it's talking, negotiations. I wasn't there so I'm, I'm speculating as to how this all happened.

30 I'm just picking up what I understood your evidence to be, that Mr Petroulias suggested that why didn't Gows purchase the lands or something to that effect.---I'm completely speculating here. I wasn't party to most of those discussions.

Well, I asked you, Ms Bakis, a specific question about what did Mr Petroulias tell you before you went up - - -?---Oh, okay, sorry.

Just, Ms Bakis, please, just allow me to ask the question. About what Mr Petroulias told you prior to going up to meet Mr Green on the weekend. Do you understand the question I'm asking you?---I do.

40 So what did he tell you?---He told me that the Land Council had agreed to sell a parcel of land to Gows. He's spoken to the chairman. He'd spoken to the deputy and they agreed it was a good deal. "Can you come up and document this?"

Did he tell you who the chairperson was?---Yes.

And presumably he told you Ms Dates's name, did he?---Yes. Yes.

And did he tell you in relation to the deputy that that was Mr Green?---Yes.

Now, had you had any dealings, prior to this time, with documenting a land transaction involving an Aboriginal land council?---No.

Were you familiar with the provisions of the Aboriginal Land Rights Act at that time, Ms Bakis?---Not at that time.

I take it you acquainted yourself fairly promptly thereafter, did you?---I did. It's not, it's not a big Act.

10 And the provisions that deal with land are fairly confined, are they not?  
---They are, yes.

And readily understandable. At least that's the way you perceived it. Is that so?---Yes.

Now, did you then go and meet Mr Green on the weekend, is that the next step, Ms Bakis?---Yeah, I remember going up to Newcastle, meeting oh, I, I think I went up there with the drafted document from memory.

20 And this is a draft of the heads of agreement?---The agreement, yeah. I might have gone up there with a draft to talk to them about - - -

And when you say them, do you mean Mr Petroulias and Mr Green?  
---No, Ms Dates and Mr Green.

I'm sorry, so Ms Dates was also at this café?---No, no, that was, that was a separate time. I can't remember if it was the same trip or it was a later trip.

30 Well, let's just focus on the occasion that you, I think, said that you went to a café to meet on a weekend.---Yes.

And you were there obviously, yes?---Yes.

Mr Petroulias was there?---Yes.

Mr Green was there?---Yes.

And was Ms Dates there?---No.

40 So when you went to this café, did you have the draft agreement at that stage or not?---Gosh, I don't remember. I think I might have.

Right.---Might have just to save time going back up.

Right. And what did Mr Green say, if anything, at this meeting?---He wanted clarification around the price, he ran through the process about just because you sign a document it still has to go to approval to members and then to NSWALC, he, he knew that process pretty well from memory.

That's my recollection. I remember talking about, I remember talking about the process.

And what was Mr Petroulias saying at this time?---I don't remember, I really don't.

Well, what did you agree to do, if anything?---I can't remember if I came back and re-drafted it or, I can't, I can't remember.

10 Well, Mr Green ultimately signed it though, did he not?---He did.

And you would know that he was only the deputy chairperson, wouldn't you?---Yes, yes, but - - -

And he, as you would know, would not, on the face of that title, have the authority to sign any document. Isn't that right, Ms Bakis?---Yes, but he, he said he would take care of the process of taking it to the board and making sure it had been done properly, is my recollection.

20 So let's be clear. You knew and recognised that Mr Green did not have the authority to execute the agreement. That's correct?---No.

Right.---No.

I thought that's what you said, but he assured you that he would take it to the board.---No. Oh - - -

THE COMMISSIONER: You said that he said he would take it to the board and make sure it was done properly.---I'm just trying to remember.  
30 Yeah, he, he may have used words to that effect, yeah.

MR CHEN: All right. So do you accept, Ms Bakis, that you accepted at that time that Mr Green did not have the authority to execute that agreement?---Well, he told me that he'd been endorsed by the board to look for property transactions, property deals to sell their land.

Well, this is a different question, a different step.---And my, my understanding was on that basis that he had the authority to sign but that there were perhaps more steps to go after that.  
40

So, they're the matters that led you to satisfy yourself that Mr Green was appropriately authorised to execute the agreement, is that the position, Ms Bakis?---Well, I, I just relied on what he told me, that he, that he could sign it on behalf of the board until - yeah.

You see, did Mr Petroulias not show you an apparent promotional document that he had put together with IBU?---Oh, he probably did.

Well, what's your recollection, Ms Bakis? Did he or didn't he?---He did.

And what was the connection that he told you that his shelf company had with IBU, if any?---They, they'd been having a lot of discussions.

When you say, "They," who's they?---IBU. Cyril, I remember Cyril Gabey, I remember a few other people whose names I forget right now, and they'd been in meetings for, well, maybe two months prior. I'm just guessing. I, I think, I think that's the case.

10

Well, this is just what Mr Petroulias has told you, is that the case?---Yes.

Well, what is clear, Ms Bakis, as you would know, is that Gows Heat never made a presentation to this board, isn't that right?---No, but I believe IBU did.

Well, when you say, "No," you're agreeing with me that you knew that Gows did not present to the board, correct?---That's not what I said.

20

Well, what are you saying then, Ms Bakis?---Sorry, what is the question you asked me?

You knew that Gows made no presentation to the board?---I didn't know that at the time but I knew, I knew IBU had and those two entities were - - -

THE COMMISSIONER: Well, are you saying this, that to your knowledge there had been a presentation to the board but the only one you knew about is said to be the presentation that was given by IBU?---Yeah.

30

Sorry, is that right?---That's right but I, I thought the IBU and Gows presentation were one and the same.

MR CHEN: How does that come about, Ms Bakis?---Because what they were presenting I believe was in fact a joint, well, it was the same thing. I think, I think they were presenting the same thing in - - -

THE COMMISSIONER: Well, were you given any information as to what the IBU presentation consisted of?---No.

40

MR CHEN: When you're saying this, this is just what Mr Petroulias has told you as the solicitor for Gows, is that right?---No.

Well, where else are you getting it from? Mr Green?---What the IBU - - -

Yes.---It could have been.

That somehow there's this connection between - - -?---Yeah, it could have been.

Ms Bakis, just allow me, if you would, just to ask the question, that this connection between IBU and Gows, has this come from Mr Green, has it?  
---I think it came from both of them. They were both involved in IBU.

I see. And so, what, they're both telling you, are they, that IBU had presented to the board but Gows and IBU are one and the same? Is that the thrust of what they're saying?---I, I think that's how it happened, yeah.

10 And, Ms Bakis, you also mentioned that Mr Green told you, as did Mr Petroulias, that there'd been some agreement that, on the part of the Land Council, that this transaction go forwards with Gows, is that right?---Yes.

And later you came to see what appeared to be a resolution involving Gows, is that right?---Yes.

And you do know, Ms Bakis, that there is evidence before the Commission that that very resolution was a resolution that Mr Petroulias had also seen and used, don't you?---Sorry, I don't understand your question.

20

Well, Mr Petroulias, can I suggest, Ms Bakis, on the evidence before the Commission, handed that resolution over to the people representing Sunshine in or around October 2015.---Yes. Yes, that's right.

You know that, don't you?---Yes. Yes.

Do you know that?---Yes.

30 And presumably you would have spoken to him about it. Is that right?---I don't remember if we spoke about it.

Anyway, you knew he had it, correct?---Yes.

And you knew that he'd used it, don't you?---Yes.

And you also had it and had seen it, isn't that right?---I, gosh, I don't remember. I don't remember if I'd seen that minute.

40 Got no recollection one way or the other, is that your evidence?---I'd have to look at my file notes but I don't recall.

THE COMMISSIONER: On the face of it, it was a key document, wasn't it, in the transactional process?---For Sunshine it was.

Yes, well, from the purchaser or the vendor's point of view or anyone else's point of view, it was a document, on its face, of some significance.---Yes.

Well, reflecting about it, do you think you did see it at some point? We're not trying to pin you down to a date.---Yeah, I did see it at some point, yes.

MR CHEN: And did Mr Petroulias give that to you?---Yes, because I didn't, I didn't get it myself from the Land Council, so, yes.

Just on that, Ms Bakis, you didn't keep a file, did you, for the Gows Heat transaction for Gows, did you?---There would have been a pile of papers somewhere.

10

Well, you didn't, for example, send them a fee disclosure agreement, did you?---No, because it was, yeah, no.

Because it was what?---Because it was Mr Petroulias.

Your partner?---Yes, I got a bit sloppy, yes.

You didn't keep a file at all, did you, for Gows, a separate file, for the client that you had, isn't that right?---No, well, I had a bundle of papers which I would probably call a file, yeah.

20

Well, that would also be called the Land Council file, wouldn't it?  
---Separate file.

You don't have any file notes of conversations you kept with Mr Petroulias?---No.

