

SKYLINEPUB00001
27/03/2018

SKYLINE
pp 00001-00049

PUBLIC
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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 TUESDAY 27 MARCH, 2018

AT 10.00AM

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

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

THE COMMISSIONER: Mr Chen.

MR CHEN: May it please the Commission, I appear with Ms Curtin as Counsel Assisting.

THE COMMISSIONER: Thank you, Mr Chen. I'll deal with the scope and purpose of this public inquiry. The general scope and purpose of the public inquiry is to gather evidence relevant to the matters being investigated for the purposes of determining the matters referred to in section 13(2) of the
10 Independent Commission Against Corruption Act 1988. The matters being investigated, firstly whether any public official, being a director of the board of the Awabakal Local Aboriginal Land Council, hereafter referred to as the Land Council, acted dishonestly and/or in breach of his or her duty as a board member in relation to a scheme involving proposals from the period of 2014 to 2016 for the sale and development of properties, hereafter referred to as the Sale and Development Scheme, owned by the Land Council.

20 Secondly whether any director of the board of the Land Council acted dishonestly and/or in breach of his or her duty as a board member in agreeing to or purporting to retain, or retaining, Knightsbridge North Lawyers or anyone else to act for the Land Council in respect of the Sale and Development Scheme.

30 Thirdly, whether any director of the board of the Land Council firstly acted dishonestly or in breach of his or her duty as a board member by participating in or aiding or assisting any person in relation to the Sale and Development Scheme including any dealings with Sunshine Property Investment Group Pty Limited, Sunshine Warners Pty Limited, Solstice Property Corporation Pty Limited and Advantage Property Experts Syndications Pty Limited and/or the Advantage Property Syndications Limited. Additionally whether any director of the board of the Land Council received any financial or other benefits as a reward or payment for their involvement in or for assistance or services rendered in relation to the Sale and Development Scheme or any matter connected therewith.

40 And fourthly whether any person or persons firstly encouraged or induced any director of the board of the Land Council to dishonestly or partially exercise any of their official functions in respect of the Sale and Development Scheme and any other land council property, or secondly, otherwise engaged in conduct connected with corrupt conduct within the meaning of the Independent Commission Against Corruption Act 1988.

I propose to proceed with Counsel Assisting's opening address, following which I will take any applications for leave to appear.

Mr Chen?

MR CHEN: Thank you, Commissioner.

The public inquiry that commences today is part of an investigation by the New South Wales Independent Commission Against Corruption into a series of transactions purporting to deal with land owned by the Awabakal Local Aboriginal Land Council in the period from 2014 to 2016, and the role of a number of individuals and companies in connection with these transactions or in one instance, attempted transaction. For present purposes I will simply describe them as transactions, but I will later make clear the attempted transaction. These transactions are individually reasonably straightforward in what they sought to do and the nature of the obligations they sought to create, nevertheless there is detail and complexity in the various steps taken in furtherance of these transactions and detail and complexity in the roles of the individuals and companies that were involved in or behind them.

Before descending into that detail, I will provide a summary of some of the issues that will be investigated. I will then identify some common threads and then provide a general overview of the transactions and the individuals who had central roles in effecting them. Thereafter I will go to the detail of the inquiry within the parameters of the scope that has previously been announced by the Commission.

Summary. This inquiry will investigate whether land belonging to the Awabakal Local Aboriginal Land Council, which was the registered proprietor of a number of properties in the Lake Macquarie area, was targeted for the promotion of land sale transaction schemes to investors and developers, and in particular, A, whether such schemes were disclosed to the board of the Land Council; B, whether the board authorised any of the transactions purported to have been entered into as part of those schemes; and, C, whether any persons who promoted and/or assisted in promoting such schemes – including in particular Mr Nicholas Petroulias, one or more board members of the Land Council, and the lawyer who purported to act in the interests of the Land Council and on behalf of other parties to one or more of the transactions – engaged in conduct that was improper or unlawful in any respect, and if so whether any such conduct constituted corrupt conduct within the meaning of the ICAC Act.

Neither Mr Petroulias nor the lawyer, Ms Despina Bakis, who acted in relation to the transactions were members of the board of the Land Council, and neither were Indigenous people. The board member who was involved in each transaction, Mr Richard Green, was at all relevant times the deputy chair of the board of the Land Council. The other who was involved in three of them, Ms Debbie Dates, was at all relevant times the chair of the board of the Land Council.

There are a number of questions related to the transactions that will fall for consideration. They include the question as to the entitlement of the Land

Council to monies paid by Sunshine to the Land Council via the trust account of Knightsbridge North Lawyers in respect of the Sunshine transaction. The Land Council has not received any of those monies and there will be evidence of the monies having been disbursed but not for the benefit or at the direction of the Land Council. The question as to who received, directly or indirectly, the benefit of the monies paid into the trust account of KNL from what I have referred to as the scheme, and whether any individual who benefitted did so, though having no entitlement to any monies paid into the trust account of KNL.

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The land transactions purported to burden or affect the Land Council's interests in the properties to which the transactions related and to create rights in outsiders, the developers, in respect of such properties. Matters that fall for examination in the investigation are whether the board of the Land Council was informed of or knew and appreciated the effect and significance of the transactions upon Land Council property; what legal advice was or was not provided to it; and how the transactions were entered into if there had been no disclosure to the board as to material matters concerning them. The purported retainer of the solicitor to act on behalf of the Land Council and the circumstances in which that came about will be referred to a little later.

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An overview of the transactions. This inquiry centres on three transactions and one attempted transaction involving the Awabakal Local Aboriginal Land Council in the 2014 to 2016 period. These transactions had a number of common features. I'll give some examples. One common feature was that each transaction involved Mr Petroulias. In relation to these transactions, Mr Petroulias purported to acquire a right to purchase a number of parcels of land owned by the Land Council; on sold that right; then, having done so, attempted to on sell it again without disclosing this fact to the original purchaser or prospective purchaser, and later entered into an agreement with the Land Council through a corporate vehicle – that he established and in which he had a 25 per cent shareholding – that conferred an option in favour of that company to acquire a substantial portion of the landholdings of the Land Council. The ultimate purchase price was expressed to be \$30 million.

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Another common feature is that Mr Petroulias used a number of different aliases during the course of these transactions. These included Nick or Nicholas Piers, Nick or Nicholas Pearson and Nick or Nicholas Peterson.

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I will now outline the transactions that are the focus of this inquiry. The first transaction that sought to deal with land owned by the Land Council was an agreement described as Heads of Agreement dated 15 December, 2014 between Gows Heat Pty Ltd and the Land Council. This purported agreement involved Gows Heat purchasing five properties from the Land Council. It was signed by Richard Green, then deputy chairperson of the Land Council, and by Jason Latervere said to be a director of Gows Heat.

At the time of the execution of the agreement this could not be so because Jason Latervere was deceased so the signature was obviously not his. As it turned out the person who executed the document, apparently pursuant to a power of attorney, was Nick Petroulias. Not only could Mr Latervere not have signed the agreement but he also could not have been a director. At the time he was apparently appointed to the role in 2014 he had already passed away.

- 10 By this agreement Gows Heat and thus Mr Petroulias secured a right to purchase five lots of land owned by the Land Council with an estimated value of around \$12.6 million. Gows Heat it should be added was a \$2 company controlled by Mr Petroulias and Mr Petroulias at that time had recently been made a bankrupt. Neither Gows Heat nor Mr Petroulias paid any money to the Land Council to secure this right. As I explain later, Gows Heat and Mr Petroulias secured a significant windfall. He sold this right around six months later and received around \$1.1 million as a result.

- 20 The second transaction that sought to deal with Land Council land involved three parties, Sunshine Property Investment Group Pty Ltd or a corporate vehicle created by them to pursue this arrangement, Gows Heat and the Land Council. Negotiations commenced in around May, 2015 and by 30 June, 2015 an agreement was reached between these parties that involved the buying out of the purported right created under the Gows Heat heads of agreement and the substitution of Sunshine in the place of Gows Heat.

- 30 To give effect to this transaction a number of agreements were prepared but it is presently only necessary to refer to two of them, the surrender agreement and release which is undated and the Sunshine heads of agreement dated 2 October, 2015. For the Land Council each agreement was executed by Mr Green and Ms Dates who held the positions of deputy chairperson and chairperson of the Land Council respectively.

- 40 By clause 1A of the surrender agreement and release, which is on the screen, Sunshine agreed to pay Gows Heat \$1.6 million to in effect buy out what was described in the agreement as the right of Gows Heat to acquire property at valuation from Awabakal Land Council arising inter alia from the Gows Heat heads of agreement dated 15 December, 2014. Under the Sunshine heads of agreement Sunshine acquired the right previously held by Gows Heat to purchase the five lots owned by the Land Council for a purchase price of \$6.3 million plus completed houses on land of not less than \$6.3 million in value.

Further, by clause 2.5 of that agreement which is on the screen, the sum of \$1,102,000 was to be paid into the trust account of Knightsbridge North Lawyers by 7 October, 2015 and the sum of \$48,000 previously held by Knightsbridge North Lawyers was to be disbursed towards the payment of Gows pursuant to its surrender and release agreement.

The third transaction that sought to deal with land was an attempted transaction with Solstice Property Corporation Ltd. The attempts to effect this arrangement commenced in around November, 2015 with Mr Green and Ms Dates executing an agreement purportedly on behalf of the Land Council on 19 November, 2015. That is at the time there was a concluded agreement with Sunshine.

10 In effect this was an attempt to replicate the Sunshine transaction with another party. To put it bluntly, Mr Petroulias, with the assistance of Mr Green and others, sought to sell the interest allegedly created by the Gows Heat heads of agreement to Solstice without disclosing to Solstice that it had already been sold to Sunshine and without disclosing to Sunshine that he was trying to resell what had apparently been sold to it.

20 Four points about this attempted transaction should be made. The first is that the proposed agreement, the Solstice heads of agreement, followed substantially the form of the agreements used in the Sunshine transactions, albeit that one document rather than multiple documents was to recall the agreement. The second is that, like the Sunshine transaction, Gows Heat and thus Mr Petroulias was to have its interests bought out by the proposed purchaser. Initially this was for the amount of \$400,000 but in a later form of agreement proposed, this amount was increased to \$1.2 million. The third is that in its original form, the proposed agreement purported to sell land that was not in fact owned by the Land Council, it was owned by the state of New South Wales. The fourth is that in its revised form the arrangement involved more than the five properties that were subject of the Gows Heat heads of agreement and the Sunshine heads of agreement. The property holdings of the Land Council sought to be transacted were far more
30 substantial, which was reflected in the proposed purchase price of \$30 million.

The negotiations relating to this attempted transaction continued into 2016 but by May 2016 no agreement had been reached and the proposed deal was not pursued. I will later seek to outline in more detail some of the circumstances that explain why this was so, but in part it was because there was another potential buyer, Advantage Property Experts Syndications Limited, a New Zealand entity or a wholly-owned Australian subsidiary of
40 it.

In June and July 2016 the Land Council entered into a number of transactions with Advantage a number of other entities. These agreements are detailed and as part of this general overview I will mention one, the call option deed dated 7 June, 2016. The call option deed granted Advantage, upon payment of the option fee, an option to purchase the properties identified in schedule 1B of the deed. In all there were 32 properties covered by this agreement. The purchase price, upon exercising the option, was \$30 million, made up of a payment of \$16.5 million with house and

land packages making up the balance. The purchase price was expressed to be subject to the collaborative agreement entered between the parties. The initial period to exercise the option was five years, although this option in favour of Advantage could be extended by Advantage for a period of a further three years. The agreement notes on the execution page, quote, "The owner hereby acknowledges receipt of option fee deposit." Despite this, as it turns out, no option fee was ever paid to the Land Council and a form of deposit bond or something similar to it was apparently used in its place.

10 I have already mentioned some of the corporate entities involved in these transactions, but there are many more. A feature of these corporate entities are their links to Mr Petroulias or associates of his. Some of them have been created using the names and identities of people who know nothing of their involvement. One, as I have mentioned, passed away before he was appointed a director of a company controlled by Mr Petroulias. Some have been established in New Zealand. At least one has had its shareholding and directors changed immediately after transacting business with the Land Council, presumably to show that Mr Petroulias was not involved in the transaction in question.

