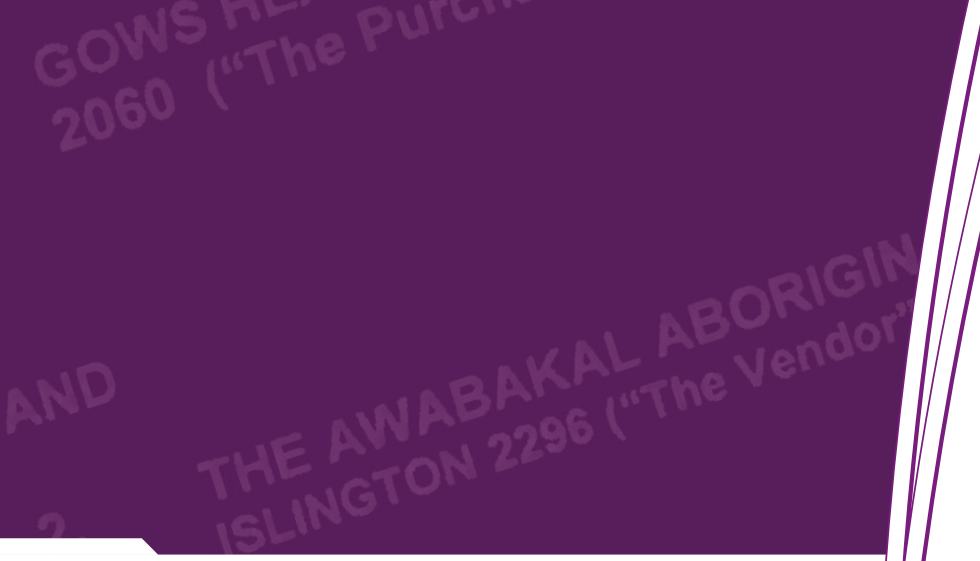


THIS DEED OF HEADS OF AGREEMENT dated 15 DECEMBER 2014

PARTIES:

1 **GOWS HEAT PTY LTD of Level 5, 44 Miller Street, North Sydney NSW 2060 ("The Purchaser")**

OF THE FIRST PART

AND

2. **THE AWABAKAL ABORIGINAL LAND COUNCIL of 127 Maitland Road ISLINGTON 2296 ("The Vendor")**

OF THE SECOND PART

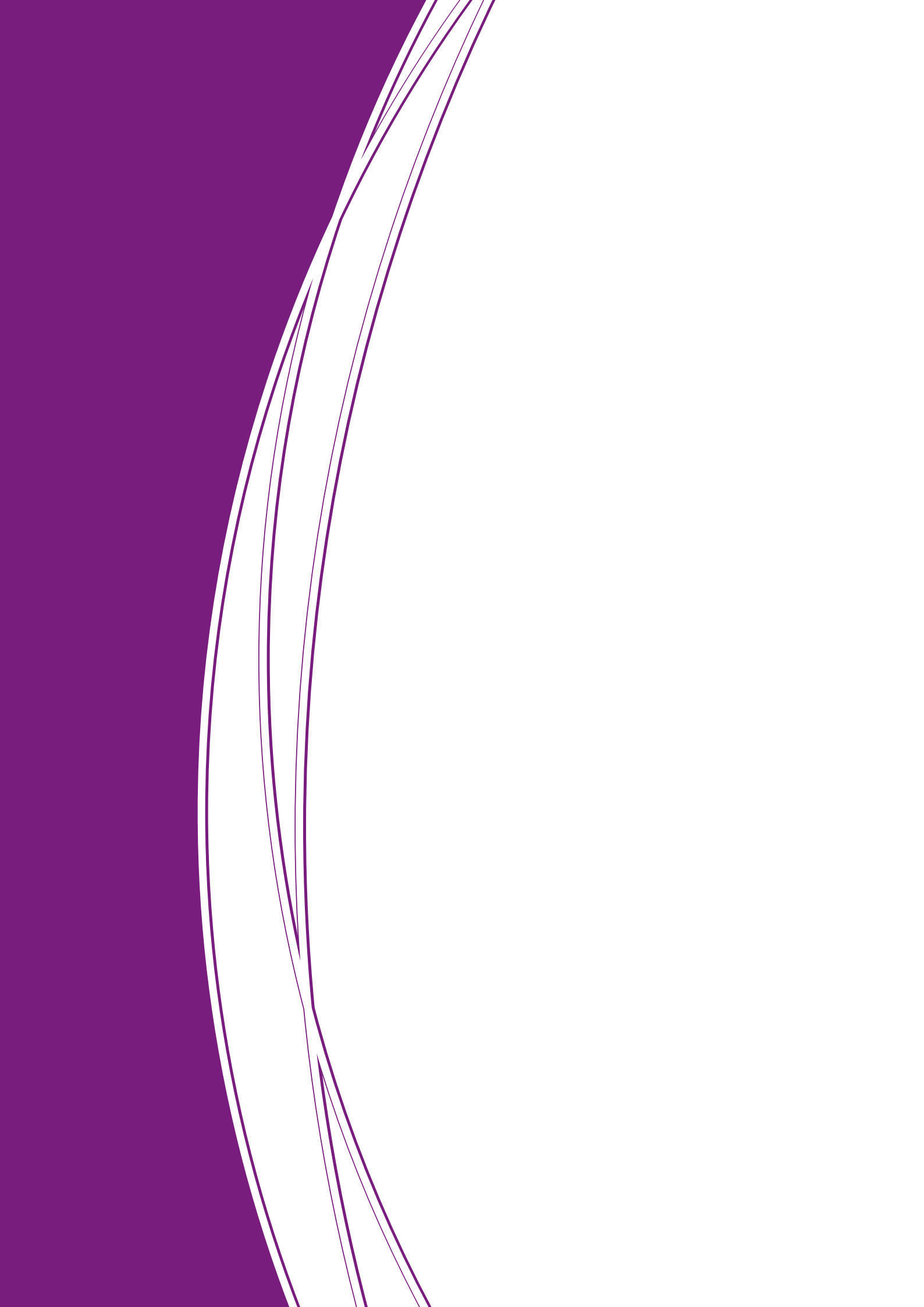
INVESTIGATION INTO DEALINGS INVOLVING AWABAKAL LOCAL ABORIGINAL LAND COUNCIL LAND

I·C·A·C

INDEPENDENT COMMISSION AGAINST CORRUPTION

NEW SOUTH WALES

ICAC REPORT
OCTOBER 2022



ICAC

INDEPENDENT COMMISSION AGAINST CORRUPTION

NEW SOUTH WALES

INVESTIGATION INTO DEALINGS INVOLVING AWABAKAL LOCAL ABORIGINAL LAND COUNCIL LAND

ICAC REPORT

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This publication is available on the Commission's website www.icac.nsw.gov.au and is available in other formats for the vision-impaired upon request. Please advise of format needed, for example large print or as an ASCII file.

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AGAINST CORRUPTION

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The Hon Jonathan O'Dea MP
Speaker
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Mr President
Mr Speaker

In accordance with s 74 of the *Independent Commission Against Corruption Act 1988* (the ICAC Act) I am pleased to present the Commission's report on its investigation into dealings involving Awabakal Local Aboriginal Land Council land.

The former Chief Commissioner, the Hon Peter Hall QC, presided at the public inquiry held in aid of this investigation and was responsible for preparation of the report.

I draw your attention to the recommendation that the report be made public forthwith pursuant to s 78(2) of the *Independent Commission Against Corruption Act 1988*.

Yours sincerely

The Hon John Hatzistergos AM
Chief Commissioner

Contents

Chapter 1: Summary of investigation and results

This investigation by the NSW Independent Commission Against Corruption ("the Commission") was concerned with whether, from 2014 to 2016:

- any public official, being an Awabakal Local Aboriginal Land Council (ALALC) board member, acted dishonestly and/or in breach of their duty as a board member in relation to a scheme involving proposals for the sale and development of properties ("the Sale and Development Scheme") owned by the ALALC
- any ALALC board member acted dishonestly and/or in breach of their duty as a board member in purporting to retain, or retaining, Knightsbridge North Lawyers or anyone else to act for the ALALC in respect of the Sale and Development Scheme
- any ALALC board member: acted dishonestly and/or in breach of their duty as a board member by participating in, or aiding or assisting any person in relation to, the Sale and Development Scheme including dealings with Sunshine Property Investment Group Pty Ltd, Sunshine Warners Bay Pty Ltd, Solstice Property Corporation Pty Ltd and Advantage Property Experts Syndications Pty Ltd and/or Advantage Property Syndications Ltd; and whether they received any financial or other benefits as a reward or payment for their involvement in, or for their assistance or services rendered in relation to, the Sale and Development Scheme or any connected matter
- any person or persons encouraged or induced any ALALC board member to dishonestly or partially exercise any of their official functions in respect of the Sale and Development Scheme and any other ALALC property, or otherwise engaged in conduct connected with corrupt conduct within the meaning of the *Independent Commission Against Corruption Act 1988* ("the ICAC Act").

The investigation focused on the activities of the following persons:

- Nicholas Petroulias
- Despina Bakis, a solicitor practising as Knightsbridge North Lawyers (KNL)
- Debbie Dates, chairperson of the ALALC board
- Richard Green, deputy chairperson of the ALALC board.

The Commission found that Mr Green, Ms Dates, Mr Petroulias and Ms Bakis knowingly participated in a dishonest scheme that involved Mr Green and Ms Dates acting contrary to their public official duties and involved the purported sale and/or development of properties owned by the ALALC as a means to wrongfully confer a benefit on Mr Green, Mr Petroulias and Ms Bakis.

For this scheme to be effective, it was necessary to create the illusion that Mr Petroulias had rights with respect to certain ALALC lands that could be on-sold to third parties. To do this would require the cooperation of one or more ALALC board members to enter into agreements purportedly on behalf of the ALALC and purportedly providing Mr Petroulias with rights over ALALC property. This is where Mr Green and Ms Dates came in. KNL was engaged as the solicitors for the ALALC in order to cover the relevant contractual arrangements with a veneer of respectability, and to provide assurance to those third parties approached to deal with the property and other ALALC board members and the ALALC community in general. Ms Bakis was not only KNL, but was also in a domestic relationship with Mr Petroulias.

There were a number of salient aspects to this scheme.

First was the establishment, by Mr Petroulias, of a company, Gows Heat Pty Ltd (Gows), which was used by him, acting with Mr Green, to enter into heads of agreements with the ALALC. These agreements were a

sham, falsely purporting to give Gows certain rights over ALALC properties which could be on-sold by Gows to a third party.

The next step in the scheme involved finding a third party, being Sunshine Property Investment Group Pty Ltd (Sunshine), to which the purported rights could be on-sold. The sole director and shareholder of Sunshine was Tony Zong. On the understanding that Gows had been granted an option by the ALALC that allowed it to purchase certain properties, and believing that the ALALC board had approved such a transaction, Sunshine paid over $1 million to acquire the purported rights of Gows.

The third step involved having the ALALC board reject the Sunshine proposal and instead agree to proceed with new agreements involving another company, Solstice Property Corporation Pty Ltd (Solstice), under which Gows would secure a significant financial windfall if the transaction with Solstice proceeded. After obtaining legal advice that there were legislative restrictions on the sale of Aboriginal land, requiring the approval of any sale by ALALC members and the NSW Aboriginal Land Council (NSWALC), Solstice sought to make any transaction subject to NSWALC approval, whereby the ALALC board accepted a motion drafted by Ms Bakis that the proposed transaction with Solstice be "rejected". Solstice did not proceed with the proposed transaction.

