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PUBLIC
HEARING

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INDEPENDENT COMMISSION AGAINST CORRUPTION

THE HONOURABLE PETER HALL QC
CHIEF COMMISSIONER

PUBLIC HEARING

OPERATION SKYLINE

Reference: Operation E17/0549

TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON MONDAY 14 MAY, 2018

AT 10.00AM

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

THE COMMISSIONER: Yes.

MR CHEN: Commissioner, I call Ian Sheriff.

THE COMMISSIONER: Yes, thank you. Mr Sheriff, are you there?
Thank you. Just take a seat there for a moment, Mr Sheriff. Mr Sheriff, just
before we start, a couple of matters. The provisions of section 38 of the
Independent Commission Against Corruption Act entitle a witness to object
to giving evidence. The purpose of that, as you may appreciate, is to result
10 in the position whereby the witness's evidence cannot be used in other
proceedings, criminal, civil or administrative proceedings, other than
proceedings from defence under the Act, such as giving false evidence.
You may or may not want to take an objection for that purpose. You're
absolutely entitled to do so if you wish and I'll make the necessary order if
that be the case. Have you considered that matter?

MR SHERIFF: I have no objection.

THE COMMISSIONER: No objection, thank you. Very well, just before
20 we start, then, I'll make an order that the evidence to be given here today in
the presence of Mr Sheriff is restricted and prohibited from publication and
can only be communicated to staff of the Commission for statutory purposes
and those here present.

MR CHEN: I think, Commissioner, we don't need that order today. I don't
think we need that order today.

THE COMMISSIONER: All right, very well.

30 MR CHEN: Yes.

THE COMMISSIONER: So we just go straight into a public?

MR CHEN: We do, yes, Commissioner.

THE COMMISSIONER: Very well. Mr Sheriff, do you take an oath or an
affirmation?

40 MR SHERIFF: Take an oath.

THE COMMISSIONER: Yes. Would you mind standing, and my associate
will administer that.

THE COMMISSIONER: Thank you, Mr Sheriff. Just take a seat there. You may have access to any files that you've brought with you if you need to do so. Yes.

MR CHEN: Is your name Ian Sheriff?---It is Ian William Sheriff.

10 Mr Sheriff, you're a solicitor, are you not?---I am.

Were you admitted to practice first in 1976?---I was.

Have you practiced continuously since that time?---I have.

Initially, were you a partner within a firm called Emery Partners?---I was.

And they're a Hunter Valley firm, are they not?---Yeah. Newcastle and Hunter Valley.

20

And did you work within that firm until approximately late 2015 or so? ---Late 2014.

I see. And since then you've continued to practice as a sole practitioner, have you not?---I have.

Mr Sheriff, can you tell the Commissioner your areas of practice over the last 38 or so years?---My areas of practice, Commissioner, are largely in the commercial field, property field, residential and, and, and commercial, and state planning.

30

Mr Sheriff, did you, in around 2006, whilst you were at Emery Partners, first come to do some work for the Awabakal Local Aboriginal Land Council?---I did.

And since that time, was initially Emery Partners and thereafter, yourself, retained on a transaction by transaction basis by the Land Council?---That is correct.

40 In particular by the board of the Land Council?---That's correct.

Was the first transaction that you were involved with a property at Scott Street, Newcastle?---It was.

And did you deal with the conveyance of that property?---I did.

Thereafter, did you from time to time deal with commercial and property related matters for the Land Council?---I did.

And one of the other partners in the firm, I think, also did some employment issues from time to time. Is that so?---She did.

She did, I'm sorry. You were introduced to the board, were you, by a then board member called Ronald Gordon. Is that right?---I was.

10 And for Emery Partners to secure the role as being the lawyers for the Land Council, did Emery Partners or some of the partners within the firm present to the board?---I did.

You did, did you?---I did.

And did any other partners present to the board, or was it just you?---And Nada Vujat was a partner and she had conduct of the, of employment related matters within our practice.

20 And after the presentation to the board, did Emery Partners then secure that retainer, albeit it on a transaction by transaction basis?---Yes.

And I just want to ask you about some other transactions you may have dealt with, Mr Sheriff, if I might. The most recent transaction dealing with property that you dealt with, with the Land Council, was a transaction in relation to Olney Road, Adamstown, was it not?---It was.

And did that transaction occur – that conveyance of property – occur from around 2013 until about 2015?---Yes. Late 2013 to early 2015.

30 And did that require you to have contact with the board and board members from time to time?---It did.

And also with the CEO from time to time?---Yes.

Did you also, at one point, open a file in relation to a property known as Hillsborough Road, Warners Bay?---I did.

40 And did that involve the potential purchaser, either Hillsborough Retirement Living or Greg Cahill?---I recall the file being opened up, a proposed sale to Hillsborough Retirement Living, I'm not aware of Greg Cahill.

But in any event, that transaction didn't progress to a sale as far as you can recall?---It did not.

THE COMMISSIONER: Who was the CEO you dealt with in 2013/15?---I believe there was a hiatus late 2013 with the CEO appointments and an exchange time in relation to the Olney Road property, I had direct dealings with the chairperson, Debbie Dates, at exchange time. And early 2014, I

believe, that's when CEO Steven Slee was appointed, and I then had much to do with Mr. Slee.

Yes. Thank you.

MR CHEN: Was another property that you dealt with, as solicitor for the Land Council, at Cardiff South?---It was.

Yes. And was another one at Arcadia Vale?---It was.

10

Mr Sheriff, as at 2015, were you experiences in transactions involving land that was subject to the statutory controls under the Aboriginal Land Rights Act?---I was.

I'll come back to this point a little bit later, Mr Sheriff, but was the last time you did any work for the board of the Land Council to the Land Council in about September-October, 2015?---That is correct.

20

Now, during the time that you were providing legal services to the Land Council, were you aware of any other lawyers being retained by them?---I wasn't aware of any particular firm but I was aware that they had another or other firms looking after their various land claims but I was not aware of any other firm being engaged in, in the field that I was practicing.

THE COMMISSIONER: Were those land claims native title claims?---Yes. Yes. So I had something to do with, with those such claims.

30

MR CHEN: During the time that you were providing legal services, or the period when you were providing legal services to the Land Council, were you aware of any proposal by the board for other lawyers to be retained? ---No.

During the time that you provided legal services to the board, were you aware of a firm of solicitors called Knightsbridge North Lawyers?---No.

Had you ever seen, during the time that you provided legal services to the Land Council, a fee agreement between the Land Council or the board of the Land Council and Knightsbridge North Lawyers?---No.

40

I'll just show you a document, if I can, Mr Sheriff. It's Exhibit 43, page 1. Have you ever seen that letter before, Mr Sheriff?---Not before the private examination.

All right. And just have a look at the next couple of pages, the fee agreement and on to the next page, you'll see it's page 4 and 5. Do you see there, what appears to be a cost disclosure statement between the Land Council and Knightsbridge North Lawyers?---Yes.

Until recent time, had you ever seen that document?---No.

To be clear, you certainly hadn't seen it by the time you were providing legal services to the board of the Land Council?---Certainly not.

And during the time that you were providing legal services to the Land Council, did any board member raise with you, they proposed to retain that firm of lawyers?---No.

10 Did the CEO or any of the CEOs every tell you they were proposing to retain that firm of lawyers?---No.

No staff member raised it with you?---No.

You're completely unaware of it?---That's right.

Is that right?---That's right.

20 Now, if you just, I'll just ask you to go to page 1 and have a look at this now on the screen, Mr Sheriff. You'll see that that appears to describe generally work dealing with acquiring or dealing with property in very general terms. Do you see that?---I see.

And I take it that's the kind of work which was well within your skillset, is that right?---Yes.

Well within your experience?---Yes.

30 And if somebody had asked you to do that kind of work in November, 2014, what would your position have been?---Oh well, I would, I'd accept at such a, such a position depending on the, the nature of the, the matter but in general terms, I would have accepted instructions in a, in a matter of, of this nature.

Now, during the time that you were providing services to the Land Council, had you ever seen or heard of an agreement between the Land Council and an entity called Gows Heat Pty Ltd?---No.

40 No one had ever shown you an agreement of any kind involving that entity and the Land Council?---No.

Nobody had ever told you that there had been apparently agreements of that kind entered between Gows Heat Pty Limited and the Land Council involving Land Council land?---No.

Would you have a look, please, at volume 3, page 123, and you'll see there that it's a document described as Heads of Agreement Dated 15 December, 2014, Mr Sheriff?---I see.

And if you just have a look at the next page, please, so page 124. That appears to be an agreement between Gows Heat and the Land Council?
---It appears so, yes.

And you can see, Mr Sheriff, just by looking at the clause 1, Heads of Agreement, and clause 1A in particular, it's referring to the sale of properties in schedule 1?---Yes.

10 And if you have a look, please, onto the next page, I'm sorry, clause 2.1, you'll see there's again a description about the purchaser agreeing to buy and the vendor agreeing to sell land, et cetera?---Yes.

Again undertaking legal work in relation to transactions such as that was well within your fields of practice and experience?---Yes.

And again the preparation of any subsequent agreement following on from this apparent agreement was likewise well within your areas of practice and experience. Is that so?---Yes.

20

And again if it was, if you were approached by a board member or the board of the Land Council to undertake this work at that time, I take it you would have been prepared to accept such an offer for work, would you?---I'd certainly have considered the offer for work, yes.

Now, Mr Sheriff, when you were providing legal services to the Land Council, were you aware of any agreements or proposed agreements between the Land Council and Sunshine Property Investment Group Pty Limited involving Land Council land?---No.

30

During the time you were providing legal services to the Land Council, were you aware of any agreements of any kind between the Land Council and Sunshine Property Investment Group Pty Limited?---No.

What about to an entity called Sunshine Warners Bay Pty Limited?---No.

Mr Sheriff, during the time you were providing legal services to the Land Council, had there ever been any mention to you of any agreements between the Land Council involving Land Council land and an entity called Solstice Property Corporation Pty Limited?---No.

40

You're not aware of any agreements of that kind or proposed agreements of that kind?---I'm not.

Mr Sheriff, as a lawyer representing the Land Council, would you expect that if agreements of the kind that I've mentioned had been entered that they'd be disclosed to the board?---I would expect that they would be, yes.

And would you expect that they would be minuted?---I would expect them to be minuted, yes.

Can you think of any reason why it wouldn't be disclosed or not minuted?
---No, I can't give that reason.

Now, during the time that you were providing legal services to the Land Council, were you aware of Mr Green ever being given authority of the board to execute contracts of the kind that I've raised with you this morning?---I'm not aware of any such authority, no.

Are you aware of Mr Green being given authority of the board to execute any form of contract?---No.

What about any other board member, including the chairperson, are you aware of any other board member or the chairperson being given authority to execute contracts of the kind that I've mentioned this morning?---I'm not aware of the, the, the exact nature of any authority that was given to a board member, nor the, nor the chairperson.

20 You certainly weren't asked to prepare a form of delegation of authority to the chairperson or deputy chairperson at any time?---I have not.

All right. Nor any other board member I take it?---That's correct.

THE COMMISSIONER: Mr Sheriff, in the years over which you acted on behalf of the Land Council, had you ever seen or been involved in a situation where the board actually delegated its authority in relation to land transactions to an individual board member?---No, I've not seen that, Commissioner, no.

30 Do you regard invoking that sort of process, that is the board delegating to a board member authority to enter into land transactions, as regular, or irregular?---Look, I, I really couldn't say whether it was regular or irregular, Commissioner, I can only say that I hadn't been privy to any such discussions, they do have the power to, to delegate but I was certainly not aware of the nature of any delegations.

40 Yes, thank you. Thank you.

MR CHEN: And when you say the power to delegate, you mean the power within the Act - - - ?---Yes.

- - - to delegate? And only in those circumstances.---Correct.

But so far as you know, no delegation within the Act was ever, I withdraw that. You were never asked at any stage to prepare a delegation within the terms of the Act?---I was not.

All right. Now, you mentioned earlier a CEO, Steven Slee.---Yes.

Did you, in the course of your services, have reason to deal with Mr Slee from time to time?---I had much to do with Mr Slee in his capacity as the CEO.