You didn't get him to sign his own file notes or your file notes, did you?  
---No.

30

All right, now, is this the position, Ms Bakis, that the transaction has gone forward on the basis of, first, Mr Green telling you in the presence of Mr Petroulias that there's been this agreement by the Land Council to sell land to Gows Heat?---Yes.

And you relied and only relied on Mr Green's say-so that he was authorised to enter into this transaction or at least execute the documents on behalf of the Land Council, is that right?---Yes, yes, yes.

40 And the transaction went forward on that basis and on that basis alone, isn't that right?---I do remember sitting with Debbie at some point. I, I don't remember if it was at the same time or afterwards.

Well, when you say at the same time, do you mean the same time as the Gows Heat heads of agreement was signed or after?---Around, around that time when the agreement had been signed.

Can you pinpoint whether that is before or after, Ms Bakis, or not?---I can't. I can't right now, no.

THE COMMISSIONER: But in any event, so far as Green was concerned, the transaction went forward based on his statement that he had the authority of the board to enter into this agreement, is that right?---That's right.

10 MR CHEN: And otherwise he was, I think as you said last Friday, a willing participant in the transaction, not only at that point in time but going forward. Is that the case?---Yes, that's right.

Now, you also sent off – I'm sorry, Ms Bakis, just pardon me. I'm instructed, Commissioner, there was an error at Corrective Services and he can be here at 1.00pm.

20 THE COMMISSIONER: I see. All right. Well, I think if we can take steps to obtain at the earliest possible time a copy of the transcript of today's proceedings so that he will have the opportunity to look at it, whether over the lunch period or some later time at least, we'll do our best to get it to him as soon as possible upon his arrival. All right.

MR CHEN: Now, Ms Bakis, once you had the agreement, the Gows Heat heads of agreement in draft form, you sent that, did you, to Mr Green, is that so?---No, I didn't send anything to Richard. I would have taken it to him.

Right.

30 THE COMMISSIONER: Sorry, you would have taken it to him?---Yeah.

MR CHEN: Well, just have a look if you would at MFI 33, page 1. Now, are you saying that you handed this letter to Mr Green - - -?---Yes.

- - - rather than posted it, Ms Bakis?---That's right.

Sorry, that didn't - - -?---Sorry, that's right.

40 And the reason why you sent it to Mr Green rather than the board was because that's the person you were dealing with. Is that so?---That's right.

And you also, did you not, have discussions with Mr Green about entering into a fee agreement, isn't that right?---Yes, that's right.

Because it was important I take it for you to have that agreement to enable you to take the steps to document this apparent transaction. Isn't that right? ---That's right.

And just have a look, Ms Bakis, this is the fee agreement, is it not, dated 28 November, 2014, that you presented to Mr Green?---(No Audible Reply)

Do you recognise that as the cover page? This is Exhibit 43, page 1, do you recognise that, Ms Bakis?---Yes.

And we can scroll through it all if you like, but you recognise this as the fee agreement that you prepared at the time this Gows Heat transaction was entered into?---Yes.

10

And did Mr Green sign that document, Ms Bakis?---Well, did he? Looks like he's signed it there, so yeah, I believe so.

Do you have any doubt about it?---Well, only because you're asking me. Oh, there we go. Yes, he did.

THE COMMISSIONER: Did he read the cost disclosure agreement before he signed it?---I ran through the important clauses.

20 MR CHEN: Well, what he's told the Commission, Ms Bakis, as you would well know, is that he denied having discussions with you about this document.---Yes, I know.

What do you say to that?---Well, it's not true.

And in fact at least at one stage he denied having seen it.---Well, it's not true.

30 But in any event you say, do you, that he signed this in your presence?  
---Yes, he did, yes.

And you gave him advice about the substance of the agreement and the key matters within it. Is that so?---That's correct.

And thereafter you acted as the solicitor for the Land Council, did you not?  
---No.

You didn't?---No.

40 What did you do?---Well, I, I came in to do this transaction. They, Debbie and Richard, wanted me to look at, they, they were really upset about land claims that hadn't been granted by the, by the Minister and they wanted me to do a whole heap of work for them and I, I didn't want to. It, it was just, it was inconvenient, it was, it, it was a high touch sort of client and at the time I remember thinking, no, I don't want to get involved in this, so I didn't. They had their own lawyer.

But you certainly continued, did you not, to act in relation to any of these property transactions that occurred following signing of these Gows Heat heads of agreement, isn't that right?---Well, yeah. Six months later, roughly, I think Sunshine, the Sunshine transaction started, yeah.

And during the course of those, you acted as, obviously the solicitor for the Land Council, did you not?---I did.

10 And you held yourself out as the solicitor for the Land Council, didn't you?  
---I did.

Now, Ms Bakis, you recall that I may have asked Mr Green about clause 20 of this fee agreement. Just have a look at this if you would. So, that's page 8. Do you see the appointment of, or instructions through your agents. Do you see that?---I do.

And you can see that this is obviously permitting you to take instructions from people that are nominated in this clause?---Yes.

20 And you can see that it obviously involves Mr Petroulias, described as Mr Peterson?---Yes.

And Mr Peterson, or Mr Petroulias, gave you instructions to put that in there, did he?---No. Well, Richard and Nick would have agreed that all these people are associated with IBU and they should all be able to give me instructions just to say - - -

30 THE COMMISSIONER: Could I just interrupt you. It's not helpful, as I have previously pointed out, to say, "They would have agreed." What you're being asked about is past events as to what did and did not happen. Firstly, clause 20 is somewhat of an unusual provision in a land transaction like this, isn't it, or any sale of land transaction?---Yes.

40 And all at this stage – Counsel Assisting will ask other questions, probably – is how did it come about that this clause was inserted into the agreement?  
---The, the reason it's there was to protect privilege. So, these people were agents, so it's, if, if any of these people gave me instructions that I could take instructions, put notes on the file without it, and, and it would privilege and it, it came about, I was instructed to, to do this, I didn't agree with it and in fact, never acted on it. So, if, if I ever – and really, the only instructions I received were from Nick Peterson or Richard Green. If they gave me any instructions, it would always go back to Debbie, as chairman, until there was a board to check. So, so even though it's there, I never really relied on it.

But I'm asking you how it came to be there and do I take it that you were asked to include it by Mr Petroulias?---And Mr Green together.

Well, do you remember the occasion - - -?---No.

- - - on which this was discussed?---No. I actually don't.

Are you saying on your oath you have a clear recollection that both of them, and it wasn't just Mr Petroulias, came along and made the request for the inclusion of clause 20?---I only say that because Mr Petroulias wouldn't have, I wouldn't have let him put that in there. I, I would have had to have spoken to someone about it to put that in there.

10

Did Mr Petroulias draft clause 20 or did you?---He, he might have given me the wording for it, yep.

Well, do you think that's likely?---It's possible, yeah.

Well - - -?---Likely, yes.

All right.

20 MR CHEN: Well, Ms Bakis, let's just work through it. Did you know William Tofilau?---I wish you wouldn't say that name.

Why is that?---Um - - -

It's in the agreement.---There, there's issues.

Right.---Um - - -

30 Well, do you know him or not?---Can I talk to everyone later, I don't - - -

Right. And what about Andrew Margi, do you know Andrew Margi?  
---I have met Andrew Margi, yeah.

Right. And what's either of those gentleman's connection to Aboriginal lands or the Land Council, if any, Ms Bakis?---I don't know. I think they were all talking to each other about various opportunities and financing. I think a lot of it was around financing.

40 Well, Mr Green's given evidence before the Commission that he doesn't know Andrew Margi at all, never heard of the name before, Ms Bakis.  
---Well, he was there when I met him.

Well, you understand what I'm putting to you is that he's denied ever meeting him and knowing him.---Well, he was there when I met him.

And so is it your evidence, Ms Bakis, that these names, these agents, have come from a draft that Mr Petroulias has prepared?---Yes.

And also naming people who, at least on one view of the evidence, have no connection to this Land Council at all. Do you agree?---Yes.

And by the inclusion of these names, these two gentlemen, Tofilau and Margi, it entitles you as the solicitor for the Land Council to take instructions from them in relation to this very transaction. Isn't that right?  
---That's right.

10 That is a – I withdraw that. That is a very significant matter, is it not, that is, enabling two individuals with no connection to a Land Council to give you instructions in relation to a land transaction. Isn't that right?---Yes.

And it is enabling you to act legitimately, pursuant to this agreement, on their instructions rather than the Land Council's instructions. Isn't that right?---That's right.

20 And that is a matter of a very significant and serious kind, is it not, namely to act against potentially the interests of your client on the instructions of somebody else?---Which is why I never relied on this clause.

But the fact is, it's in the agreement, Ms Bakis, is it not?---Yes, it's in the agreement, but I never relied on it.