The fourth step involved a New Zealand company established by Mr Petroulias, Advantage Property Experts Syndications Ltd (Advantage NZ), entering into agreements with the ALALC whereby Advantage NZ was granted an option to purchase certain ALALC properties and ALALC properties were charged in favour of Advantage NZ. Although this transaction differed from those involving Sunshine and Solstice (not resting on the heads of agreement) the object was the same, namely, to financially benefit each of Mr Petroulias, Ms Bakis and Mr Green.

The Commission found that each of Mr Petroulias, Mr Green, and Ms Bakis benefited financially from their involvement in the scheme. In particular, Mr Petroulias received just over $1,023,000 which was used for his own benefit and the benefit of Mr Green and Ms Bakis. Mr Green received direct financial benefits of about $159,000 and indirect financial benefits of about $85,000 – in total over $244,000. Ms Bakis derived a financial benefit of about $179,000.

Corrupt conduct findings

Findings of corrupt conduct are made against Mr Green, Ms Dates, Mr Petroulias and Ms Bakis (see chapter 14 of this report).

The Commission found that Mr Green engaged in corrupt conduct by knowingly participating in a dishonest scheme with Mr Petroulias, Ms Dates and Ms Bakis that involved him acting contrary to his public official duties as an ALALC board member and deputy chairperson in relation to the purported sale and/or development of properties owned by the ALALC as a means to wrongfully confer a benefit on himself and others.

The Commission found that Ms Dates engaged in corrupt conduct by knowingly exercising her public official functions as an ALALC board member and chairperson of the ALALC board partially in connection with the Sunshine and Advantage transactions to favour the interests of Mr Petroulias, Mr Green and Ms Bakis and to the detriment of the ALALC.

The Commission found that Mr Petroulias engaged in corrupt conduct by knowingly instigating and participating in a dishonest scheme with Mr Green, Ms Dates and Ms Bakis that involved Mr Green and Ms Dates acting contrary to their public official duties and involving the purported sale and/or development of properties owned by the ALALC as a means to wrongfully confer a benefit on himself, Mr Green and Ms Bakis.

The Commission found that Ms Bakis engaged in corrupt conduct by knowingly participating in a dishonest scheme with Mr Petroulias, Mr Green and Ms Dates that involved Mr Green and Ms Dates acting contrary to their public official duties and involved the purported sale and/or development of properties owned by the ALALC as a means to wrongfully confer a benefit on herself, Mr Petroulias and Mr Green.

Section 74A(2) statements

Statements are made in this report pursuant to s 74A(2) of the ICAC Act that the Commission is of the opinion that consideration should be given to obtaining the advice of the NSW Director of Public Prosecutions (DPP) with respect to the prosecutions of:

- Mr Green for offences of fraud pursuant to s 192E of the *Crimes Act 1900* ("the Crimes Act"), of corruptly giving commissions pursuant to s 249B of the Crimes Act, the common law offence of misconduct in public office and the offence of conspiracy to defraud

- Mr Petroulias for offences of fraud pursuant to s 192E of the Crimes Act, of corruptly receiving commissions pursuant to s 249B of the Crimes Act, the common law offence of aiding and abetting misconduct in public office and the offence of conspiracy to defraud
- Ms Bakis for offences of fraud pursuant to s 192E of the Crimes Act, of aiding and abetting the receipt or giving of corrupt commissions pursuant to s 249F of the Crimes Act, the common law offence of aiding and abetting misconduct in public office and the offence of conspiracy to defraud.

For the reasons set out in chapter 14, no statement is made concerning consideration being given to obtaining the advice of the DPP with respect to the prosecution of Ms Dates for any criminal offence or that consideration should be given to the taking of disciplinary action against her.

Corruption prevention

Chapter 15 of this report sets out the Commission's review of the corruption risks identified during the investigation. The Commission makes 15 recommendations as follows.

Recommendation 1

That the Awabakal Local Aboriginal Land Council (ALALC) includes the following provisions about board meetings in its Model Rules:

- The ALALC provides reasonable notice for all board meetings. This requires at least seven (7) days clear notice to all board members in the method approved by the board.
- If the board wishes to call an extraordinary meeting at shorter notice, a two thirds majority of board members must agree to the proposed date and time for the meeting, and the ALALC must maintain a record of how and when it contacted, or attempted to contact, board members.

Recommendation 2

That the Minister for Aboriginal Affairs reviews the funding of the Office of the Registrar of the *Aboriginal Land Rights Act 1983* ("the ALR Act) to ensure:

- that the registrar has the capacity to undertake the full range of investigative and enforcement options available in relation to misconduct by board members and LALC staff
- that the registrar has sufficient resources to fulfil its role in building capacity in LALCs.

Recommendation 3

That the Minister for Aboriginal Affairs, the NSWALC, and the registrar of the ALR Act discuss and implement legislative or policy measures that protect chief executive officers (CEOs) from arbitrary dismissal or without due process. Among other things, this discussion should consider requiring councils to provide reasons for dismissing a CEO and creating powers for the registrar or other entity to, in certain circumstances, approve or otherwise intervene in the proposed dismissal of a CEO.

Recommendation 4

That the ALALC devises an outline of the skill mix required of board members, including an ability to understand financial reports and contracts.

Recommendation 5

That persons interested in standing, or intending to stand, for a position on the board of the ALALC be required to attend an information meeting prior to board elections where:

a. roles, legal duties and responsibilities of a board member are explained at the information meeting
b. examples of matters that can arise, and the legislation, policies and procedures board members must follow when determining a course of action, are discussed.

Recommendation 6

That the ALALC prepares a checklist of legal duties and responsibilities which can guide board members during meetings. The checklist can be sourced from the ALR Act, the Regulation, the Mandatory Governance Training manuals, and ALALC internal policies and procedures.

Recommendation 7

That the ALALC implements an electronic document and records management system with version and permission controls, allowing it to manage and monitor the creation, alteration and deletion of records.

Recommendation 8

That the typed minutes of ALALC meetings:

- accurately reflect the discussions held, including board members' views for or against proposals and motions
- are saved to the electronic document and records management system.

Recommendation 9

That the ALALC audio-records all board meetings and saves the recordings into its electronic document and records management system.

Recommendation 10

That the ALALC keeps a register of contracts for all transactions, including commercial, rental and employment contracts, and the engagement of consultants. This register should:

- be saved into the ALALC's electronic records management system
- have version and permission controls to enable the ALALC to determine who has accessed or made changes to it
- be updated as new contracts are executed
- be maintained at the ALALC, and made available to the ALALC's legal advisor
- be viewed and verified by the Eastern Zone office periodically during the Risk Assessment System process
- archive contracts that are no longer operational.

Recommendation 11

That the ALALC, in conjunction with the NSWALC, develops a due diligence checklist and procedure that is followed when developers and other interested parties propose a land dealing. Among other things, the checklist may require parties with an interest in ALALC land to:

- put a brief outline of their proposal in writing
- identify all relevant personnel
- include information such as:
  - a company name
  - an Australian Business Number or Australian Company Number
  - licences and qualifications held by the proponents
  - relevant industry experience
- acquaint themselves with the land dealing provisions in the ALR Act.

Recommendation 12

That the ALALC considers conducting open-source checks on websites including the Australian Business Register, Australian Securities and Investments Commission and NSW Office of Fair Trading to verify information provided by parties involved in land dealings.

Recommendation 13

That the NSWALC and the registrar consider whether the corruption prevention recommendations made in this report should be applied to other LALCs and whether the NSWALC and the registrar should collaborate to develop an education program that addresses the findings and recommendations in this report.

Recommendation 14

That the NSWALC extends the questions concerning "Property" in the Risk Assessment System to include "Is the LALC in discussion(s) with any third parties about potential land dealings in which any agreement(s) would be conditional on the LALC obtaining necessary approval under the ALR Act?"

Recommendation 15

That the ALR Act be amended to require LALCs to notify the NSWALC, in writing, when specific proposals of land dealings, that would require approvals under s 42G of the ALR Act, come before the board of the LALC for its consideration. The minutes of the meetings at which the land dealing proposal is discussed will record who is responsible for notifying the NSWALC of the proposal.

These recommendations are made pursuant to s 13(3)(b) of the ICAC Act and, as required by s 111E of the ICAC Act, will be furnished to the ALALC, the NSWALC and the Minister for Aboriginal Affairs.

As required by s 111E(2) of the ICAC Act, the ALALC and the NSWALC must inform the Commission in writing within three months (or such longer period as the Commission may agree to in writing) after receiving the recommendations, whether they propose to implement any plan of action in response to the recommendations affecting them and, if so, details of their proposed plan of action.

In the event the ALALC and/or the NSWALC prepare a plan of action, they are required to provide a written report to the Commission of their progress in implementing the plan 12 months after informing the Commission of the plan. If a plan has not been fully implemented by then, a further written report must be provided 12 months after the first report. The Commission will publish the responses to its recommendations, any plan of action and progress reports on implementation on the Commission's website at www.icac.nsw.gov.au.

Recommendation that this report be made public

Pursuant to s 78(2) of the ICAC Act, the Commission recommends that this report be made public forthwith. This recommendation allows either Presiding Officer of a House of Parliament to make the report public, whether or not Parliament is in session.

Chapter 2: Background

This chapter sets out some background information on how the investigation came about, why the NSW Independent Commission Against Corruption ("the Commission") decided to conduct a public inquiry, and the conduct of the public inquiry.

How this investigation came about

By letter dated 28 April 2017, the solicitors retained by then Awabakal Local Aboriginal Land Council (ALALC) administrator, Terry Lawler, made a report to the Commission on Mr Lawler's behalf pursuant to s 11 of the *Independent Commission Against Corruption Act 1988* ("the ICAC Act"). Section 11 of the ICAC Act requires the principal officer of a public authority, such as Mr Lawler, to report to the Commission any matter that the person suspects, on reasonable grounds, concerns, or may concern, corrupt conduct. The report concerned possible corruption by two former members of the ALALC board, Debbie Dates and Richard Green, as well as others.

The conduct the subject of the report concerned allegedly unlawful and improper land dealings, using ALALC assets to obtain money by deception, and other deliberately deceptive conduct in relation to ALALC assets. Allegations were made concerning the purported grant of an option to purchase land held by the ALALC to a company called Gows Heat Pty Ltd (Gows) and the subsequent sale of this option to companies called Sunshine Property Investment Group Pty Ltd (Sunshine) and Sunshine Warners Bay Pty Ltd (Sunshine Warners Bay), referred to collectively as "the Sunshine Entities". Further allegations were made regarding the payment by these companies of a large amount of funds into the trust account of the ALALC's previous law firm, Knightsbridge North Lawyers (KNL), apparently for the benefit of the ALALC and Gows, in consideration for the option to acquire ALALC land, and the subsequent disappearance of those funds. It was reported that while Mr Green and Ms Dates appeared to have knowledge of or involvement in these dealings, the remaining ALALC board members had no knowledge of the purported land dealings with Gows and the Sunshine companies. Further, it was reported that Steven Slee, who had been the chief executive officer (CEO) of the ALALC until October 2015, had never heard of Gows, or KNL, despite the agreement purporting to grant Gows the option over ALALC land having been drafted by KNL and entered into by the ALALC on 15 December 2014.

On 31 May 2017, after assessing the information provided on behalf of Mr Lawler, the Commission determined that it should conduct a preliminary investigation. The preliminary investigation suggested that serious corrupt conduct may have occurred and, accordingly, the matter was escalated to a full investigation on 30 September 2017.