10 And what, in general terms, were the nature of your dealings with him?---
We'd, there was various issues, just general business, just matters relating to
the running, running of the Awabakal Land Council's business, some
employment related issues, some basic commercial contacts and some
discussions in relation to the property dealings, particularly that one at
Cardiff South and Arcadia Vale.

All right. And how did you describe your interactions with him?---I had a
very good relationship with Mr Slee, very good working relationship.

20 How did he appear to you to be discharging his functions as a CEO?---To
me he appeared to be doing them very well.

All right. Now, you understood, didn't you, that Mr Slee was suspended?
---I was.

Was that a bit of a surprise to you?---It was.

30 Were you asked to provide any advice to any of the board members when he
was first suspended?---Not when he was first suspended, I made no formal
address to the board, but towards the end of the period of his suspension, I
addressed the board of directors as to their position as far as the provisions
of the unfair, unfair dismissal were concerned, that they were
contemplating.

Now, you actually attended a meeting, did you not, of the board on the 6th of
August, 2015?---I did. I did.

Which had its principal, if not specific, function to do with a report that the
Registrar, Mr Wright, had prepared in relation to an investigation he had
undertaken?---That's right.

40 And one of the matters that he had investigated were the complaints that Ms
Dates and Mr Green had levelled against Steven Slee?---Yes.

You remember that board meeting?---I do.

And Mr Wright addressed the meeting in your presence, obviously, did he
not?---He did.

And was the substance of what Mr Wright said is that there were, in the investigations that he had undertaken in the report that he had prepared, no adverse findings against Mr Steven Slee?---That's right.

And did he also say that he didn't see there was any reason why he could not return to work in that role thereafter?---That's right.

And suggested or even recommended the reinstatement of him. Is that so?
---Yes.

10

Mr Sheriff, would you just have a look, please, at volume 3, page 210? You'll see on the screen in front of you, what appear to be the minutes of the meeting of the board on 6 August 2015.---Yes.

And you recall the meeting was held at the offices of PKF in Newcastle?---I do.

And you can see that you're recorded as an attendee?---I am.

20

Yes. I just want to take you to some parts of it, Mr Sheriff, just to see whether this accords with your recollection. If you just have a look, please, at the next page at point 4.42, subpoint 1, it says, "Ian Sheriff". Do you see that there?---Yes, I do.

And was it the case that you were fully supportive of Mr Wright's opinions?---I was given the content of the report that he presented, yes.

Did he provide you with a draft of his report prior to the meeting?---He did.

30

And you'd read that, I take it?---I did.

And that informed the advice that you gave, did it?---it did.

Now, you took the position that you were happy provide the board with advice as a group, is that so?---That's, that is so.

But not individual board members?---That is correct.

40

Why is that?---At that particular time, I had some standing instructions as far as my dealings with directors is that it had to be at a, a meeting of the directors at a board meeting. Otherwise, I was to deal directly with the CEO or acting CEO, whichever the case may be, and failing a CEO appointment or acting CEO, with the chairman.

Who gave you the standing instructions?---Oh, look it was many years ago, during the early times of my tenure and it was the, at a board meeting and - -

So the board itself?---The board itself and delivered by the chairperson.

I see. And that's the standing instructions you followed throughout?---It was.

Now, you'll also see, at the second last dot point in 4.42, that there was some discussion about reinstating Mr Slee. Do you see that?---I do.

10 And Mr Wright gave some advice that if they decided to stand Mr Slee down, they should obtain some legal advice.---Correct.

Do you see that? And you recall that happening?---I, I can.

Do you recall then addressing the board? Do you, Mr Sheriff, recall addressing the board thereafter once that advice had been given?---I do.

Just have look at the next page, please, under 2.12(5), first dot point, "Ian Sheriff addressed the board."---Yes.

20 Just have a read of that, if you would, to yourself.---I see.

Does that minutes accurately record what you addressed the board on?---It does.

And if you look down a couple of point further, to the third dot point, you'll see that again you stated the Registrar, in your opinion, has acted within the scope of his duties and come to make recommendations et cetera.---Yes.

30 Can you see that? And you also told the board that they were not obliged to accept his recommendations?---Correct.

But you then gave them some advice, did you not, that they needed to be cautious about doing so?---I did.

And do you see the second last and last dot points?---Yes.

And does that accord with - - -?---It does.

40 - - - your recollection of what you addressed the board on?---It does.

Now, if you turn to the next page, please, you'll see at the top that you gave the board advice that they would need substantial evidence if they wished to stand Mr Slee down. Do you see that?---Yes. I do.

And you gave advice, did you, that they should think seriously about accepting the recommendations of Mr Wright?---I did.

Now, it's the case, is it not, though, that Mr Green proposed a motion that notwithstanding Mr Wright's report and notwithstanding your advice, that Mr Slee be sacked. Do you remember that?---I do.

Do you remember giving any other advice once Mr Green moved that motion?---I didn't.

And you understood then, that there was some separation but ultimately the motion was re-put and passed?---It was.

10

Mr Sheriff, are you able to say whether or not any of those individuals who supported the sacking of Steven Slee provided any grounds for why they were supporting the termination of Mr Slee?---I was aware, look, not, not at that, not at that meeting. Subsequently, I had a conversation with Richard Green and Debbie Dates concerning the, the consequences and the, that the board's decision was confirmed by them, that they were going act accordingly.

20

THE COMMISSIONER: Tell us about that conversation you had with Green and Dates.---It was a conversation that took part, place, at the Awabakal place of business and it happened very soon after the, after the meeting, and I once again gave certain advice as to the likely consequences of the sacking and I was instructed that the board's decision will stand and it's in the best interest of the LALC to have the sacking expedited.

30

Did Mr Green ever articulate any basis upon which he was moving the basis to sack Mr Slee?---At that meeting, Mr Green told me that he was concerned that the CEO was using Land Council's resources to further his own personal business interests.

But that had been the very subject matter that the Registrar had investigated?---Yes.

And come to a contrary view.---That's right.

So, did Mr Green, well, Mr Green was maintaining that position, if it wasn't irrational it was certainly directly contrary to the Registrar's view.---It was contrary, Commissioner, it was indeed.

40

Did he ever give any reason as to why he wanted to sack, or have sacked, Mr Slee, have him sacked? Did he give a valid reason?---He did, he said that he didn't have any faith in the report and that he wanted to pursue the action.

And did he say why he didn't have any faith in the Registrar's report? ---Look, I, I believe that he, he, he thought that the CEO was perhaps getting some favourable treatment from the NSW Aboriginal Land Council.

MR CHEN: Did any of the other board members at the meeting in August 2015 express any particular concerns about the report of the Registrar?
---No. I can't recall anyone specifically raising concerns about the contents of the report.

Did any of the other board members who supported his termination provide a reason or a ground for why they supported the termination of Mr Slee?
---No.

10 Can you think of any reasons, knowing what you do now, as to why he was terminated?---Well, well, I, I can, if the, if the grounds were sustainable and the grounds upon which the Land Council were relying, then they certainly would've been grounds to suspend and terminate.

But the fact is, isn't it, well, I'll come to that in a moment, but did you think the decision to terminate him was justifiable?---No.

Did you think it was reasonable?---No.

20 THE COMMISSIONER: Did you have any idea what was inspiring or motivating Mr Green and the others who were intent on sacking Mr Slee regardless of what the Registrar found?---I don't, Commissioner. No.

MR CHEN: Now, Mr Slee in fact brought a wrongful dismissal claim, didn't he?---Yeah.

But at or around that time, probably before, were you asked by the then CEO or acting CEO to draft a notice of termination to Mr Steven Slee?---I was.

30 And what did you do when you were asked to prepare such a notice?---I declined to prepare the notice of termination given the advice that I had given the Land Council that I didn't think their actions were justifiable and they may well, there may well be some consequences as far as that action is concerned in the, in the Fair Work Commission.

And did you obviously communicate that back to the acting CEO at the time, that you refused to do that?---I did.

40 And so far as you were aware, was a notice of termination ever drafted by anyone else to Mr Slee?---I'm not, I'm not aware of such, the notice being drafted.

Now, Mr Slee brought a wrongful dismissal claim or an unfair dismissal claim, didn't he?---He did.

And you were asked to assist, weren't you, in the resolution of that claim by him?---I was.

And who were you asked to, or who asked you to provide that assistance?
---Debbie Dates and Richard Green.

And what did they ask you to do?---They asked me to make sure that it's resolved as quickly as possible.

Did that involve – sorry.---Yes.

10 Did that involve the payment of money?---It did.

And who did you get instructions from to pay that or pay any sum of money?---The chairman and the deputy chair, that's Richard Green and, or Debbie Dates and Richard Green.

I see. So far as you're aware, did they go back to the board at any time to get some authority as to how much they should be paying Mr Slee?---I'm not aware, I'm not aware.

20 THE COMMISSIONER: Subsequently did you become aware of the fact of the settlement?---Absolutely, yes.

And did it involve money being paid by the Land Council rather than Mr Green or Ms Dates - - -?---It did.

- - - to compensate Mr Slee?---It did.

MR CHEN: Now, did this settlement of this claim by Mr Slee occur in around September or October 2015?---September, yes.

30 And after – sorry, is that the last time you did any work for the Land Council?---It is.

You were not ever told, were you, that your services were no longer required, were you?---I was not.

Just that nobody came to approach you anymore. Is that right?---Correct.

40 Did you feel that somehow what had happened in the position you'd taken in relation to Mr Slee and the advice that you'd given them had some bearing on you getting any other work?---I would think so.

Why do you think that?---Oh, well, they, they, the, the chair and deputy chair were clearly dissatisfied with the nature of my advice. I believe that they thought I was supportive of Mr Slee. I made it clear to them that I'm employed, I'm engaged by the Land Council and it's my obligation to advise the Land Council as to the, the, the proper approach as far as this

whole dilemma was concerned and, and I don't think that they, they were pleased with that, that advice.

Now, in late 2015 or early 2016, were you asked by the auditor, Clayton Hickey, to provide a letter to him for the purposes of him preparing an audit report?---Oh, I can't recall I'm afraid.

I'll just show you a document if I can.---Yes. Oh, yes, I'm, this is a - - -

10 Do you recognise that - - -?---Yes, I do.

- - - as a letter that was sent to you by the Land Council requesting some information so that it could be added into an audit report?---Yes. I, I would receive such a letter on an annual basis.

All right. Just before I tender that, Commissioner, I'll just show you one other document, Mr Sheriff.---Yeah.

20 Would you have a look, please, at this letter as well. Mr Sheriff - - -?---Yes.

- - - is that the response that you prepared to that earlier letter?---It is.

Commissioner, I tender the letter to Mr Sheriff, or to Sheriff Lawyers, dated 15 September, 2015, and the response date 14 October, 2015, to PKF Lawler Partners.

THE COMMISSIONER: Yes. Have you got the copy of the second letter?

30 MR CHEN: Yes. It's with the witness, thanks.

THE COMMISSIONER: Yes. The letter addressed to Sheriff Lawyers, 15 September, 2015 will be admitted and become Exhibit 81.

**#EXH-081 – LETTER TO SHERIFF LAWYERS FROM ALALC
CHAIRPERSON DATED 15 SEPTEMBER 2015**

40 THE COMMISSIONER: The response from Mr Sheriff dated 14 October, 2015 will become Exhibit 82.

**#EXH-082 – LETTER TO PKF LAWLER PARTNERS FROM IAN
SHERIFF DATED 14 OCTOBER 2015**

MR CHEN: That's the evidence, Commissioner. Thank you.

THE COMMISSIONER: Yes, thank you. Yes. Has anybody got any questions for Mr Sheriff? No questions, Mr Menzies? No questions?

MR MENZIES: I'm just taking some instructions, Your Honour. Commissioner, can I have the indulgence of a short break for a few moments?

THE COMMISSIONER: How long?

10

MR MENZIES: Only a few minutes, five minutes.

THE COMMISSIONER: Yes. Ms Nolan, do you have any questions of Mr Sheriff?

MS NOLAN: No, I don't.

THE COMMISSIONER: Sorry?

20

MS NOLAN: No, I don't.

THE COMMISSIONER: Right. Very well. Well, what I'll do is I'll stand down for 10 minutes or so. Is that - - -

MR MENZIES: Thank you, thank you.