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I have already mentioned four particular individuals involved in the transactions, each of whom will have some prominence in the investigation into these transactions. I propose to explain who they are now so that the roles of each can be more readily understood when I later outline the investigation in more detail. The first is Nicholas Petroulias. His current name is Nicholas Pearson. His birth name was Nikitas Nicholas Petroulias. Mr Petroulias had a central role in each of the four land transactions or attempted transactions.

30 The second is Richard Green. Mr Green was a member of the Land Council Board and its deputy chairperson during the period of these transactions. He ceased being a board member on 13 October, 2016, when the Minister appointed an administrator to the Land Council. Mr Green is also a common denominator to each transaction. He signed, on behalf of the Land Council, each of the agreements that are being investigated by the Commission. The investigation will examine, at least in relation to the first three transactions, whether he had authority of the board to execute these agreements and bind the Land Council; whether he disclosed the existence of these transactions to the board; and if he did, whether any disclosure was
40 full and complete. I understand, at least in relation to some of these transactions, that Mr Green will say that he cannot read well; that the various documents were simply put in front of him to sign, which he did; and that he did not know what he was signing.

The third is Debbie Dates, who was a member of the Land Council Board and its chairperson, aside from the period 2 November to 28 December, 2015, in which she was suspended from this role during the relevant period. She ceased being the chairperson on 27 July, 2016 and a board member on

13 October, 2016, when the Minister appointed an administrator to the Land Council. With the exception of the Gows Heat heads of agreement, Ms Dates signed on behalf of the Land Council each of the agreements that are being investigated by the Commission. As with Mr Green, the investigation will examine whether she had the authority of the board to execute these agreements and bind the Land Council; whether she disclosed the existence of these transactions to the board; and if she did, whether any disclosure was full and complete. I understand that in part Ms Dates will say that although she signed the documents, she was given no advice about the content of it because it was simply presented to her to sign.

The fourth is Despina Bakis. Ms Bakis is a solicitor and practised as a sole practitioner under the name Knightsbridge North Lawyers, or KNL as I will call them from time to time. The role of Ms Bakis and that firm features throughout each transaction. She undertook, it seems, all of the legal drafting that was required in connection with the four transactions. How that firm came to be apparently retained by the Land Council is a matter that is being investigated by the Commission. At the time that Ms Bakis and KNL were apparently retained by the Land Council in late 2014, Ms Bakis was a sole practitioner based in Sydney who had never before acted for a land council and who had no relevant experience in undertaking the legal work in connection with a land transaction or land transactions of the kind that she was apparently tasked to undertake for the Land Council.

Her connection to the Land Council came via Mr Petroulias, who introduced her to Mr Green. It should be pointed out that Mr Petroulias and Ms Bakis were at that time in a domestic relationship and had been so for nearly 20 years, notwithstanding that it might be described as an “on again, off again” relationship.

Having given that general overview, I propose to move to the detail. Before I do so, I want to make some remarks about this opening and the nature of the investigation and the public hearing. The opening of the investigation is not evidence nor, it should be stressed, is it a statement of the view of the Commission or you, the Commissioner. I want to make it clear that I'm speaking on behalf of counsel assisting this inquiry, and I am not speaking for you, Commissioner. You will only make your findings based upon all the evidence and only after considering the submissions of all parties, including those of Counsel Assisting.

This public inquiry is only one part – albeit an important part – of an investigation by the Commission. It is also important to understand that an investigation is not a trial. This public inquiry is not a trial nor like a trial. The procedures are different to those used in a trial. Some allegations of corruption have been raised and they were sufficiently serious to require investigation. This public inquiry is part of a process through which those allegations are being investigated. The whole story is a very complex story. To present it in a coherent fashion, we propose to present it by organising it

into parts. There is no simple or single timeline that can be drawn through the course of events, so my outline today cannot be strictly chronological and there will be a degree of backtracking and some repetition.

I will now outline the detail of this inquiry and from time to time I will use some visual aids to display some of the relevant documents onto the screens around the hearing room. The Awabakal land. For present purposes the Land Council operates across Newcastle and the Lake Macquarie area. It owns and is the custodian of a range of assets including vacant blocks of land, undeveloped parcels of land, commercial properties and urban residential land. Perhaps one of the most well-known of its properties is the former Newcastle Post Office.

The Gows Heat agreement concerned five properties in Warners Bay that were owned by the Land Council. A description of those properties is shown up on the screen. These properties were also the subject of the Sunshine transaction. For the proposed Solstice deal the arrangements were different. In the initial proposal the land that was sought to be the subject of this transaction was described as Lot 7393 Deposited Plan 1164604 and Lot 101 Deposited Plan 1180001. As I mentioned earlier, this was not land owned by the Land Council it was owned by the state.

In a later version of the proposed arrangement with Solstice described as a call option agreement between Solstice and the Land Council dated 4 April, 2016, the land that was sought to be the subject of this transaction was far more extensive and the proposed purchase price on the exercise of the options similarly more substantial. The nominated purchase price was identified in clause 2.1 of the option agreement as \$30 million. The land involved in this attempted transaction was set out in schedule 1, item 1 which is now shown on the screen in the yellow and blue highlight.

In the Advantage transaction the land that was sought to be the subject of this transaction via a call option deed dated 7 June, 2016 was even more extensive despite the purchase price remaining fixed at \$30 million. By that agreement an option was created in favour of Advantage that upon exercise entitled it to purchase the land set out in schedule 1B which is now on the screen. It included the land in the Sunshine and Solstice transactions and the other land highlighted in pink.

In the period between 2014 and 2016 the Land Council was the registered proprietor of 38 properties in the Newcastle and Lake Macquarie area. Through the Advantage transaction an option was to be granted over 32 of those 38 properties. In addition to the ambitious scope of the Advantage transaction it is worth noting the following matters regarding the subject land.

First, five of the properties belonged not to the Land Council but to the State of New South Wales. Secondly, one of the properties 20 Olney Road,

Adamstown had formerly been the property of the Land Council but had in fact been sold in early 2015. Thirdly, one of the properties 127 Maitland Road, Islington was actually the premises of the Land Council itself.

10 The Awabakal Local Aboriginal Land Council and its functions. The Awabakal Local Aboriginal Land Council is an incorporated body and under part 5 of the Aboriginal Land Rights Act 1983. It is one of 120 Aboriginal land councils in New South Wales, a network established under the Act as the elected representatives of Aboriginal people living in New South Wales. The Act provides for the vesting of land in this network of local Aboriginal land councils and the acquisition and management of land and other assets by or for those councils.

20 The Land Council operates out of premises located in Islington, a suburb of Newcastle. The members of the Land Council are the adult Aboriginal persons who are listed on the Local Aboriginal Land Council membership roll for that adult area. See section 53 of the Act. By way of background, as at June, 2013 there were estimated to be around 3,880 Indigenous persons within the Land Council area and approximately 498 members of the Land Council, 383 of which were current voting members.

The Land Council was first established in 1985 but ceased to operate for a brief period. It was re-established in 1992 and has operated since that time, albeit that it has been operating since 13 October, 2016 until today with an administrator appointed under section 222 of the Act by the Minister for Aboriginal Affairs.

30 Each land council is an autonomous separate entity governed by a board that is elected by its members. By virtue of section 51 of the Act, the objects of each Local Aboriginal Land Council, and thus the Awabakal Local Aboriginal Land Council, are to improve, protect and foster the best interests of all Aboriginal persons within the council's area and other persons who are members of the council. In furtherance of these objects, the Land Council has specific functions which are enumerated in part 5, division 1A of the Act. That division sets out the functions of a Local Aboriginal Land Council which broadly fall into the categories of land acquisition, land use and management, Aboriginal culture and heritage and financial stewardship. One of the principal functions of the Awabakal Local Aboriginal Land Council as mandated by the Act is therefore the acquisition of land, either by land claim or purchase.

40 Under the Act the Land Council must protect the interests of Aboriginal persons in its area in relation to the management, use, control and disposal of its land. That the interests of Aboriginal persons in the Land Council's area are made paramount is ensured by various protective measures in the Act relating to land dealings by land councils. For example, before approving a land dealing, a Local Aboriginal Land Council must consider the impact of the proposed land dealing on the cultural and heritage

significance of the land to Aboriginal persons. Further, the New South Wales Aboriginal Land Council may refuse to approve a proposed land dealing if it considers that the dealing is or is likely to be contrary to the interests of the members of the Land Council or other Aboriginal persons within the area of that council.

10 In order to fulfil its functions, the Land Council is required by section 82(1) of the Act to prepare and implement a Community, Land and Business Plan. The content of such a plan is to cover matters prescribed by section 83 of the Act and this includes land management and development.

Being an incorporated body, section 61 of the Act provides that the Land Council has a board consisting of at least five but not more than 10 board members. The functions of the board are prescribed by section 62(1) of the Act, and they include relevantly to direct and control the affairs of the council and to review the performance of the council in the exercise of its functions and the achievement of its objectives.

20 A board of a Local Aboriginal Land Council may, subject to any directions of that council, exercise any of the functions of the council on behalf of the council, other than those functions that are expressly required to be exercised by resolution of the voting members of the council, for example, relevantly, approval of land dealings, as well as any function delegated to the board under section 52E of the Act.

30 During the period 2014 to 2016, the Awabakal Local Aboriginal Land Council had up to 10 board members. It is also necessary to refer to the staffing of the Land Council. By section 78A(1) of the Act, the Land Council must employ an individual to exercise the functions of the chief executive officer of the Land Council for the purposes of the Act. By section 78(2) of the Act, the chief executive officer is tasked with functions including the day-to-day management of the council affairs and to assist in the preparation and implementation of the council's Community, Land and Business Plan.

40 I have mentioned, albeit briefly, the requirement for a CEO and their functions because, as I explain a little later, for critical times during the period of these transactions, there was no permanently-appointed CEO of the Land Council and in consequence the Land Council went into a period of significant organisational decline.

Background to land development in 2014. I have set out the statutory provisions in part to explain that land use and management and financial stewardship can legitimately involve the selling or disposal of land vested in the Land Council, albeit that under part 1, division 4 of the Act there are steps required to be followed to effect the sale or disposition, according to law.

Consistent with the above, section 82(1) of the Act provides that land councils are required to prepare and implement a Community, Land and Business Plan. By section 83 of the Act, the Community, Land and Business Plan must contain, relevantly, the objectives and strategy of the land council in relation to land, including the acquisition, management and development of land.

10 In 2011, the Land Council prepared a plan called a Community, Land and Business Plan 2011-2015, and within it the Land Council identified as long-term goals – being goals over the period of the plan – the disposal of Land Council land. The intent to dispose of land owned by it was motivated, at least in part, by the need for income to enable the Land Council to provide funds to further develop and enhance the other services and programs it provided, and to increase its ability to self-sustain and self-fund projects. In the projected budgets for the financial years 2014, 2015, 2016, as set out in the Community, Land and Business Plan 2011-2015, the disposal of limited amounts of property was central to ensuring that the Land Council operated at a surplus.

20 The Indigenous Business Union presentation on 31 October, 2014. From time to time the Land Council, as the owner of substantial land reserves, many of which are undeveloped, received approaches from developers interested in developing Land Council land or approaches from prospective purchasers interested in buying it. In late 2014 an approach was made by a company called the Indigenous Business Union Pty Ltd, or IBU. That company was first formed in July 2014 and one of its directors was Cyril Gabey. Mr Gabey knew Mr Green, and through this contact the topic of Land Council land arose, and there was a discussion about the prospect of a proposal to develop some of it.

30 Mr Green advised Mr Gabey to make an appointment with the Land Council if he wished to present a proposal to the board, and this is what he did. As part of this process, Mr Gabey enlisted the help of Omar Abdullah. Mr Abdullah, whose background was in building design, was asked by Mr Gabey to assist him with this specifically by presenting the proposal to the board, as well as preparing the material that would be provided to it during that presentation. Mr Abdullah agreed to do both, and they attended the Land Council on 31 October, 2014 to present the proposal to the board.

40 The promotional material that was prepared makes it clear that it was a proposal by IBU and only by IBU. I say this because I understand that Mr Petroulias will contend that in fact the presentation was a joint presentation by IBU and the company that Mr Petroulias controlled, Gows Heat. One of the critical matters that will be the subject of this investigation will be whether that contention is true or not. Some light is cast on its correctness by the minutes of the board from that meeting and the formal resolution that was passed by it that dealt with the IBU proposal. I will deal with these now.