Why the Commission investigated

One of the Commission's principal functions, as specified in s 13(1)(a) of the ICAC Act, is to investigate any allegation or complaint that, or any circumstances which in the Commission's opinion imply that:

> *(i) corrupt conduct, or*
>
> *(ii) conduct liable to allow, encourage or cause the occurrence of corrupt conduct, or*
>
> *(iii) conduct connected with corrupt conduct,*
>
> *may have occurred, may be occurring or may be about to occur.*

The role of the Commission is explained in more detail in Appendix 1. Appendix 2 sets out the approach taken by the Commission in determining whether corrupt conduct has occurred.

The Commission has jurisdiction to investigate allegations concerning the conduct of public officials that constitutes or involves the dishonest or partial exercise of their official functions.

The ALALC is a public authority for the purposes of the ICAC Act pursuant to s 248 of the *Aboriginal Land Rights Act 1983* ("the ALR Act"). Ms Dates and Mr Green were board members of the ALALC and respectively held the positions of chairperson and deputy chairperson of the ALALC board, positions that carried duties and functions under the ALR Act of a public nature. They were, for the purposes of s 3 of the ICAC Act, public officials.

The Commission also has jurisdiction to investigate allegations concerning any conduct of any person, whether or not a public official, that adversely affects, or could adversely affect, either directly or indirectly, the honest or impartial exercise of public official functions by any public official, any group or body of public officials or any public authority.

The matters brought to the Commission's attention were serious and, if established, capable of constituting corrupt conduct within the meaning of the ICAC Act.

In deciding to investigate, the Commission took into account a number of matters, including the seriousness of the allegations, and the fact that a number of matters concerning the ALALC had previously been reported to the Commission, both by community members and also under s 11 of the ICAC Act, indicating that there may be systemic issues relating to the governance of the ALALC.

The Commission decided that it was in the public interest to conduct an investigation to establish whether corrupt conduct had occurred, the identity of those involved and whether there were any corruption prevention issues that needed to be addressed.

Conduct of the investigation

During the course of the investigation, the Commission:

- obtained documents from various sources by issuing 202 notices under s 22 of the ICAC Act requiring the production of documents
- obtained information by issuing two notices under s 21 of the ICAC Act, which requires a public official to provide a statement of information
- interviewed and/or took statements from numerous potential witnesses
- conducted 34 compulsory examinations.

The public inquiry

After taking into account each of the matters set out in s 31(2) of the ICAC Act, the Commission determined that it was in the public interest to hold a public inquiry to further its investigation. In making that determination, the Commission had regard to the following considerations:

- the conduct was serious, as it was alleged to have involved:
  - multiple attempts to sell significant land holdings of the ALALC
  - the falsification of ALALC records
  - the improper creation of ALALC records
  - unlawful land dealings involving ALALC property
  - the purported entry by certain ALALC board members into unlawful agreements
- the members of local Aboriginal land councils (LALCs) are entitled to possess a legitimate expectation that those entrusted to direct and control their affairs (on behalf of all Aboriginal

persons within the respective LALC areas) do so in compliance with the ALR Act and that the opportunity for corruption and misuse and mismanagement of ALALC land is limited

- the potential vulnerability of LALCs, which are autonomously run, to corruption
- a public inquiry would serve to educate the public and public authorities about the risk of corruption where inadequate monitoring and funding are in place to ensure appropriate governance within LALCs and compliance with the ALR Act
- a public inquiry would serve to educate the public and public authorities about the consequences of corruption.

The Chief Commissioner, the Hon Peter Hall QC, presided at the public inquiry. Nicholas Chen SC and Juliet Curtin were Counsel Assisting the Commission. The public inquiry commenced on 27 March 2018, initially for three weeks, followed by a number of further hearing days held throughout 2018 and 2019. The public inquiry sat for 53 days in total.

On 5 March 2021, the Chief Commissioner ruled that the public inquiry was concluded. In total, 38 witnesses appeared before the Commission to give oral evidence at the public inquiry and a large amount of documentary material was tendered.

The reasons for the delay in completing the public inquiry are set out below.

At the conclusion of the public inquiry, Counsel Assisting prepared submissions setting out the evidence and identifying findings and recommendations that the Commission could make based on that evidence. These submissions were provided to relevant parties on 14 May 2021. The Commission's Corruption Prevention Division also prepared submissions, which were provided to relevant parties on 14 July 2021. The last of the submissions in response to the submissions of Counsel Assisting were received on 7 August 2021. Submissions in response to the corruption prevention submissions were received from the ALALC on 8 October 2021.

All submissions were considered in the preparation of this report.

Where requested, as required by s 79A of the ICAC Act, the Commission has included in this report a summary of the substance of the response of each relevant affected person disputing adverse findings contended for in the submissions of Counsel Assisting the Commission where such adverse findings have been made by the Commission.

Principal persons of interest

The principal persons of interest in the investigation were two ALALC board members, Ms Dates and Mr Green, and two individuals who, prior to the events the subject of the investigation, had no connection to or dealings with the ALALC: Nicholas Petroulias and Despina Bakis.

Ms Dates is an Indigenous woman and traditional owner of Awabakal land through her father. She had been a member of the ALALC for more than 30 years and had served as a member of the ALALC board from 2010. Ms Dates was appointed as chairperson of the ALALC board in September 2013. Aside from a brief period of suspension from the board, between 2 November and 28 December 2015, Ms Dates continued to hold the role of chairperson until Mr Lawler was appointed as the administrator of the ALALC on 13 October 2016. Ms Dates was introduced to Mr Petroulias and Ms Bakis by Mr Green.

Mr Green is of Aboriginal descent and a member of the ALALC. He was appointed as deputy chairperson of the ALALC board in September 2013 and, as with Ms Dates, held this role until the appointment of Mr Lawler as administrator on 13 October 2016. He first met Mr Petroulias in around August 2014.

Mr Petroulias was not a member of the ALALC board and is not an Indigenous person. Prior to the events the subject of this investigation he had no involvement with, or connection to, the ALALC. Mr Petroulias was not employed during the relevant periods of time, but he had previously been admitted to practise as a solicitor in Victoria. In 2008 he was convicted of two serious dishonesty offences while employed by the Australian Taxation Office (ATO), for which he served a term of imprisonment. In October 2014, he was made bankrupt and he remained an undischarged bankrupt for the entire period of his dealings with the ALALC.

Ms Bakis is a solicitor and practised as a sole practitioner under the name Knightsbridge North Lawyers. She was not a member of the ALALC board and is not an Indigenous person. Prior to the events the subject of this investigation, she had no involvement with, or connection to, the ALALC, and no prior experience with undertaking land transactions on behalf of other LALCs. Her introduction to Mr Green, Ms Dates, and subsequent involvement with the ALALC, came through Mr Petroulias. Ms Bakis had known Mr Petroulias for nearly 20 years. At the time of the events the subject of this investigation, the two were in a domestic relationship together.

Delay in the completion of the public inquiry

The progress of the public inquiry was impeded by significant delay, having been adjourned a number of times, with the majority of those adjournments being made on medical grounds for reasons relating to Mr Petroulias' health.

Despite the large number of adjournments, the Commission ultimately received oral evidence from 38 different witnesses over the course of the public inquiry. Further, by November 2019, the only witness who was scheduled to appear to give oral evidence who had not yet done so was Mr Petroulias. While Mr Petroulias had not by November 2019 given oral evidence before the Commission, he had produced a written narrative statement, following a successful application (made on medical grounds by Mr Petroulias' then solicitor in October 2019) that he be permitted to give his evidence in writing.

Before attempting to reconvene the hearing of the public inquiry in 2020, so that various outstanding matters could be attended to and the public inquiry concluded, the Commission sought an expert opinion from Dr Jonathon Adams, a forensic psychiatrist. The Commission asked Dr Adams to address Mr Petroulias' competency to give evidence and capacity to meaningfully participate at any resumed hearing. Dr Adams' report was provided to the Commission in June 2020. The Commission provided a copy of the report to Mr Petroulias, inviting his comments about the matters raised by Dr Adams, but Mr Petroulias declined to comment. The Commission then formed the preliminary view that the Commission should not proceed to take any further oral evidence in the public inquiry, but first invited written submissions from interested parties with respect to its preliminary view. Only one interested party availed themselves of the opportunity provided to make written submissions to the Commission on this issue, being Ms Bakis.

On the basis of the opinions expressed by Dr Adams in his June 2020 report, and taking into account the adverse impact that the significant delays and recurring adjournments had wrought upon the work and programming of the Commission, as well as the cost and inconvenience incurred by other interested parties as a result of those delays and adjournments, the Chief Commissioner ruled, in early 2021, that the public hearings of the Commission for the taking of evidence be concluded, and that the public inquiry be brought to a close.

Affording procedural fairness to affected persons

Prior to determining that the public inquiry should be brought to a close, the Commission gave consideration to the fact that concluding the public inquiry without first receiving oral evidence from Mr Petroulias would carry potential implications for those affected persons who may have wished to apply to cross-examine Mr Petroulias. It was for this reason that interested parties were invited to provide any written submissions they may wish to make with respect to the Commission's proposal that it not proceed to take any further oral evidence.

As indicated above, Ms Bakis was the only interested party to make written submissions to the Commission on its proposal to bring the public inquiry to a close. Those written submissions were considered by the Chief Commissioner before ruling that the public hearings of the Commission for the taking of evidence be concluded. Also taken into account was the fact that each of the principal persons of interest (including Mr Petroulias, through his written narrative statement) had been provided with an opportunity to put forward their own version of events to the Commission in the evidence they gave during the public inquiry. It was the Commission's view that no substantial unfairness would be incurred by any interested party in concluding the public inquiry without first receiving oral evidence from Mr Petroulias.

The participation of Mr Petroulias

Mr Petroulias appeared at the first two tranches of the public inquiry held in March and April 2018, and May 2018. Initially, Mr Petroulias represented himself. However, from 11 April 2018, until the first tranche of hearings adjourned on 14 April 2018, Paul Menzies QC appeared on Mr Petroulias' behalf. Mr Menzies continued to represent Mr Petroulias when the public inquiry reconvened on the morning of 14 May 2018, but withdrew his appearance later that day, following which Mr Petroulias again appeared for himself.

The public inquiry adjourned on 17 May 2018 and resumed in July 2018. On 21 June 2018, Mr Petroulias was arrested and remanded in custody in connection with matters not related to the investigation. Although arrangements were made by the Commission to allow Mr Petroulias to be brought from custody to attend the public inquiry scheduled for July 2018, he elected not to take advantage of those arrangements, and so the Chief Commissioner directed that Mr Petroulias was not required to attend. Copies of the transcript and exhibits from the July 2018 public inquiry were provided by the Commission to Mr Petroulias.

Mr Petroulias appeared at the next tranche of the public inquiry held from 6 August to 17 August 2018. The inquiry was then adjourned to 17 September 2018, for what was intended to be the final two weeks of the inquiry.

On 17 September 2018, the public inquiry reconvened. On that day, Mr Petroulias, who was then represented by solicitor Aloysius Robinson, made an application that the proceedings be adjourned for reasons relating to his ill health. The Chief Commissioner directed that the Commission would continue to receive the evidence of the witnesses who had been scheduled to appear before it, but that Mr Petroulias would not be required to give evidence. He also would not be required to make an application to cross-examine any witnesses scheduled to appear before the Commission or undertake any such cross-examination. Instead, any cross-examination that Mr Petroulias may have wished to undertake was deferred, along with his oral evidence, until November 2018. On 21 September 2018, the public inquiry was stood over until 19 November 2018, for a further two weeks, with a view to completing the taking of evidence during that period.