THE COMMISSIONER: I'll resume at about 11 o'clock. Mr Sheriff, would you mind stepping down and we'll resume at 10 minutes or so. I'll adjourn.

30

SHORT ADJOURNMENT

[10.51am]

THE COMMISSIONER: Mr Menzies.

MR MENZIES: Thank you for that indulgence. I've taken some instructions from Mr Petroulias. He wishes to ask some questions. I've given him some advice about that. I don't, accordingly it's not appropriate for me to continue to appear and I would - - -

40

THE COMMISSIONER: Sorry, I missed the last bit?

MR MENZIES: It's not appropriate under those circumstances, if Mr Petroulias wishes to cross-examine the witness, which he does, obviously there can't be two, there can't be two riders of this particular horse and so I will seek your leave, if leave is required, to withdraw my attendance.

THE COMMISSIONER: Seek leave to?

MR MENZIES: I seek leave, if leave is required, to withdraw and Mr Petroulias seeks to ask some questions then over to him.

THE COMMISSIONER: Right. Well, thank you, Mr Menzies. I might just suggest these remarks or questions to Mr Petroulias to try and ascertain what it is that he wants to cross-examine about.

10 MR MENZIES: Indeed.

THE COMMISSIONER: It might clarify things, I don't know.

MR MENZIES: It may do.

THE COMMISSIONER: Thanks, Mr Menzies. Mr Petroulias, it's an unusual situation which counsel has exercised his right to withdraw. What is it that you want to cross-examine this witness about?

20 MR PETROULIAS: As you may recall, Commissioner, from our cross-examination of Ray Kelly, there was a presentation by myself on two attempted occasions before the Awabakal community which put me at odds with them.

THE COMMISSIONER: No, but what is it that you want to cross-examine?

MR PETROULIAS: There's one area in particular which is the, the, the report that the Registrar had done. And I was obviously unaware of the
30 history, I simply read - - -

THE COMMISSIONER: Well, what is it about the report you want to ask Mr Sheriff?

MR PETROULIAS: I, my reading of it is, which we have it provided to
- - -

THE COMMISSIONER: Yes, the report speaks for itself, yes.

40 MR PETROULIAS: Is it's completely at odds with, with what - - -

THE COMMISSIONER: Well, it'll be - - -

MR PETROULIAS: And it may well be that it's a different report that is being referred to.

THE COMMISSIONER: No.

MR PETROULIAS: The report that we have is the 11 - - -

THE COMMISSIONER: The report will be in evidence, is in evidence, I'm not sure if it is, but it will be if it's not already, and if you want to maintain that any evidence given by Mr Sheriff is inconsistent with that report, that will be open to you to make a submission about in due course.

MR PETROULIAS: I want to ask him about the report that he's read and therefor his interpretation of it.

10

THE COMMISSIONER: No, no, I won't allow that. What else did you want to ask Mr Sheriff?

MR PETROULIAS: Okay. I wanted to ask him a little bit about there was disquiet that was represented to us, he may be able to shed some light on - - -

THE COMMISSIONER: Disquiet? What does that mean?

20 MR PETROULIAS: Disquiet, some unhappiness on the part of Mr Green and Ms Dates in relation to other matters.

THE COMMISSIONER: Unhappiness by whom?

MR PETROULIAS: Mr, Mr, Ms Dates and Mr Green, that do not, we are presented a certain picture of the events.

THE COMMISSIONER: Yes, well, what - - -

30 MR PETROULIAS: We're saying there was a bit more to it than that.

THE COMMISSIONER: All right. What else is it?

MR PETROULIAS: I want to ask him a little bit about the Gows Heat agreement.

THE COMMISSIONER: About the?

MR PETROULIAS: The Gows Heat agreement.

40

THE COMMISSIONER: Yes, no, I - - -

MR PETROULIAS: Only one question.

THE COMMISSIONER: I won't allow that. Yes. Anything else?

MR PETROULIAS: And the, the, as a solicitor, the execution of his authority, the effect of the execution and the delegation that was, that was discussed.

THE COMMISSIONER: Does that complete the list?

MR PETROULIAS: And, and his actions with regard to the Registrar and call, attempting to call an election for the board.

10 THE COMMISSIONER: Anything else or that's it?---And the, the minutes of 6 August and whether they have been proved.

Is that it?---Yes.

Yes. Dr Chen?

MR CHEN: Mr Petroulias has identified disquiet between, or apparently disquiet between Richard Green and Debbie Dates. I don't recall this witness giving any evidence to that effect, they certainly gave confined
20 evidence about certain events related to Mr Slee, but Mr Petroulias had nothing to do with that, Commissioner. Commissioner, the other matters seem to be peripheral, with great respect. This witness is really saying, for example, in relation to Gows Heat, he's never seen it, knows nothing of it, if he was asked to do something about it he would've done - - -

THE COMMISSIONER: There's nothing, Mr Sheriff made it perfectly plain nobody ever told him anything about it. He's never seen it. No knowledge about it. Just sit down, please. Yes?

30 MR CHEN: Commissioner, in my submission, none of the matters that the witness, sorry, Mr Petroulias has identified are material, but it's a matter for you, Commissioner. Obviously enough as to whether or not you wish Mr Petroulias to embark on a limited form of questioning of this witness in light of his evidence.

THE COMMISSIONER: Yes. Mr Petroulias, I won't allow you to cross-examine on the matters you've indicated. Now, is there anything else? Do you have any other evidence?

40 MR PETROULIAS: No, I don't, Commissioner.

THE COMMISSIONER: And there's no, you said earlier you don't have any questions for Mr Sheriff, that's still the position?

MS NOLAN: That's still the position.

THE COMMISSIONER: Thank you, yes. Mr Sheriff, I want to thank you for your attendance here today, you are excused.

MR SHERIFF: Thank you, Commissioner.

THE COMMISSIONER: Thank you.

THE WITNESS EXCUSED

[11.06am]

10 MR CHEN: Commissioner, I call Clayton Hickey. Commissioner, Ms Berberian will, in due course, when she reaches the bar table, will seek leave to appear for Mr Hickey.

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

MS BERBERIAN: Commissioner, with leave, Ms Berberian, that's spelt B-E-R-B-E-R-I-A-N. I appear for Mr Hickey.

20 THE COMMISSIONER: Yes. Well, I grant leave for you to appear. Mr Hickey, do you take an oath or an affirmation?

MR HICKEY: Oath, thank you Commissioner.

THE COMMISSIONER: I'll just have that administered.

THE COMMISSIONER: Thank you, Mr Hickey. Is there any application?

MS BERBERIAN: Yes, Commissioner, if you would make a declaration order under section 38 of the Act.

THE COMMISSIONER: You've explained that to Mr Hickey?

10

MS BERBERIAN: Yes.

THE COMMISSIONER: Thank you. Pursuant to Section 38 of the Independent Commission Against Corruption Act, I declare that all answers given by this witness, Mr Hickey, and all documents and things that may be produced by him during the course of his evidence at this public inquiry are to be regarded as having been given or produced on objection. Accordingly, there is no need for Mr Hickey to make objection in respect of any particular answer given or document or thing produced.

20

PURSUANT TO SECTION 38 OF THE INDEPENDENT COMMISSION AGAINST CORRUPTION ACT, I DECLARE THAT ALL ANSWERS GIVEN BY THIS WITNESS, MR HICKEY, AND ALL DOCUMENTS AND THINGS THAT MAY BE PRODUCED BY HIM DURING THE COURSE OF HIS EVIDENCE AT THIS PUBLIC INQUIRY ARE TO BE REGARDED AS HAVING BEEN GIVEN OR PRODUCED ON OBJECTION. ACCORDINGLY, THERE IS NO NEED FOR MR HICKEY TO MAKE OBJECTION IN RESPECT OF ANY PARTICULAR ANSWER GIVEN OR DOCUMENT OR THING PRODUCED.

30

THE COMMISSIONER: Yes.

MR CHEN: Thank you. Would you tell the Commissioner your full name?---Clayton Gary Hickey.

Mr Hickey, are you an auditor and chartered accountant?---Yes.

40

Are you currently a partner at PKF Audit and Assurance Limited?---Yes.

Have you been a partner of that organisation since about 2007?---Yes.

Are you a fellow of the chartered accountants of Australia and New Zealand?---Yes.

And you're also a registered company auditor, are you not?---Yes.

For the past 19 or so years, have you conducted audits on a number of local Aboriginal Land Councils?---Yes.

Specifically, that is, bodies under the Aboriginal Land Rights Act.---Yes.

How many audits have you conducted of Local Aboriginal Land Councils, approximately?---I have audited at any point in time, probably up to 10 Local Aboriginal Land Councils, spanning over a period of around about 10
10 to 12 years.

Your firm was appointed to audit the financial records of the Awabakal Local Aboriginal Land Council for the financial year ending 30 June 2015, were they not?---Yes, that is correct.

Commissioner, I tender a bundle of material described as Public Inquiry Hearing Brief (Clayton Hickey).

20 THE COMMISSIONER: Yes. Thank you. Yes. The folder marked as Public Inquiry Hearing Brief (Clayton Hickey) will be admitted, will become Exhibit 83.

#EXH-083 – DOCUMENTS PRODUCED BY CLAYTON HICKEY

MR CHEN: For the record, I should say, Commissioner that Exhibit 83 starts at page 15. Now, Mr Hickey, you've got Exhibit 83 in front of you now. If you just open that up, you'll see that that is your firm's retainer,
30 dated 14 September, 2015, commencing at page 15, is it not?---It is.

And your appointment as auditor was such, sorry, occurred because your firm was contained on a list of auditors that have been approved by the New South Wales Aboriginal Land Council, is that right?---That's right. There's a number of firms on that list.

Now, ultimately, in the preparation of this report, the board itself is responsible, is it not, for ensuring the financial statements have been prepared in accordance with accounting standards and the Public Finance
40 and Audit Act, is that right?---That's correct.

Now, I want to ask you some questions, Mr Hickey, just about your report. Now, the report, described as a full financial report, is contained more or less of three separate documents. Is that so?---That's right.

Now, I'm just going to ask you to follow me through this, just so I can explain this to the Commissioner. The three parts to the report, the first is an audit report. Is that so?---That's right.

The second is a management letter?---That's correct.

And the third is a board report. Is that so?---That's correct.

Now, I'll just ask you to turn, please, for the audit opinion, pages 100 to 101, and they're numbered down the bottom of the page. Do you see that, Mr Hickey?---I do.

10 It's also on the screen as well if you prefer to look at on the screen. So, pages 100 to 101 is the audit opinion, is that so?---That's correct.

And if you turn then to page 102, you'll see there are, what is described as the management letter for the year ended 30 June, 2015. Do you see that? ---That's correct.

And if you turn to page 122, that's where that section of the report ends, does it not?---That's right.

20 And at page 123, that then is the, what is described as the board report. Is that so?---Correct.

And that goes to pages 223, does it not?---Yes, it does.

Now, that report was prepared and ultimately presented – partly in hard copy, partly orally – by you to a members' meeting of the Awabakal Local Aboriginal Land Council on 20 July, 2016, was it not?---I did give the membership an outline of some of the, the issues that were material to the complication of the financial statements, which did end up being disclosed in this report, yes.

30

But you sent, in any event, prior to that meeting, a PDF copy of those three parts of the report, did you not, to the Land Council offices?---So, we had provided the financial statements, the audit opinion but at that particular point in time, the full management letter and board, board report was yet to be drafted.

I see. And when you say the financial statements, do you mean the documents that appear essentially from pages 223, I apologise, 224 onwards?---That's correct.

40

And did that include all of the documents up to and including page 252? ---That's correct.

So, just so it's clear, what was sent to the board of the Land Council prior to them meeting on 20 July, 2016?---The financial statements and the audit opinion.

I see. And the balance then was produced, was it, for the meeting on 20 July or subsequent to that time?---Subsequent to that time.

Do you know when approximately those further documents were prepared?
---I can't recall.

Now, Mr Hickey, the report itself was signed by you, was it not?---The audit opinion?

10 Well, the three parts that form the report, what I described as the full financial report, are all signed by you, are they not?---They are.

And they're all approved by you, are they not?---That's correct.

And you reviewed all of – sorry, I withdraw that. You're ultimately responsible for it, are you not?---Correct.