And it should never have been in there, should it, Ms Bakis?---Well, in hindsight should probably not, yes.

30 In foresight it shouldn't have been either, should it, Ms Bakis, because what it endeavoured or permitted was other people without a proper basis at all to provide you with a means to provide instructions over Land Council land?  
---Yes, but I mean I still have fiduciary duties to the Land Council and that would never have happened. It would never have happened.

So really this has come about, can I suggest, because Mr Petroulias has told you to do it. Isn't that right?---I, I don't think so. I, I've got a, I have to look at my file notes. I don't think so.

40 THE COMMISSIONER: I thought I detected, but I may have been wrong, that you had some misgivings about putting this clause in in the first place?  
---I did.

And yet you did, and I suppose the obvious next question is, well, if you had misgivings, why did you include it. What's the answer?---I'm trying to think of the way I operate. It would have been, I'll just put it in there and ignore it because there is no way I will ever act on instructions from some of these people.

Well, I mean it would have to be said that it's almost obvious that you put it in because Mr Petroulias was asking you to put it in. Would that be a fair conclusion to draw?---It might be.

MR CHEN: Well, Ms Bakis, that's the only sensible reconciliation of all these events, is it not, that is, it's Mr Petroulias, because it wasn't you, was it, that decided upon it?---No, it wasn't.

10 I mean ultimately you signed off and approved it as the solicitor for the Land Council. Isn't that so?---Yes.

And Mr Green at least has given some evidence that he doesn't know of at least one of these people.---Oh, Richard barely recognises me. I mean, he's, it's obvious what Richard's doing. Richard knew about this transaction.

Please, I'm asking you about the name of an individual, Mr Margi.---No, no. Yes.

20 So why would Mr Green suddenly suggest in a fee agreement that you'd take instructions from those people? Can you think of a sensible explanation?---No.

Doesn't that just leave Mr Petroulias directing that this go into this fee agreement, Ms Bakis, as the only sensible answer to why this has occurred? ---That's one conclusion, yes.

30 THE COMMISSIONER: Just one other matter. Perhaps if that could be brought back up on the screen, clause 20. The other unusual aspect about the agreement, sorry, about the clause 20 is that the person authorised, one of the persons authorised to instruct you is Mr Petroulias himself.---Yes.

Of course he did give you instructions from time to time in relation to the Sunshine agreement, is that right?---If there ever were instructions, I would always check.

You would always - - -?---Always check with the Land Council. If he told me to draft something that I thought was unusual, I would always check.

40 MR CHEN: This agreement was only signed by Mr Green on the part of the Land Council, isn't that right, Ms Bakis?---I think that's what we saw earlier, yes.

Well, I'll show you the last page, if you like. Do you see on page 12?---Yes.

You see, and you were acting again, were you, just on the say-so of Mr Green that he was authorised to sign this document, is that right?---That, that is my recollection.

You accepted, I think, last week, Ms Bakis, that these two Gows Heat heads of agreement were unenforceable and void, isn't that right?---As against the Land Council, yes.

Well, Gows couldn't enforce it against the Land Council, could they?---No, not unless it had been approved, correct.

Yes. And similarly the Land Council, or the board of the Land Council, couldn't enforce it against Gows either, could they?---That's right.

10

It's not correct, Ms Bakis, is it, to characterise anything that's transpired between these two parties in these circumstances as creating a right of any kind, isn't that so?---As between each other, that's correct, yes.

And it'd be false and misleading to so describe it, wouldn't it?---As between each other, that's correct, yes.

Well, to anybody, because - - -?---Well, no.

20

- - - on the one hand, Ms Bakis, two parties have entered into this transaction which, as you know, the Aboriginal Land Rights Act says is void until certain steps are taken, isn't that so?---Yes.

So as between those two parties, it's plainly unenforceable, isn't it?---As between those two parties, agreed, yes.

And it's otherwise a nothing agreement, isn't that so? It's not worth the paper it's written on, I think you've accepted.---Yes. As between those two parties, yes.

30

Well, they're the only parties to the agreement, aren't they?---Yes. Yes.

And it'd be false and misleading, would it not, Ms Bakis, to describe anything that's apparently or purportedly created pursuant to it as a right, isn't that so?---I don't think that's correct.

What's the hesitation or reservation you've got about accepting it?---Well, just because it's not correct. It's void and unenforceable. Looking at Gows's position, void and unenforceable. However, it's not void and unenforceable for other parties.

40

THE COMMISSIONER: But there are no other parties.---Well, not at this stage.

But if its void ab initio, then it means it's incapable of creating any right or interest in the land or any right or interest of any other kind, is that not right?---I don't think it's void ab initio.

Why do you think it is?---I don't know.

Well, there's only one type of a voidness it seems to me, that could be - - -?  
---No, this is - - -

- - - applicable in this case.---This is a statutory void. It's - - -

10 No, no, no, no. Well (not transcribable) there's no consideration that's  
pressed in this heads of agreement, is there? This is just an ancillary point,  
but can you find anywhere where you've included consideration to  
constitute a binding contract as an option agreement?---I don't know what  
you're talking about.

MR CHEN: I think the second one's an option agreement. The first one  
may bear a different characterisation but - - -

THE COMMISSIONER: Well, 15 December, 2014 refers to the heads of  
agreement granting an option to purchase.

20 MR CHEN: That may be the second one, Commissioner, correct.

THE COMMISSIONER: The second one?

MR CHEN: Correct.

THE COMMISSIONER: Yeah. But in any event, if it's void, how can it  
create any interest or right or interest in the land or right or interest of any  
kind? Can you explain that one to me?---Right now, I can't.

30 MR CHEN: Well, what is it?---I can't explain it to you right now.

There is no right, Ms Bakis, isn't that the position?---I, I don't think that's  
correct.

Well, there must be some interest that you believe has been created by  
virtue of this agreement being entered into, if you won't accept the  
proposition that it's void, meaning nothing's created.---Okay. Okay, well,  
that's the position then.

40 No, there's no position, Ms Bakis. I've asked a question and I'd like a  
response.---I can't answer it right now.

Well, Ms Bakis, is it in your advices that you've given the Land Council?  
---Oh, I'm sure it's somewhere on my file.

Well, let's work through it. It's unenforceable, I think you've accepted, as  
between Gows and the Land Council, that you've accepted, have you not?  
---Yes.

But you seem to have this reservation that as between, well, in the world at large, there's some other inchoate right out there that you're unable to define, is that the position?---Yes.

Right. And where do you say that right exists? By virtue of what?---Sorry, I'm just trying, I'm, I'm racking my brain. I don't know.

10 There is no agreement, there is no interest, Ms Bakis, that's the position, isn't it?---Well, that's your opinion.

Well, I'm asking you for yours and you've been unable to give it.---And I've told you I don't know. I mean, we could sit here all day while I try and remember it. I may never, may never. I mean we had, we had litigation. Like we, I went through all this.

THE COMMISSIONER: It's not a question of remembering anything - - - ?---It is a question - - -

20 It's a question that you were party - - -?---No.

- - - to drafting the legal instruments to give effect to the alleged transaction and I think you're fully across the nature of the transaction of the subject matters, and as a lawyer it's been put to you as to how you can, and on what basis you can, in the circumstances of this transaction, say there was any legal right, contractual or otherwise or interest created by it. And you've been given full opportunity to support your denial of the assertion made to explain, "Well, there is a basis for a right or interest." So, what is it?---I, I don't know.

30 MR CHEN: Well, you did say before that it was a statutory void. It is in the statute somewhere, Ms Bakis?---I don't know. I don't know. Really, I've tried to put all this legislation behind me.

Well, Ms Bakis, you do know, don't you, that Mr Petroulias and Mr Green had gone out and met a number of individuals involving Mr Zong in about May of 2015, isn't that right?---Yes.

40 And you knew that Mr Zong was interested in the five lots of property that were the subject of the Gows Heat heads of agreement, isn't that right? ---Yes.

And you understood at all times during the course of that transaction that the way in which it would need to proceed would be for Mr Zong and his company to buy out the interest of Gows Heat under its heads of agreement with the Land Council dated 15 December, 2014. Isn't that right?---Yes.

And the first step in that transaction, Ms Bakis, was the execution of an acquisition proposal on or around 30 June, 2015. Isn't that right?---Sounds right, yep.

And you knew by that, that Mr Zong was prepared to pay a sum of money, nominated to be \$50,000, to secure a period of time to enable him to investigate the development potential of these lots.---Yes.

10 And but at all times on the footing that he would need to buy out Gows Heat. Isn't that so?---Yes.

And you understood, didn't you, that Mr Green for the Land Council signed the acquisition proposal on 30 June, 2015?---I don't recall that, but - - -

Right. Well, I'll have it brought up on the - - -?---No, that's not true. That's not right. But anyway, you bring up whatever version of the documents you have.