Ultimately, the scheduled hearings for November 2018 did not proceed, and the Commission did not again reconvene to take oral evidence until 6 May 2019. Prior to the public inquiry resuming in May 2019, Mr Petroulias successfully made an application on medical grounds that his evidence be taken in private. On 29 April 2019, the Commission made an order to that effect, pursuant to s 31(9) of the ICAC Act. Mr Petroulias appeared at the first four hearing days (from 6 to 9 May 2019), representing himself. On 14 May 2019, the public inquiry was adjourned to a date to be fixed, with the inquiry ultimately being set down to reconvene in July 2019.

Intermittently throughout 2019, Mr Petroulias was represented by solicitor Theo Voros. In July 2019, Mr Voros successfully applied for an adjournment of the five hearing days that had been scheduled to commence on 17 July 2019, on grounds again relating to Mr Petroulias' health. In October 2019, Mr Voros successfully applied for Mr Petroulias to give his evidence by way of written narrative statement, as an alternative to giving oral evidence in private session.

The 228-page written narrative statement produced by Mr Petroulias was admitted into evidence in its entirety. It was detailed in nature and traversed a large number of issues that had been the subject of evidence before the Commission over the course of the public inquiry. It was the opinion of Dr Adams, who had given regard to a copy of Mr Petroulias' written narrative statement when preparing his June 2020 report, that Mr Petroulias was "better able to prepare written submissions…compared to participating in the enquiry [sic] in person".

In light of Mr Petroulias' appearances during the public inquiry, both in person and through his various legal representatives, as well as his having provided a written account of the matters under investigation by the Commission, the Commission finds that Mr Petroulias was afforded an opportunity to, and ultimately did, meaningfully participate in the public inquiry.

Chapter 3: Credibility findings

This chapter sets out how the Commission has dealt with the credibility and reliability of the evidence of each of Mr Green, Ms Dates and Ms Bakis, and also considers the position with respect to Mr Petroulias, who did not give oral evidence.

Mr Green

Mr Green was a witness without credibility and his evidence was unreliable. This is demonstrated by the analysis of his evidence set out in the following chapters. The Commission has only accepted Mr Green's evidence where it is non-controversial, when corroborated by other independent and objective evidence or when it amounts to an admission against interest. Instances of his lack of credibility include his attempts to feign an inability to read, at a functional level, when he was shown on lawfully intercepted telephone calls to have a perfectly serviceable ability to read English.

Ms Dates

Ms Dates was an unreliable witness. When asked why she did something, for example, her repeated statement was that she was trying to "move the land council forward", yet she was not able to explain what that actually meant or why that would result from her conduct. She did not present as a witness seeking to assist the Commission. Further, her evidence was plainly wrong on key issues, such as her assertion that the execution of the various documents relating to the Sunshine transaction (discussed in chapter 8) occurred at an ALALC board meeting, when the ALALC board meeting records (and the evidence of the other ALALC board members) established that *no* such meeting occurred. As with Mr Green, the Commission has only accepted her evidence where it is non-controversial, when corroborated by other independent and objective evidence or when it amounts to an admission against interest.

Ms Bakis

Ms Bakis lacked any semblance of credibility as a witness. She was unreliable and dishonest. The Commission has only accepted her evidence where it is non-controversial, when corroborated by other independent and objective evidence or when it amounts to an admission against interest.

Examples of Ms Bakis' dishonesty include:

- her dealings with the ALALC auditor, Clayton Hickey, and his staff. This dishonesty extended to her: failing to make full disclosures to him, when requested to do so, via representation letters necessary to complete the 2015 audit of the ALALC financial records; failing to disclose the existence of either of the Gows Heads of Agreements, the Sunshine Agreements, and the draft Solstice agreements; only partially disclosing the existence of the Advantage Property Experts Syndications Ltd (Advantage NZ) agreements; and misrepresenting the position of Awabakal LALC Trustees Ltd. These matters are dealt with further in the body of the report
- making a partial and incomplete disclosure to the NSW Land and Environment Court in relation to the Advantage NZ transaction in an affidavit she swore in support of an application for an interim injunction to prevent the appointment of an administrator under s 223B(1) of the ALR Act (see chapter 12)
- improperly securing a Tasmanian driver's licence in the name of Daphne Diomedes, using a falsely-secured passport in that name.

Ms Bakis was an unimpressive witness. She routinely failed to answer questions in a direct manner. When confronted with documentation, she delayed responding to questions. She also changed her evidence in an attempt

to fashion what she considered to be an explanation for her conduct.

Mr Petroulias

Over the course of the public inquiry, Mr Petroulias appeared either on his own behalf, or with legal representation.

As noted in chapter 2, he did not give oral evidence. Instead, on 19 November 2019, he provided a 212-page unsworn written statement to the Commission. It was accompanied by a 450-page annexure. Mr Petroulias was not subject to cross-examination in relation to his unsworn statement.

The statement is unsworn, and untested by cross-examination. Ordinarily, evidence received in this way should be treated with considerable caution. The Commission has accepted the submission of Counsel Assisting that the evidence contained in the statement should be rejected, and only acted upon by the Commission when corroborated by evidence expressly accepted by the Commission or when it amounts to an admission against interest.

Chapter 4: The Awabakal Local Aboriginal Land Council

This chapter sets out some relevant and uncontroversial background information on the ALALC, the board of the ALALC, and the statutory controls on land dealings by LALCs pursuant to the ALR Act.

What is the Awabakal Local Aboriginal Land Council?

The ALALC is an incorporated body under Part 5 of the ALR Act. It is one of 120 LALCs in NSW – a network established under the ALR Act as the elected representatives of Aboriginal people living within the state. The ALR Act provides for the vesting of land in this network of LALCs and the acquisition and management of land and other assets by, or for, those councils.

The ALALC operates across the Newcastle and Lake Macquarie area from office premises located in the Newcastle suburb of Islington. It was first established in 1985 but ceased to operate for a brief period. The ALALC was re-established in 1992 and has operated continuously since that time. On 13 October 2016, shortly following the events that are the subject of this investigation, the minister for Aboriginal affairs appointed Mr Lawler as administrator of the ALALC, pursuant to s 222 of the ALR Act. The period of administration came to an end on 13 October 2018.

The ALALC's members "are the adult Aboriginal persons who are listed on the Local Aboriginal Land Council membership roll for that adult area" (see s 53 of the ALR Act). As at June 2013, there were estimated to be around 3,880 Indigenous persons living within the ALALC's area, 498 of whom were members of the ALALC and 383 of whom were current voting members.

The statutory regime governing the conduct of LALCs

Under s 51 of the ALR Act, the objects of each LALC – and thus the ALALC – 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 ALALC has specific functions, which are enumerated in Part 5, Division 1A of the ALR Act. That division sets out the functions of a LALC, which fall broadly into the categories of land acquisition, land use and management, Aboriginal culture and heritage, and financial stewardship.

One of the principal functions of the ALALC, as mandated by the ALR Act, is therefore the acquisition of land, either by land claim or purchase. Under the ALR Act, the ALALC 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 ALALC's area are made paramount is ensured by various protective measures in the ALR Act relating to land dealings by LALCs. For example, before approving a land dealing, a LALC must consider the impact of the proposed land dealing on the cultural and heritage significance of the land to Aboriginal persons. Further, the NSWALC 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 LALC or other Aboriginal persons within the area of that council.

Each LALC is required, by s 82(1) of the ALR Act, to prepare and implement a Community, Land and Business Plan (CLBP). The contents of a CLBP are prescribed by s 83 of the ALR Act, and are to include, inter alia, the objectives and strategy of the council in relation to the acquisition, management and development of land and other assets. A CLBP is adopted if approved by resolution passed by not less than 80 per cent of a LALC's members

(ALR Act, s 84(1A)), and a copy must be provided to the NSWALC not more than 14 days after being approved by members (ALR Act, s 84(5A)). Pursuant to s 84(7) of the ALR Act, a CLBP has effect for the period specified in the plan (which must not exceed five years) or until it is replaced, whichever occurs first.

Each LALC is an autonomous, separate entity, governed by a board that is elected by its members. Section 61 of the ALR Act provides that each LALC is to have a board consisting of at least five, but not more than 10, board members. The functions of a LALC board are mandated by s 62(1) of the ALR Act and include "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". A board's functions are to be exercised in accordance with the ALR Act and the regulation, and in a manner consistent with the council's CLBP (ALR Act, s 62(2)). (During the events the subject of this investigation, the regulation in force was the Aboriginal Land Rights Regulation 2014 ("the 2014 Regulation"), which has since been replaced by the Aboriginal Land Rights Regulation 2020 ("the 2020 Regulation")). A LALC board may, subject to any directions of that LALC, exercise any of the functions of the LALC on behalf of the LALC, other than those functions that are expressly required to be exercised by resolution of the voting members of the LALC (for example, relevantly, approval of land dealings) as well as any function delegated to the board under s 52E of the ALR Act.

The board of a LALC is required to transact the LALC's business at board meetings. The procedural requirements for the board of a LALC, including as to how meetings are held and with what frequency, the keeping of minutes, voting, and the authentication of documents, are governed by Schedule 3, Part 2 of the ALR Act. The Model Rules for LALCs also apply to the conduct of meetings of a LALC board (they are set out in Schedule 1 to both the 2014 Regulation and the 2020 Regulation).

The day-to-day management of a LALC's affairs is the responsibility of its CEO, who is employed by the LALC under s 78A of the ALR Act. In addition to day-to-day management, by operation of s 78A(2) of the ALR Act, the CEO is also tasked with assisting in the preparation and implementation of a LALC's CLBP, and the exercise of such functions as are delegated to him or her by the board.

The ALALC board and management: 2014–2016

During the period from 2014 to 2016, the ALALC had up to 10 board members. The chairperson of the board was Ms Dates (aside from her period of suspension between 2 November and 28 December 2015) and the deputy chairperson was Mr Green. The other members of the board during this period were Eleanor Swan, Debra Swan, Jaye Quinlan, Leonard Quinlan, Michael Walsh, Larry Slee, Ronald Jordan (until December 2015) and John Hancock (also until December 2015). Initially, neither Mr Jordan nor Mr Hancock were replaced, which meant that from January 2016 to 20 July 2016, when a new board was elected, there were only eight board members of the ALALC.

Steven Slee was the CEO of the ALALC from January 2014 until August 2015. From February 2015, Steven Slee was suspended as CEO, and Nicole Steadman was appointed to the role of acting CEO, a position she held until June 2016. In August 2016, Sophie Anna took on the role of acting CEO and continued to occupy that role until Mr Lawler was appointed as administrator in October 2016.

Land dealings under Part 4 of the ALR Act

Part of the ordinary business of the ALALC, and thus the board of the ALALC, related to the "management" of land holdings it held. During the period relevant to this investigation, the ALALC was the registered proprietor of 38 properties in the Newcastle and Lake Macquarie areas.

In 2011, the ALALC prepared a CLBP plan entitled the "Community, Land and Business Plan 2011–2015" ("the ALALC CLBP"). In the plan, the ALALC identified the disposal of ALALC land, within "Long Term Goals", being goals over the period of the plan. The intent to dispose of land owned by the ALALC was motivated, at least in part, by the need for income to enable it 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 of 2014, 2015 and 2016, as set out in the ALALC CLBP, the disposal of limited amounts of property was central to ensuring that the land council operated at a surplus.