You had several people though working beneath you to undertake certain tasks. Is that so?---That's correct.

20

But you supervised those individuals perform the work, did you not?---Yes.

And you reviewed the work when they prepared it for you. Is that so?
---Yes.

Now, I want to ask you some questions, Mr Hickey, if I can about the process to prepare the audit and report to the board. The first step I take it is that you need to secure the primary financial information, the accounting records from the Land Council. Is that right?---That's correct.

30

Is the second step that you need to do to perform the audit to speak with the relevant persons to ensure there's a basis for the transaction?---That's correct.

Is the next step to seek production of the source document in the event that a transaction is identified as being potentially doubtful?---Yes.

40 Now, in the audit that was prepared for the financial year you did come to reach a view that some of the expenses for that year were doubtful or there was insufficient evidence to support the transactions. Is that right?---That's correct.

And was the sum that you considered were doubtful approximately \$122,000?---That's the point to which we tested those transactions, yes.

Could you explain what you mean by that?---Sure. So that particular qualification relates to the period from February 2015 onwards where the control environment relating to governance around expenses broke down

significantly, almost to a point of inadequacy. That arose as a result of the removal of several levels of review within that control environment, the primary ones being the removal of the CEO who performed a level of review over expenditure as part of the Land Council's control environment, and at that point in time the board stopped meeting in the sense that the board was incapable of reaching a quorum, meeting for, and then therefore meeting for the purposes of approving payments. What was put in place in relation to that was that the chair, Ms Dates, then was appointed as the person who would review, approve and singularly release payments from the bank accounts. So that control environment had gone from a place where there were some checks and balances and there were separation of duties in relation to the initiation, review, approval and release of payments, and that control environment then went to a place where those processes quite simply were not there. I made it quite clear to the Land Council in around about September 2015 that that was going to present a considerable problem in terms of being able to render an audit opinion that is unqualified, and I first furnished how that qualification was most likely to look, to a board meeting on 30 November, 2015. The amount of \$121,000 is, was arrived at by testing that we had done up to what we call an error threshold or a materiality level. Once we reached that materiality level we didn't test any further because there's really no utility in doing that because your materiality threshold has been breached and the audit opinion is going to end up qualified. So once we'd got to that point there was no way that qualification was able to going, was going to be able to be removed, so we stopped at that point in the interests of getting the audit done as efficiently as we could and to of course not incur any more costs than what was absolutely necessary for our client.

So what was actually provided was therefore a qualified opinion in relation to those particular transaction which you described as being where the, or the control environment had broken down. Is that right?---Correct.

Would you just turn up, please, page 101 of the exhibit, and you'll see there where you express the opinion there's a – I'll withdraw that – where you express the basis for the qualified opinion, and that's the amount that you've just been telling the Commissioner about?---Yes.

Right. Now, I want to just return again, I've perhaps invited you to sidetrack there, but I want to return to the process to prepare the audit report and opinion. The process also includes you requesting other information to ensure a full and accurate financial picture of the Land Council, does it not? ---Yes.

And that includes the management and board making disclosures to you, is that so?---That's correct.

And that includes them disclosing in what are called management letters, I think, is that right?---Management representation letters, yes.

I'm sorry, management representation letters for the financial year, is that so?---Yes.

And also for events occurring after the financial to the date of the report. Is that so?---Up to the date of the signing of the audit report, yes.

So in this case, that date was 20 July 2016?---Correct.

10 And in effect, disclosures were required to that time by select individuals. Isn't that so? I'll ask it a different way. Disclosures were required by these management representation letters from management of the Land Council. Is that right?---Yes.

From the board of the Land Council?---Yes.

And also in this particular instance, lawyers who provided services to the Land Council in the relevant period, or were retained at the relevant times? ---That's correct.

20 Mr Hickey, could you tell the Commission very briefly what's the purpose or reason for those management representation letters and the disclosure that are required up to 20 July 2016 when the audit is really only for the financial year ending 30 June 2015?---It's the audit testing that we undertake goes up until the date ending the financial period being 30 June 2015, however, there is an auditing standard and an accounting standard that requires both the preparers of the financial statements, being the Awabakal Local Aboriginal Land Council and the auditor, being myself, to undertake inquiry from 1 July, being the date after the end of the financial reporting
30 period, through until the date in which the accounts are approved for signing and the audit, the audit opinion is issued. An important element of the Australian auditing standard that governs audit evidence is that in that period, that's subsequent events period, an important part of evidence both for the purposes of the preparation of the financial statements and ensuring the board have properly relinquished their obligations but, of course, making sure that I collect the evidence that I need to collect, is that the board and management and their advisors, if we wish to circulate those particular individuals, met disclosures in relation to matters that either are, or could be pervasive to the content of the financial report.

40 Did you, by pervasive, mean effect?---Yes.

All right. In a positive or negative way?---Either.

Yes. Now, the report itself took approximately nine months, didn't it, from the retainer to the presentation at the member's meeting in July 2016? ---Yes.

And there were a number of reasons why it was delayed, isn't that right?
---Yes.

There were a number of difficulties encountered by you and your staff in,
along the way. Is that fair?---Yes.

I just want to ask you to turn over, please, Mr Hickey, page 141 of the
Exhibit 83. And this is on the screen as well if you like, Mr Hickey, you'll
see that there are four matters which were identified by you as contributing
10 to the overall delay in the preparation of the report. Do you see that?---I do.

And the first was significant delays in the provision of information. That
was information requested by you and delayed in receiving a response from
the Land Council. Is that what it was?---That's correct.

The second point was an attempt to enforce a brief time in which to
complete the audit. Do you see that?---Correct.

What does that mean, Mr Hickey?---We received an email from
20 Knightsbridge North Lawyers some time during June 2016, which provided
a timeline in which Knightsbridge North Lawyers wanted the audit
completed, and that email went on to say that if it wasn't completed within
that time frame, then there would be the prospect of litigation at some time
being taken against our firm.

I'm going to deal with this a little bit later, that topic, but you regarded that
and another email that you received from Knightsbridge North Lawyers and
Ms Bakis as being considered, in your professional opinion, a threat or an
intimidation of you, the auditor. Is that right?---Correct.
30

And that caused you to put in place some control measures to try and
manage that occurrence, isn't that right?---Yes.

I'll come back to that. I just want to follow through the difficulties in
preparing the report, if I can. The third point discusses or identifies the
unavailability of expected information. Do you see that?---Yes.

Now, Mr Hickey, were some of the initial queries that you had in terms of
information, were requested by you at a board meeting that you attended, of
40 the Land Council on 30 November, 2015, isn't that right?---That's correct.
That, I presented a summary of information that we'd been requesting over
time leading up to that point to the board on 30 November, 2015.

And some of the queries that you put to the board, on that occasion, had not
been responded to until at least you met with Ms Bakis in Sydney on 11
May, 2016, is that right?---That's right.

Now, I just want to get you to identify, Mr Hickey, some of the matters that were, or some of the information that was not provided. One of them related to the back pay to an employee called Candy Towers, isn't that right?---Correct.

So, if you just have a look please, at page 28 and 29 of Exhibit 83, you'll see there an email from yourself to Ms Bakis on 14 March, 2016.---Yes.

10 And you'll see that there the two issues that were raised was the back pay, which was for Candy Towers, as point 1.---Yes.

And also you requested some information in the nature of rental statements for some of the Land Council properties. Isn't that so?---Correct.

Now, you met Ms Bakis at her, sorry, at your office, did you not, in Sydney on 11 May, 2016?---Correct.

20 Did she tell you at that point that she was also the lawyer or the solicitor for the Land Council?---No.

She didn't tell you that?---No.

Did you find that out at a subsequent occasion?---Oh, is this at the MEA meeting? My apologies, at the MEA meeting, she did disclose that she was also the lawyer, it was in her email of March, where she first contacted me, that she presented herself as the accountant but then at that meeting, I learnt Ms Bakis was, well she presented herself as also the Land Council lawyer, my apologies.

30 Now, there were also a number of other matters that were the subject of outstanding requests by you as at May 2016, were there not?---There was.

And some of them included related party transactions, including source material?---Correct.

Disclosure of subsequent events, is that right?---Yes.

You just have to audibly answer, I'm sorry, Mr Hickey.---Yes.

40 Disclosure of related party transactions, is that right?---Yes.

And was it also details related to all subsequent events and related party transactions, are they the three matters that were also outstanding?---That's correct.

And the lack of provision of that information was again one of the reasons why the report was delayed, is that so?---That's correct.

Just on the issue of Ms Bakis being a lawyer and the accountant for the Land Council, did that cause you some concern that she had two roles?
---Yes.

10 What was your opinion about whether or not somebody should have a position as being the lawyer and also the accountant of a body such as the Land Council?---I think in, in the circumstances, particularly given how regulated a Land Council is and how specific the legislation is that surrounds a Land Council, that it is appropriate to have lawyers engaged and are focussed on those issues and only those issues because it is, it is a very specialised area. Indeed, the accounting related to a Land Council as well, it follows that it is also quite specialised and that, yeah, that I would have thought the minimum levels of governance would require that those two roles be separated.

Indeed, you gave the Land Council advice in your report, did you not, that those, sorry, from a governance perspective, those roles should be separated, isn't that so?---I did.

20 Would you have a look, please, at page 143? And you'll see you there in 4.2 refer to the dual roles of Knightsbridge North Law and Knightsbridge Tax?---Yes.

And ultimately you thought that the separation of the role would be something that should be strongly considered by the board?---Correct.

Just while we're on that page, on the first column, the fifth dot point, it refers to Ms Bakis subpoenaing PKF as part of the above litigation.---Yes.

30 What is that about, Mr Hickey?---That was a litigation that the Land Council had brought against, I think from memory, the Minister, the Registrar and the New South Wales Local Aboriginal Land Council.

And why was your firm subpoenaed?---I'm not sure.

40 What material did they seek?---Our audit funds and all correspondence relating.---I just want to follow on, please, just some of the reasons for the delay. Audit queries were made to Ms Dates on a couple of occasions, were they not?---They were.

And there was no response given to the request that you made of Ms Dates, in fact, at all, was there?---No.

And the specific issues, were they that the audit queries were made of Ms Dates related to the appointment of Ms Steadman, and the payment to Ms Steadman in a role as acting CEO. Is that so?---They were two of the issues, yes.

And I'll just show you, if you can, would you please turn over page 161 of Exhibit 83, and these are the emails that were sent to Ms Dates that received no response. Is that right?---That's correct.

Now, another reason why there was some delay in the production of your report was that Kelvin Kenny was conducting an investigation, was he not? ---That's right.

10 Did that have some bearing on the availability of information that you needed, of course?---Not the availability of information but it does have an impact on audit risk. If a regulator feels sufficiently compelled to appoint an investigator to investigate the affairs of an organisation and an auditor is auditing, then the auditing standards do give cause for the auditor to consider their assessment of risk and to consider their audit program and determine what that means in terms of what further audit testing may need to occur as a consequence of that.

20 Now, earlier I asked you some, or you gave some evidence about some matters that you perceived were threats by Ms Bakis to you as the auditor. ---Yes.

Would you please turn to page 142 of your report? And you there record, do you not, the fact that you'd received some contact from the lawyers for the Land Council, Knightsbridge North Lawyers.---That's right.

30 And threats of litigation, at least in your view, had been made against you in connection with timelines and approach and conclusions of you and your team. Is that so?---Correct, that just wasn't my view. I also, I formed a view on that particular matter, I had that reviewed by an independent second partner of our firm from a different PKF office. I also had that position reviewed by the head of our audit leadership group nationally and then I also forwarded that position on to an independent third party consultant to give a view over whether or not that did, indeed, amount to an intimidation threat and whether the actions and the steps that we were therefore going to put in place were sufficient and adequate in the circumstances.

Was the advice that you received that it did amount to an intimidation and a threat?---Yes, it was.

40 And did the advice that you received at the various stages and levels that you got, support the steps that you took to manage what you perceived to be those threats of litigation against you as the auditor?---Yes, they did.

You mentioned this and set out some of the detail how independent advice was sought by you on page 132 of your report. Sorry, I withdraw that, privilege 132 of Exhibit 83. Do you see that there, Mr Hickey?---I do.

THE COMMISSIONER: Is this 132?