20 All right. Well, I'll show you if there's - - -?---I'm not doubting you, I'm, I'm just - these documents are a mess so - - -

All right. Well, have a look at volume 3, page 150.---Yes.

And you can see that that's an acquisition proposal?---Yes.

And if you scroll down, please, to the next, you can see that it involves those five lots, so we'll just have a quick look at that, and you can see clause 5 talks about the payment of a deposit. Do you see that?---Yeah, this is a draft.

30 Right.---This was an early version of this agreement.

Ms Bakis, just wait. I'll take you through these documents. And if you have a look at the next page you can see that's been signed by Mr Zong and by Mr Green. Do you see that?---Can you scroll back up?

What, to an earlier page, is that what you want?---Sorry, to the previous page, yeah.---Okay.

40 Now, you also though signed a version, did you not?---I don't recall this being the final version, but yeah.

My question was, you also signed a version, did you not?---I signed a version I think as a holding thing before Debbie signed it, yes.

But you recall signing a slightly different version of this document, don't you?---Oh, yeah, I think so.

Right. Well, we'll just bring that reference up. Volume 3, page 146. Now, you can see that, and perhaps I'll show you the last page, 148 first, and you see your signature on it. Do you see that?---That's not my signature, but yeah.

When you say it's not your signature, you mean what appears down the bottom?---I didn't sign it.

Who signed that?---I don't know.

10

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

When did you see it first?---Oh, I can't recall but I've seen this many times.

Right.---But the point is – anyway, you keep going. I won't interrupt you.

20

Well, are you able to explain how that signature appears on that document, Ms Bakis?---I think it might be Mr Petroulias signing for me and I believe Debbie signed, signed this the day after because she wasn't available at this, something's ringing a bell.

Right.

THE COMMISSIONER: Do you recognise the signature purporting to be your signature is in the handwriting of Mr Petroulias or similar to his handwriting?---That's, that's not – I don't think that's meant to be a signature, I think that's just my name.

30

Whatever it's meant to be, does it appear to be his handwriting to you?  
---Yes.

All right.

MR CHEN: And you knew of that though, did you?---After the event.

Well, you knew about it in or around July of 2015?---Yes.

And it still went forward on that basis?---No, it didn't.

40

Right.---I've said that three times now. This was - - -

What, you didn't - - -?---There is another document after this.

All right.

THE COMMISSIONER: We might take a morning tea adjournment if it's convenient.

MR CHEN: Oh, yes, Commissioner.

THE COMMISSIONER: Right. We'll take a 15-minute adjournment.

**SHORT ADJOURNMENT**

**[11.35am]**

THE COMMISSIONER: Yes.

10

MR CHEN: Ms Bakis, I'll just show you perhaps another version of this acquisition proposal which you might be good enough to look at. You can see the front page there, so this is from Bakis material volume A, page 99. And if you scroll down, please, you can see on page 100, it's still dealing with the same properties?---Yes.

20

Scroll down a bit further, please. You can see that it's only got Mr Zong's signature on it. If it would assist you, Ms Bakis, I can identify what at least I perceive to be the differences between at least this agreement and the one that you say Mr Petroulias signed in the earlier version, which is in clause 5. That appears to me to be the only difference but if you think there's other differences, by all means tell the Commissioner.---No. I, I – the only difference is that there's a version that Debbie signed as opposed to me.

I see.---Yeah, because that, I don't know where that is and I thought that was a reference but obviously I got it wrong.

30

Well, and you say it's on your file, do you? If it's on your file, we'll find it. ---I don't know. I don't know what's on my file anymore.

Well, that certainly was. That's where it's come from.---This one?

This one.---Yeah, okay.

That's on the screen.---Okay.

Commissioner, could I have that document marked for identification and in due course, I'll extract it and tender it.

40

THE COMMISSIONER: What volume is it?

MR CHEN: So, it's Bakis volume A, page - - -

THE COMMISSIONER: A, 99, is it?

MR CHEN: Page 99, Commissioner.

THE COMMISSIONER: Yes. The document contained in the brief, Bakis A, 99 will be marked for identification. Is it 41? 37, is it? Oh, yes. MFI 37.

**#MFI-037 - SUNSHINE PROPERTY INVESTMENT GROUP  
ACQUISITION PROPOSAL AALC DATED 30 JUNE 2015**

10 MR CHEN: Now, Ms Bakis, you were aware of this acquisition proposal at the time, weren't you?---Yes.

And you knew that it had been, at least some of the drafts had been prepared by Sunshine and submitted to the Land Council, isn't that so?---Yes.

And that came to you perhaps if not from the Land Council, from Mr Say, isn't that right?---Yes.

20 And there may have been some negotiation about whether the deposit in clause 5 would be refundable if certain steps did or did not occur. Is that - - -?---Yes.

And you were involved in those negotiations, were you not?---I wasn't involved but I do remember them going on.

Well, you were the solicitor for the Land Council in this transaction, weren't you?---Yes.

30 And Mr Green and Ms Dates presumably had brought this to your attention, had they not?---I don't remember.

Well, that's what appears to have happened, doesn't it? That Mr Zong's come onto the scene and a proposal was put forward. Surely it would come to you as the solicitor for the Land Council?---Yeah, yeah. I thought you were asking about the \$50,000 deposit.

40 No, I'm not concerned about that at the moment. I'm just working out the sequence of these documents and matters of that kind. But you accept, do you, that you were aware of the transaction, is that right?---Yes.

And the documentation was sent to you at or around this time?---Yes.

You looked at it as a solicitor for the Land Council?---Yes.

And ultimately you approved the changes to the way in which the deposit may have been paid or refundable to Sunshine if the transaction did or did not proceed?---Yes.

And you knew thereafter that Mr Zong and his company underwent or undertook steps to determine whether or not the property was, or the properties were able to be developed, isn't that right?---Yeah, they, they did some sort of planning work, evaluation work, yes.

Well, that was clear. That was the intent of the acquisition proposal, was it not? Namely that they would have a period of 90 days to enable them to go onto the various lots and work out what they can do with it, isn't that so?  
---Yes.

10

And you understood that, surely.---Yes.

And that's what in fact occurred in that 90-day period or thereabouts, isn't that right?---Yes.

Now, Ms Bakis, at the end of the 90-day period, though, there was supposed to be an agreement entered into between the Land Council on the one hand and Sunshine on the other if Sunshine was content with the results of their due diligence. Is that roughly what was to occur?---Yes, I think so.

20

And you had cause, did you not – I withdraw that. You were certainly still the solicitor for the Land Council during this period of time?---Yes, I was a solicitor for the Land Council, yes.

Well, you were dealing with this transaction, Ms Bakis. That's the point I'm putting to you, obviously.---I was. I was.

30

Yes. And what was occurring, Ms Bakis, was that there was a good deal of negotiation and drafting of documents to try and determine the form of any agreement going forward involving Sunshine, isn't that right?---Yes.

But they were all going forward on the footing that this would involve the buying out of the Gows Heat interest, isn't that so?---Yes.

And you drafted a number of documents, didn't you, at and around this time leading up to 23 October, 2015?---Yes.

40

For example, Ms Bakis, you drafted, did you not, a document called a right of first refusal? Which is at volume 4, page 74.---Yes.

You remember that?---I remember the document, yeah.

I'll just bring it up on the screen. Do you see that document?---Yes.

And you also had occasion, did you not, to liaise and speak with the solicitors or the solicitor for Mr Zong and Mr Driscoll, isn't that right?---I never spoke to Mr Driscoll.

At all?---Never. I think we had some email correspondence.

In any event, you were taking instructions, were you, during this time from the Land Council, is that right?---Yes.

And who were you taking instructions from at the Land Council at this time?---Debbie, Debbie and Richard.

10 THE COMMISSIONER: Sorry, I couldn't hear that.---Sorry, Debbie and Richard.

MR CHEN: Now, at one point, though, you did express your dissatisfaction with the lack of pace and the changes that were being made to the documentation by those representing Mr Zong, isn't that right?---I might have.

20 Well, just have a look, if you would, Ms Bakis, at volume 5, page 358. Do you see there on the screen now an email, or various emails, dated 16 October, 2015?---Yes.

And you can see on the screen it's an email from you to Matt Fisk, amongst others, and Tony Zong.---Yes.

And you can see there, "Our client is fed up with this process," et cetera. ---Yes.

Who of your clients was fed up with that process?---Awabakal were fed up.

30 No, but who in particular?---Oh, probably Richard, I'd say.

And it says, "Please consider the negotiations are at an end at 5.00pm today if this delay continues." Do you see that?---Yes.

Who gave you those instructions?---Probably Richard.

When you say probably - - -?---Oh, I couldn't say for sure.

40 But there was no members' meeting or anything that had been arranged at this stage, Ms Bakis. Isn't that right?---Not relevant.