The minutes and resolutions of the meeting on 31 October, 2014. Commissioner, the Act requires that minutes must be kept of the proceedings of each meeting of the board of a Local Aboriginal Land Council, and these minutes must include detailed records of motions put and resolutions passed. The ALR Act regulations require the chairperson of the board to sign minutes of previous meetings as correct once they have been presented to, and accepted as correct by, the board at the next meeting.

- 10 The practice of the Land Council's board was to have them typed and signed as correct by the chairperson once accepted by the board. This is what occurred following this meeting, and it is clear that the board resolved to act further in relation to IBU's proposal, as can be seen in the minutes which are now on the screen. These minutes, it will be observed, have been signed by Ms Dates as chairperson of the board. Consistent with these minutes are the formal resolutions of the board from that meeting. The resolutions of the board are now on the screen.

- 20 Commissioner, there are other documents that I need to mention which apparently provide a slightly different complexion to these events. The first are the handwritten minutes of the meeting. Behind the formal minutes are handwritten minutes taken during the meeting. On 31 October, 2014 the minute taker was John Hancock, a Land Council board member. These handwritten minutes are now on the screen.

- 30 These minutes are at odds with the formal minutes and it seems the words "including Gows" have been added to it. On the face of them, and when understood in the context of the typed minutes and formal resolution of the board meeting on the day, a real question arises as to whether these minutes have been falsely altered. Added to this is the following. There will I expect be a body of evidence that the name Gows Heat was never mentioned during that meeting and that the participants, possibly with the exception of Mr Green, had never heard of that entity.

- 40 This inquiry will investigate the circumstances of and the events surrounding the meeting on 31 October, 2014 including whether the minutes have been falsely altered and if so the purpose for its creation, who might be motivated to falsely alter the minutes and who actually did alter them. Logically, Commissioner, if that conclusion is reached there are only three people who could have such motivation, Mr Petroulias, Mr Green and Ms Bakis, these being the individuals who entered and documented the Gows Heat heads of agreement and who participated in the negotiation and documentation of the Sunshine and Solstice agreements.

There is more. Despite the formal resolution another resolution has been discovered stapled into the board minute book. This apparent resolution is now on the screen. Proposed sale to Gows and/or on market value minimum per heads of agreement including standard terms and conditions.

Plan A all five properties. Plan B four properties not including Hillsborough Road, Warners Bay. Moved Debbie Dates. Seconded Mick Walsh. Motion carried.

Commissioner, the fact that it has been stapled into the minute book is itself somewhat unusual in the sense that resolutions of the board were not typically recorded separately from other business recorded in the minutes. Another unusual feature of this resolution is its appearance. This resolution was also provided to Sunshine during the course of the transaction involving the Land Council, Gows Heat and that entity.

The examination of the meeting on 31 October, 2014 will also involve investigating whether this resolution was falsely created and if so the purpose for its creation. Who might be motivated to falsely create the resolution and who actually did create it. Again, Commissioner, if that conclusion is reached there are only three people who could have such motivation, Mr Petroulias, Mr Green and Ms Bakis, these being the individuals who entered and documented the Gows Heat heads of agreement and who participated in the negotiation and documentation of the Sunshine and Solstice agreements.

The involvement of KNL, the retainers dated 28 November, 2014 and 27 November, 2015. It is appropriate now to explain a little more about the role of KNL and Ms Bakis. I had earlier explained how Ms Bakis and her firm, Knightsbridge North Lawyers, came to be retained namely, Mr Petroulias introduced her to Mr Green and having done so Mr Green appears to have taken it upon himself to engage that firm by signing a fee agreement and retainer to that effect dated 28 November, 2014.

Even without the events that I have just mentioned this appointment is more than a little curious. To this point in time the Land Council and the board had used the services of a local Newcastle firm, Emery Partners, and a solicitor, Ian Sheriff in particular. Mr Sheriff was a highly experienced commercial and property lawyer, and the board and Land Council had used his services for this kind of work from at least 2006. Despite this well-established relationship, Mr Green bypassed Mr Sheriff and proceeded to directly engage Ms Bakis. As I pointed out earlier, Ms Bakis was Sydney-based, with no prior experience in dealing with any land council or Aboriginal land, and who appeared to secure the role simply because she was introduced by Mr Petroulias.

The curiosity does not end there. It also appears to be the case that not only did Mr Green enter into this arrangement without board authority, but he failed to disclose to the board that he had done so at least until January 2016, when he moved a motion to ratify their appointment. This investigation will examine the reasons why Mr Green took these steps, and whether he did so for an improper purpose, namely to facilitate – at least initially – the first three land transactions identified. In connection with the

later engagement with that firm, on 27 November, 2015, the investigation will examine the reasons why Mr Green entered into this further engagement, what led him to propose a resolution to the board on 11 January, 2016 to ratify their appointment, and whether Mr Green took these steps for the same improper purpose.

10 Not only was the appointment of KNL a little curious, but so too were some of the terms of the agreement that it had with the Land Council. A striking example of one of the more unusual terms is clause 20 of the agreement, dated 28 November, 2014, which is now on the screen. That clause provided “(20) Instructions through your agents. You have instructed us that we may work with and take in instructions from your agents. These include Mr Nicholas Peterson, Richard Green, William Tofilau, Andrew Margi and each of you for each other. Indeed it is contemplated that drafts of documents will be prepared and compiled to assist the workload to this firm.”

20 By this arrangement, Ms Bakis was able to transact business on behalf of the Land Council, taking instructions from those persons nominated as agents. This included her domestic partner, Mr Petroulias, as well as two others, being Mr Tofilau and Mr Margi, who had absolutely no connection whatsoever to the Land Council. Their connection was to Mr Petroulias. The terms of the agreement dated 27 November, 2015 that KNL entered into with the Land Council contained a similar clause. Clause 20 of that agreement, which is on the screen, provided, “You have instructed us that we may work with and take instructions from your agents. These include Mr Nicholas Peterson, Richard Green and each of you for each other. Indeed, it is contemplated that drafts of documents will be prepared and compiled to assist the workload to this firm.”

30 Commissioner, as I understand it, Ms Bakis’s explanation for these matters that she was always given to understand from her dealings with Mr Green, that he was authorised to appoint her and KNL; and in relation to clause 20 and the appointment of the four agents in the 2014 retainer, that she included the agents as identified on the say-so of Mr Petroulias. I also understand that Ms Bakis will say that she gave advice on the conflicts of interest that arose. This inquiry will investigate the roles of Mr Petroulias, Mr Green and Ms Bakis in the formation of the relationship between KNL and the Land Council; the reasons that motivated the retention of Ms Bakis initially and during 2015 and later in 2016; and the way in which KNL and Ms Bakis carried out her role as the solicitor for the Land Council in the four transactions being investigated.

The Gows Heat heads of agreement. Commissioner, despite the fact that the board had resolved to proceed with the IBU proposal, it is clear that nothing in fact developed between the Land Council and IBU. What did occur, however, is that an agreement, bearing the date 15 December, 2014, was entered between the Land Council and Gows Heat, a shelf company

controlled by Mr Petroulias. I've already mentioned this agreement and some of its detail, but the execution of the agreement and the manner in which it was drafted were quite unusual.

Entry into an agreement of this kind – the value of the property sought to be covered by this agreement was in excess of \$12 million – reasonably might be understood to be a significant matter for the Land Council, requiring it to be put to the board for it to consider, receive advice and decide upon.

10 It is also the case that pursuant to the Aboriginal Land Rights Act, entry into this agreement required the approval of, first, the members of the Land Council by resolution at a members meeting; and, secondly, the New South Wales Aboriginal Land Council. In the case of this transaction, these approvals simply were not sought. Mr Green, without board or Land Council authority, executed this agreement, and having done so failed to disclose to the board that he had. Commissioner, my understanding is that Mr Green will say that although he may have signed this document, he did not read it and did not know what was in it.

20 The manner in which this agreement came to be drafted was also unusual. Having been appointed by the Land Council, Ms Bakis then proceeded to document this agreement. In doing so she acted for and took instructions from both parties to this transaction – that is, from Gows Heat, who was Mr Petroulias and her domestic partner, and apparently from Mr Green. This inquiry will investigate how the Gows Heat heads of agreement came about, including how Mr Green came to sign it, how Mr Petroulias came to sign it, what instructions Ms Bakis received, whether it was a bona fide commercial arrangement, whether the creation of this agreement was for an improper purpose – the improper purpose being the creation of an interest in Land Council land via the Gows Heat heads of agreement and thereby permit the
30 onselling or novation of this agreement to third parties as a means to confer a financial benefit on participants – and if it was created for an improper purpose, the roles of Mr Petroulias, Mr Green and Ms Bakis in the creation and documentation of that agreement for that improper purpose.

Board dysfunction and the removal of Steven Slee. As I have earlier set out, the requirement under the Act for the Land Council is to have a CEO. The CEO at the relevant time was Steven Slee. Mr Slee was first appointed on
40 12 January, 2014. During the period that Mr Slee was the CEO, risk assessments of the Land Council, conducted by the New South Wales Aboriginal Land Council, determined that the Land Council was functioning well from an organisational, financial and governance perspective.

By late 2014 and early 2015, however, the board of the Land Council was showing some signs of dysfunction and factions appeared to emerge. The circumstances leading to this dysfunction seemed to start around the time that Mr Wright, the Registrar under the Aboriginal Land Rights Act, was requested by the Commission to investigate allegations of potential

misconduct by members or former members of the board of the Land Council.

As a result of that referral and matters that occurred in late 2014, Mr Wright attended the Land Council in February 2015 to start his investigations. He met with Mr Green and Ms Dates and, at that time, allegations of misconduct at Mr Slee were raised by them with Mr Wright. In consequence of these allegations, Mr Wright's original investigation was deferred and he investigated the allegations against Mr Slee and some
10 allegations of misconduct against Ms Dates that arose out of the investigation that he had undertaken or arranged. Mr Slee, in light of the allegations made against him by Mr Green and Mr Dates, was suspended by them from his role as the CEO of the Land Council. The dysfunction of the board became entrenched following the suspension of Mr Slee. The factions were divided between those board members that favoured his removal, led by Ms Dates and Mr Green, and those board members who supported him. One consequence of this division was that the board of the Land Council met infrequently during 2015.

20 An acting CEO, Nicole Steadman, was appointed. Ms Steadman was the wife of a board member, Lenny Quinlan, who was the son of another board member, Jaye Quinlan, and the nephew of Ms Dates. Ms Steadman had previously been employed as a receptionist and project officer. She was not trained in the role of a CEO, nor did she have any experience in undertaking the duties of a CEO. An investigator appointed by the Minister to investigate the affairs of the Land Council found that without directing any criticism of Ms Steadman for this, she was not able to "act effectively in the role of the Awabakal Local Aboriginal Land Council CEO".

30 The records from the New South Wales Aboriginal Land Council and in particular the risk assessments that they undertook in the time period following Mr Slee's suspension show that organisationally the Land Council fell into a period of sharp decline. By June, 2015 the risk rating given to the Land Council by the New South Wales Aboriginal Land Council was so high that the Land Council lost its funding, that is, funding from the New South Wales Aboriginal Land Council stopped.

40 On an occasion that the board did meet on 6 August, 2015 the Registrar attended the meeting and reported on the key findings of his investigation. Relevantly there were two. The first is that he found no evidence of any wrongdoing by Mr Slee. The second is that he found that there was evidence of misconduct as that term is defined under the Aboriginal Land Rights Act on the part of Ms Dates.

The Registrar recommended that Mr Slee be reinstated to his former position. This recommendation was fully supported by Mr Sheriff, the solicitor who undertook work for the Land Council who also attended the meeting. Mr Sheriff provided the board with advice about the consequences

of not acting on the recommendation of the Registrar. Further, the Registrar advised that he had found evidence of misconduct on the part of Ms Dates and he later suspended Ms Dates from acting as chairperson for the period from 2 November to 28 November, 2015.

As it happened, Ms Dates and Mr Green did not accept the key findings given by the Registrar nor the advice that Mr Sheriff gave in relation to Mr Slee. Mr Green proceeded to move for the immediate termination of Mr Slee, a motion that was carried with support from Ms Dates, Jaye
10 Quinlan and Lenny Quinlan. Mr Slee contested his termination and he was paid out a substantial sum for what occurred including alleged defamation. The payment of this money was approved and made by Ms Dates on 29 September, 2015 without approval of the board of the Land Council.