MR CHEN: 132, yes, Commissioner. Now, the final matter that caused some delay, Mr Hickey, was there was late notification of an entity called Advantage, was there not?---There was late notification, I wouldn't use the term notification. Our team became aware of an entity referred to as Advantage, we also, through our subsequent inquiries that I spoke of earlier, became aware of various entities being incorporated that either the Land Council controlled or directors of the Land Council were involved in that hadn't been disclosed to us.

10

I'm going to come to that in a moment but in any event, the inquiries were made of one of your staff members because there was a reference in one of the minutes to Advantage and further information was sought. Isn't that right?---Correct.

And it was the inquiries that surrounded that notification, sorry, identifying that there potentially was an entity involved in there that hadn't been disclosed that delayed or required further work before the report could be completed. Is that right?---That's correct.

20

Now, you mentioned the minutes as well. Had you been requesting the minutes from the board of the Land Council for many months during the course of you preparing the report?---Yes.

Over what period of time had you been requesting the minutes, approximately?---We would request minutes progressively throughout the audit, so we would, generally when we were out on site performing the audit, we would review all of the minutes up until the date at which they're available while we're out on site and then we will continue to review the minutes as the audit progresses on up until the relevant date that the audit opinion is signed.

30

Were you provided with the minutes at some point in time during the course of you preparing the report?---Yes.

And did they, when you received them did they give you a cause for concern that perhaps they were, sorry, that some of them at least or a good number of them had been approved as accurate well after the actual meetings had taken place?---Yes.

40

And the minutes in particular were, there was a particular set of minutes on 6 May 2016 that appeared to involve the board undertaking approval of minutes going back as early as 2014. Do you remember that?---Yes.

And for that reason, what reliance did you place on the minutes having regard to your observation about that having taken place?---That, those types of minutes would generally fall short of the required standard of evidence under auditing standards.

Does that mean that in the course of your work in looking at material, you place some but limited reliance on them? Is that a fair way of putting it?
---Yes.

All right. You look to other potentially more reliable sources of information to work out what's going on in the audit period and in the post audit period?---Correct.

10 Now, I want to come back to the representation letters if I can, Mr Hickey. In this case, representation letters were sent to Mr Ian Sheriff, were they not?---Yes.

Was it not, and also one was sent to Knightsbridge North Lawyers?---Yes.

And also the board of the Land Council was required to sign off on a representation letter?---We requested that they sign off on two independent sets of representations, yes.

20 A management letter and a board letter.---They were two representation letters, so the way that occurred was that we had them sign the first letter of representation which they did and sent back to us, then in the course of completing the audit and compiling the financial statements, we began to become aware of the incorporation of certain entities that haven't previously been disclosed, we identified that as part of our post ballot state event inquiry, and then we therefore then put a very specific set of additional representations before the board to sign off on as a result of having identified those issues.

30 I'll take you through – I'm sorry, I didn't mean to cut you off then, did you finish?---I did.

I'll take you through them a little bit more specifically, Mr Hickey. Would you turn up, please, first page 244 of Exhibit 83. Do you recognise that as the letter that was sent to Ms Bakis?---Yes.

And you'll see at the - - -

40 THE COMMISSIONER: What page is this?

MR CHEN: 244, Commissioner.

THE COMMISSIONER: 244?

MR CHEN: It should be after the blue divider.

THE COMMISSIONER: The numbering at the bottom of the page.

MR CHEN: Commissioner, I'm told there should be one before and after a blue divider and it has a page numbering.

THE COMMISSIONER: This is Mr Hickey's tender bundle we're talking about?

MR CHEN: It is, Commissioner.

THE COMMISSIONER: 244.

10

MR CHEN: If that could be returned, Commissioner, I'll make sure that it is accurate and I'll just ask for Mr Hickey's - - -

THE COMMISSIONER: Yes, I just, I'll hand it down in case there's something amiss. You might have a look at it.

MR CHEN: So we've put a tag on it, Mr Hickey, in case you prefer to see it in hard copy, but that's a copy of the letter that was sent to Ms Bakis. Do you see that?---Yes.

20

I'm going to take you to when it came it back to you et cetera a bit later, but I just want to ask you some questions about this. You'll see that in – I withdraw that. That was prepared at your direction, that letter, was it not? ---Yes.

And you'll see that you, in the third line, the second sentence, state, "We understand that no legal services were provided for the period under review," et cetera. Do you see that?---Yes.

30 And I take it that that was based upon your and your staff's reviewing of the records of the Land Council?---Yes.

And that statement was never disputed or challenged by Ms Bakis or Knightsbridge North Lawyers, was it?---No, it wasn't.

And a response to that was received, was it not, from Knightsbridge North Lawyers and Ms Bakis, Mr Hickey?---Yes.

40 And would you just have a look, please, at Exhibit 83, page 45. Just wait till it comes up, Mr Hickey. That's up on the screen now, Mr Hickey, if that's easier.---Thank you.

That's the response that you received, was it not, from Knightsbridge North Lawyers?---Correct.

Some of the material is fairly general. Is that the intent of why you request this or should it be more specific. What's the position?---The way this letter

was constructed and now knowing the, the existence of particular matters that, in my view, this letter was, was too general in terms of its response.

But as it turned out enquiries within your office pursued a few issues that they detected, isn't that right?---Correct.

Now, you'll see on page 46, there's a statement about a successful property development proposal.---Yes.

- 10 There's no other or subsequent letter to this, is it, that's a formal representation letter that sets out what that proposal was?---No.

But your office, as it were, detected that there was an issue because of something they noticed in one of the minutes, isn't that right?---Correct.

- 20 I'm just going to take you to those minutes now. Sorry, I withdraw that, to those emails now. Would you have a look, please, at page 45, I'll withdraw that. Sorry. I apologise Mr Hickey, would you just please turn to page 44 and you'll see that this representation letter was sent back on 19 July at 5.04pm.---Yes.

Do you see that? What's the significance in terms of the date of receipt of that letter from an auditor's perspective? That is, does the date that it's received or dated by, in this case, Ms Bakis have some significance over the date that you sent it to Ms Bakis?---Not at all. As long as the, the date that it is sent back is up until the period at which the audit opinion is signed, is the key point.

- 30 I see. So the date you act on is the date you receive it, is that so, or the date of the letter?---It, it would be if there was information that had been disclosed that was relevant to our enquiry and relevant to our audit, then, then, then we would, we would act on that at the time of receiving the letter.

Now, although the letter was dated 18 June, or the letter to Ms Bakis was dated 18 June, 2016, it appears, for whatever reason, it never came to her attention until at least 18 July, 2016. Is that your recollection? Just have a look at telephone bottom of page 44, you'll see it's been sent again. Can you see that?---Yep.

- 40 And if you turn, please, to page 37, you'll see that in fact, there was another follow up. So page 37, down the bottom of the page, Ms Keagan sent an email to Ms Bakis on 19 July, 2016 at 2.01pm, following up the solicitor's representation letter. Do you see that?---I do.

Now, in the email that Ms Keagan sent to Ms Bakis on 19 July, 2016 at page 37, if you turn to page 38, you'll see that a request is made, this is at the top of page 38, Hayley Keagan also makes a specific request for, "Please advise of any companies or other entities you have set up for Awabakal

Local Aboriginal Land Council and/or its directors.” Do you see that?---I do.

And if you then turn back to page 37, I'm sorry, the way these are arranged, there's separate responses to this request which makes the responses a little but unclear from the material but the initial response that was provided by Ms Bakis is that which appears at page 37 of the exhibit, that is an email of 19 July, 2016 at 4.02pm. Do you see that?---Yes.

10 And part way down, you'll see that there's a reference to a number of companies, the second of which was identified as Awabakal LALC Trustees Limited. Do you see that?---Yes.

And Ms Bakis was telling you that in fact that company was to be established, in fact, the next day. Do you see that?---Yes.

Now, some other inquiries had been sent by Ms Keagan requesting, in effect, advice from Ms Bakis about what other companies had been set up. Isn't that so?---Correct.

20

And part of the response is what I've just shown you, but if you turn please to page 51, you'll see that Hayley Keagan was following up Ms Bakis quite late in the evening of 19 July 2016, trying to get a clearer picture of some of the entities that the council may have direct or indirect interest in. Do you see that?---Yes.

And you'll see that Ms Bakis has provided a response on 19 July at 10.31pm at page 50.---Yes.

30 And over onto page 51 and Ms Bakis is advising that the word “Awabakal” is of no significance but she does advise that she was in the process of incorporating the Awabakal LALC Trustees Limited, which will be owned by the Land Council, but that had not been incorporated as yet. Do you see that?---Yes.

Would you turn also please to page 49, Mr Hickey? You'll see as well that in response to the request for information concerning the Advantage agreements, two agreements were attached, namely the Awabakal Advantage Collaboration Agreement, and the collaboration agreement addendum. Do you see that?---Yes.

40

Now, those documents were attached to that email at Exhibit 82, page 62, which is first the collaboration agreement dated 7 June 2016.---Yes.

Do you see that?---I do.

And also the collaboration agreement addendum dated 7 June 2016. Do you see that?---Yes.

Both of those agreements that were sent to you were unsigned, were they not?---That's correct.

You weren't sent any other information about any other agreements that had been entered into between the Land Council and Advantage at all by Ms Bakis?---No, we were not.

10 Despite the request for any agreement in relation to Advantage?---That's correct.

Now, just in relation to Awabakal LALC Trustees Limited, did Ms Bakis ever tell you in writing or over the phone or in person, that in fact that very entity had been incorporated in January of 2016 but had been, or steps taken, to have it removed from the register on 15 July 2016?---No.

20 No. And did she tell you that, at all, either in correspondence of some kind or in discussions you had with her, that either Mr Green or Mr Petroulias may have had an association with that entity Awabakal LALC Trustees Limited that had been incorporated in January of 2016?---No, she did not.

All right. Would that have been important information for you to know? ---Yes.

Would it have been important information for you to know that a few days prior they were seeking to have that name removed from the register but then another company in exactly the same name registered?---Yes, that would have been important to know.

30 Why is that?---Because Mr Green is a director or was a director at the time of the Local Aboriginal Land Council, he was also the deputy chairperson, which creates related party relationships that are required to be disclosed so that a line of inquiry can be made in relation to those particular related party relationships. In the context of a Local Aboriginal Land Council that takes on another perspective again because it is not just the requirements of the auditing standards and the accounting standards that need to be complied with, but there is a whole area within the Aboriginal Land Rights Act as well related to related party relationships and pecuniary interests, which from my recollection is in part 10 of the Act. So it is of considerable
40 importance in the context of a Local Aboriginal Land Council.

Did it cause you some concern, Mr Hickey, that this entity was to be established in New Zealand as opposed to Australia?---It did strike us as being odd, yes.

In your dealings with auditing other land councils have you ever seen anything like this where a foreign company is incorporated to apparently assist in land transactions of this kind?---No, I have not.

Just while we're on page 49, Mr Hickey, of Exhibit 83, there was also advice from Ms Bakis that New Zealand gives certain flexibility, particularly to the New Zealand investors. Do you see – it should be on the screen, or I'm sorry, it may not be on the screen but it will be shortly.---Yes.

10 Again, did that cause you some concern that perhaps business or investment was to come from external sources such as New Zealand and - - -?---It did, and that was one of the driving principles as to why we sought additional further representations from the board of directors.

Are you aware of what the certain flexibility could possibly be for a New Zealand company as opposed to an Australian company?---Specifically, no, I'm not.

20 Now, just while we're on page 49, Mr Hickey, you'll see that what's potentially proposed is that this entity, this New Zealand entity, would hold title to property that the Land Council wished to potentially sell whilst it's being rezoned and during the DA process. Do you see that?---Yes.

Can you think of any good reason why a Land Council would need to do that?---No.

Have you ever seen it occur in any other Land Council that you've been associated with in the many years you've undertaken auditing work? ---No, I haven't.

30 Now, I should have taken you to this earlier, Mr Hickey, I apologise, but the specific request that you made or your staff made for the Advantage material is at exhibit page 47, and you'll see that's an email sent from Ms Keagan, 19 July, 2016 at 8.49pm?---Yes.

And the specific requests were for the Advantage agreements. Do you see that?---Yes.