The ALALC's capacity to deal with its land was, and remains, subject to statutory controls provided for by Part 2, Division 4 of the ALR Act. Pursuant to s 40(1)(a) of the ALR Act to "deal with land" includes to sell, exchange, lease, mortgage, dispose of, or otherwise create or pass a legal or equitable interest in land. A land dealing by a LALC must comply with s 42E(1) of the ALR Act. By that section, a LALC is precluded from dealing with land vested in it "except in accordance with an approval of the New South Wales Aboriginal Land Council under section 42G".

Section 42G of the ALR Act requires approval of a prospective land dealing by the NSWALC (see s 42G(1) of the ALR Act), which must be given if the NSWALC is satisfied that the application for the land dealing is in accordance with the ALR Act, and that the land dealing has been approved by a resolution compliant with s 42G(5) of the ALR Act, passed at a members' meeting of the LALC "by not less than 80 per cent of the voting members of the Council present at the meeting…". However, pursuant to s 42G(2) of the ALR Act, the NSWALC may refuse to approve a land dealing if it considers that the dealing is, or is likely to be, contrary to the interests of the members of the LALC or other Aboriginal persons within the area of that LALC.

Subsection 42G(3) provides a list of factors that the NSWALC may consider in determining whether a proposed land dealing is contrary to the interests of the LALC's members or other Aboriginal persons within the relevant area. This includes whether the dealing is consistent with the applicable CLBP, whether the terms of the dealing are fair and equitable to the LALC in all the circumstances, and whether it is likely that the proceeds of the land dealing will be managed and applied in the interests of the members of the LALC and Aboriginal persons within the relevant area.

A failure by a LALC to obtain the required approval will render a land dealing "void" (s 42C(1) of the ALR Act) and the dealing will be unenforceable against the LALC. That this is the consequence of the failure to secure the relevant approval was confirmed by Young CJ in Eq, as his Honour then was, in *Redglove Projects Pty Ltd v Ngunnawal Local Aboriginal Land Council* [2005] NSWSC 892, although in that case, his Honour found the existence of the conditions precedent in the contract (that made the contract conditional upon securing the relevant approvals: see [2005] NSWSC 892 at [8]) saved it from the provisions of the ALR Act that would otherwise have rendered the contract unenforceable (at [31]): "absent cl 4, the DMDA [Development Management Deed of Agreement] would certainly have been illegal because it would be a contract to perform an act (mortgaging and selling Ngunnawal's land without approval) that was illegal". The same conclusion was reached by *Hidden J* in *Illawarra Local Aboriginal Land Council v Stewart* [2016] NSWSC 125.

For completeness, reference to the Second Reading Speech of the Aboriginal Land Rights Amendment Bill 2009 is also instructive as to the intended effect of the ALR Act on a land dealing entered into, absent NSWALC approval:

> *This bill provides this certainty by creating a clearer regime and legal responsibilities for land councils and third parties when engaged in property development and sales. This means land councils will have a long-term future in the development of their land. Importantly, the bill makes it clear that a land dealing by a land council that requires approval and that is not the subject of an approval is* ***void and of no effect*** *. This is a matter of certainty and also a strong protection against corruption. More specifically, the* ***validity of a land dealing by a local Aboriginal land council hinges on a valid approval of the dealing by the New South Wales Aboriginal Land Council****….*
>
> *There is the introduction of a new system of certification of the application and approval process. This includes two types of certificates. One is a dealing approval certificate, which will be required before an Aboriginal land council can deal with land, or enter an agreement to deal with land, or lodge development applications with local government authorities.* [Emphasis added]

Chapter 5: Developer interest in ALALC land

This chapter examines developer interest in ALALC property in 2014 up to and including a presentation to the ALALC board by Indigenous Business Union Pty Ltd (IBU) on 31 October 2014. The chapter also addresses what took place at the 31 October 2014 ALALC board meeting and what was resolved by the ALALC board at that meeting.

Greg Cahill's proposals

The ALALC was approached by developers from time to time who expressed an interest in developing or purchasing ALALC land. These developers would in the first instance deal with the ALALC's CEO, who would then take the relevant proposal to the ALALC board in order for it to determine whether the proposal should in turn be referred to the ALALC members at a members' meeting.

In September and October 2014, three separate property proposals were put to the ALALC board for discussion. The first proposal, initially discussed at the 10 September 2014 ALALC board meeting, was in connection with ALALC land located at 291 Hillsborough Road, Warners Bay, property which Greg Cahill wished to purchase from the ALALC in order to develop a nursing home on that lot and an adjoining property that he already owned. Mr Cahill had held an interest in purchasing the Hillsborough Road property for a number of years and had on several occasions been involved in discussions with the ALALC board in relation to his proposed development of that land.

At a subsequent ALALC board meeting in September, Mr Cahill gave a presentation to the board in relation to his Hillsborough Road development proposal. No resolution regarding the proposal is recorded as having been put to the board at that point. The board minutes of 16 October 2014 record, under the heading "Business arising. 18 Sept" that the then ALALC CEO Steven Slee had scheduled a meeting with the Hillsborough Road developer (Mr Cahill).

Mr Cahill presented to the ALALC board again at a meeting on 2 June 2016, where it was resolved that his proposal in relation to the Hillsborough Road property could be put to ALALC members at a members' meeting. Ultimately, the ALALC did not move ahead with Mr Cahill's proposal.

The LB Group proposal

The LB Group was another developer to express an interest in acquiring ALALC land in 2014. The 16 October 2014 ALALC board minutes record that a presentation was given to the board by the "LB Group" and refer to an individual named Peter Zhu. Steven Slee's evidence was that he invited the LB Group to present to ALALC board members, after the LB Group had first initiated contacted with him. The LB Group had been referred to the ALALC by a staff member of the Office of the Registrar, ALR Act. At the ALALC board meeting on 16 October 2014, materials detailing the LB Group's proposals were provided to board members. Those materials revealed that the LB Group proposals concerned possible joint ventures with the ALALC in connection with property surrounding the Charlestown Golf Course, the site of the Newcastle Post Office, and residential properties around Warners Bay. The materials referred to the extensive rezoning process that would be required before the proposed land development could take place.

No resolution is recorded as having been put to the ALALC board following the presentation, and there were no steps taken subsequent to the presentation in relation to the proposal by either the ALALC or the LB Group. Steven Slee's evidence to the Commission was that following the LB Group's presentation, a number of ALALC board members expressed their opinion that the ALALC should look at other development proposals as well.

The IBU proposal

In around late-October 2014, Steven Slee was introduced by Mr Green to Cyril Gabey and Omar Abdullah. Mr Gabey was a director of IBU, a company he had incorporated in July 2014 with the express purpose of assisting Indigenous people develop their land. Mr Gabey had first met Mr Green in the latter half of 2014. Mr Green told him that the ALALC owned land it wished to sell and invited him to approach the board to discuss a proposal. Mr Gabey told the Commission that he asked Mr Abdullah to become involved with IBU and assist him with putting together a land development proposal for the ALALC, as Mr Gabey himself had no background in building or land development. Mr Abdullah accepted the invitation and, on behalf of Mr Gabey and IBU, contacted Steven Slee to discuss the proposal. Steven Slee then met with Mr Gabey and Mr Abdullah at the ALALC offices.

Steven Slee reported his discussions with Mr Abdullah to the ALALC board at its 24 October 2014 meeting. The ALALC board minutes record as follows: "It was noted that the CEO has been approached by a group of developers in putting forward a proposal regarding land held by the LALC next to Charlestown golf course". Steven Slee's evidence before the Commission was that the "developers" referred to in the minutes were IBU. The ALALC board then agreed that IBU should be invited to make a presentation to the board the following week. Steven Slee arranged for the presentation to take place on 31 October 2014.

For the purposes of IBU's meeting with the ALALC board on 31 October 2014, Mr Abdullah prepared a proposal, or "discussion paper", which he intended to distribute at the presentation. Mr Abdullah prepared the paper himself without input from Mr Gabey or anyone else. In the discussion paper, Mr Abdullah proposed the purchase and subdivision and development of five separate parcels of land owned by the ALALC in the Warners Bay area by a joint venture company, at a cost of around $50 million. Mr Abdullah told the Commission that the discussion paper did not represent any form of concrete proposal and that he was not proposing to fund the joint venture himself.

The 31 October 2014 ALALC board meeting

Before making any findings as to what took place at the 31 October 2014 ALALC board meeting, it is important to outline the way the ALALC board recorded its meetings.

It is a requirement under Schedule 3 of the ALR Act for minutes to be kept of the proceedings of each meeting of a LALC board. These minutes must include records of motions put to a meeting and resolutions passed by a meeting. The ALR Act regulation requires the board's chairperson to sign as correct the minutes of previous meetings once they have been presented to, and accepted as correct by, the board at the next meeting.

In accordance with these procedural requirements, it was the practice of the ALALC board to assign a board member with the function of making handwritten notes of the ALALC board meeting, including the various resolutions of the ALALC board. These handwritten notes were recorded in a red minute book and were subsequently typed up by ALALC administrative staff. Once the draft typed minutes were accepted by the ALALC board as accurate, they were signed by the chairperson. In addition, the board's resolutions were also typed, then placed in a separate book and, according to Steven Slee, kept at the ALALC's office reception.

The ALALC board meeting that took place on 31 October 2014 was attended by Steven Slee in his capacity as CEO, Ms Dates as chairperson, Mr Green as deputy chairperson and the following directors: Ms Quinlan, Mr Walsh, Larry Slee, Mr Hancock,

Mr Jordan, Mr Quinlan and Eleanor Swan. Mr Hancock was the minute taker. Mr Gabey and Mr Abdullah attended the meeting to put IBU's proposal to the board.

Mr Abdullah gave an oral presentation and distributed the "discussion paper" to the board members. The handwritten minutes taken by Mr Hancock, beneath the apologies, state "presentation Cecil", being a reference to the IBU presentation to be given by Mr Gabey and Mr Abdullah. Next to those words, it is written: "Richard Green Declared Interest". The evidence of each of Mr Hancock, Steven Slee, Eleanor Swan, Mr Green and Ms Dates was that the "interest" Mr Green declared was that he knew Mr Gabey.

Steven Slee told the Commission that after the IBU presentation was concluded and Mr Abdullah and Mr Gabey had departed the meeting, the board agreed to investigate whether IBU would purchase the ALALC properties for the price identified in the discussion paper. This is reflected in the typed minutes and the record of the formal resolution of the meeting which are in the following identical terms:

> *Propose a contract of sale to IBU and include landscaping, fencing, apprenticeships, traineeships to be contracted to the land council. Sale to be at minimum value rate. If agreed then put forward to members.*
>
> *Plan A all five properites* [sic]
>
> *Plan B 4 properties not including Hillsborough road* [sic] *Warners Bay*
>
> ***Moved:*** *Debbie Dates* ***Seconded:*** *Mick Walsh*
> ***Motion*** *Carried*

The Commission is satisfied as to the accuracy of the typed minutes and resolution and finds that the ALALC board's resolution made on 31 October 2014 regarding the IBU proposal was as is recorded above. On 28 January 2015, the ALALC board adopted the 31 October 2014 typed minutes as true and correct and, in accordance with the practice within the ALALC, Ms Dates as chairperson signed the minutes of the 31 October to certify their accuracy. Steven Slee's memory of what was resolved at the meeting corresponds with the typed minutes and typed resolution. Similarly, Ms Dates and Mr Green both told the Commission that the typed minutes accorded with their recollection of what broadly went on at the meeting.