Commissioner, these matters paint the picture of the board of the Land Council failing to govern effectively and instances of Mr Green and Ms Dates acting in a manner that sits uneasily with their roles, functions and duties as board members and as deputy chairperson and chairperson of the
20 board.

The Sunshine agreements. Armed with the Gows Heat heads of agreement Mr Petroulias sought out a potential purchaser of the land so that the interest he acquired under that agreement could be bought out. This came about through Mr Petroulias contacting an individual called Sammy Sayed. Mr Sayed and Mr Petroulias had met whilst both were prison inmates at Dawn de Loas Correctional Centre.

Once contacted by Mr Petroulias Mr Sayed then made contact with a person named Keith Rhee. Mr Rhee had a number of contacts in the Chinese
30 business community and one of them was Tony Zong. Mr Zong was interested in the land and arrangements were made to view the lots being offered. This occurred in May, 2015 possibly around 26 May and there were discussions about the purchase of the land at this time. Those that attended this meeting were Mr Zong, Matt Fisk, a person experienced in property development employed by Mr Zong's company Sunshine, Mr Green, Mr Rhee, Mr Sayed and Mr Petroulias.

Commissioner, it seems reasonably clear that in addition to discussing the purchase of the land a number of other matters were discussed between
40 those at this meeting. I say that in part because by 30 June, 2015 the parties had entered into an agreement for Sunshine to purchase the properties instead of Gows Heat and for Gows Heat to be paid out for relinquishing their rights under the Gows Heat heads of agreement.

One matter discussed was the position of the Land Council. Commissioner, it seems clear that during this meeting and after it as well Mr Green represented that he had the authority of the board and thus the Land Council to enter into any agreement with Sunshine. At some point, possibly after

this meeting, some of those individuals were also provided with a resolution that purported to record the board on 31 October, 2014 resolved to sell land to Gows Heat. I understand that Mr Petroulias will say that he thought at all times Mr Green was so acting.

10 Another matter discussed was the need to buy out Gows Heat and the amount that would be needed to effect this. Mr Petroulias, as I understand it, accepts that he spoke to Mr Zong in these terms and, as I have said, the payment to Gows Heat to buy out its interest is entirely consistent with what actually occurred.

A third matter discussed was payment to the individuals who introduced Mr Zong and Sunshine to Mr Petroulias. Ultimately payment to Mr Sayed and Mr Rhee for that introduction was effected through an agreement described as a project procurement deed dated 2 October, 2015, between Keeju Pty Limited and Sunshine Warners Bay Pty Limited. Pursuant to that agreement, Keeju, which was a company controlled by Mr Rhee, was paid \$250,000 and was to be paid a further sum of \$2,150,000 upon acquisition of the Land Council land by Sunshine.

20 Once the agreement had been reached between Gows Heat, Sunshine and the Land Council, it required the parties to document the buying out of the Gows Heat interest and the documentation of the agreement between the Land Council and Sunshine. For the Land Council, these documents were signed by Mr Green or by Mr Green and Ms Dates, or by Ms Bakis. Each agreement was drafted by Ms Bakis. This inquiry will investigate the circumstances surrounding how the Sunshine agreement came to be formed, including how and in what circumstances Mr Green and Ms Dates came to sign these agreements, how and in what circumstances Ms Bakis came to sign one of them and whether these agreements were disclosed to the board of the Land Council.

30 In all there are nine agreements documenting or relating to this transaction. I've earlier mentioned two of the more significant ones. I will mention them now and give some detail to the relevant ones and the payments that were made pursuant to them.

40 A. The offer schedule and exclusive due diligence agreement dated 30 June, 2015. This agreement provided by clause 5 for the payment of \$50,000 which, although not stated, was to be paid to the vendor and paid into the vendor's solicitor's trust account. On 13 July, 2015, pursuant to this agreement, Sunshine paid \$50,000 into the KNL trust account. From this, \$2,000 was released into Mr Green's account on 22 September, 2015. I'll return to this payment to him later.

In late October 2015, Mr Zong signed the heads of agreement dated 2 October, 2015, between Sunshine and the Land Council, which provided that the remaining \$48,000 received by KNL on behalf of the Land Council

was to be released to Gows Heat pursuant to the surrender agreement and release, also referred to below.

B. The offer schedule and exclusive due diligence agreement dated 8 July, 2015. This was signed by Mr Zong and Ms Bakis.

C. The offer schedule and exclusive due diligence agreement bearing a date of 21 September, 2015, signed by Mr Zong but not executed by or on behalf of the Land Council.

10

D. The heads of agreement between Sunshine and the Land Council dated 2 October, 2015. I've already mentioned this agreement by the deposit commitment, that is the money that was to be paid by Sunshine was \$1,102,000 plus the \$48,000 it had already paid.

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E. The undated surrender agreement and release between Sunshine Warners Bay Pty Limited, Gows Heat and the Land Council. This was signed by Mr Zong and it seems by Mr Petroulias. By this agreement Sunshine was to pay Gows Heat and thus Mr Petroulias the sum of \$1.6 million to surrender its rights under the Gows Heat heads of agreement.

F. The call option agreement between Sunshine and the Land Council dated 12 October, 2015. This was signed by Mr Green and Ms Dates but was not signed by Sunshine.

G. The project procurement deed dated 2 October, 2015, between Keeju Pty Limited and Sunshine Warners Bay Pty Limited. This was signed by Mr Zong and Mr Rhee and made provision for the payment to Mr Zong and Mr Sayed.

30

H. A deed of rescission agreement dated 12 October, 2015, between Gows Heat and the Land Council.

I. The variation agreement dated 23 October, 2015, between Sunshine and the Land Council. This was signed by Mr Green and Ms Dates for the Land Council and by Mr Zong for Sunshine. The variation agreement granted Sunshine an option to purchase the land in consideration of the payment of an option fee to the Land Council in the amount of \$712,000.

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Of the \$712,000, \$400,000 was to be released to the Land Council and the balance was to be held in KNL's trust account. On 26 October, 2015, Sunshine paid \$512,000 into KNL's trust account. On 10 December, 2015, a further \$200,000 was paid into KNL's trust account by Sunshine. I should also mention the deed of acknowledge and guarantee dated 21 December, 2015 between Sunshine Warners Bay Pty Ltd and the Land Council. This is signed by Mr Zong and Mr Green.

A number of representations and assurances are made in this agreement – which is now on the screen – by Mr Green, ostensibly on behalf of the Land Council. Some examples are recitals A and C. Recital E provides “The owner assures the purchaser that there is no reason arising from the controversy,” which is described in recital C, “which will compromise the validity of the arrangements or which would expose the purchaser to additional risk of financial loss in acting on a reliance thereon.”

10 And then the operative part, clause 2, “The owner guarantees the purchaser for any loss or damage suffered by the purchaser by continuing to proceed with the rezoning development process and the project generally. Such loss is not limited to any payments made by the purchaser to Gows and Keeju of \$926,667 and \$250,000.”

The significance of this document, Commissioner, extends beyond what it sought to guarantee. You will notice the date, 21 December, 2015. As I will shortly explain, at the very time that Ms Bakis drafted this agreement and at the time Mr Green executed it, Ms Bakis had drafted and Mr Green had signed another agreement seeking to effect a sale of Land Council
20 property and the buying out by Solstice of a Gows Heat interest under the Gows Heat heads of agreement.

In the early part of 2016, Sunshine began to want some clarity around progressing the transactions and securing dealing certificates – that is certificates under section 42K of the Act. A meeting was requested in March 2016, and by way of update Ms Bakis advised Sunshine that “the board will meet on all this and get the process going at next meeting in two weeks”. There were a series of emails between Mr Fisk and Ms Bakis about
30 this on 28 April, 2016. Formalities omitted, I will make mention of two of them. They are onscreen and they are as follows. “Dear Despina, I am not querying the investigation. I am sure that that will be appropriately dealt with in due course. We are seeking an update on the approvals which will be required from the New South Wales Aboriginal Land Council to allow a land sale transaction. I understand this is the dealing approval certificate vested under section 41(1) and 42K(1) of the Aboriginal Land Rights Act 1983. As it presently stands, we have no documentary evidence that shows that the Awabakal Land Council has permission to sell the land. Regards, Matt.”

40 The response from Ms Bakis was as follows, “Matt, with respect you are asking the wrong question. Only the Local Aboriginal Land Council can enter into any agreement, land dealing or otherwise. It does not require permission to enter into such. We suggest you obtain proper legal advice before engaging down that legal pathway. We will get instructions and revert to you. Regards, Despina Bakis, Solicitor.”

The content of these communications, in particular the response from Ms Bakis dated 28 April, 2016, is intriguing. Mr Fisk’s inquiries were entirely

reasonable and identified the statutory controls with which the transaction was required to comply. Ms Bakis, it seems, appears to either dispute this or not know this. Putting that matter to one side, despite what Ms Bakis had said in her email, on 8 April, 2016, the board of the Land Council had resolved not to proceed with the Sunshine Group agreements.

Ms Bakis and Mr Petroulias knew this because she attended this meeting as did Mr Petroulias when the resolution was passed.

- 10 The other matter to know note is that despite agreeing to get instructions for Sunshine about this issue, Ms Bakis had been documenting agreements for and engaging in negotiation with Solstice.

I should explain, briefly, some of the background to how the Sunshine deal ended. At the meeting on 8 April, 2016 there was also discussion about a report that had been prepared by Abel Consulting Pty Limited apparently at the request of Ms Dates to assess land proposals that had been submitted to the Land Council. This report was signed by Greg Vaughan and addressed to Ms Dates. Mr Vaughan was a director of that company from 20 January
20 to 11 April, 2016. Its registered office was at Level 4, 44 Miller Street North Sydney. This is the same address as the registered office for Gows Heat Pty Limited. Mr Vaughan was appointed as a director of Gows Heats on 29 August, 2017 and remains its sole director. He has also been a business associate of Mr Petroulias since around 2005. Seemingly, on the strength of the advice contained within a summary given to the board by Mr Petroulias, the board not only resolved to reject Sunshine but to approve the establishment of The Awabakal Local Aboriginal Land Council Trustees Limited as trustees and nominee of The Land Council and the use Awabakal LALC Trustees Limited to oversee a project of the re-zoning of Land
30 Council property and its sale to Solstice “or such other party in substitution to Solstice on comparable terms should that relationship fail.”

This inquiry will investigate the background to this meeting including how the resolutions came to be drafted and passed, the role of Mr Petroulias, Mr Green, Ms Dates and Ms Bakis at and during the meeting and the nature and extent of the disclosures made and the advice given to the other Board Members at the meeting before there was a vote on this resolution.

- 40 Payment under the Sunshine Heads of Agreement and Benefits. I’ve already outlined the payments made by Sunshine and the fact over \$1 million has been disbursed from the KNL Trust Account to Gows Heat. In fact, as I understand it, Mr Petroulias does not dispute receiving it. This inquiry will investigate what has happened to this money.

Mr Green received a payment of \$2,000. This was paid to him via a KNL Trust Account dated 21 September, 2015 on 22 September, 2015 and Sunshine authorised the release of this money to him. The request that was made to Sunshine, however, was for this money to be released so the money

could be used to sponsor an Aboriginal sporting team. In fact, the money was used, not for that purpose, but it was used by Mr Green to buy furniture for his own purposes, on or about 23 September, 2015.

10 In early May 2016 Ms Bakis transferred a 2009 Mercedes Benz to First Peoples Advancement Charity Pty Limited. Mr Green was the sole director of that charity. The notional selling price was recorded as \$36,000 but Mr Green did not pay for the vehicle. Mr Green accepts that he received and used the vehicle but says that he received it for a legitimate business purpose. This inquiry will investigate the circumstances surrounding the transfer of that vehicle to him and his subsequent use and disposal of it.

In addition, Mr Green appears to operate a number of bank accounts in his own name and in the name of various corporate entities. Some of them were opened and are operated jointly with Mr Petroulias. Money has come directly or indirectly from Gows Heat into 13 of those bank accounts. This inquiry will investigate the circumstances surrounding these payments and whether they are related to the full and transactions or not.

20 In addition to the funds received from Gows Heat from the KNL Trust Account on 26 October, 2015, \$250,000 was paid by Sunshine directly to Gows Heat. On 28 October, 2015 this money was disbursed as follows, \$200,000 to an account held by Point Partners Consulting and \$50,000 to two accounts in the name of Nicholas Peterson. Point Partners Consulting Pty Limited is the former company name of Knightsbridge Tax Pty Limited, a company apparently controlled by Ms Bakis. Nicholas Peterson is, as I've indicated earlier, one of Mr Petroulias' names.