And all you were provided with are two unsigned agreements that I've earlier asked you about. Is that so?---That's correct.

40 Did Ms Bakis ever tell you that in fact there were a number of other agreements that had been signed involving the Land Council and Advantage?---No, she did not.

Did she tell you that there were in fact at least one, possibly two, call option agreements involving the Land Council and Advantage?---No, she did not.

In light of, I withdraw that. You see on page 47, Mr Hickey, you'll see that Ms Bakis sent an email to Ms Keagan at 10.26pm on 19 July 2016, and you'll see that Ms Bakis is contending, amongst other things, that before a

community meeting approves anything, there is nothing, do you see that?---I do.

Having regard to, sorry, do you recall receiving or at least reading that email at the time?---I do.

10 And having regard to the fact that you had that email and the unsigned collaboration agreements and the addendum agreements, did you think there were any binding agreements of any kind involving the Land Council and Advantage?---No, I did not and I also had the representation letter from Knightsbridge North Law as well.

Okay. Did, you subsequently have had reason to make contact with Mr Lawler, the administrator, have you not?---Yeah, he made contact with me. Yes.

20 All right. And did, at that time, were you shown a number of documents by Mr Lawler that related to Advantage and the Land Council amongst others? ---Yes.

Were you shown by Mr Lawler a copy of a call option deed between the Land Council and Advantage?---Yes.

Do you recall that there were two documents of that kind, one dated 7 June 2016 and one dated 10 June 2016?---I do recall two documents, I don't recall the exact dates.

30 But until Mr Lawler had shown you that document you were unaware of it, is that right?---That's correct.

Is that a document that should've been disclosed to you by Ms Bakis? ---Yes.

Is that a document that should've been disclosed to you by the board of the Land Council, assuming they knew of it?---Yes.

40 And should there have been a disclosure in both the board and the management representation letters to the effect that there were such agreements such as the call option agreements that I've mentioned?---Yes.

When you spoke to Mr Lawler did you also become aware that there was an agreement involving an entity called Forlife Developments Pty Ltd?---Yes.

Had that, or the existence of, I withdraw that. That agreement was dated 13 June 2016. Do you remember the date of it?---Yes.

Was that agreement ever disclosed to you by Ms Bakis?---No.

Was it ever disclosed in any of the representation letters that you received from either Ms Bakis, the board or management of the Land Council?---No.

Should that agreement have been disclosed to you as part of your audit process that you undertook?---Yes.

Do you consider that the failure to disclose those, or the existence of those agreements was misleading?---Yes.

10 Do you consider that a party who drafts an agreement and documents an agreement such as Ms Bakis should have disclosed it to you?---Yes.

If these suite of agreements, the call option deed, the Forlife Development agreement dated 13 June 2016 had been disclosed to you, what, if anything, would you have done?---It would've required us to consider our audit strategy, our audit plan, our audit program. It would have caused us to look at the related party relationships that may exist within those particular agreements. It would have also caused us to review those agreements, potentially seek advice on those agreements to determine whether or not
20 there were any contractual commitments or any circumstances under which, for example, a liability might arise on the Land Council that needed to be booked in with the financial statements or either disclosed.

Now, earlier in your evidence, you describe as, you explain how, after events reporting was still important, notwithstanding that the financial period being audited ended on 30 January, 2015. Do you remember that evidence?---I do.

30 Prior to, sorry, in the course of you undertaking this audit, were you ever told that there were agreements entered between a company called Gows Heat Pty Ltd?---No.

You weren't told anything about them by Ms Bakis?---No.

Not told anything about them by any board member?---No.

And no disclosures in any of the representation letters that had been returned to you?---No, there wasn't.

40 Would you just have a look, please, at one agreement I want to show you, Mr Hickey. It's volume 3, page 123. More recently you've seen this agreement I think, haven't you?---Yes.

Just have a look at the second page, so 124. When did you first see this agreement?---I believe this agreement was provided to us by Mr Lawler's lawyers.

I see. And was that is 2017 or thereabouts?---Either the end of 2016 or the beginning of 2017. Likely to be the beginning of 2017.

Would you just have a look at the next page, please, so clause 2, so page 126, and you'll see that it makes reference to purchaser agreeing to buy and vendor agreeing to sell the land. Can you see that?---I do.

On the face of it, that appears to be trying to deal with land, doesn't it?---It does.

10

That's the way you would understand it, as at least from an accountant and an auditor?---Yes.

And would you expect an agreement such as this to be disclosed to you? ---Yes.

And I think you've said it but you didn't see any agreements between the Land Council and any entity called Gows Heat at all?---No, I did not.

20

Now, in the course of you undertaking the audit, did anybody disclose to you that agreements had been signed with an entity called Sunshine Property Investment Group Pty Ltd?---No.

Did anybody disclose that there'd been agreements between the Land Council and that entity, dealing with Land Council land?---No.

Did anybody disclose to you that there had been any agreements of any kind between Sunshine and the Land Council?---No.

30

Did anybody disclose that there were any agreements between the Land Council and an entity called Sunshine Warners Bay Pty Ltd?---No.

I just want to show you a couple of documents, actually more than a couple, a few documents, I'll withdraw that. I'm going to show you a number of documents, Mr Hickey. The first is the, it's called a surrender agreement and release. So, this is volume 7, page 136. It's a surrender agreement and release between the Land Council, Gows Heat and Sunshine Warners Bay Pty Ltd. Do you see that, Mr Hickey?---I do.

40

Was that agreement ever disclosed to you by any party in the course of you undertaking this audit?---No, it was not.

Is that the kind of agreement that should have been disclosed to you?---Yes.

Why is that?---It refers to the involvement of land, obviously a very material asset, to the members of the Land Council. It refers to an option agreement, it refers to rights. All things that could confer some type of obligation

potentially on the Land Council, either as at the date of this particular agreement or at some point in its future.

Thank you very much. Would you just have a look at another document now which is at volume 7, page 128? And you'll see that's the, a document described as general heads of agreement dated 2 October 2015.---Yes.

10 If you look at the second page, it appears to be an agreement between the Land Council and Sunshine Property Investment Group Pty Ltd. Do you see that?---Yes.

And if you just have a look at, say, for example, recital C, you'll see there's a reference to agreements, land, etcetera.---Yes.

Is that an agreement that should've been disclosed to you as part of this audit process?---Yes.

And did anybody disclose this to you at all?---No.

20 Would you have a look, please, at volume 7 page 142? You'll see that's a document described as a variation agreement dated 23 October 2015?---Yes.

And it refers back to the heads of agreement that I just drew your attention to?---Yes.

Was that ever disclosed to you in the course of you preparing this audit? ---No, it wasn't.

30 Again, is that a document, sorry, is that an agreement that should've been disclosed to you?---Yes.

Would you have a look now, please, at Exhibit 43, page 25? Have you ever seen this document before, Mr Hickey?---Not until late 2016 slash early 2017.

40 I should put on the record that's called a Deed of Acknowledgement and guarantee between Sunshine Warners Bay and the Land Council, dated 21 December, 2015. Is that a document that came to your attention after the administrator was appointed, or through the lawyers for the administrator? ---That's correct.

Was it the latter, through the lawyers?---Yes.

And if you just scroll down please, you'll see that what this document attempts to do is to guarantee certain transactions that were recorded in the heads of agreement that I drew your attention to earlier. Do you see that? ---Yes.

I take it from your earlier evidence that nobody disclosed the existence of this guarantee to you during the course of your audit?---No, they did not.

And is that a document, I'll just show you the guarantee if you just scroll down, just go up a bit. If you just have a look at clause 2 of the operative part, the owner guarantees the purchaser for any loss or damage suffered by the purchaser, etcetera. Do you see that?---Yes.

10 Is that a document, sorry, an agreement that should've been disclosed to you in the audit process?---Yes.

Why is that?---Again, it is a contract relating to what appears to be some sort of land deal, as I said before, a highly material asset to the members of the Land Council. It mentions entities for which we're unfamiliar with so we would want to determine the extent of, if any, related party relationships in relation to those particular entities. I can see that it also refers to amounts of 926,000, 667,000 and 250,000 dollars, all within the context of our audit material, and if those amounts ever were to come to pass with respect to the Land Council, it would require consideration in the context of the audited
20 financial report.

Were you ever told that any money had been paid pursuant to any of these agreements that I've drawn your attention to?---No.

There was also, Mr Hickey, a document between the Land Council and Sunshine described as an acquisition proposal, dated 30 June, 2015. Were you ever aware of that document?---No.

30 If money had been paid pursuant to one or other of these agreements, arguably for the benefit of the Land Council, should you have been notified of that fact, that money had been paid for the benefit of the Land Council?
---Yes.

And you were not told of that?---No.

Were you told at all that money had been received but disbursed?---No.

40 Was there any form of disclosure at all by any party about moneys being paid pursuant to any of these agreements that I've drawn your attention to?
---No.

Now, one of the matters that is contained in the representation letters concerns whether or not there is litigation, I think. Is that right, Mr Hickey?
---(No Audible Reply)

I.e., part of what the representation letters are designed to elicit is whether or not there's an either litigation or a risk of litigation. Is that so?---That is one of the elements, yes.

And the purpose I take it is to determine whether or not there's a risk that somehow the value of the assets of the Land Council could be compromised in some way. Is that right?---Yes. Or another example could be a litigation could cause to confer a liability on the Land Council of some kind.

10 Now, did anybody disclose to you that in fact Mr Zong, who was the principal behind Sunshine, had in fact threatened litigation against the Land Council as a consequence of the Land Council refusing to be bound by the agreements that had been signed by it?---No.

Could I ask you to have a look, please, at volume 16, page 146. You'll see there's a letter from Andrews & Holm dated 15 July, 2016, to Knightsbridge North Lawyers, Ms Bakis. Do you see that?---Yes.

And it refers to an earlier email in the body of it dated 6 July, 2016. Do you see that?---Yes.

20 And you'll see under a couple of paragraphs down there's heading, Demand. "This is a letter of demand," et cetera?---Yes.

Have you ever seen this letter before?---No, I haven't.

Did anybody disclose to you that a demand of that kind had been made on 15 July, 2016, against the Land Council?---No, they didn't.

Is that a matter that should have been disclosed to you?---Yes.

30 Why is that?---Because it refers to an agreement that we were not aware of or not had been disclosed, it refers to an entity, Sunshine Property Investment, which appears on its face to be a property company and therefore there is a risk that it may have been dealing with the material asset of the Land Council, being its land. The demand matters are material in terms of their amount and appear could confer a material liability on the Land Council, it also refers to entities that it will separately pursue as part of the same transaction, being what appears to be Gows Heat Pty Limited and Keeju Pty Limited. Given the presence of those two names we would also be pursuing a strong line of inquiry in relation to whether or not any related party relationship that were there that needed to be considered.

40 In any event, Ms Bakis never told you about this letter of demand, did she?---No.

And she never told you about any of these other agreements, the surrender agreement and release, the general heads of agreement, did she?---No.

Now, did Ms Bakis ever tell you that she'd also been negotiating to sell and alleged interest that Gows Heat had to a company called Solstice?---No.

That she'd drawn up an agreement in November 2015?---No.

That she'd drawn up revised agreements in April and May of 2016?---No.

And that those revised suite of agreements that had been drawn up by her also involved this entity Awabakal LALC Trustees Ltd?---No.

10 Did any other board member tell you of the above?---No.

Did any of the other staff members tell you about those matters?---No.

Now, do you consider that what Ms Bakis told you fairly represented the position? That is, her representation letter fairly represented the true position?---As auditors, to a degree, we do rely on the fact that when we're requesting representations from parties, such as Ms Bakis, who are lawyers, who are registered professionals, who are governed by certain codes of conduct, that we do place a level of reliance in that in terms of the responses that we get and that we believe at the time, that, yes, we've been told
20 everything that Ms, that Ms Bakis was aware of. There are also other procedures that we can undertake in addition to receiving those representations, which we did.

Well, I'll put it in more direct terms. Do you think that she should have disclosed that she'd apparently been involved in drafting these agreements with Gows Heat Pty Ltd to you?---Yes.

30 Do you think she should have disclosed to you that she'd been involved in drafting a whole suite of agreements involving the Land Council and Sunshine?---Yes.