Further, on 10 November 2014, Mr Slee sent an email to Mr Abdullah, in accordance with the terms of the 31 October 2014 board resolution. In the email, Steven Slee told Mr Abdullah that the board had discussed IBU's proposal and agreed to invite IBU to purchase the Warners Bay properties at the price "valued" within Mr Abdullah's discussion paper provided that it was "not lower than a registered value". Steven Slee told Mr Abdullah that the transaction was also subject to the ALALC members and the NSWALC providing the necessary approvals.

Mr Abdullah replied to Steven Slee on 15 November 2014. He said that "IBU Pty Ltd or its Nominee is willing to purchase" the properties and that "we have prepared a deposit" and are preparing "documentation". Mr Abdullah told Steven Slee that he would contact him early next week "to present contracts for our perusal".

Despite the assurances made by Mr Abdullah in his email to Steven Slee, it was common ground that Mr Abdullah and Mr Gabey did not take up the offer contained in Steven Slee's email to purchase the Warners Bay properties. The Commission finds that after 15 November 2014, Mr Abdullah and Mr Gabey showed no further interest in pursuing the ALALC's invitation to purchase the land and made no further contact with Steven Slee.

The 31 October 2014 ALALC board minutes and resolutions

It was common ground among the ALALC board members who gave evidence before the Commission, as well as Steven Slee who also attended the meeting on 31 October 2014, that there had been no mention at that meeting of a company by the name of "Gows", "Gows Heat", or "Gows Heat Pty Ltd". Further, the evidence of each ALALC board member present and Steven Slee was that no proposal of any kind had been advanced by Mr Gabey or Mr Abdullah other than that which was made on behalf of IBU. This is reflected in the typed minutes of the meeting, which describe the presentation as follows:

> ***3. Development Proposal***
>
> *A proposal was presented by Omar Abdullah from Indigenous Business Union Pty Ltd to Awabakal LALC board and CEO for a joint venture that would look at the development of the LALC land next to Charlestown golf course, across the road from the golf course, Warners Bay property, Waratah property and the Newcastle Post Office.*
>
> *IBU went through their proposal in detail responded* [sic] *to board questions as they arose. Upon completion of the proposal Awabakal LALC board thanked IBU for their time and proposal and that* [sic] *the LALC would be in touch soon with the LALC views.*

Mr Abdullah and Mr Gabey both told the Commission that they had no knowledge of a company by the name of Gows Heat Pty Ltd at the time of the meeting, and that the proposal they had made to the ALALC board was IBU's alone – it was not a joint proposal or a joint venture made with Gows Heat Pty Ltd. That is consistent with the typed minutes of the meeting, where no reference is made to Gows.

Despite this evidence, which the Commission accepts, the handwritten minutes of the 31 October 2014 meeting have the word "Gows" inserted after the word "IBU". Further, a typed resolution, which referred to a proposed sale to "Gows" and not IBU, had been stapled into the ALALC board's minute book". This additional typed resolution ("the Gows Resolution") was in the following terms:

> ***Propose* [sic] *sale to Gows and/or on market value minimum per Heads of Agreement including standard terms and conditions***
>
> *Plan A* *all five properites* [sic]
>
> *Plan B* *4 properties not including Hillsborough road* [sic] *Warners Bay*
>
> ***Moved:*** *Debbie Dates* ***Seconded:*** *Mick Walsh*
> ***Motion*** *Carried*

With two notable exceptions, the Gows Resolution adopts, verbatim, the wording (including the typographical error with respect to the word "properties" – "all five properites [sic]") and contents of the resolution that had been recorded in relation to IBU, namely, that there were two proposals, involving either all five of the ALALC's Warners Bay properties, or all except the Hillsborough Road property. The first exception is that the Gows Resolution does not refer to "landscaping, fencing, apprenticeships, traineeships" being contracted to the ALALC as part of the proposal. The second exception is that there is no reference to the proposal, if agreed, being "put forward to members" for approval.

The evidence of each ALALC board member who appeared before the Commission was that the Gows Resolution was created without his or her knowledge or consent. Similarly, not one ALALC board member had any knowledge of how the handwritten minutes came to be altered. Mr Hancock, the board member who took the minutes for the meeting, gave unchallenged evidence that he had not inserted the word "Gows" after the word "IBU" in his handwritten minutes of the meeting, and that this alteration to the handwritten minutes was made without his knowledge. Mr Hancock also told the Commission that he did not staple the Gows Resolution into the minute book, that it was not a resolution that flowed from the one he had transcribed in his handwritten minutes, and that he had no knowledge of its contents.

The Commission is satisfied to the requisite standard that the Gows Resolution was improperly created, and the handwritten minutes were improperly altered, to lend support to the false Gows Resolution. The ALALC board resolved to propose a sale to IBU, not Gows.

The question that inexorably follows as to who was responsible for the improperly created Gows Resolution, and the falsified handwritten minutes, is addressed in chapter 6.

Chapter 6: Gows Heat Pty Ltd

This chapter considers the question of the identity of Gows Heat Pty Ltd (Gows), and how it came to be named in the Gows Resolution and altered handwritten minutes of the ALALC board's 31 October 2014 meeting as the proposed purchaser of ALALC properties in Warners Bay.

Who is Gows?

Gows is a company that was incorporated in NSW in 2006. Its sole shareholder during the relevant time was an individual named Fondas Douloumis, who held the share capital of one share (nominally valued at $1) non-beneficially. A search of the NSW Electoral Roll found no results for Mr Douloumis.

The sole director of Gows throughout the public inquiry was Gregory Steaven Vaughan. Mr Vaughan's evidence to the Commission was that Mr Petroulias had asked him to become a director of Gows in around August 2017 because "the current director had died". In reality, the former director to whom Mr Vaughan referred, Johan Latervere, had died approximately 10 months prior to his purported appointment as a director of Gows on 20 March 2014.

In a statement tendered during the public inquiry, Mr Latervere's de facto partner of 17 years, Stella Stamatopoulos, stated that Mr Latervere, also known as Jason Latervere, died of oesophageal cancer on 22 May 2013. The Gows' ASIC company extract records a Johan Peiter Latervere as having been appointed a director of Gows on 20 March 2014 and ceasing to be a director on 1 September 2017. In her statement, Ms Stamatopoulos observes that the appointment date is subsequent to the date of Mr Latervere's death, that Mr Latervere's middle name, Pieter, was incorrectly recorded in the ASIC company extract, that Mr Latervere never resided at or had any association with the Strathfield address listed in the ASIC company extract, and that she had no knowledge of Mr Latervere ever being a director or secretary of Gows.

Ms Stamatopoulos had never heard of Gows. However, she knew Mr Petroulias, having first met him in 2012 through her former employer, Karl Suleman. Ms Stamatopoulos stated that after she met Mr Petroulias, she and Mr Latervere socialised with him from time to time. When Mr Latervere died, Mr Petroulias visited Ms Stamatopoulos' home to express his condolences.

The Commission also admitted into evidence a statement provided by Glynnes Taylor. According to the ASIC company extract, Ms Taylor was a director of Gows between 2 June 2011 and 5 June 2011. Ms Taylor stated that she had never heard of or had any involvement with Gows and did not know what type of business or trade Gows engaged in. She further stated that she never authorised any person to nominate or register her as a director, company secretary or shareholder of Gows. While Ms Taylor did live at the address listed in the Gows ASIC company extract for an extended period, she observed that, contrary to what is recorded in that document, she was not born in Sydney.

While Ms Taylor had no knowledge of and denied any involvement in Gows, she, like Mr Latervere, did know Mr Petroulias. She and Mr Petroulias had met in around 2008. In around 2010, Ms Taylor allowed Mr Petroulias to register a storage shed for his use in her name. Ms Taylor stated that she signed paperwork (which she did not read) in connection with the lease for the storage shed.

A third individual, who is listed in the Gows' ASIC company extract as a director during the period from 5 November 2011 to 20 March 2014, is Andrey Kravtsov. Mr Kravtsov is also listed as being a former secretary and shareholder of Gows. In a statement given by Mr Kravtsov and tendered during the public inquiry, Mr Kravtsov stated that he had never heard of, nor been

associated with, Gows. He stated that he had never been a director or company secretary of Gows, nor a shareholder. Mr Kravtsov observed that while the Gows ASIC company extract correctly records his name and date of birth, it incorrectly states that his place of birth is Sydney, when in fact he was born in Kazakhstan.

Mr Kravtsov also observed in his statement that he had never lived, or known anyone who resided, at the address listed in the company extract as his address. The ASIC company extract records Mr Kravtsov as having been appointed as a director and company secretary of Gows on 5 November 2011 and holding those roles until 20 March 2014. Yet, Mr Kravtsov stated that in 2010, he left Australia and travelled to Russia, where he remained until he returned to Australia at the end of 2013. Unlike Mr Latervere and Ms Taylor, Mr Kravtsov had never met or heard of Mr Petroulias.

In his written narrative statement, Mr Petroulias provides his version of Gows' corporate history. He states that in 2011 the company, which had been dormant for some time, "became available for me to use". He further states that "Gows became a member of the Pinnacle 8 Joint Venture Consortium". It may be inferred, though he does not say so expressly, that it was Mr Petroulias who chose to make Gows a member of that joint venture. No one else is nominated by Mr Petroulias as being in control of Gows at that time.

Mr Petroulias' evidence is that he asked Ms Taylor, and she agreed, to be a director of Gows. He does not offer any explanation as to Ms Taylor's motivation to agree to such a proposition or indicate what skills or expertise would have recommended Ms Taylor for such a role. He also does not provide a credible explanation for Ms Taylor's complete denial, in her written statement, of any knowledge of or involvement in Gows. Mr Petroulias suggests that Ms Taylor's statement to the Commission is motivated by fear and self-preservation. In circumstances where (according to the Gows ASIC company extract) Ms Taylor's appointment as a director was for a period of five months only, and well pre-dated Gows' involvement in the matters that are the subject of this investigation, the Commission finds this explanation to be implausible, and rejects it. The Commission finds to the requisite standard that Mr Petroulias stole Ms Taylor's identity, for use in connection with Gows and in the deliberate fabrication of a corporate history for Gows that was intended to conceal his own involvement in the company.

Mr Petroulias' explanation for Mr Latervere's appearance in the Gows ASIC company extract is similarly implausible. He suggests that Mr Latervere had given his "pre-consent" to being appointed as a director of Gows in late 2012 (prior to his death) and that when he was appointed as a director of Gows, by unidentified individuals constituting the "secretariat" purportedly then in control of the Pinnacle 8 Joint Venture Consortium, "whoever needed to know he had died, didn't know". The Commission notes that this explanation is inconsistent with a letter dated 31 October 2017 written to ASIC by Rosita Luk, of Luk & Associates, a solicitor who was acting for Gows at that time. According to Mr Petroulias, this letter was written by Ms Luk to rectify ASIC's records, on the instructions of himself and Mr Vaughan. In the letter, Ms Luk informs ASIC that Mr Kravstov had highjacked Gows, and in so doing, registered (impliedly without Gows' knowledge or authorisation) Mr Latervere as a director of Gows, when for the relevant period Elayne Bennett and Mr Douloumis were serving as Gows' directors.