30 Following receipt of the money from Gows Heat Point Partners returned \$70,000 to Gows Heat. This inquiry will investigate these transactions and others to determine whether this was an arm's-length transaction or not and if not whether it was a benefit received by Ms Bakis and/or her company for her participation in the various land transactions.

40 The introduction of Solstice. Notwithstanding that an agreement had been entered with Sunshine an attempt was made to undertake a further transaction again based on the existence of the Gows Heat heads of agreement. This transaction is recorded in the Solstice heads of agreement dated 19 November, 2015 which was signed by Mr Green and Ms Dates and drafted by Ms Bakis.

The documents were drafted by Ms Bakis and it is clear that she used the Sunshine transaction as a template. That is, she used the Gows Heat heads of agreement as a means to (a) confirm the existence of an underlying transaction between Gows Heat and the Land Council, (b) confirm that such transaction created an interest in the land owned by the Land Council that permitted its on-selling in the sense that the Land Council consented to the novation of that agreement to third parties and, (c) enable Gows Heat to

extract payment from Solstice in consideration of it foregoing its interest in the land and novating the agreement with the Land Council to Solstice.

Initially it was intended that the proposed transaction take the same form as the Sunshine transaction which it largely did. Later, during the course of negotiating the final terms, the form of the proposed agreement with Solstice changed so as to be similar to what was used in the June and July, 2016 agreements between Advantage and the Land Council. Despite this change the underlying purpose of the agreement remained, to enable the
10 Gows Heat interest allegedly created by the heads of agreement dated 15 December, 2014 to be bought out by an unwitting third party, in this case Solstice.

There were two basic differences between the Solstice heads of agreement and the Sunshine agreements. The first difference related to the land that was the subject to the Solstice agreement and the apparent value of the transaction. Ultimately the properties involved and the moneys involved were substantially greater. The proposed contract price payable if an option was exercised was \$30 million.
20

The second difference related to the payment to be made to Gows Heat pursuant to the surrender agreement and release. In the Solstice transaction the sum initially nominated was \$400,000 although this changed such that by the time the revised form of agreements had been circulated having been prepared by KNL on or before 1 April, 2016, the payment to Gows Heat was \$1.2 million.

As I mentioned one of the striking features of this attempted transaction was that on the one hand Gows Heat and the Land Council had entered into an
30 agreement with Sunshine and yet on the other they were secretly dealing and negotiating with the assistance of Ms Bakis with Solstice with a view to entering into a similar arrangement and extracting another payment to Gows Heat. However, unlike the Sunshine transaction an agreement was never reached. Although the reasons for that lack of consensus suggest that (a) possibly the reason for this was because Solstice became aware of the conditional nature of any agreement, that is, of a need to comply with the terms of the Act and its reluctance to part with any money in that setting without it being secured and refundable in the event the transaction did not proceed.
40

Possibly because those behind these negotiations sensed or knew of these matters and thus the futility of proceeding further the proposed transaction was called off. On the face of it this was the consequence of a resolution that was passed by the board on 6 May, 2016 which ended any negotiation with Solstice. The board resolution was, "That owing to a failure to come to terms with the Solstice Group entities that the Solstice proposal be rejected."

This inquiry will investigate whether in or around early to mid-November, 2015 and into 2016 a scheme for the sale and development of properties owned by the Land Council based on the Gows Heat heads of agreement was utilised in an attempt to effect a transaction with Solstice despite the apparent agreement with Sunshine and the role that Mr Green, Ms Dates, Mr Petroulias and Ms Bakis had in this attempt.

10 The introduction of Advantage. Commissioner, on and after 7 June, 2016, a number of agreements were entered into between the Land Council and Advantage. The first mention of that entity in the minutes of the board was on 2 June, 2016.

I will read these minutes because they are illuminating. “Despina spoke about resolution they would like for board to pass.” The minutes of the board then recorded the following resolution, “That Awabakal LALC Board agrees to the replacement of Advantage for Solstice for the collaboration and development of Awabakal Land Council and the Advantage transactions.” Before I outline the nature of the Advantage agreements, I will explain the foundation for their involvement, because they were laid well before they were first mentioned to the board on 2 June, 2016. I will also explain who was behind Advantage.

20 The key steps explaining how Advantage came to be involved in a transaction with the Land Council are as follows. The resolution passed by the board at its meeting on 8 April, 2016 was to sell to Solstice “or such other party in substitution to Solstice on comparable terms should that relationship fail”. The resolution passed was in a form that was proposed by Ms Bakis before that meeting, an email to Ms Steadman and Ms Dates. At the meeting on 8 April, 2016, the board had also resolved to approve the establishment of the Awabakal LALC Trustees Limited as trustee and nominee of the Land Council and the use of Awabakal LALC Trustees Limited to oversee a project of the rezoning of Land Council property. Again, the resolution passed was in a form that was proposed by Ms Bakis before that meeting and emailed to Ms Steadman and Ms Dates. As at 8 April, 2016, the sole director and shareholder of Awabakal LALC Trustees Limited was Nicholas Piers – that is, Mr Petroulias – who had incorporated the company in New Zealand on 20 January, 2016.

30 On 8 June, 2016, Mr Piers – that is, Mr Petroulias – was removed from the register as a shareholder and replaced by Mr Green. On 9 June, 2016, Mr Green was registered as a sole director of the company and as having been appointed as a director on 20 January, 2016 while Mr Piers is recorded as having ceased to be a director on 1 February, 2016.

Awabakal LALC Trustees was removed from the register on 15 July, 2016 and a new company is incorporated with the same name on 20 July, 2016. The ultimate holding company is registered as the Land Council, the shareholder consent form for the Land Council having been signed –

purportedly on its behalf – by Mr Green. At the time of registration, its sole director was Mr Green.

Advantage Property Experts Syndications Limited was a company incorporated in New Zealand by Nicholas Piers – that is, by Mr Petroulias. Further, when the Advantage agreements were discussed by the board, Nicholas Piers – that is, Mr Petroulias – held a 25 per cent shareholding in Advantage and was also registered as one of its four directors.

- 10 On 8 June, 2016, the day after the board resolved to execute the Advantage agreements, Nicholas Piers – that is, Mr Petroulias – transferred his 25 per cent shareholding to Knightsbridge North Lawyers Pty Ltd. Ms Bakis was the sole director and shareholder of KNL. On 30 June, 2016, KNL shareholding was transferred to another company called Composite Building Industries Limited, which is registered in Hong Kong.

- 20 On 9 June, 2016, one of Advantage’s directors, Hussein Faraj, registered a change in the directors of the company – namely that Mr Piers, that is Mr Petroulias – ceased to be a director, apparently as at 5 May, 2016. The company appointed as manager in the Advantage agreements was Able Consulting Pty Ltd. As at the date the agreements were executed, Mr Vaughan had ceased to be a director of Able Consulting Pty Ltd, but he had been a director of that company from 20 January to 11 April, 2016.

He had also, it will be remembered, prepared a report to the board dated 8 April, 2016, assessing the various proposals to buy or develop Land Council land. He has been and is currently a business associate of Mr Petroulias. He is also the sole director of Gows Heat.

- 30 On 7 June, 2016, the board resolved to enter into the agreements with Advantage. Again, like the resolutions that had been passed at the meeting on 2 June, 2016, the resolution relating to Advantage had been emailed before the meeting from KNL either by Mr Petroulias or Ms Bakis or possibly both of them to Ms Steadman, the acting CEO of the Land Council.

- 40 There were seven agreements executed in connection with the Advantage transaction. I will identify them and make mention of some of the terms of the agreements. The first was described as a collaboration agreement, Awabakal economic advancement strategy, between the Land Council, Advantage, Awabakal LALC Trustees Limited, Able Consulting Pty Limited. Essentially by this agreement the parties agreed to an unincorporated collaborative venture, the Awabakal Development Advancement.

The second was described as the agreement addendum regarding community housing, Awabakal economic advancement strategy between the Land Council, Advantage and KNL. The third was the confirmation of variation of retainer and engagement between the Land Council and KNL.

The agreement records that the Land Council, quote, “Hereby confirms its retainer engagement letter dated 27 November, 2015, with Knightsbridge North Lawyers is varied to include inter alia the Advantage transaction.”

10 By clause 2 the description of services provided by KNL extends beyond simply documenting or advising on the Advantage transaction to services that impress as going well beyond KNL or indeed any solicitors’ capabilities and expertise, namely, quote, “Assisting with the assessment of building systems, feasibility studies, analysis, site preparation, engaging third parties in respect of the same and doing such things necessary or convenient for the purpose of preparing the community meeting and preparing the background material appropriate for the New South Wales Aboriginal Land Council expert panel assessment.”

By clause 4, as security for payment of KNL’s fees and any third parties appointed by KNL, the Land Council provides a further or separate charge in favour of KNL over its assets and authorises KNL to lodge a charge, mortgage, security interest or caveat over those assets.

20 Finally, this agreement by clause 5 is said to have retrospective effect. This document was signed by Ms Dates, Mr Green and Ms Bakis. Consistent with its terms, KNL proceeded to lodge caveats over Land Council property to secure its fees.

The fourth was the call option deed between the Land Council and Advantage dated 7 June, 2016, albeit that there is a later version of this agreement which is the fifth, I’ve already outlined the nature of this agreement.

30 The sixth was the agreement addendum, Awabakal economic advancement strategy, dated 8 July, 2016, between the Land Council, Advantage, Awabakal LALC Trustees Limited, Able Consulting and KNL. Pursuant to this agreement, Mirror Developments Pty Limited was appointed to conduct a feasibility report analysis and KNL was appointed to manage that work. By clause 5 of that agreement a fee proposal prepared for Forlife Development Pty Limited, dated 13 June, 2016, was accepted and Advantage is appointed to manage the work to be conducted for Forlife Development. The Land Council also provides a further charge in favour of Advantage and KNL over its assets and authorises Advantage and KNL to
40 lodge a charge, mortgage security interest or caveat over those assets to secure payment of legal costs and disbursements arising from this agreement. This agreement was drafted by KNL, it is signed by Mr Dates, sorry, Ms Dates, Mr Green, Mr Faraj and Ms Bakis on behalf of the owner, trustee, the purchaser and KNL respectively.

The seventh was a fee proposal for preparing plans and reports by Forlife Development, sent to Advantage, dated 13 June, 2016, which I have mentioned above. The proposal was for a fee of \$3 million with \$300,000

payable on acceptance of the fee proposal. This document was signed by Ms Dates, Mr Green and Ms Bakis, quote, “KNL for Awabakal.”

10 From the above, Commissioner, the following might be noted. First, assuming the validity of the such an agreement having regard to the statutory controls on land dealings prescribed by Part 1 Division 4 of The Aboriginal Land Rights Act, the grant of an option in favour of Advantage is meant for the duration of the option period and any extension they might seek. The Land Council was precluded with dealing with that land. This could be for anywhere up to eight years.

Secondly, the land holdings of The Council sought to be the subject of these agreements is substantial and there appears to be have no material, such as valuations, put before The Board nor any detailed analysis undertaken by The Board to properly assess whether a transaction of this kind involving the sums of money of this magnitude was warranted.

20 Thirdly, by the entering into the agreement with Full Life Development, The Land Council became immediately liable to pay it \$300,000 irrespective of whether overall sale and development proposal with Advantage proceeded. As it happens, The Land Council is now being sued for this money, albeit that Advantage appears to allege that it has the entitlement to this money and not Full Life Development.

It is not immediately obvious, Commissioner, why The Council would enter into such an agreement so as to create such an immediate liability or even to consider entering into such agreement having regard to the statutory controls on dealing with land as set out in The Aboriginal Land Rights Act.

30 Concluding remarks. Commissioner, that is all I wish to say about the facts by way of opening of the inquiry. There will be a lot of evidence, both oral and documentary, so naturally, what I have said is but a summary. Obviously the matters to be investigated by this inquiry are serious. Over the course of this inquiry evidence is almost certain to emerge that will have some bearing upon the final position but it seems necessary that I outline, in addition to those matters I have earlier covered, some of the more serious matters that are to be investigated.