And that she'd been involved in transactions involving the Awabakal LALC Trustees, albeit that they didn't complete, but she'd still be drafting agreements, drafting documents to try and effect agreements with them?
---Yes.

40 Do you think in fact, that by providing you with only two of, unsigned advantage agreements, that that was full and proper disclosure to you?
---No.

Do you think that, in fact, she had misled you?---Yes.

And if you've been provided with all this information about the background dealing of this Land Council, the agreements that have been signed, would you have had serious reservations about going forward in signing off the audit report as you did?---Yes.

What would you have done, if anything, differently, if you'd found out about all these agreements, Mr Hickey?---I don't want to speculate in relation to this particular circumstance but comparing it to other circumstances, the likelihood would have been, we'd have issued a disclaimer of audit opinion, which means we'd have been unable to issue any assurance over the financial statements and the activities of the Land Council.

10 If you reached that position, would you not have reported it to the New South Wales or the state level of the Land Council?---We'd have reported it to the New South Wales Local Aboriginal Land Council and we'd have also obtained advice on whether or not we were required the matter to the ICAC.

I see. Now, I want to ask you now, Mr Hickey, just about the board and the management representation letters. Would you turn, please, to page 95 of the exhibit. Do you see that as a copy of the, I think it's described as the director's transaction letter, is it? Or director's representation letter, dated 19 June, 2016?---Yes.

20 And again, if you look at page 96, it talks about compliance with, or disclosing legal disputes, entities established outside the ALC land dealings. Do you see that down the bottom?---Yes.

There hadn't been any disclosure at all outside of this letter about the matters that I have taken to you in evidence today?---Only to the extent that we received two unsigned advantage agreements.

I see. Would you turn, please, to page 97 and you'll see there, is the management representation letter dated 20 July, 2016?---Yes.

30 And you'll see that's been signed by the chairperson and deputy chairman on 20 July, 2016?---Yes.

40 If you assume that at the very least, that deputy chairman had signed if not all of them, a good number of the agreements that I've taken you to – namely involving Gows, Sunshine, Solstice, Advantage – what do you regard the failure to disclose those matters by the deputy chairman in this letter as? Is it, I'll put it another way. Mr Green, I want you to assume, signed all the Sunshine agreements, he signed the Solstice agreements and he signed the Gows Heat agreements. He didn't disclose independently of this letter to you those matters, did he?---No.

And having regard to those facts now, what do you say about this representation letter that he has signed?---That it's incorrect to the extent that it includes some very significant omissions.

It's misleading, isn't it?---It is.

And if Ms Dates has signed a number of these agreements, too, the same could be said. Is that so?---Yes.

Now, from your own inquiries, you found out subsequently, did you not, that the Land Council was involved in litigation with the Minister. Is that right?---I believe that matter had been disclosed.

Would you have a look at page 115 of the exhibit, please? You'll see in the column Contingent Liabilities and Subsequent Events.---Yes.

10

And you'll see in the third paragraph in that first light blue column, it says, "Despite receiving". Do you see that?---Yes.

Is it the case that in fact they had been disclosed that the Land Council was involved in litigation with a minister, or was that something you found out? ---That was something that we found out in the course of reviewing documentation after receiving the letter of representation.

20

Mr Hickey, from your own investigations conducted as part of the audit, were there problems with the proper functioning of this Land Council? ---Yes.

It had, did it not, at the time that you undertook its, or started undertaking, the audit of its records, tax and statutory liabilities of well over \$100,000, did it not?---Yes.

That is in 2016 it had unpaid tax liabilities and superannuation liabilities from nearly a year prior.---Yes.

30

Notwithstanding there appeared to have been an accountant appointed to look after this part of the financial management of the Land Council?---Yes.

You'd also identified that there was approximately \$122,000 of unconfirmed expenses. Is that right?---Correct.

And you've also mentioned to the Commissioner earlier that there were unsatisfactory controls generally. Is that so?---Correct.

40

How would you describe the functioning of this Land Council at this time in terms of its financial management?---Well below the minimum standard required in order for it to comply with its obligations under the Act.

And what about how it was functioning in terms of governance?---Dysfunctional.

From your observations and the investigations that you undertook were you surprised that an administrator was appointed?---No.

Did you think it was justified?---Obviously not my decision and a matter for me.

If you don't want to express an opinion or view on it.---Yeah, thank you.

All right. Now, you attended, did you not, the AGM on 20 July 2016?---I did.

10 And the purpose of you attending was to present the report?---Yes.

And you attended with a number of others from your office, did you not?
---One other, our managing partner, Steven Meyn.

And as part of the, or during the course of the presentation, did it come to your attention that the audit opinion was not included in the material, for whatever reason, that was distributed to members?---Yes, it did.

20 And the audit opinion is those two pages, pages 100 and 101 of the exhibit. Is that right?---That's correct.

Now, was that brought to your attention by someone called Sean Gordon?
---Yes.

30 And as a consequence of that, did that require you then simply to read that out to the members so they were able to understand what your audit opinion was?---I first wanted to confirm that it wasn't an issue that was just confined to Mr Gordon's report that he had in his possession, and I went on to check a selection, a random selection of other members' reports on the evening and identified that they also didn't have audit opinions attached to them and I then proceeded to read the audit opinion out verbatim to the membership to ensure that it was communicated and understood.

Who prepared the material that was distributed to members, was that your office or the Land Council office?---I emailed the financial statements in one single PDF with the audit opinion included within that PDF to the Land Council.

Thank you, Commissioner, that's the evidence of this witness.

40 THE COMMISSIONER: Did you ever seen the retainer agreements between KNL and the Land Council?---No, I didn't.

Can you give me the reference to the retainer agreement, and in particular I think it's clause 20?

MR CHEN: Exhibit 43, page 1.

THE COMMISSIONER: Can we bring that up?

MR CHEN: It's Exhibit 43, page 1. It's on the screen now.

THE COMMISSIONER: Is it clause 20 that contains - - -

MR CHEN: It is, there is - - -

THE COMMISSIONER: Yes. I might leave it to you to see if there's any significance in that to audit or risk issues.

10

MR CHEN: I'll take it and put it to the witness now.

Mr Hickey, on the screen is a retainer agreement, apparently signed on or around 28 November, 2014, between the Land Council and Knightsbridge North Lawyers.---Yes.

I think you said earlier in one of the questions I asked you that you had found no evidence that Knightsbridge North Lawyers had performed any work in the relevant financial period that you were auditing?---No, I hadn't.

20

And you've never seen this document before, have you?---No.

On the screen now, so it's Exhibit 43, page 8, is a clause in a fee agreement and I want you to assume, Mr Hickey, that identifies that there would be four agents for the Land Council. Do you see that?---(No Audible Reply)

Mr Nicholas Peterson, Richard Green, William Tofilau and Andrew Margi. ---I do see that.

30

That, at least on one view of the agreement, enables the solicitor from this firm to receive instructions from each of those four individuals, notwithstanding that at least three of them are not only not members of the Land Council but not board members. Do you see that?---I do. Now, is that something that is a matter that should be disclosed in any of the material that you were auditing in that time period?---It is.

40

Why is that?---Because Mr Green is an agent and a representative of the Land Council, not of the law firm, and I would find it unusual, indeed I have never seen that before in a retainer of this type where a director would be mentioned in this way.

What about the three others that have no connected whatsoever to this Land Council?---I would, I've, would certainly want to understand what their role is and what their authority is in terms of being able to provide instructions to the law firm under this retainer on behalf of the Land Council.

Anyway, it wasn't disclosed to you?---It wasn't.

Thank you, Commissioner.

THE COMMISSIONER: All right. Yes. Now Ms Nolan, do you have any questions, or - - -

MS NOLAN: Mr Petroulias has some that he's going to start with.

THE COMMISSIONER: Yes, all right. Mr Petroulias first.

10

MR PETROULIAS: Mr Hickey, that report to the board that you were shown that you said you couldn't remember what date was produced. ---Mmm.

That was a, if it refreshes your memory, March 2017.---I don't believe that would be the case, no.

20

Well, I think there is a date attached to it, if we can pull it up. No. The report to the board, so there's the management representation letter and there's the report to the board which - - - ?---Or the management letter?

Yeah.---You might be referring to.

Yes. Well it actually says "report to the board".---Mmm hmm.

And it seems to be dated around March 2017 from what I understand because Mr, so that's some significant period.---Okay, my apologies, I do have that. March '17, I was referring to the management letter.

30

Okay. All right. Okay. Now, you do say in paragraph 1.3 of that, if we can just focus on that one for a moment, keep it tight, in the first page 125 I've got here, I don't know what page you have. Paragraph 1.3, the beginning of the executive summary.---Are you able to let me know so that I can look it up in here, please?

Yes. I've got 125 on the version that's on the portal but I think they vary a little, there we go.---Thank you.

40

Now, you say some sort of - - -

THE COMMISSIONER: This is the responsibility of the auditor, is that the - - -

MR PETROULIAS: 1.3, responsibility of the auditor, yes.

THE COMMISSIONER: Yes, all right.

MR PETROULIAS: That there were inconsistencies and difficulties with the, with the lawyers, numerous.---Yes.

And the only one that you've really identified is the, what you call, the threat of intimidation which said if you don't finish the audit in time, we will seek specific performance.---There was a second one as well in a letter that was sent to us by Knightsbridge Law, I think on 2 July, 2016.

10 Yeah.---Yeah.

What does that say?---That says something to the effect of, in relation to the matter that we did end up qualifying on, that if, and I'm paraphrasing here, but if we were to continue to go down the line in terms of this audit opinion that we were proposing then we would be adjointed to proceedings that were currently in play and that we would be forced to correct the record.

20 Yeah. Exactly. So in other words if, if the audit opinion wasn't an honest and accurate, that we would enforce, yeah. Is that an extraordinary position in your - - - ?---That is an incredible extraordinary position because it's not Knightsbridge North Law's opinion, it's my opinion.

Yes. But if there is a difference of opinion, someone can challenge that opinion?---They can, and I considered those issues ad nauseam over the eight months leading up to the furnishing of my opinion.

Terrific.---And my final opinion, the final opinion.

30 The \$385,000 that you qualified in October 2015, they vanished by this stage, didn't they?---The \$385,000?

The original ones, the original draft audit report had a whole series of qualifications, didn't it?---They did. I think the number from memory you're referring to, Mr Petroulias, is 304,000.

40 Right. So that 304,000 disappeared and we got instead the 121,000?---I think I explained the circumstances earlier under which we arrived at that number. I'm happy to do that again for you if that's in answering your question.

No, no, because - - -

THE COMMISSIONER: Mr Petroulias, would you please not talk over a witness when that witness is talking?

MR PETROULIAS: Certainly. In fact, we can be very specific. There was an email that was provided by Hayley Keagan which identified what the 300, what the 125,000 was.---Yes.

And just from memory before we pull it up, basically it was the vouchers for payroll to staff.---Yes. Yes.

And the audit fees to the accountant, the former accountant.---The accounting fees to Summit, yes.

Summit, beautiful. And then there was 40,000 that we just, you didn't even ask about?---Oh, no we just didn't have the information, so we don't, we'd been asking for that information, Mr Petroulias, since, oh, jeez, September-October, 2015 to resolve those issues. So - - -

But in fact it was only the morning of the audit?

THE COMMISSIONER: Mr Petroulias, Mr Petroulias. Did you hear what I just said to you a moment ago? Do you recall what I just said to you?

MR PETROULIAS: Yes.

20 THE COMMISSIONER: What did I say?

MR PETROULIAS: You said, "Don't talk over the witness."

THE COMMISSIONER: Now, are you going to comply with that direction?

MR PETROULIAS: Yes, we're I will.

30 THE COMMISSIONER: Right. Now, I'm sorry, would you pick up where you left off or, before you were interrupted.---Sure. No problem. I, I feel I answered that question, which was we, we'd been asking for, we'd been giving, I think from memory, we had issues something like three or four draft audit opinions in advance of the final audit opinion being furnished. That particular qualification that you're referring to existed in that draft audit opinion since its first iteration. I think, which I presented at a board meeting on 30 November, 2015, from which I then followed up on, on multiple occasions from that date, indeed before 30 November with Ms Steadman while we were conducting the audit. Leading up to the audit being completed, the Land Council then wanted to take an attempt to remove that
40 qualification. I'd identified very early on in the audit that due to the inadequacies in the control environment that existed over that period of time, which I spoke to earlier in my evidence, that it would be a very difficult qualification to overcome. However, the Land Council is our client, we do what we can do to assist our clients and albeit the request was very late in the piece, we agreed to receive that information and undertake those procedures in relation to that.