THE COMMISSIONER: What do you mean by that?---Well, I'm not sure why I'm being asked about a members' meeting. Oh, because you're going back to this issue about the contract is void. Okay. No, a members' meeting had not been organised.

MR CHEN: And so there's no urgency at this stage, is there, Ms Bakis? ---No, the urgency is because they were wasting my time.

I see.---And they kept wasting my time. It was a lot of toing and froing.

THE COMMISSIONER: But you couldn't put your interests ahead of your client's, could you, just because they're wasting your time, threatening to end negotiations between the parties?---Well, not wasting my time, but every time there's a change to the drafts I have to talk to someone about the changes and get instructions and it's just going backwards and forwards and backwards and forwards and - - -

10 MR CHEN: Were you really doing that, Ms Bakis?---Yes, I was.

Were you really - - -?---Yes.

- - - going back and forth, speaking to the Land Council, getting instructions on matters of details such as changes to the proposed documentation?  
---Well, I'm not sure in what context this email was drafted.

Well, it's in the content.---I sound fed up, but ah - - -

20 THE COMMISSIONER: Sorry.---No, you're right. I'm finished.

In this period of time round this email, 16 October, '15, your instructions were coming, were they, from both Mr Petroulias and Mr Green?---Yes.

And who was it that you'd been needing to consult about changes that Zong's solicitors were proposing, both of those two, Mr Petroulias and Mr Green, or one or the other?---This email would have been drafted in the context of Awabakal.

30 MR CHEN: I think the Commissioner was asking you questions about was it Mr Green that was giving you these instructions or was it somebody else?  
---Well, Mr Green was the chairman and as my memory, as I recollect, there was no board, sorry, he was acting chairman because Debbie had been suspended, I could be wrong about these dates, but so the board wasn't meeting therefore Richard was the board, so I think it must have been Richard.

Right.

40 THE COMMISSIONER: Just incidentally, earlier you said that, in relation to the agreement 15 December, 2014, Mr Green represented that he had authority of the board. You said words to - - -?---I remember, I, I, I have a vague recollection of him saying he was endorsed by the board to sign - - -

Did you – sorry.---Yes, no, that's right.

Did you ever take steps to confirm that Mr Green ever had authority from the board?---I didn't at that time.

But wasn't it absolutely critical to check out whether his say-so was accurate?---Well, well, the chairman confirmed it so that - - -

Well, the same would apply to the chairperson, that they had the authority by a duly constituted Land Council to be doing these activities, negotiating agreements, entering into agreements.---Well, I relied on their say-so. It was deputy and chair.

10 Why did you not go further and say, I want to be satisfied that you do in fact hold the authority you assert, to both of them, Green and Dates?---I, I just relied on, on their say-so.

MR CHEN: You see - - -?---It didn't occur to me.

Isn't it the case, Ms Bakis, that really this email that I've drawn your attention to on 16 October, 2015, that really this is only you acting on your own here, this is not acting with Mr Green's imprimatur at all, isn't that right?---Can you scroll down so I can read it? I don't even know, I can't  
20 even remember what was going on. Valuations, I wouldn't - - -

I think the subject matter of them are unconnected, Ms Bakis, but you feel free to read them if you like.---Well, in that case it's, there's obviously a lot been going on – calls, negotiations, discussions, meetings, God knows what else has been going on – and I've sent that email. And Richard's probably fed up driving up and down the coast looking at documents.

What, he was coming to your office and looking at these documents, was he?---Oh, I don't know. He, he was probably meeting Nick to talk about  
30 them.

Well, what's Nick's role in looking at the documents, then?---This was a United Land Councils deal and - - -

Not on the face of it, it wasn't?---It wasn't?

No.---Okay. Well, that's evidence you'll need to get from Mr Petroulias. But, so just out of the blue I sent someone an email saying I'm fed up. It's not something I do. There must have been something going on during that  
40 day to really annoy me, and I, and I do recall this process took a long, long time, same with the Solstice one later, and very frustrating. People trying to rip each other off.

Well, you ended up preparing, did you not, the heads of agreement that were actually signed by Sunshine and the Land Council, isn't that right?---Yes.

You also prepared the variation agreement to that agreement, did you not?  
---Yes.

And you also prepared, did you not, the surrender and release agreement that was to accompany these documents, isn't that so?---Yes.

Now, Ms Bakis, you understand, don't you that there was an arrangement made for all these documents, those documents that I just mentioned, to be signed at the Land Council offices on 23 October, 2015.---Yes.

10 And who made those arrangements?---It would have been Mr Petroulias, Mr Zong and Mr Green.

Why didn't you make the arrangements?---Because I was fed up.

With what?---The, well, I, I got to the point with this particular deal that I thought it would never get signed, and me travelling up there to organise a meeting would be a waste of time. So Mr Zong and Mr Petroulias were negotiating on this deal directly and they organised the meeting and, yeah, I, I didn't organise it. I didn't go.

20 But, Ms Bakis, these are your clients, the Land Council at least and Gows. ---Yes.

And the Land Council are being asked to attend and sign the documents, were they not?---Well, yes, they were there, so - - -

Well, you knew they were going to be there to sign this, isn't that right? ---Yes.

30 Mr Green, yes?---Yes.

Ms Dates?---Yes.

Why is it that you didn't go with them on that day to ensure that everything ran smoothly?---I don't remember. I actually don't remember. I might have had something on, it's too far, I don't know.

Was it the fact that you really just left it for Mr Petroulias to represent their interests?---No.

40 Ms Bakis, there doesn't appear to be any file notes or letters confirming what occurred at this meeting back to the Land Council following it. Is that your understanding of the file notes, or lack thereof, that are in your file? ---I, I can't say the way - I'm sure there's a file note but - - -

What about a letter? Is there a letter, Ms Bakis, on your file?---I don't know.

You haven't checked?---Well, I don't know. I really don't know. There could be, there could not be. I don't know.

Anyway, you knew in any event that, on this day, that Mr Zong was coming up to the Land Council to hopefully sign the documentation that you had prepared, is that right?---Yes. Yes.

10 And you decline to attend in part because you thought it would be a waste of time or potentially so. Is that the position?---Well, I said I don't know why I didn't attend. One reason may have been I was fed up or, yeah, I don't know.

And you know, don't you, that those three agreements that I drew your attention to – the heads of agreement, the variation agreement and the surrender and release agreement – were all signed on that day, isn't that so? ---I think so, yep.

Now, Ms Bakis - - -

20 THE COMMISSIONER: Just before you go on- - -

MR CHEN: I'm sorry.

THE COMMISSIONER: Before those agreements were entered into, is there any memorandum or notice, any advice you gave to the Land Council about each of those agreements?---There could be.

30 Well, do you know whether you did create any memorandum or create any written advice about these agreements as to each of them so the Land Council could understand what they were entering into?---My practice at the time was to talk to them, put it in a file note or a brief or whatever we called it and talk that through with Debbie and Richard. So, if there isn't such a thing, I, I really can't recall now. Mr Chen's saying there isn't.

MR CHEN: I have's asserted that.---Oh, okay.

40 I've asked you whether – I have my own, I've reviewed with the material, Ms Bakis, but I've asked you questions about what your recollection was. ---Well, I don't remember what's in my file. I honestly don't and I'm not being evasive. I just do not know. Even though I looked at them earlier this morning, I have forgotten.

THE COMMISSIONER: Did you form any view as to the capacity of Mr Green, firstly, to understand the effect of terms and conditions in the heads of agreement, the variation agreement and the surrender and release agreements?---When I explained it to him, he appeared to understand. Now, whether he was listening or not - - -

It's not a question of whether he's listening. It's whether he had the background and experience to be able to comprehend without a document which explained the operation and effect of these agreements at law, to just be told in a discussion about them.---Well - - -

10 Did he appear to have the background expertise or experience to be able to comprehend what's in each of those agreements and the effect that they would have on the Land Council of which he was a member?---Well, one thing I knew about Richard and Debbie, was they didn't like reading documents. So, writing them another letter of advice was pointless and all it would serve was to protect me. So, my practice was to explain things to them as best I could, running through the documents.

Did you create a note as to what it was that you explained to them about the variation agreement or the surrender and release document?---I don't, this is what I'm saying, I don't remember. I don't remember if I actually did it for this particular, on this - - -

20 I think it may be suggested that you did not.---Right, okay.

And if that is in fact the position, one asks, why would you not make a note as to the advice you gave them, just to ensure that they had got the message, that they had understood the legal implications of these agreements? Why would you not?---I'm sure I did but if I haven't it was just an oversight. It wasn't deliberate, it was just an oversight.

30 You see, why wouldn't you have put your advice in writing and send it to the board rather than relying on the ability of Green and Dates to fully understand what transaction the Land Council was about to enter into?  
---The board wasn't sitting at the time.