40 In relation to the Gows Heat transaction, a) whether Mr Petroulias and Mr Green devised a scheme for the sale and/or development of the properties owned by The Land Council via the use of a false agreement, namely the Gows Heat Heads of Agreement dated 15 December, 2014 which was to be used as a means to wrongfully confer a financial benefit on each of them; b) whether and if so, the extent to which Mr Petroulias, Mr Green and Ms Bakis participated in and/or assisted with the implementation and execution of that scheme; c) whether Mr Petroulias, Mr Green and Ms Bakis receiving benefits from their participation in this scheme.

In relation to the Sunshine transaction, a) whether Mr Petroulias and Mr Green devised and/or utilised a scheme for the sale and/or development of properties owned by The Land Council to Sunshine via the use of a false agreement namely the Gows Heat Heads of Agreement dated 15 December, 2014 which was to be used as a means to wrongfully confer a financial benefit on each of them; b) whether, and if so, the extent to which Mr Petroulias, Mr Green, Ms Bakis and Ms Dates participated in and/or assisted with the implementation and execution of that scheme; c) whether Mr Petroulias, Mr Green and Ms Bakis received benefits from their participation in this scheme.

In relation to the Solstice transaction; a) whether Mr Petroulias and Mr Green devised and/or utilised a scheme for the sale and/or development of properties owned by The Land Council to Solstice via the use of a false agreement namely the Gows Heat Heads of Agreement dated 15 December, 2014 which was to be used as a means to wrongfully confer a financial benefit on each of them; b) whether, and if so, the extent to which Mr Petroulias, Mr Green, Ms Bakis and Ms Dates participated in and assisted with the implementation and execution of that scheme.

In relation to the Advantage transaction; a) whether Mr Petroulias, Mr Green, Ms Bakis and Ms Dates devised and/or utilised a scheme for the creation of an interest in relation to properties owned by The Land Council in favour of Advantage; b) whether and if so the extent to which Mr Petroulias, Mr Green, Ms Bakis and Ms Dates participated in and assisted with the implementation and execution of that scheme; c) whether Mr Petroulias, Mr Green, Ms Bakis and Ms Dates devised and/or utilised a scheme for the creation of a contractual liability in The Land Council in the amount of \$300,000 in favour of Full Life Development; d) whether and if so, the extent to which Mr Petroulias, Mr Green, Ms Bakis and Ms Dates participated in and assisted with the implementation and execution of that scheme.

Thank you Commissioner, that's my argument.

THE COMMISSIONER: Thank you Mr Chen. As I indicated before, I propose to adjourn and following the adjournment I'll take applications for leave to appear. Accordingly I'll adjourn. I'll take about 20 minutes.

40

SHORT ADJOURNMENT

[11.46AM]

THE COMMISSIONER: Yes. Are there any applications?

MR OATES: If the Commissioner pleases my name is Oates. I seek leave to appear for Mr Steven Slee.

THE COMMISSIONER: Yes, Mr Oates. What do you identify as his particular interest the - - -

MR OATES: I imagine Mr Slee – well, I don't imagine, that would be presumptuous of me but it may be that Mr Slee will have some accusations made against him by others who will appear before the inquiry.

10 THE COMMISSIONER: Yes. Very well, Mr Oates. Well, I'll grant leave for you to appear and leave as I've indicated with other applications of course is subject to the standard directions of the Commission. Thank you, Mr Oates.

MR OATES: If it please the Commission.

THE COMMISSIONER: Yes, any - - -

20 MR KIRK: May it please the Commission. My name is Kirk, K-i-r-k. I seek the Commission's leave to appear for the Awabakal Local Aboriginal Land Council, potentially assisted by a junior counsel, Mr Thomas Prince, instructed by the law firm Chalk & Behrendt and I have Mr Andrew Chalk sitting here with me.

THE COMMISSIONER: Very well. Yes, I grant your application for leave again subject to the standard directions.

MR KIRK: If it please the Commission.

30 MR TYSON: Commissioner, my name is Tyson. I'm instructed by Ms Katawazai, K-a-t-a-w-a-z-a-i, and I seek leave to appear on behalf of Ms Deborah Dates.

THE COMMISSIONER: Yes, Mr Tyson, I grant leave for you to appear again subject to the general directions of the Commission.

MR TYSON: Thank you., Commissioner.

MS NOLAN: Commissioner, my name is Nolan, N-o-l-a-n.

40 THE COMMISSIONER: Yes, Ms Nolan.

MS NOLAN: I seek the Commission's leave to appear for both Knightsbridge North Lawyers and Ms Despina Bakis instructed - - -

THE COMMISSIONER: Sorry, Knightsbridge?

MS NOLAN: Knightsbridge North Lawyers and Ms Despina Bakis instructed - - -

THE COMMISSIONER: Mr?

MS NOLAN: Ms Despina Bakis, B-a-k-i-s.

THE COMMISSIONER: Oh, Bakis. Yes.

MS NOLAN: Instructed by Knightsbridge North Lawyers.

10 THE COMMISSIONER: Yes, Ms Nolan, I grant leave to appear on behalf of Knightsbridge Lawyers North and Ms Bakis, again leave is granted subject to the standard directions of the Commission.

MR PATTERSON: May it please the Commission, my name is Patterson and I seek leave to appear on behalf of Mr Raymond Kelly who is a board member of the local Aboriginal land council.

20 THE COMMISSIONER: Mr Patterson, are you seeking leave in relation to any particular segment of the investigation as you would understand it from the opening or that is a general leave or is it more related to specific matters?

MR PATTERSON: I understand that Mr Kelly will be questioned as to his knowledge as a board member of what was put before the Commission this morning, that is, his knowledge as a member of the board as to the various matters of inquiry.

30 THE COMMISSIONER: So, Mr Patterson, your application in other words is to appear on his behalf as a witness in the Commission as distinct from being a person substantially directly affected or not?

MR PATTERSON: I don't think that is the situation, Commissioner. Mr Kelly has been required to give evidence and so I assume that there are matters of which he is expected by Counsel Assisting to be able to assist.

THE COMMISSIONER: Mr Chen, is there any matter you want to raise about that?

40 MR CHEN: No. Mr Kelly, Commissioner, was a board member for a discrete period from approximately 20 July, 2016 until the appointment of the administrator on 13 October, 2016. He is not a person who any allegations of, I'll call it in general terms, misconduct are to be made in any way, shape or form. He is a witness of fact, Commissioner.

THE COMMISSIONER: Well then, Mr Chen, is it appropriate that I grant Mr Patterson leave to appear on behalf of Mr Kelly when he is called to give evidence but are you suggesting that there's no other matter that you can see at the moment which would warrant a general grant of leave?

MR CHEN: That is so, Commissioner. I don't foresee it.

THE COMMISSIONER: Mr Patterson, what I'll do is subject to any further application you may care to make is grant you leave to appear on behalf of Mr Kelly during the course of his evidence.

MR PATTERSON: May it please the Commission.

10 THE COMMISSIONER: And it is open to you to make further application if you see the need to do so.

MR PATTERSON: Thank you, Commissioner.

THE COMMISSIONER: Thank you. Yes.

MR PETROULIAS: Nick Petroulias. I seek to appear for myself.

THE COMMISSIONER: Yes, Mr Petroulias.

20 MR PETROULIAS: I seek to appear for myself.

THE COMMISSIONER: Yes. But, Mr Petroulias, I think you've put in writing - - -

MR PETROULIAS: That's right.

THE COMMISSIONER: - - - the matters you want to rely upon in support of your application.

30 MR PETROULIAS: That's correct.

THE COMMISSIONER: I grant your - - -

MR PETROULIAS: Thank you.

THE COMMISSIONER: - - - application for leave to appear and it's subject to the standard directions of the Commission.

MR PETROULIAS: Yes, sir.

40

THE COMMISSIONER: Yes.

MR WHITE: Commissioner, my name is white. I appear on behalf of Mr Ryan Strauss who is a property developer who was involved in a number of the transactions. It's difficult at this stage to say exactly what is going to be said about him but I suspect that certain allegations could be raised by a number of persons and I seek to leave to appear for that purpose.

THE COMMISSIONER: Yes, Mr White. Just a moment. What do you say, Mr Chen?

MR CHEN: Mr Strauss was involved as you would understand from the opening, Commissioner, in a transaction described as Solstice or an attempted transaction involving Solstice. Commissioner, I don't foresee that there will be anything that will be put against Mr Strauss but there is a suggestion which may be levelled by one or other parties that he offered money for certain things to happen so on that footing his interest may extend wider than simply being, leave being granted to him wider than simply being here to represent him as a witness, Commissioner.

THE COMMISSIONER: Yes, thank you. Mr White, you've heard what's been said. I'm prepared to grant you leave. It may be that at least for parts of this inquiry or this hearing it may be a watching brief of some kind and feel free to come and go as you please.

MR WHITE: Yes. I will. Thank you, Commissioner.

20 THE COMMISSIONER: Mr White, I grant leave for you to appear and again it's on the standard conditions of the Commission. Very good. If there's no other application. Now, Mr Chen - - -

MR CHEN: Commissioner, did you wish to mark Mr Petroulias's application for leave?

30 THE COMMISSIONER: Yes. Yes, thank you. What I'll do is I'll mark the four-page document produced, I think, today by Mr Petroulias. I'll have them marked for identification. I don't think it need be marked as an exhibit. I'll mark it as MFI 1, application of Nick Petroulias for authorisation to appear.

**#MFI-001 – APPLICATION OF NICK PETROULIAS FOR
AUTHORISATION TO APPEAR**

40 THE COMMISSIONER: Now, Mr Chen, before you proceed, are there any other matters anyone who's been granted leave to appear wishes to raise? Ms Nolan?

MS NOLAN: May it please the Commissioner, I have an issue I wish to raise.

THE COMMISSIONER: Yes. I'm sorry, I'm having difficulty hearing you. Maybe the microphone hasn't been properly directed.

MS NOLAN: I'll stand here. Am I more audible if I stand here? I don't think so. I think these microphones may not be on? Hello? Yes, it is.

THE COMMISSIONER: Yes, well, it is but it perhaps needs adjustment. But, anyway, we'll see how we go. Yes.

MS NOLAN: I'm instructed to make an application with respect to the way in which the Commission proposes to exercise its functions during the course of this inquiry.

10

THE COMMISSIONER: Yes.

MS NOLAN: The application is made by reason of matters which Senior Counsel Assisting adverted to throughout his opening, and that is the concurrency of proceedings in the New South Wales Supreme Court with respect to a number of the significant issues which will be the subject and scope of the investigation here being conducted.

THE COMMISSIONER: It's limited to that matter, is it?

20

MS NOLAN: It is. There are submissions which I am instructed were sent this morning by Ms Bakis to the Commission. I am not instructed to make any submissions in any way connected with that, and indeed I have not sighted the documents until only just a moment ago.

THE COMMISSIONER: Well, there has been a document produced or received. It's entitled Submissions to the Commissioner by Despina Bakis. Operation Skyline, Matters of Procedural Fairness. And it runs to some 112 paragraphs. Now, that document, do you anticipate you'll be seeking to rely upon that in any way at all?

30

MS NOLAN: I don't know. I've only just sighted it.

THE COMMISSIONER: You have only just seen it.

MS NOLAN: I've only literally sighted it prior to standing to speak.

THE COMMISSIONER: Well, what I'll do is I'll have that document marked for identification as MFI 2, and you can – when you've had a chance to read it – just indicate whether you want to rely upon it and, if so, what parts of it.

40

**#MFI-002 – SUBMISSIONS TO THE COMMISSIONER BY
DESPINA BAKIS RE: OPERATION SKYLINE MATTERS OF
PROCEDURAL FAIRNESS**

THE COMMISSIONER: As to the discrete matter that you've identified, perhaps if you could indicate what's the general nature of the application and the matters you seek to rely upon. Bear in mind that, as I understand it, the proceedings you refer to are proceedings in the civil jurisdiction of the Supreme Court. Is that right?

MS NOLAN: That's correct.

10 THE COMMISSIONER: And which proceedings are they?

MS NOLAN: In discussions that I have had with the Junior Counsel Assisting, she has identified to me that the Commission does have in its possession a copy of the pleadings. I have here a folder, which I'm content to provide to the Commission and have marked if that's something that will assist.

THE COMMISSIONER: Can you identify the parties to those proceedings?