MR PETROULIAS: So that was on the Tuesday the 19th, that was the day before the late at night, 9.20pm, when David Hutchison asked Despina to produce those financial records? In other words, vouchers for payroll.

---Yes. But as I said, that request was made in connection with a request from the Land Council to revisit out draft opinion that had already been through three or four draft corrections.

10 So, the day of the audit is when Ms Bakis first got it to act on?---No. The Land Council had had that to act on since, as I said before, probably around, formally, in terms of the communication with board, since 30 November, 2015.

But you agree that Mr Hutchinson asked for it that morning, the morning of the audit?---Because that was a response to the Land Council wanting us to revisit that qualification in an attempt to lift it.

20 And you agree that Candy Towers came to your office at about 2-3 o'clock with the documents and it was a bit too late for the audit?---No, we checked them all.

But you said, "It's too late."---When?

Well, we just received, but, however, it says yourself at 2.02, "However, due to it being delivered an hour prior to the deadline, we're not, this may not occur."---"This may not occur."

You wouldn't have time to check the vouchers?---We did check the vouchers.

30 MR CHEN: I think, Commissioner, this is of marginal relevance but also it's unfair. Mr Petroulias well knows now that if he wants to cross-examine of a document, he should identify it and the witness should be shown it. It can come up on the screen and we can, rather than have Mr Petroulias cross-examining what appears to be off an email, you can show the witness and we can move through it far more expeditiously, in my submission, Commissioner.

40 THE COMMISSIONER: Mr Petroulias, I think one point being made, apart from the fact that this is all very marginal, is that unless you give notice as to what document you're going to take the witness to, we can't bring it up on the screen and that places everyone, including the witness, potentially at a disadvantage.

MR PETROULIAS: I would do that if there was a disadvantage, Commissioner, but he seems to well aware, well, in great command of the facts.

THE COMMISSIONER: Well, he is but nonetheless, he's entitled to be taken to a document, if you're cross-examining on a document and suggesting a proposition, he's entitled, just like any other witness.

MR PETROULIAS: Certainly, certainly. If he has, if he has, if that needs to happen then I'll do it but if he remembers it, then why waste time?

10 THE COMMISSIONER: Because it's fair procedure that if you're going to cross-examine somebody of a document that the witness has the document in front of them. That's not possible, as it has been pointed out, because you're not given any forewarning or notice that the document is required on the screen, so the screen remains blank.

MR PETROULIAS: Okay, I'm not - - -

THE COMMISSIONER: Do you understand?

MR PETROULIAS: Okay, I'm not cross-examining. Yeah.

20 THE COMMISSIONER: Now, Mr Petroulias, also bear in mind that the cross-examination is not at large. It depends upon what your interest is and whether or not you want to establish an affirmative case - - -

MR PETROULIAS: Yes.

THE COMMISSIONER: - - - on any point that you're raising.

MR PETROULIAS: Yes.

30 THE COMMISSIONER: If you're not and if you're just cross-examining for the sake of cross-examination, I won't permit it. So it's got to be a focused and structured cross-examination, we've had this discussion before and just bear that in mind that we're not here just to do a roving examination of the work that Mr Hickey has done. It's got to be focused on any interest that you have in these proceedings.

MR PETROULIAS: Certainly.

40 THE COMMISSIONER: And for the moment, what we're really dealing with is the audit report assessing risk, etcetera, within the governance and accounting and financial operations of the council. You were not in council, you're an outsider to the council at all relevant times in most senses, you're not a member of the council, you're not on the board of the council, you come outside and you're dealing with, occasionally, people within the councils, within the council and the board, like Mr Green in particular. But bear in mind that whatever deficiencies there are within the accounting and the dysfunction and governance and so on doesn't go directly to affect your interest at all. It does affect those involved with the council, and that would

include internally, the people on the council, it would include professional advisors who are retained to advise the council, or act for the council on instructions, but you're not in any of those categories. You are an outsider. I'm not saying that in any pejorative sense, but I'm just pointing out that your interests in what this evidence has been about is hard to see, because you are not involved. You were not dealing directly with the council, et cetera. Do you follow the point?

MR PETROULIAS: I do.

10

THE COMMISSIONER: Well I'm trying to find what is your interest.

MR PETROULIAS: Okay. Let me - - -

THE COMMISSIONER: What is your interest in the evidence that's been given by Mr Hickey?

MR PETROULIAS: Asking about the Gows agreement, for example.

20

THE COMMISSIONER: Pardon?

MR PETROULIAS: Can I ask him about the Gows agreement, for example?

THE COMMISSIONER: No, no, don't ask me questions but I'm simply asking you to identify - - -

MR PETROULIAS: Yes.

30

THE COMMISSIONER: - - - how can you establish an interest in the evidence that this witness has been giving? What's the go to, what are you trying to do in terms of advancing an interest of yours?

MR PETROULIAS: The adequacy of the disclosure.

THE COMMISSIONER: But how does that affect you? It didn't affect you at all, you're not a member of the specific council.

40

MR PETROULIAS: We have just been shown a document where I'm the agent of Awabakal and that was regarded as extraordinary.

THE COMMISSIONER: Do you follow what I'm saying?

MR PETROULIAS: Yes, yes. To that role - - -

THE COMMISSIONER: Let's get straight to the point, what is your interest in the evidence of this witness? Your interest that is affected by the evidence given by this witness?

MR PETROULIAS: Okay. I'm a fiduciary.

THE COMMISSIONER: You're a?

MR PETROULIAS: Fiduciary, in a sense, because I'm an agent of Awabakal.

THE COMMISSIONER: You're a fiduciary?

10

MR PETROULIAS: Well I'm an agent of Awabakal according to clause 20, clause - - -

THE COMMISSIONER: How do you establish that?

MR PETROULIAS: The clause 20 agreement that we just had on the screen five minutes ago.

THE COMMISSIONER: I hope that's not your best point.

20

MR PETROULIAS: Okay. And I'm, I'm a number of property seminars, sorry, a number of property selection board meetings, right, and that's been the subject of criticism, what role did I play, what did I do?

THE COMMISSIONER: But you were there as an outsider, you weren't there as a councillor or under a contract arrangement for the council.

MR PETROULIAS: A proposition was that I was there for the United Land Councils.

30

THE COMMISSIONER: Mr Petroulias, I'm trying to assist you in identifying - - -

MR PETROULIAS: No, I understand.

THE COMMISSIONER: - - - what is your interest in the evidence of this witness. Thus far, you haven't been successful.

MR PETROULIAS: Okay, no - - -

40

THE COMMISSIONER: You need to reflect, I think, upon what is the relevance and the impact of this witness's evidence on your interests, on you. And if you can't establish such an interest then you don't have a right of cross-examination.

MR PETROULIAS: I understand what this entire inquiry is based on my association with Ms Bakis and that somehow we acted jointly in a conspiracy.

THE COMMISSIONER: Ms Bakis is an entirely different category to you. She did have a contractual relationship with the council.

MR PETROULIAS: Well that assists a lot, Commissioner. I understand the inquiry is that this is one grand conspiracy by me as the principal, as the, as the, as the major conspiracy to do something naughty to the Land Council.

10 THE COMMISSIONER: And how does that - - -

MR PETROULIAS: It, it - - -

THE COMMISSIONER: How does the evidence of this witness affect that?

MR PETROULIAS: Because this witness has, has said he's been misled.

THE COMMISSIONER: Yes.

20 MR PETROULIAS: And I'm going to establish that he isn't, he hasn't been misled.

THE COMMISSIONER: But that doesn't affect you. Let's assume - - -

MR PETROULIAS: Well, if I'm the conspirator - - -

THE COMMISSIONER: Let's assume that something this witness said was misleading, the next question is, so what, so far as you're concerned, how does it affect you?

30

MR PETROULIAS: If I'm the grand conspirator who caused him to be misled so that certain action wouldn't be taken that should have been taken, then that's exactly in my interests. Isn't that what this case is, this inquiry's about?

THE COMMISSIONER: I'm afraid I think you're missing the point, but let's see what your next question is.

MR PETROULIAS: Okay.

40

THE COMMISSIONER: And we'll have to deal with it I think question by question

MR PETROULIAS: Okay. Okay.

THE COMMISSIONER: But you bear in mind what I've said.

MR PETROULIAS: Yes.

THE COMMISSIONER: You're not invited just to put questions for the sake of putting questions.

MR PETROULIAS: I - - -

THE COMMISSIONER: It must relate to your personal interest and position so far as the evidence of the witness is concerned.

10 MR PETROULIAS: Okay. You indicated that weren't you saw the Gows agreements but you weren't told about it during this audit period. That's the, that's the company that I was involved in the Gows Heat.

MR CHEN: I object to the form of that question. It should be put far more accurately. I don't think that's his evidence at all and he shouldn't make a statement, he should put a question and he should put it, if it's going to be based on some other proposition, make it clear that he's making - - -

MR PETROULIAS: Yeah.

20

MR CHEN: - - - it on another footing or on the evidence, but it's not at the moment in my submission.

THE COMMISSIONER: Mr Petroulias, before you frame the question - - -

MR PETROULIAS: Yeah.

THE COMMISSIONER: - - - again, just bear in mind the evidence Mr Hickey's given already about the Gows agreement, that nobody told him about it.

30

MR PETROULIAS: No, I agree. Mr Hickey, that AGM that you attended was meeting number 2 of three that were held back-to-back on that day. ---I attended the AGM.

And then after the AGM there was a meeting on land dealings, but you didn't stay for that or it never got to that?---I don't recall it getting to that.

40 Okay. So anything that was disclosed as part of the community disclosure documents for the land dealing component, you would not have seen? ---Our office did make a request for all of the documentation that was proposed to be displayed to the members on that evening. I believe Ms Bakis responded to that, so from that perspective as far as I was concerned we were in possession of everything that was going to be put in front of the membership on that evening.

But that meeting never went ahead as far as you – you don't remember it going ahead or you never - - -?---I answered that before - - -

Yes.--- - - - in the sense that I do not recall that going ahead.

Terrific. Thank you, thank you. And do you recall in September that there was some documents that, there was a search warrant request to the Registrar that you were forwarded a copy of?---Sorry, can you say that again?

10 A search warrant request to the Registrar to preserve the documents that were in apprehension of being destroyed at the time?---I do recall a document being forwarded to me by I think Ms Bakis along those lines, yes.

Right. And what steps did you take in that regard?---Can you be a little bit clearer, please?

What steps did you take, were you alarmed that you received this search warrant request that documents were purportedly being destroyed?
---Well, I'm the external auditor, Mr Petroulias, my - - -

20 Oh, so you didn't take any steps?---My obligations don't extend to the safeguarding of the Land Council's documentation.

I see.---Indeed I did review the document and we would consider that in our risk assessment in our, in our ultimate audit strategy in terms of how we would respond to such issues through our audit program for that year.

30 Okay. But you are concerned about documents for example that are void in law and don't have a financial consequence because they're void. That is a concern to you?

MS BERBERIAN: I hate to object but - - -

THE COMMISSIONER: Yes.

THE WITNESS: I don't understand what you're saying.

THE COMMISSIONER: No. I reject the question.

40 MR PETROULIAS: Okay. Yeah. I'm done.

THE COMMISSIONER: Is that all? All right. Ms Nolan? Ms Nolan, just before you start, to perhaps help everyone including the witness, have you an idea how long you might be?

MS NOLAN: I'm instructed that I have a lot of questions, probably around an hour, perhaps an hour and a half.

THE COMMISSIONER: All right. Well, look, what we might do is, we'll take the morning, the luncheon adjournment now and we'll resume at 2 o'clock. Mr Hickey, how does that impact on you? We resume at 2 o'clock, we're given an estimate of an hour, an hour and a half?---It's perfectly fine, Commissioner.

THE COMMISSIONER: Thank you. I'll adjourn.

10 **LUNCHEON ADJOURNMENT**

[12.55pm]