Well, whether they were sitting or not, they had a right to be informed, didn't they?---Okay, well, perhaps I should have written long, long letters to the board which I knew they would never read. I, I thought that was risky.

40 Well, they may not read it but they might sit down and ask you to go through the document that sets out all the detail as to what it does involve, being fairly complex, potentially complex transactions.---Yeah. It's not that sort of client.

MR CHEN: Well, you did it on other occasions though, Ms Bakis.---I did.

There's long advices in connection - - -?---I did.

Please, just allow me to ask the question. You've prepared other quite long detailed advices in connection with other transactions have you not?---I have.

So that justification for not sending it that you posited to the Commissioner couldn't be right, could it, because you've done it on other occasions?---I'm speaking, I have no idea what's in my file. I'm pretty sure I wrote something down. I explained it to them. Sure there were occasions, especially when the full board was sitting, when I did write advices because other board members may be interested in reading them. They never did but  
---

10 THE COMMISSIONER: But coming back to Counsel Assisting's question to you. You had on prior occasions sat down and explained things to them, had you not?---Yes.

And the question is why wouldn't you have done that in order to ensure that they fully understood the legal effect of these agreements, the variation agreement, the surrender and release agreement, the heads of agreement? ---But I did, I did, and I think you're all suggesting that I didn't, but I did.

You did. I see.---I did.

20 And they sat there and they listened, appeared to listen to you and understand?---Yeah, I mean, yeah.

Oh.---Yes.

Do you remember now what you told them about the variation agreement? ---No, I don't.

30 Do you remember what you told them about the surrender and release agreement?---No, I don't.

What about the heads of agreement? What did you tell them about that agreement, the legal effect?---Well, I don't remember.

Did you ever tell them that the heads of agreement entered into in December, 2014 was nonbinding, was not a binding contract at all?---Well, that's your opinion, Commissioner.

Did you ever tell them that?---Well, that, that wasn't my opinion.

40 Did you act on the basis when dealing with them that they should understand that the heads of agreement did create a binding legal agreement?---Yes.

MR CHEN: Well, Ms Bakis, there are a number of documents that were prepared and around this time, that is to say, prior to the execution of these surrender and release agreement, the variation agreement and the Sunshine heads of agreement, were there not?---There were many documents prepared, yes.

Well, one of them I think I took you to before was the right of first refusal. You remember that?---Yeah.

There was a number of other documents called put and call options or Sunshine call option agreements. You remember those?---Yes.

10 And you also remember, Ms Bakis, there was another document that you prepared called the deed of rescission. Do you remember that?---Vaguely.

Well, I'll have it brought up onto the screen for you. It's volume 7, page 71, and if you scroll through the back you can see the back page. You can see it's been signed by Ms Dates, Mr Green and what appears to be Mr Latervere I take it. Is that right?---Well, obviously that's Mr Petroulias.

Why do you say that?---We've been through this. Mr Latervere wasn't alive. Isn't that right?

20 Anyway, you remember drafting this agreement, do you?---Can you scroll back up. Yes.

And the purpose of this document, Ms Bakis, was to effect a rescission of the Gows Heat heads of agreement. Isn't that right?---Yes.

Ultimately this document was superseded though, was it not?---By what?

Well, by the surrender and release agreement. Isn't that your understanding?---Oh, that could be right, yes.

30 You don't know?---I don't remember.

Well, you don't know. Is that the more correct answer?---I don't remember.

Well, Ms Bakis, if you have a look at recital C you can see that what you're endeavouring to do by this document is to rescind or formerly rescind their agreement, that is the agreement between those parties. Is that right? ---Yes.

40 And if you look at recital A you can see the parties have entered into an agreement on 15 November – that appears to be a typographical error, it's probably December it's referring to. Do you agree?---Yes.

And the two parties are Gows and the Land Council. Correct?---Yes.

So, Ms Bakis, could you just explain to the Commissioner if as between Gows on the one hand and the Land Council on the other it's void and unenforceable and no rights are created - - -?---Well, that's your opinion, yes.

Well, it's your evidence as well, Ms Bakis.---No, it's not.

I see, it's different now, is it?---Sorry, keep asking me questions. I interrupted you.

Well, if the agreement which I thought we had established well and truly before morning tea, the Gows Heat heads of agreement, created no enforceable rights between at least Gows and the Land Council - - -?---Yes, I agree with that, yes.

Right. Then why on earth, Ms Bakis, do you need to prepare an agreement that's rescinding a document that creates no rights?---I don't know. I don't, I don't know if this is, if, I don't – is this from my file?

Please answer my question, Ms Bakis.---I don't know. I don't know. I really don't know.

What took you near on 15 seconds to respond initially to that, Ms Bakis?  
20 ---Trying to remember.

Let's not try to remember anything. I'm asking you about the effect of an agreement which you've accepted you drafted. Why is there an agreement purporting to rescind an earlier agreement which you say is void and unenforceable?---Well, yeah, that's right, that's wrong.

You see, what you were doing, Ms Bakis, with this and other documents, is creating this impression that in fact that there was something of substance in the agreement between Gows Heat and the Land Council. Isn't that right?  
30 ---And there still is something of substance in those agreements.

And what is that, Ms - - -?---They can still be approved.

Right.---They can still be put to the members.

Could you please, Ms Bakis, define that in legal or other terms, please.  
---I can't, I can't, but all I'm saying to you is at that point, I mean Tony Zong could have taken that and had it approved by members or, or NSWALC.

40 Well, Ms Bakis, I'm going to suggest to you that you know that is completely and utterly false.---No, that's - - -

Ms Bakis, you know full well that Gows Heat never had an agreement at all of any kind supported by a resolution of this Land Council. Isn't that right?  
---That's not right.

And what you were doing here, Ms Bakis, with the other documents is creating this false impression that in fact there is some legitimate legal or legally identifiable interest in this Gows Heat agreement when you knew full well there was not.---Well, that's not true.

Well, let's have a look at these agreements you've drafted, Ms Bakis, shall we? Have a look, please, at volume 7, page 128. Now, you would be well familiar with this document, would you not?---(No Audible Reply)

10 If you have a look at the next page, the Sunshine heads of agreement.  
---Okay, yeah.

Well, you'd be well familiar with it, wouldn't you, Ms Bakis?---Okay.

Is that a yes?---Well, is this a draft, is this a signed document?

Well, I'll show you, Ms Bakis.---Did it come from my file, did it come from someone else's file.

20 Look at volume 7, page one hundred and - - -?---There are so many documents.

Please, Ms Bakis.---Well - - -

Do me the courtesy of asking, allowing me to ask the questions and I will permit you to answer them. Volume 7, page 134.---Okay. That's the signed agreement.

30 So let's go back to page 129, please, Ms Bakis. Now, you accept, don't you, that at no stage do you, when you draft this agreement, say, "This is a conditional agreement"? Isn't that right?---Why would it be conditional?

Well, you know full well, don't you, Ms Bakis, that before this can go anywhere this needs to – assuming it's gone before the board – go to the members.---Yes. And Tony Zong knew that.

Well, I'm just asking about your drafting at the moment, Ms Bakis. You didn't state in this agreement at any point "This is a conditional agreement," did you?---I probably didn't.

40 You definitely didn't, Ms Bakis. It's not in there.---Okay.

You didn't state at all, at any stage in this document, Ms Bakis, did you, that this agreement was subject to approval under the provisions of the Aboriginal Land Rights Act, did you?---No, but - - -

There's no reference at all in this document, is there, Ms Bakis, to the Aboriginal Land Rights Act, is there?---No, it's on the certificate of title. It's pretty obvious.

I see. And, Ms Bakis, if you have a look, please, say, at volume 7, 129, you'll see that under clause 1 you refer to "This document subject to law is a binding contract." Do you see that?---Sorry, which clause.

Clause 1.

10

THE COMMISSIONER: Second line.---Oh, down the bottom, sorry. Yes.

MR CHEN: It's not binding at all, is it?---Well, if it's not it was up to their lawyer, his lawyers to tell me otherwise if he didn't like it.

THE COMMISSIONER: Wait a minute. You're the lawyer for the Land Council.---Sorry, sorry, sorry. I'm, I'm confused. I'm confused. Scroll, can you scroll back up. I'm really confused what document I'm looking at now.

20

You're the lawyer for the Land Council.---Sunshine.

And you're the drafter of the document.---Yes. And that's why there was another lawyer on the other side telling them - - -

We're just talking about your role at this stage.---No, well, there's two sides to this, and I know what you're trying to do here, but these people had legal advice and they were told there was a process. They knew.

30

But you'd accept, wouldn't you, that, whether somebody's legally represented on the other side of the transaction or not, that it would be totally unacceptable for a client to misrepresent to that other party – that is, to make inaccurate and substantial misrepresentations?---Generally, yes.