20 MS NOLAN: They are numerous, as you can see. But in proceedings 2017/92960, Knightsbridge North Lawyers Pty Ltd is the first plaintiff, second plaintiff is Advantage Property Experts Syndications Limited, and that proceeding is brought by suit against the Awabakal Local Aboriginal Land Council through its administrator Mr Lawler. Those proceedings are in respect of the charge, the subject of opening submissions, and it will traverse issues with respect to the validity of the charge, the operation of the Aboriginal Land Rights Act, and a number of matters which I understand go to the submissions made with respect to retrospectivity and the validity of that charge.

30 THE COMMISSIONER: Ms Nolan, the position, however, is even though there might be proceedings current in the Supreme Court yet to be heard and disposed of, that of itself is not ordinarily a basis upon which the Commission would not hold a public inquiry. Unless there's something in particular that you can identify, doesn't seem to me as though there's much to be said for not dealing with all of the matters that Counsel Assisting have identified in a public inquiry. A decision has been made to hold a public inquiry. A number of matters, as you'd be aware, under the Act have to be taken into account before such a decision is made. The position is or can be, of course, more difficult if there are proceedings in another jurisdiction in
40 the nature of criminal proceedings in which a person's being charged and is awaiting trial. Criminal proceedings, as you're aware, attract all sorts of other principles that don't apply where there's concurrent proceedings in civil proceedings. So that unless there's some basis upon which the ordinary rule – when I say the ordinary rule, the ordinary procedure – whereby a public inquiry proceeds notwithstanding proceedings in another jurisdiction, civil jurisdiction, I can't see what basis you would have for an application that this inquiry doesn't either look into those matters as the subject of the civil proceedings or that some other course, such as a private

hearing, be conducted. So what really is your application? Is it that this Commission not proceed with certain matters? Or that it only do so other than in a public inquiry?

MS NOLAN: My present application is not that the Commission does not proceed. It's rather the way in which it exercises its functions is tailored so as to take into account a number of considerations which I say arise by reason of the operation of section 18, to which I understand the Commission has adverted, and also section 19 in people, and the way in which the
10 breadth of powers that are afforded the Commission by that provision can be exercised so as not to traverse the issues the subject of the concurrent proceedings. And I have only identified one, so I need to say that there are a number, involving a number of other parties the subject of counsel's opening address.

THE COMMISSIONER: That does come back, though, doesn't it, to the point I've raised? That if there are proceedings – as I understand there are – in the civil jurisdiction of the Supreme Court of New South Wales, those proceedings are heard or will be heard and determined by a single judge of
20 the court in the first instance. There's no question of jury trial being involved, and therefore the ordinary procedure would seem to me to be appropriate in this case – that is to say that the matters and evidence relating to the matters, as Mr Chen has indicated in his opening, can go forward without any risk of prejudice to the civil proceedings at all. That being upon the basis that a single judge of the Supreme Court is well able to determine matters regardless of what goes on in the Commission or what might be contained in a report. Indeed, such a report wouldn't even come across the gaze of the Supreme Court judge. They have no interest in it at all. That's
30 the normal position. So, look, it seems to me that if there are particular matters that you're concerned about, that may be dealt with by a witness, that you can provide to Counsel Assisting a list of any particular matters that you wish to be heard about for some other approach or some other form of proceeding to be adopted. But short of that, it seems to me that there is no impediment whatsoever in the Commission proceeding in a public inquiry, notwithstanding the proceedings to which you refer.

MS NOLAN: I understand what the Commissioner is putting to me, and that is that a Supreme Court judge is well equipped to proceed without fear or favour, despite what is going on in this Commission. That's not the
40 proposition to which my submission directs its attention. The proposition to which my submission directs its attention is a different one. It traverses the question of public policy and the public interest. A public inquiry is conducted in the public interest. It is a matter of public policy that the due administration of justice requires that all suitors have the ability to appear before the court without any public obloquy.

THE COMMISSIONER: Without any - - -

MS NOLAN: Public obloquy. And that these proceedings, with the greatest of respect to the Commissioner, can constitute public obloquy and particularly with respect to the issues that are being raised within the Supreme Court proceedings. It is a rule that is normally one which informs criminal contempt, as it's understood in this state, the distinction between civil and criminal contempt being that it is disparate by reason of the operation of the Supreme Court Act, but nonetheless it is contempt by publication by another name and that what goes on in the course of a public hearing in this Commission can render a type of public obloquy which may not necessarily be in the public interest to introduce into the public domain such that aspects of this inquiry may need to be in private, suppressed or something so as to protect the interests that are relevantly affected.

Now, I take up, if I might, the suggestion give to me by the Commissioner that there be some discussion with Counsel Assisting as to a schedule of issues which we can agree may be the subject of these types of protection that I've identified may be necessary so as to ameliorate the friction that exists between matters of public policy and the public interest.

20 If the Commission would be assisted in further expression of these submissions by way of writing I'm happy to prepare something and they can be considered and perhaps the Commissioner can be addressed by Counsel Assisting.

THE COMMISSIONER: Well, Ms Nolan, the public obligatory that you refer to is a very, very general concept. It really is another way of suggesting that there would be some form of prejudice arising out of the conduct of these proceedings that in some way would adversely impact or affect the disposition of the proceedings in the Supreme Court. As I've said, at the moment I can't see how any prejudice could arise from a public inquiry of this Commission to a Supreme Court judge when discharging his or her function in the administration of justice. There are authorities that deal with contempt in a commission of inquiry proceeding as we're all aware, every one of those to my knowledge has always involved concurrent criminal proceedings, not civil, in particular well-known High Court cases. There's no authority that I'm aware of, unless you can point me in the direction, where this Commission has refrained from or been restrained from or charged with contempt in proceeding with a public inquiry where there are civil proceedings on foot. None that I'm aware of. And if I'm right in that, that there are in fact none, it just confirms what I've said to you, that the reason you won't find any is because you won't find risk to the administration of justice by proceedings of a commission such as this one.

I've heard what you said. I might just, I don't know whether Mr Chen has had notice of this application, but I should hear from him and perhaps come back to you and we'll see where we go from there.

MS NOLAN: May it please the Commission.

MR CHEN: I hadn't had notice, Commissioner.

THE COMMISSIONER: Sorry?

MR CHEN: I hadn't had notice. I'm not saying that Ms Nolan spoke to my learned junior about it, so I'm not in a position to assist you further beyond the exchange that has passed between you and Ms Nolan.

10 THE COMMISSIONER: Very well. Look, I think, Mr Chen, what we might do is this. Ms Nolan might want to perhaps develop her application by putting in some form of written document which will then give you the opportunity of considering what it is that she relies upon. I don't think however that that should delay or hold up the progress of today's program, but if I perhaps direct Ms Nolan to provide you with some synopsis or outline of the matters she wants to rely upon in support of this application and that you have it by 9 o'clock tomorrow morning, then we can deal with it in the morning or at such other time as might be convenient to Ms Nolan and yourself.

20

I think meantime my view is that it is an appropriate course to proceed with the program, unless you wish to urge to the contrary.

MR CHEN: No, I don't.

THE COMMISSIONER: All right. Well, Ms Nolan, you've heard what I've said. I think that will give you the opportunity of at least outlining in some sort of succinct form exactly what it is that you're relying upon and if you wish can develop it further tomorrow. Is that suitable to you?

30

MS NOLAN: May it please the Commission, that is suitable.

THE COMMISSIONER: Thank you, Ms Nolan.

All right. Now, yes, Mr Petroulias?

40 MR PETROULIAS: Yes, a short application in relation to, I refer to paragraph 26 of your standard directions, which is the suppression. As you may recall from the compulsory examinations, we raised the issue of the various name changes which were put to this, which in the opening address were expressed as aliases. They were in fact, as we touched upon in the private compulsory examination, they were in fact legal name changes and they had connections with assisting various government agencies which were, I embarked upon explaining but wasn't a matter of interest. I think wrote an email to your solicitor, to your lawyer, Mr Patrick Broad raising this issue with him. He responded by email saying, no we're not going to go down that line, but it's very clear from the opening address that it's been used as some sort of feature of dishonesty, concealment, when in fact, it is

not. So, what it does is unnecessarily puts myself and others at risk. Now, if it does become relevant, for example, so I ask an order that the names or aliases or whatever you call them be suppressed unless it becomes relevant in the course of the inquiry. Now, for example, if the name was something that actually was material to somebody and they were legitimately confused or potentially confused then I can understand that that requires publication but otherwise, I ask that it be suppressed unless it becomes relevant.

THE COMMISSIONER: Mr Chen?

10

MR CHEN: I'd oppose an order in those terms, Commissioner, I mean, the way in which I have outlined the matters to be investigated by The Commission in this inquiry, Mr Petroulias has used different names at different times to different people, Pearson, Peterson as well as others, Piers is the third one. Commissioner, the identity of that individual will be relevant to demonstrate who that person is at any given point in time, what steps were taken by that individual using specific names in terms of, one or more of the transactions. So Commissioner, the identity and the names used are directly relevant to the matters that are being investigated by you.

20

THE COMMISSIONER: Mr Chen, any names, the evidence will itself indicate were used by Mr Petroulias during the course of the transactional period that we're dealing with 2014/2016 seems to me, is part of the evidence if you anticipate will indicate what those names were as used by Mr Petroulias in that period. If however, there is another name or names that were not utilised in the course of the transaction and there's no evidence to establish that he was using other names, what would be the evidentiary utility of relying upon names that there's no evidence about otherwise than in the compulsory hearing, for example?

30

MR CHEN: Commissioner, I don't apprehend there will be evidence of names beyond those that I have identified in the opening to the extent that -
- -

THE COMMISSIONER: Just to be clear, those names are?

MR CHEN: If you just pardon me for a moment, Commissioner. Commissioner, I just want to add one further matter.

40

THE COMMISSIONER: Yes.

MR CHEN: There will be, I expect, some financial and accounting evidence which will need to be put before The Commission to determine the financial aspects as well. So, I opened on three names, I expect the evidence will extend to additional names but in the material that is to be tendered in the short term, that is immediately at a time convenient to you Commissioner, I don't apprehend there are any other names other than the

three that I have identified or possibly four, Peterson, Petroulias, Piers, Pearson.

THE COMMISSIONER: Mr Petroulias, I think you've heard what Mr Chen has said, that the only three names that have been mentioned in his opening are names which will – in one shape, manner or form – emerge from the evidence that is to be called, be it accounting evidence or other evidence.

MR PETROULIAS: That's fine.

10

THE COMMISSIONER: So that the names will be subject of evidence and in conformity with the opening. As to any other names that may or may not have been used beyond those three, then I would certainly hear from you as to whether or not any other names should ever emerge in this public inquiry.

MR PETROULIAS: With respect - - -

20

THE COMMISSIONER: Just a moment. But the position is that if, as Counsel Assisting has said, that any names you've used – including your present name, Petroulias – is the subject of other evidence, there's no reason then to suppress any of those three names as I see it. As I say, it's open to you to make any application. However, if some fourth or fifth or sixth name, or any other number, is sought to be led in public hearing. Do I make myself clear?

30

MR PETROULIAS: Yes. If we can just clarify. Petroulias and Peterson is not an issue because they were (not transcribable). Pearson has never appeared before in any, in anything. If it becomes relevant in an accounting document, can we deal with it when it becomes relevant?

THE COMMISSIONER: I think that's what Mr Chen was suggesting.

MR PETROULIAS: Yeah, but - - -

THE COMMISSIONER: If it looks likely that some other name will come out, Mr Chen will give you notice, or those instructing him will give you notice, so that you'll have an opportunity to make an application for an order under section 112, so that you'll be protected in that way.

40

MR PETROULIAS: Yeah, but right now, for the opening?

THE COMMISSIONER: Not now. We'll wait until we get to the evidentiary phase of this inquiry. And as I say, the process that I have suggested be adopted will be followed.

MR PETROULIAS: With respect, Commissioner - - -

THE COMMISSIONER: Mr Chen, do I understand your position to be that if you anticipate that there will be evidence or that there's sought to be reference to any other name, you'll give notice to Mr Petroulias before it's led?

MR CHEN: It will be, Commissioner.

THE COMMISSIONER: Is that right?

10 MR CHEN: It is.

THE COMMISSIONER: Yes.

MR PETROULIAS: Right now we have an opening and it can be published as we speak.

THE COMMISSIONER: That's right.

20 MR PETROULIAS: What I'm saying is, well, therefore it needs to be suppressed until it becomes relevant. I have no objection with Petroulias and Pearson. Petroulias and Pearson, absolutely no objection. If anything else becomes relevant, then I have no problem there.