In any event, there are matters arising from Ms Stamatopoulos' statement to the Commission, and independently of it, that also serve to cast doubt upon the authenticity of "pre-authorised consent" upon which Mr Petroulias relies to suggest that Mr Latervere's appointment was legitimate. The document refers to Mr Latervere's residential address as the Strathfield address recorded in the Gows ASIC company extract, which Ms Stamatopoulos says was never Mr Latervere's

address. Further, there is no explanation provided as to why Mr Latervere would "pre-authorise" his consent to being appointed as a director of Gows. Similarly, no explanation is provided by Mr Petroulias as to why the unidentified members of the "secretariat" controlling the Pinnacle 8 Joint Venture Consortium chose – apparently without communicating this to Mr Petroulias (or presumably even attempting to confirm the appointment with Mr Latervere himself) – to appoint Mr Latervere as a director of Gows in March 2014. This manoeuvre seems particularly improbable when it appears, on Mr Petroulias' evidence, that it was he who effected Ms Taylor's appointment and subsequent removal as a director in 2011, and again Mr Petroulias who requested, in 2017, that Mr Vaughan become a Gows director. It also impresses as unlikely that there was any legitimacy to such an appointment given not only that Mr Latervere's death preceded his appointment, but also that he was allowed to remain a director of Gows, according to ASIC's records, for a further three years. The Commission rejects Mr Petroulias' evidence and finds that Mr Petroulias stole Mr Latervere's identity for use in connection with Gows and in the deliberate fabrication of a corporate history for Gows that was intended to conceal his own involvement in the company.

Mr Petroulias asserts in his written narrative statement that he knows nothing of Mr Kravtsov. Mr Petroulias' evidence is that his involvement with Gows had "faded out" for a period of time "as other people became involved" with the company, and that Mr Kravstov "pre-dated my re-emergence and ALALC". Mr Petroulias does not identify other individuals who purportedly became involved with Gows around the time of his absence. The inferences available, on Mr Petroulias' version of events, are either that Mr Kravstov, for reasons unknown, chose to appoint himself as a director of Gows, with its associated duties and liabilities, but then had no further association with or involvement in the company or, alternatively, that unnamed members of the Pinnacle 8 Joint Venture Consortium (assuming, for present purposes that they exist) stole Mr Kravtsov's identity. The Commission rejects both these possibilities as being equally implausible.

Further, the Commission observes that Mr Kravtsov was recorded as being appointed a director of Gows in November 2011, which was immediately after Ms Taylor (whom Mr Petroulias apparently appointed) ceased to be a director. On Mr Petroulias' evidence, it was he who "passed on the message to the secretariat" to effect Ms Taylor's removal as director. Even if one were to accept that there was a period of time in which individuals other than Mr Petroulias were in control of Gows (and there is no evidence before the Commission, other than Mr Petroulias' bare assertion, to suggest this was the case) Mr Petroulias, on his own evidence, appears at least still to have been involved in Gows at the time of Mr Kravtsov's purported appointment as a director. The Commission therefore rejects Mr Petroulias' complete disavowal of Mr Kravtsov's appointment and finds that Mr Petroulias stole Mr Kravstov's identity for use in connection with Gows and in the deliberate fabrication of a corporate history for Gows that was intended to conceal his own involvement in the company.

Ms Bakis was the lawyer for Gows during the events the subject of this investigation. During her examination by Counsel Assisting, Ms Bakis accepted that the person behind Gows was Mr Petroulias, and that she took instructions from Mr Petroulias on behalf of Gows:

[Counsel Assisting]: *Now, we do know that Gows Heat was your client, wasn't it?*

[Ms Bakis]: *Yes.*

[Q]: *And that the person behind Gows Heat was in fact Mr Petroulias. Isn't that so?*

[A]: *Yes.*

[Q]: *And you were taking instructions from him, were you not*

[A]: *Yes.*

The Commission rejects Mr Petroulias' submission that Ms Bakis was asked this question without context and that, accordingly, the evidence cannot be accepted. The context and meaning of the question were plain from the question itself and the line of questioning that preceded it. There was no suggestion from Ms Bakis herself or from counsel representing her before the Commission that Ms Bakis was confused by the question and there was no attempt made by Ms Bakis to qualify or clarify the answer that she gave. Further, at no point during the evidence Ms Bakis gave to the Commission, over the course of some eight days, did she assert that any other individuals or entities were actively involved with, had control over, or issued instructions to her on behalf of Gows.

Gows had a Macquarie Cash Management Account, which was opened by Ms Bakis in June 2011 on behalf of Gows in its capacity as trustee of the "Gows Collection Agency Trust". The application to open the account was purportedly signed by Ms Taylor, who was said to be Gows' sole director at that time. Attached to the various items of account opening documentation is a photocopy of Ms Taylor's driver licence, certified as a true copy by Ms Bakis and a copy, certified by Ms Bakis, of a "Gows Collection Agency Trust Deed" dated 1 June

2011, also purportedly signed by Ms Taylor. In her written statement to the Commission, Ms Taylor states that the signatures appearing on the account application form and accompanying documentation are not hers. Further, Ms Taylor states that while the copy of the driver licence attached to the form appears to be a true copy of her actual driver licence, she does not know, and has never met, Ms Bakis, and cannot account for how Ms Bakis obtained a copy of her licence or was able to certify that it was a true copy.

While Ms Bakis was the signatory on the Gows Macquarie Cash Management account, her evidence to the Commission was that after opening the account, she handed over the details to Mr Petroulias. Further, Ms Bakis' evidence was that Mr Petroulias had access to the account, had control over the funds within it in terms of how and when they were disbursed, and that there was an arrangement in place to transfer the money from that account to Mr Petroulias. Again, at no point over the course of Ms Bakis' evidence did she suggest that any other individual or entity had control over or access to the funds within the account, aside from Mr Petroulias.

In his written narrative statement, Mr Petroulias asserts that Gows was part of the Pinnacle 8 Joint Venture Consortium, whereby "management of the money and the administrative functions were delegated or outsourced to a secretariat, also often called 'treasury'". Mr Petroulias' evidence is that he saw to matters regarding Gows' legal representation and gave legal effect to transactions, subject to ratification which he sought and received from (unnamed) directors and shareholders. He states that he sought "confirmatory instructions from the secretariat and that on the question of finances", and while he "could recommend payments and strategies relating to the same…day-to-day control was in the hands of the secretariat". In his written submissions, Mr Petroulias makes the submission that Gows was a co-trustee of the Gows Collection Agency Trust. He further submits that "the evidence denies that NP [Mr Petroulias] was Gows, controlled Gows or even controlled the payments [made to and from Gows' bank accounts]. He sought and relied upon instructions, and paid and was paid, on dual authorisation".

The Commission rejects Mr Petroulias' submissions regarding the control of Gows. There is no direct evidence of any individual or entity providing Mr Petroulias with instructions or authorisation with respect to the affairs of Gows, nor is such a proposition corroborated by any witness who appeared before the Commission. Mr Petroulias does not at any point in his 228-page written narrative statement, or in his extensive written submissions, identify the individuals or entities who made up the "secretariat". There is also no evidence, from Mr Petroulias or otherwise, of who it was that is said to have authorised payments made to or at Mr Petroulias' direction. Similarly, Mr Petroulias has not identified any evidence substantiating the identity of the beneficiaries of the Gows Collection Agency Trust.

Mr Petroulias submits that Mr Vaughan would have been cross-examined by him on these matters (had the public inquiry not been brought to a close), as would Ms Bakis, and that in the absence of that cross-examination taking place, it is procedurally unfair to make any adverse finding contrary to the position advanced by Mr Petroulias. The Commission rejects these submissions. Despite having agreed, at Mr Petroulias' request, to be a director of Gows, Mr Vaughan's evidence to the Commission was that he had no knowledge whatsoever of what Mr Petroulias' connection to Gows was, and that his understanding was that Gows was not trading or doing anything. Further, the evidence from Ms Bakis as to who controlled Gows was unequivocal; there was no attempt made by Ms Bakis to limit her response as to who lay behind Gows to a particular point or period in time. In any event, it was Mr Petroulias' affirmative case to make as to who had control of, and stood to benefit from, any transactions involving Gows, which it was open to him to do through the evidence he sought to put before the Commission.

The Commission is satisfied that Mr Petroulias was the controlling mind of Gows and accepts the submission of Counsel Assisting that Mr Petroulias was, in substance, Gows. The Commission also finds that Mr Petroulias "appointed" Ms Taylor, Mr Kravtsov and Mr Latervere as directors of Gows, without their knowledge or consent.

Was Gows in a consortium or other business relationship with IBU?

As discussed in chapter 5, the evidence of each of the persons who attended the 31 October 2014 ALALC board meeting, which included the ALALC board members, Steven Slee, Mr Gabey and Mr Abdullah, was that there had been no mention of a company named Gows, or Gows Heat, and that the land development proposal put to the ALALC board was made for and on behalf of IBU only. How then did Gows come to be named in the Gows Resolution and altered handwritten minutes of the ALALC board's 31 October 2014 meeting as the proposed purchaser of five ALALC properties in Warners Bay?

One explanation, which has been offered by Mr Petroulias, is that Gows was a member of a consortium with IBU, and Mr Gabey and Mr Petroulias were "the responsible officers for the Consortium". A feature of this explanation is the contention that Gows

and IBU, as members of this consortium, planned to participate in a joint venture, being the acquisition and development of the ALALC Warners Bay properties. This arrangement, it is submitted by Mr Petroulias, explains the addition of the word "Gows" to the altered handwritten minutes and the Gows Resolution, on the basis that "[t]he entity making the proposal was the consortium of which IBU was the presenter and GH [Gows Heat] was the manager," and further that "the proposal to ALALC was by IBU, a representative of a collective consortium, but not for IBU to develop". It was submitted by Mr Petroulias that "*whether or not GH* [Gows] *was expressly mentioned* [at the ALALC board meeting], it was the Consortium that [sic] behind the proposal and the acquisition. GH was the manager of the Consortium and the vehicle for investment and *read in that way*, the corrected minutes are not false" [Emphasis added].

The evidence Mr Petroulias relies on in support of this explanation includes the following. First, Mr Petroulias points to an agreement that was entered into between himself and Mr Gabey. He refers, in this connection, to Mr Gabey's oral evidence before the Commission, during which Mr Gabey stated that he had signed an agreement with Mr Petroulias, which he subsequently cancelled after a few months on learning of Mr Petroulias' criminal record. Mr Petroulias also asserts (incorrectly) that Mr Gabey's evidence was that he and Mr Petroulias were partners, and points to Mr Gabey's admission that he had given Mr Petroulias a copy of the IBU proposal document that Mr Abdullah had prepared, and which had been given to the ALALC board on 31 October 2014. Mr Petroulias submits that the agreement to which Mr Gabey referred in his oral evidence is a one–page document, tendered during the public inquiry at the request of Mr Petroulias, headed "Memorandum of Heads of Agreement", which was seemingly executed on 1 October 2014 by both Mr Gabey and Mr Petroulias. Additionally, Mr Petroulias asserts that IBU must have been part of a consortium with Gows, and made the proposal to the ALALC board on behalf of both itself and Gows, as "[t]here is no other person that Gabbie [sic] could rely to [sic]give effect to their proposal". This assertion is made on the twin bases that Mr Gabey had neither the funding nor the experience to support IBU's proposal; as a result, Gows, it is said, was the only entity who could progress the deal.

There are several difficulties with this explanation and the evidence that is purported to support it. The principal difficulty is the oral evidence given by Mr Gabey and Mr Abdullah. Both individuals firmly denied that the proposal they made was a joint proposal or a joint venture involving Gows. They denied that there was any mention of Gows during the presentation that they made to the ALALC board, and also denied any knowledge of Gows. This evidence was unchallenged. Mr Petroulias cross-examined both Mr Gabey and Mr Abdullah and did not put to either of them what he now submits the Commission should accept, namely, that Gows and IBU were part of a consortium, and that Gows was behind the proposal as both the manager of the consortium and the vehicle for the investment in the ALALC Warners Bay land.