You would not want your client making misrepresentations to another party to a proposed transaction, would you?---Tony Zong knew - - -

No, no - - -?--- - - - that this needed approval.

40

You would not want - - -?---Oh, God. No, I wouldn't, Commissioner, no.

- - - to include in a contract a misrepresentation, would you?---No.

Least of all the client's lawyer making the representation on his or her behalf. Is that right?---This is crazy.

You remain silent, shaking your head.---Sorry, this is just - - -

What's difficult about that?---I'm just, this is crazy. I mean, I sat through the meeting when Richard told Tony Zong about the whole process.

We're talking about - - -?---His lawyers knew it. I mean, I couldn't misrepresent something that the whole world knew. It was plain as day.

As a matter of general principle, you would not - - -?---I have already agreed that as a matter of general principle. That's correct.

10 - - - that you would not want a lawyer to misrepresent in the drafting of a contract a position as to a fundamental matter?---Yes.

All right. Why did you allow this to go through, then? And indeed why did you draft it in these terms? That is, that this document was, quote, "a binding contract" when it was not?---That's an error.

You knew at the time - - -?---That's just an error.

20 You knew at the time that this document, the heads of agreement was entered into on 2 October, 2015, that Mr Petroulias was very keen to see this transaction go through, wasn't he?---Well, he was keen for it to go through but I think not at any cost.

And the reason he was keen for it to go through was that there was money to be made by him or his company?---Yes. Sorry, that held be rewarded for the work he's put in. Yes.

30 And his keenness to enter into this transaction or to have the transaction entered into was made known by Mr Petroulias to you?---Yes.

He saw it as an excellent opportunity to make money, didn't he?---Yes.

I'll leave it to you, Mr Chen.

MR CHEN: Well, just coming back to this, please, Ms Bakis, you'll see as well in, for example, recital D, that it talks about the purchaser entering into an agreement with the vendor as at 30 June, 2015, with the consent of Gows. Do you see that?---Yes.

40 Gows was not in a position to consent to anything, Ms Bakis, was it, because it had no enforceable right as against the Land Council?---That's your opinion.

Well, Ms Bakis, it's not my opinion. It really is your evidence, is it not, because it had no enforceable right to do anything in connection with this land unless and until it secured the approval of the members and the NSW Aboriginal Land Council, isn't that right?---That's right.

And so what you were doing again, Ms Bakis, in crafting these clauses in this way is again creating this impression that Gows had a legitimate right in the underlying transaction, isn't that so?---Yes, and it did.

Well, we'll come to that. I mean, have a look please, if you would, at volume 7, page 131, you can see in clause 2.6 that you've drafted, "To any extent necessary the vendor acknowledges and consents to the surrender and release rights by Gows." Do you see that, Ms Bakis?---Yes.

10 That clause is drafted to objectively convey to a reader that Gows have rights derived from an agreement that it apparently has with the Land Council. Isn't that right?---Yes.

And Ms Bakis, you accept, don't you, that Gows had no such rights?  
---Gows had rights.

Tell the Commissioner what they are, Ms Bakis.---I can't tell you right now.

20 Well, you've not been able to tell the Commissioner at any point today.  
---That doesn't mean that I'm not right.

THE COMMISSIONER: Ms Bakis, that's, with great respect to you, not a very satisfactory answer to the lawyer who was involved in these transactions. You've been given opportunities and I'll give you a further opportunity to identify any possible right that was being surrendered or given up in this transaction. Having thought about it now for some time, are you able to identify any right that could possibly fall within that clause?  
---That clause that was just read out to me?

30 Yes. 2.6 I think it was, wasn't it?

MR CHEN: It was.

THE COMMISSIONER: Yes.---Can you show me again? Well, it's the same rights we've been talking about.

What rights are they?---I'll go get a legal opinion tomorrow if you want. I, I don't know what to say. I'm going - - -

40 MR CHEN: Well, you're the lawyer that's drafted it, Ms Bakis.---Yes, and I was comfortable at the time.

Right.---And right now I can't explain it to you.

THE COMMISSIONER: Well, did you draft it because you were under some pressure by Mr Petroulias?---No. No.

Well, he was in effect the representative of one of your clients at this time, so presumably he was giving you instructions. Could it be that he was clouding your vision in terms of clause 2.6?---No.

MR CHEN: Mr Bakis, on the day of 23 October, 2015, Mr Green, Ms Dates appear to sign contracts for the sale of land in relation to all of these five lots.---Yes.

10 And you annexed those draft standard form contracts for the sale of land in relation to each lots to the heads of agreement or the variation agreement, did you not?---I believe so, yes.

And the purpose of that was again to create this impression that there was something more substantial lying beneath this transaction when there plainly was not.---No, there was another reason. I don't remember what it was now. Um, there was no attempt to hide, hide anything here.

20 THE COMMISSIONER: It's not question of hiding. It's a question of misrepresenting.---Ah, there was no misrepresenting anything to anyone.

Well, it's been put to you that there plainly was.---Okay.

It's been put to you so that you can have the opportunity to refute it or explain it or justify the drafting of this agreement or these agreements. ---Well, I don't need to refute it. I'm very comfortable in my position here.

MR CHEN: All right. Let's move on.---I, I, I, I, I am surprised by this line of questioning, I'll be honest with you.

30 Well, Ms Bakis, have a look, please, at the variation agreement, volume 7, page 142. Now, you remember this document of course, do you not? ---Can you scroll down, please?

And if you have a look at the second page, so page 143, you can see it's been signed.---Yes.

40 And, Ms Bakis, have a look if you would at clause 5 on page 142. You can see that again this clause is dealing with security for the performance of the vendor's obligation under the agreement and the creation of a charge. Do you see that, Ms Bakis?---I do.

Right. And again, this is suggesting, is it not, that these steps would be performed by the Land Council to ensure that it fulfilled its obligations under the agreement. Isn't that so?---I don't recall this clause. Can you scroll back up? Sorry, what was the question?

Well, you asked to read it. What's the evident purpose of that clause, Ms Bakis?---I don't remember drafting that.

What's the evident purpose of it?---Charging Awabakal's property.

THE COMMISSIONER: Sorry, I can't hear you, I couldn't hear that answer.---Putting a charge in favour of – can you scroll back to the top? Sorry. It's so hard without a paper document. Oh, right, so I'm not, it's not  
- - -

10 MR CHEN: Well, we'll have it put in front of you, volume 7, could volume 7 - - -?---These things aren't defined. Sorry. It's okay, it's okay, it's okay. Because it's referring back to the other document, I don't have that. It's fine, it's okay.

I'm not asking – if you - - -

THE COMMISSIONER: Just pause there. Would you give Ms Bakis volume 7 so that she's got the hard copy. Page 142 I think.---See, I don't know where these documents have come from and there were so many versions of these documents.  
20

Well, just pause there for a moment.---And they were drafts.

Just pause there.---No. The same thing happened on Friday and errors are made when I'm giving evidence.

MR CHEN: So it's 142, Ms Bakis.---Thank you. Yes, I understand that now.

30 Did you draft this clause?---No.

Who did?---I don't know.

Well, who other than Mr Petroulias would it have been?---It would have been Mr Petroulias.

And, what, he's drafting on your behalf documents contained, sorry, documents within agreements for your client, the Land Council?  
---(No Audible Reply)

40 Is that the position, Ms Bakis?---Yes.

Really, you and he were working hand-in-hand, weren't you throughout this transaction, Ms Bakis. Isn't that right?---We were talking.

Well, he's doing a bit more than that, he's drafting.---Well, yeah. I don't, I don't, I don't know how this has come about, but - - -

Well, it would come about because you allowed it, Ms Bakis, surely that's the only explanation on your evidence.---Yes.

Well, Ms Bakis, have a look at clause 4 and you can see, can't you, within it that there's a couple of things, if you look on the fourth line you'll see, "The parties agree that a separate call option is granted for each property which may be exercised together or independently of each other." Do you see that?---Yes.

10 Now, you drafted that, didn't you?---I think so.

And what that enabled Sunshine to do was to choose which properties it could in due course exercise an option in favour. Isn't that right?  
---Ah, yes.

So it could choose one, some or all or none of them. Isn't that right?  
---Yes.

20 So when you say in your evidence and when there's been other suggestions that there's concerns about cherry-picking, that's a description to the legal entitlement that Sunshine was apparently granted under this agreement to exercise one or any number of any of the options over these properties. Isn't that so?---Yes.

So if there's a complaint about cherry-picking, Ms Bakis, it's a complaint about your drafting. Isn't that so?---Yes.

30 Now, Ms Bakis, you can see also if you go down a bit further in that same paragraph about five lines from the bottom it commences, "The purchaser will have access to the properties et cetera to undertake the rezoning." Do you see that?---(No Audible Reply)

Just near where the hand is, if you're looking at it on the screen.---Oh, yes, yep.