THE COMMISSIONER: Well, Mr Petroulias, I've sought to suggest what to me seems to be the appropriate balance to be achieved.

MR PETROULIAS: Yeah, wouldn't that be sort of - - -

30 THE COMMISSIONER: You're protected to that extent. I'm not prepared to place a section 112 suppression order on anything said in the opening.

MR PETROULIAS: Well, in that case it would be pointless, wouldn't it?

THE COMMISSIONER: No, it won't be.

MR PETROULIAS: Because if it's already published, then it would be pointless.

40 THE COMMISSIONER: Yes, that's right. All right. Yes, now, Mr - - -

MR CHEN: Can I raise one matter?

THE COMMISSIONER: Yes.

MR CHEN: I am told that in the public brief there may be one name in an email, the name of [REDACTED] That may be, therefore, a name that Mr Petroulias may wish to make a further application in relation to.

THE COMMISSIONER: All right. Well, that's what I envisage. So in respect of the name you just put on the record, I make an order under section 112 that that name is not to be published or identified until further order of the Commission. And we'll deal with it as it arises.

10 **I MAKE A SUPPRESSION ORDER UNDER SECTION 112 IN RESPECT OF THE NAME JUST PUT ON THE RECORD. THAT NAME IS NOT TO BE PUBLISHED OR IDENTIFIED UNTIL FURTHER ORDER OF THE COMMISSION.**

MR CHEN: Thank you, Commissioner.

THE COMMISSIONER: Now, Mr Chen, while you're on your feet, is there a requirement for a suppression order under section 112 in relation to email addresses and the like?

20 MR CHEN: There is, Commissioner. Can I propose a form?

THE COMMISSIONER: I do have a formal order.

MR CHEN: Thank you, Commissioner.

30 THE COMMISSIONER: Pursuant to section 112 of the ICAC Act, a suppression order is made protecting against any dissemination of any private email addresses, private addresses or phone numbers contained in each of the exhibits to be uploaded onto and published on the Commission's website. I make that order subject to any further order of the Commission.

40 **PURSUANT TO SECTION 112 OF THE ICAC ACT, A SUPPRESSION ORDER IS MADE PROTECTING AGAINST ANY DISSEMINATION OF ANY PRIVATE EMAIL ADDRESSES, PRIVATE ADDRESSES OR PHONE NUMBERS CONTAINED IN EACH OF THE EXHIBITS TO BE UPLOADED ONTO AND PUBLISHED ON THE COMMISSION'S WEBSITE. I MAKE THAT ORDER SUBJECT TO ANY FURTHER ORDER OF THE COMMISSION.**

MR CHEN: Thank you, Commissioner.

THE COMMISSIONER: Yes. Anything else?

MR CHEN: Yes, Commissioner. Could I tender a USB stick which contains volumes 1 to 18 of the public brief – which has already been uploaded onto the Commission's website, Commissioner – as well as two

folders described as material produced by the administrator, folders 1 and 2, which again has been uploaded onto the Commission's website, restricted website.

THE COMMISSIONER: So there is two separate tenders. Volumes 1 to 18 and then the two folders of material that you referred to.

MR CHEN: That's so, Commissioner.

10 THE COMMISSIONER: The USB stick that's tendered containing volumes 1 to 18 of the public brief and two folders of material produced by the administrator will all be admitted and marked as one exhibit, Exhibit 42.

#EXH-042 – PUBLIC INQUIRY BRIEF (VOLUMES 1-18 & MATERIAL PRODUCED BY ADMINISTRATORS FOLDERS 1 & 2)

20 THE COMMISSIONER: Mr Chen, the numbering sequence which requires Exhibit 42 to be give is caught up with the Commission's identification process. I don't need to explain it I don't think. I just want to clarify and confirm it's not an anomaly Exhibit 42.

MR CHEN: Thank you., Commissioner. Thank you.

THE COMMISSIONER: Anything else?

MR CHEN: No.

30 THE COMMISSIONER: Are you ready to proceed?

MR CHEN: I am, Commissioner.

THE COMMISSIONER: All right. Well, we might start and at least go through till 1 o'clock.

MR CHEN: Yes, Commissioner.

THE COMMISSIONER: I'll adjourn till 2 o'clock.

40

MR CHEN: Commissioner, I call Terrence Lawler.

THE COMMISSIONER: Mr Lawler, do you take an oath or an affirmation?

MR LAWLER: Oath, Commissioner.

THE COMMISSIONER: Thank you. I'll just have my Associate then administer the oath. If you could stand, thank you.

THE COMMISSIONER: Yes, Mr Chen.

MR CHEN: Would you tell the Commission your full name.---Terence Henry Lawler.

10 Are you a chartered accountant by profession?---That's correct.

Commissioner, could the witness be shown the two folders of material produced by the administrator, in fact folder 1 at this stage.

THE COMMISSIONER: Yes. Volume 1.

MR CHEN: Mr Lawler, would you be good enough just to open up that folder which is folder 1A and turn to page 1.---Yeah.

20 Is that a copy of your CV?---That's correct.

Mr Lawler, are you currently the administrator of the Awabakal Local Aboriginal Land Council?---Yes, I am.

Were you appointed to that position on 13 October, 2016 by the Minister for Aboriginal Affairs?---That's correct.

On 11 April, 2017 was your appointment extended until 12 April, 2017? ---That's correct.

30 And have you applied to have that appointment extended?---Yes, I have.

And when did you apply for that extension and has it been successful?---I applied in conjunction with my monthly report, my last monthly report, and it has not been confirmed yet by the Minister or New South Wales Aboriginal Land Council that it has been extended.

Do you expect it to be extended or - - -?---Yes, I do.

40 And for how long?---Probably – well, I suggested another six months.

Now, prior to you being appointed to the role of administrator of the Land Council, had you undertaken the task of an administrator under the Aboriginal Land Rights Act at other land councils?---Yes, I had.

Could you tell the Commission what other appointments you've had in the past?---There was (not transcribable) Local Aboriginal Land Council, Worimi Local Aboriginal Land Council, Purfleet Local Aboriginal Land Council and Tharawal Local Aboriginal Land Council.

Now, can I just ask you some questions, Mr Lawler, just about the background leading to your appointment as the administrator. It's the case is it not, Mr Lawler, that an investigation report was undertaken by – I'm sorry, could you just sit back from the microphone please, Mr Lawler. I was just given a message.---My apologies. Sorry.

10 I'll start again. Mr Lawler, an investigation report into the Land Council was initiated by the Minister and prepared by a gentleman called Kelvin Kenney. Do you recall that?---Yes, I do.

And he prepared a report dated 26 May, 2016?---That's correct.

And part of the terms of your employment required you to have regard to the content of that report did it not?---That's correct.

And obviously you've seen that report in your role as the administrator?
---Yes, I have.

20 The report highlighted issues for the Land Council around governance, financial and operational matters, amongst others, did it not?---That's correct.

And the minister indicated when Mr Kenny submitted his report to her that she was considering the appointment of an administrator, and indeed sent letters to the Land Council and the board members to that effect. Is that right?---That's what I understand, yes.

30 And shortly after those letters were circulated, is it the case that the Land Council itself commenced proceedings in the Land and Environment Court seeking to resist the appointment of an administrator?---That's correct.

Those proceedings were discontinued, were they not?---Yes, that's correct.

And ultimately you were appointed by the minister to undertake that role shortly after those proceedings were discontinued?---That's correct.

Now, would you please turn to folder 1A at page 4.---Yes.

40 And you recognise that as the letter that you received with your appointment by the minister?---That's correct.

And if you turn please to page 5, all the way to page 7, you'll see that's your instrument of appointment?---That's correct.

Now, I just want to draw your attention to some particular paragraphs if I can, Mr Lawler, about that appointment. If you turn or have a look, please,

at page 5, in particular clauses 3.2. That sets out some general matters which require you to attend to obviously in subparagraphs A through to D? ---Yes.

And if you turn, please, to page 6 you'll see in subparagraph E that you were charged with a role pursuant to that instrument to examine and establish the authority or otherwise of the board to enter into a number of agreements. Do you see that?---Yes.

- 10 And aside from steadying the financial and governance issues that presented themselves, that was one of the primary functions of you, namely to look at what are the nature of the agreements that the Land Council had entered into and the parties who were involved in those transactions?---That's correct.

Now, when you received your appointment you attended and started fulfilling your role shortly thereafter?---That's correct.

- 20 And, Mr Lawler, can you tell the Commission, please, what were the issues that presented themselves when you first arrived in terms of financial, organisational or governance matters?---They were significant and were my immediate focus with regards to the administration. They included inadequate, not up to date accounting and financial records, an external firm, Hub Advisory, had been engaged about a month prior to my appointment to try and get those records up to date and they described to me the difficulty that they had and were having with regards to the standard of the records, rental arrears for tenants were in significant arrears and well over \$100,000 and appeared to be or had not been receiving the attention that they should.

- 30 Just stopping you there, Mr Lawler. Was that in terms of the financial management but also inadequate records in relation to those financial matters?---The tenant records?

- 40 Yes.---No, the, the, the tenant management was done by a real estate firm, so therefore the records from the real estate firm were available in terms of what had been received and paid out, et cetera. Certainly there would be or appeared to be some question with regards to some of the disbursements and expenditures that had been incurred on properties as to whether they had been through appropriate process and in some instances were not, whether they were or weren't done to favour either people on the board or people associated with the board members.

Was there a Community, Land and Business Plan so far as you could ascertain?---My understanding is there was no current Community, approved Community, Land and Business plan at the time of my appointment. There was a document that you referred to in your opening address. My understanding is that that had expired prior to the date of my appointment.

What was the position in relation to creditors at this time when you first arrived?---There were significant arrears, Hub Advisory said that they had spent a lot of time trying to identify a, who were creditors and b, what were the quantum that were owed by creditors that they in fact, in many instances, from what they said, they had in fact made contact with creditors to try and clarify with the creditor what was owed and what services were outstanding. There were unpaid insurances, the bus which is a vehicle owned by Land Council it's both uninsured and unregistered. There were approximately 250 outstanding membership applications for membership of the Land Council. The Land Council had about 495 members of which, 360 approximately were in active which means, people had not attended a Land Council meeting for over six months. As I said, a very significant number of outstanding membership applications dating back to at least 2013.

Just going back Mr Lawler, if you would to the creditors and the interactions you had with Hub Advisory, are you able to assist in identifying what the value of the creditors were at that point, if it was derived?---Not off the top of my head, I wouldn't make a statement with regards to that. The 30 June Audited Financials, the numbers for creditors in that it would be a larger number than that but that would be your best source of information rather than just my memory.

What about financial reports, were they being provided to The Board?---No, not to my knowledge, no.

What kind of financial reports would you expect would be provided to The Board if it was functioning properly?---I would expect that the details or major movements or movements through the bank account each month would be reported to The Board and certainly details of major expenditures and whether you expect monthly financials if they were being externally provided, I would expect at least quarterly financial statements may be even monthly financial statements if they were able to be produced internally, but at that stage and even prior to Hub Advisory's appointment, my understanding is that they weren't produced internally.

I see. Is there a system of payment vouchers that was in use when you first arrived?---There was supposed to be.

What was the position in relation to or what were the payment vouchers used for?---Well, the payment vouchers are an approval, identification of who the service provider is, details of what service is being provided then the evidence that that service or those goods had been received., then authorised for payment and then finally signed off when actual approval for the dollars to part the Land Council were given.

What did you observe when you examined that system when you arrived?

---It was a disgrace, there were either unsigned payment vouchers, there were many payment vouchers that were signed by the Chair that none of the rest of the details on the payment vouchers in terms of evidencing, receipt of goods or whatever were there. There were sometimes more than one payment voucher for the same service so it was in disarray and is a matter that if I recall correctly, the auditors in their 30 June, 2016 report and in their 2015 report made reference to.

10 So these are all vouchers that had been submitted at least partly completed but payments had been made pursuant to them?---That's correct.

Can you sum up for The Commission, how would you describe the affairs of the Land Council at the time you'd arrived?---I used the term in the report so I've done as dysfunctional.

Is that a convenient time Commissioner?

20 THE COMMISSIONER: Yes. Mr Lawler, you may step down. We will resume at 2 o'clock.

LUNCHEON ADJOURNMENT

[1.00PM]