And a bit further down you can see a sentence that starts on the right-hand side of the page, "The purchaser will pay the vendor an option free of \$712,000," et cetera. Do you see that?---Yeah.

40 And it says in the last sentence, "An amount of \$400,000 of the option fee is released to the vendor with the balance to be held in the trust account."  
---Yes.

Now, that's likely to be, \$316,000 is likely to be an error, is it not, it's likely to be \$312,000?---Yes.

But, Ms Bakis, that's precisely the sum of money that was paid into your trust account by Sunshine, wasn't it?---312?

No, \$712,000?---Was it that much? Yeah, okay. I trust you.

And in fact the payment of that money was clearly on this clause, Ms Bakis, was it not - - -?---This is so unfair.

- - - a payment of - - -?---No, I'm not accepting this.

10 I haven't finished my question.---No. Well, I know what you're going to say.

THE COMMISSIONER: Now, will you just – look, I think it's been pointed out many times and you as a solicitor would have an appreciation that - - -?---Yeah, I do.

20 - - - the question-and-answer format requires the person to whom the question's directed not to talk over the questioner. I don't know how times we have to keep repeating this, but I thought as a lawyer you would really understand the process because two people can't talk at the same time, as you'd appreciate.---Sure.

Amongst other reasons.---My apologies, Commissioner.

Now, you're flipping around there with pages in the document.---I'm sorry, it's just - - -

Would you turn away from the volume of documents and just pay attention to Counsel Assisting?---Yes.

30 Listen to the question, let him finish it and then if you'd answer it. Let's start again.

MR CHEN: This clause, Ms Bakis, can I suggest, makes it plain that that money, the \$712,000, was payable to the vendor, isn't that right?---Yes.

And the vendor is the Land Council, isn't that so?---Yes.

40 And of course the \$400,000 that could be released was to be released to the vendor, isn't that right?---Yes.

And the balance was to be held in the vendor's solicitor's trust account, correct?---Yes.

And what happened, Ms Bakis, though, is that, according to your evidence last week, this money was all Gows's money.---Yes.

And was paid to them, isn't that right?---Yes, that's right.

So, despite this agreement having been signed, you didn't feel constrained at all to deal with the money paid into your account of \$712,000 in accordance with the terms of it, but rather paid it out to Gows. Is that the position?---I don't know. I don't know. I, I, I can't, I am not, I can't answer these questions without looking at my file notes. This is ridiculous.

Well, Ms Bakis, we established this well and truly in the evidence - - -?  
---You can, I can, you can probably find fifty – sorry, I interrupted you again.

10

This was established well and truly in the evidence when I took you through each of the moneys that went into your trust account and where it went from that trust account to last week.---I'm not, I'm not disputing that.

And I thought it was fairly obvious, Ms Bakis, indeed it was your consistent evidence that Gows was entitled to all of that money?---Yes.

20

My proposition, Ms Bakis, is you paid out that money to Gows in defiance of this clear expression in clause 4 of the variation agreement, isn't that right?---I'm pretty sure that's not right.

THE COMMISSIONER: Why is it not right?---Because I wouldn't have done that.

But you did.---No, but I wouldn't have done that. I, I - - -

Madam, please. Just give a sensible answer, please, to the question.---I can't. I cannot do it without my files. This is seriously unfair.

30

But this is - - -?---Seriously unfair.

MR CHEN: What do you need, Ms Bakis? Tell us what you need.

THE COMMISSIONER: What is it that you need about this question?  
---No. You know what, forget it. Like, I just, it's obvious what you people are trying to do here. I did not steal \$400,000. I did not.

40

Ms Bakis, are you prepared to cooperate with this Commission in its investigation or to - - -?---I am but - - -

Or to obstruct - - -?---I am.

Or to obstruct it?---No, I am but I find it curious that none of my file notes are in, in these briefs that you're taking me to.

So, you think there's something wrong being done here, do you, in terms of your file notes?---Look, we've, we've had litigation, all right? Litigation was started by Sunshine and everyone agreed that the documents were a

mess. Now, I don't know if this is one of the documents that was signed and then was discarded. I don't know.

10 A lot of these questions have just been put to you on the subject of clause 4, would not depend upon file notes. It's your recollection of a particular event or a conversation or advice you gave. It's just simply putting two propositions together. One, your evidence about the entitlement to the sum of money that's the subject of the question on the one hand and the provision here which earmarks the money to be paid to the vendor, some of  
10 which is to be held in your trust account and seeking to have it put to you that your evidence as to the entitlement of Gows to this money could not be correct. Now, that doesn't depend upon file notes of who said what or what advice you gave to anyone. So, I think if you just bear in mind, and if there's any file notes you want to have access to, you just tell us what it is that you'd like produced to you after the adjournment and we will track any files notes that you care to reply upon at all. But I think in relation to this matter, it doesn't depend on file notes. It depends upon the two matters that I've just put to you. Now, we'll see if we can continue this segment before the luncheon adjournment and then if there's any file notes you want, you  
20 just let us know. Yes.

MR CHEN: Are you able to answer the question, Ms Bakis?---If I look at that document as it is, yes, the 400 was for Awabakal without looking at anything else.

Well, you gave evidence about this last week, Ms Bakis, without the assistance of any file notes and I'm just really taking some of that up with you now, is that as I understood it what you say is that this money was always for the benefit of Gows. Is that right or not right?---It was for the  
30 benefit of Gows.

But just not consistently with clause 4 of the variation agreement. Is that your evidence?---I, I don't know.

THE COMMISSIONER: On the basis of what legal instrument do you say Gows had entitlement to this money referred to in clause 4?---Something happened after this.

40 MR CHEN: Well, Mr Zong according - - -?---Where are we?  
I'm sorry, you keep going.---No, no, please.

Well, Mr Zong according to your evidence gave you instructions to release. ---He did.

But he's not the vendor of course is he?---No.

So you got instructions from Mr Zong to release at least the first \$400,000 of moneys that were actually for the benefit of the vendor. Isn't that right? ---According to your construction of the documents, yes.

THE COMMISSIONER: And how did that sit with your obligation to the Land Council under the variation agreement?---I have no idea.

Sorry?---I don't know.

10 MR CHEN: Did you take this up with anybody in the Land Council to get their instructions at the time, Ms Bakis, or not?---Oh, God. Oh, God. This is not my recollection of how the transaction worked. I, I honestly have a big blank between here and December.

Well, Ms Bakis, I'll take you back because there is another document that perhaps this might assist you in filling in some of the blanks but you know as well that a variation – I'm sorry, I withdraw that – that a surrender and release agreement was prepared, Ms Bakis?---Oh, is that a question. Yes.

20 And so have a look at volume 7, page 136 and there's another version of this agreement, Ms Bakis, which is MFI 11 which has Ms Dates's signature on it. Would you prefer to see that document?---No.

All right. You can see at least looking down at volume 7, page 136 that aside from the in delineation there, what was to be paid according to the draft was \$250,000 initially to Gows. Do you see that?---Yes.

30 And in fact what I suggested to you last week and what, Ms Bakis, I think you accepted ,was that that sum of money was in fact paid directly to Gows by Mr Zong or his company.---Yes.

So there's been this other addition, and Mr Zong has given some evidence about that, but on the face of the documents, Ms Bakis, the money that was paid to Gows Heat, namely, the \$250,000, was paid to Gows Heat. Do you agree?---I think that's right.

40 And the \$712,000 that on the face of clause 4 of the variation agreement was also paid into your trust account for the Land Council, wasn't it?---It was paid into my trust account.

Well, on the face of clause 4 it's for the benefit of the vendor, Ms Bakis, isn't it?---In the face of clause 4 of the document you showed me, yes.

Well, is there some other document around that changes these?---I don't know.

Well, you're the solicitor, Ms Bakis, and - - -?---Yeah, I know.

I'm sorry?---I know.

THE COMMISSIONER: Could I ask you in relation to the amounts set out in clause 4, in particular the split of the option fee – 712,000 and what should have been 312,000 – how were those amounts arrived at? Who did you consult with to determine the amounts of money that would be inserted into clause 4. Who did you get instructions from, in other words?---Are you going back to that other deed?

10 Yes, I'm going back to the variation agreement, clause 4.---I have no idea.

Well, did Mr Petroulias have a hand in suggesting what the amounts should be in terms of the option fee? 712,000 - - -?---It was 712.

- - - with an amount of 400 to be released, and the balance of, well, it says 316 to be held in the trust account, your trust account. How do those amounts come about?---I have no idea.

I see it's - - -?---I have no idea. I'm sorry. I am so confused right now.  
20

I'll take the luncheon adjournment.

MR CHEN: Yes, Commissioner. Thank you.

THE COMMISSIONER: Yes. We'll resume at 2 o'clock.

**LUNCHEON ADJOURNMENT**

**[1.01pm]**