Similarly, the agreement between Mr Gabey and Mr Petroulias, which is said by Mr Petroulias to underpin the proposition that the proposal Mr Gabey and Mr Abdullah made on behalf of IBU was also made on behalf of Gows, was not put to Mr Gabey by Mr Petroulias. The agreement relied upon by Mr Petroulias does not meet the description given to it by Mr Gabey in his oral evidence to the Commission, which was that it was a "letter we signed that he [Mr Petroulias] was going to be a partner with me to do land development with the other Land Council you know...", with Mr Gabey's role being to "talk to any Aboriginal Land Council to deal with them because my part was to [do] that but his part was to do all the paperwork". It is much broader in intent, and makes no mention of either Aboriginal land councils, or the respective roles of Mr Gabey and Mr Petroulias to which Mr Gabey referred in his evidence. Without Mr Gabey having been given the opportunity not only to confirm that this was the agreement that he entered into with Mr Petroulias, but also to corroborate Mr Petroulias' submission that Mr Gabey and Mr Abdullah gave the proposal to the ALALC board in reliance on, and in furtherance of, that agreement, the Commission is unable to make any finding as to the authenticity of the agreement, which is unwitnessed, nor find that it provided any support for the contention that Gows was a part of the IBU proposal made to the ALALC board. In any event, the Commission notes the following: first, the agreement does not mention Gows, and secondly, Mr Gabey's evidence (which was also unchallenged) was that he did not go on to do any business with Mr Petroulias, notwithstanding that he had signed an agreement with him.

It is also observed that Mr Petroulias appears to be advancing a submission to the effect that Gows was not "expressly mentioned" at the 31 October ALALC board meeting, but that as Gows was "behind" the proposal (a matter which is denied by those who in fact made the proposal), the amended minutes are not false. This submission is rejected by the Commission; self-evidently, the minutes of the ALALC board were required to reflect and record what was in fact resolved by the ALALC board members, which was to propose a sale to IBU. An addition to the minutes after the event, which did not reflect and record what was in fact communicated to and resolved by the board, would not

serve to correct the minutes, but rather, to falsify them. In any event, the Commission notes that the submission is inconsistent with the evidence given by Mr Petroulias in his written narrative statement, which is that in around mid-November 2014, some two weeks after the ALALC board meeting, Mr Petroulias determined that Gows should be the purchaser of the ALALC Warners Bay properties. Even on Mr Petroulias' evidence, as at 31 October 2014 when the ALALC board met and heard IBU's proposal, Gows was not the proposed or elected vehicle for the acquisition of ALALC land.

The Commission rejects the submission that Gows was a member of a consortium with IBU or the manager of any consortium involving IBU. It also rejects the submissions that IBU made the proposal on behalf of a consortium that included Gows, or that Gows was the proposed vehicle for the acquisition of ALALC land. The Commission finds that Gows had no involvement with Mr Gabey, Mr Abdullah, and IBU, and formed no part, in any capacity, of the proposal that was made by IBU to the ALALC board on 31 October 2014.

How did the handwritten 31 October 2014 minutes come to be altered and the Gows Resolution created?

The two questions that remain, are, how did the handwritten 31 October 2014 ALALC board minutes come to be altered and the Gows Resolution created?

Over the course of the public inquiry, the only witness aside from Mr Petroulias to offer an explanation to the Commission regarding how the handwritten minutes came to be altered was Candy Towers. Candy Towers was initially employed in April 2012 as the ALALC office receptionist, a position she held until she was promoted to the position of project officer by Steven Slee while he was the ALALC CEO. Candy Towers ceased employment with the ALALC in or around May 2017. Candy Towers is also Ms Dates' daughter.

During cross-examination by Paul Menzies QC, the Queen's Counsel then retained by Mr Petroulias, Candy Towers accepted that the amendments to the handwritten 31 October 2014 board minutes were in her handwriting, and that they were amendments which she had made in the course of typing up those minutes. She also accepted that she had made the amendments after she had found it difficult to decipher the handwritten minutes, and so had called Mr Green, who instructed her to insert the additional words that now appear in the handwritten minutes. The Commission does not accept Candy Towers' explanation, for the reasons that follow.

First, Candy Towers was an unconvincing witness. She was at times argumentative and at other times vague, she was often evasive and portions of her evidence were not credible. Candy Towers' recall of relevant matters and events was selective. She was frequently unable to recall matters regarding which the Commission would have expected her to have some recall. With respect to her evidence as a whole, the Commission does not consider that Candy Towers was attempting to assist it in arriving at a better understanding of the evidence, but rather, appeared prepared to fabricate evidence for her own purposes. Although offered the opportunity, Candy Towers was unable satisfactorily to explain matters that the Commission considers served to undermine her evidence.

Secondly, the particular evidence given by Candy Towers with respect to how and why the handwritten 31 October 2014 minutes came to be altered by her lacked credibility, both in terms of the manner in which it was given, and in terms of its substance. Prior to being cross-examined by Mr Menzies, Candy Towers was asked by Senior Counsel Assisting whether she had ever been asked to make an entry into any of the minutes that had already been prepared in the minute book. Candy Towers' evidence was that she had, but that she had no memory of making any particular entry. When initially taken by Mr Menzies specifically to the handwritten minutes of 31 October 2014, Candy Towers could not remember whether she had seen the document before. When she was then asked by Mr Menzies about typing up those handwritten minutes, the exchange between Candy Towers and counsel was as follows:

[Mr Menzies]:	*Thank you. Now, did you with respect to those typed, those handwritten minutes speak to anybody concerning their contents?*
[Candy Towers]:	*I can't remember.*
[Q]:	*Could it be the case that, just think about it, could it be the case that indeed you did?*
[The Chief Commissioner]:	*You did what?*
[Mr Menzies]:	*You did speak to somebody about those typed, about the 20—-?*
[Candy Towers]:	*I could have, yeah, yeah.*
[Mr Menzies]:	*And in those circumstances can you recall who it would have been, whom you would have likely spoken to?*

[A]: *Probably the CEO John, yeah, or mum or Richard.*

[The Chief Commissioner] *Sorry, what did you say?*

[A]: *John the CEO, Richard or mum. It could have been one of those.*

[The Chief Commissioner]: *When you said John, you're talking about John Hancock?*

[A]: *John Hancock, yeah.*

Candy Towers was then asked by Mr Menzies whether there was any part of the handwritten resolution in the minutes where her handwriting appeared. Candy Towers was uncertain, and equivocated: "Could be but I can't say, I can't say, no, it could be", and then: "Maybe the, the first line, the ending…Yeah, that's it I think". After further questioning, Candy Towers was again asked directly by Mr Menzies whether she had any recollection of speaking to anyone about the 31 October 2014 handwritten minutes before she typed them up. Candy Towers' response was that she did not. However, when Mr Menzies then put to Candy Towers that she had telephoned Mr Green and "asked him what did those words mean in that minute that you were having difficulty comprehending", Candy Towers responded: "Yeah, I think so. I can recall". Candy Towers could not recall what Mr Green said to her when she spoke to him, but her evidence was that "It was Richard Green that did instruct me to put that [the additional words] in there". The Commission pauses here to observe that when this was put to Mr Green, he emphatically denied providing instructions to Candy Towers either to amend the handwritten minutes or to create the typed resolution including Gows.

In terms of the substance of the explanation given by Candy Towers, the Commission finds it to be inherently unlikely, having regard to the documents themselves. On the face of the handwritten 31 October 2014 minutes, there is nothing about the addition of the letters "G E" prior to the word "IBU", or the addition of the word "Gows" after it, that would serve to clarify the meaning of the handwritten minutes. Certainly, Candy Towers did not offer any explanation either as to what she had sought to clarify, or how the addition of those words assisted her in any way. Further, the typed version of the 31 October 2014 minutes (which, on Candy Towers' evidence, she typed herself), being the version that was approved and signed by Ms Dates as chairperson of the board, accord precisely with the unaltered handwritten minutes. If the additional words had been added by Candy Towers to the handwritten minutes in her effort to understand them as she transcribed them, then it would follow that those additions would have made their way to the typed version. Candy Towers was unable to explain how she had successfully typed up the minutes and the resolution without adding the words she had purported to add on Mr Green's instructions to the handwritten minutes. That those additional words do not appear in the typed and approved minutes is enough, in the Commission's view, to find that Candy Towers' explanation is false.

Candy Towers' evidence was that it was her responsibility to type up the resolutions made at ALALC board meetings separately, after the typed minutes had been passed and signed off by the chairperson. The list of resolutions was then kept as a separate record to the minutes. Candy Towers told the Commission that it was she who had typed up the resolution regarding the development proposal by IBU. With respect to the Gows Resolution, Candy Towers' evidence was initially to the effect that its formatting was such that it looked like something she may have created, but she couldn't definitively say that she did. After further questioning from Senior Counsel Assisting as to how the word "Gows" found its way into the Gows Resolution, Candy Towers said: "I'm pretty, like, 99 per cent sure I did it". Yet Candy Towers was unable to explain how she had come to prepare two distinctly different resolutions, being, the resolution which reflected precisely what was recorded in the minutes she had typed up, and the Gows Resolution, which refers only to Gows and extinguishes any reference to IBU.

In the circumstances, having regard to the totality of Candy Towers' evidence, her evidence about her alteration of the 31 October 2014 minutes and the creation of the Gows Resolution is entirely unsatisfactory. Further, the Commission finds that Candy Towers is not a witness of credit, and that her uncorroborated evidence cannot be accepted.

In his written narrative statement, Mr Petroulias also offered to the Commission an explanation for how the handwritten 31 October 2014 minutes came to be altered, and the Gows Resolution created. The thrust of this explanation is that Candy Towers altered the minutes at his instigation (via Mr Green) in order to *correct* the minutes, Mr Petroulias having first discussed the matter with Ms Dates.

On Mr Petroulias' version of events, which rests on the contention that IBU made its presentation to the ALALC board on behalf of a consortium of interests, including Mr Petroulias and Gows, he was shown the typed resolution (involving IBU) at a meeting with Ms Dates and Mr Green in mid-November 2014 (also attended by Candy Towers), where he formed the view that the minutes were inaccurate. In particular, Mr Petroulias stated that the minutes required correction to reflect that the proposed

sale that had been agreed upon by the ALALC board was not to IBU, but rather to an entity yet to be advised, which was to be *introduced* by IBU. Mr Petroulias' evidence is that he suggested to Ms Dates that the minutes be amended to read "sale to Purchaser TBA" or "IBU/Gows and/or nominee". Ms Dates is alleged to have agreed to looking into making the necessary changes to render the minutes more accurate, and Mr Petroulias states that he understood Candy Towers (who was still present during this conversation) was tasked with dealing with the matter.

According to Mr Petroulias, he required the minutes to be "corrected" in this fashion, in order to "give my prospective investors the comfort of progress and give the maximum flexibility in structuring the final vehicle to give effect the [sic] transaction in the most efficacious way". Having not yet received a "corrected" version of the minutes by early-December 2014, Mr Petroulias asked Mr Green about it, who then called Candy Towers in Mr Petroulias' presence, and told her that "Nick" (Mr Petroulias) wanted the minutes, and for them to include the words: "and/or nominee…to include Gows". The Gows Resolution was allegedly then subsequently prepared and presented by Mr Green to Mr Petroulias in mid-December 2014.

It is relevant to observe that although this account is said to involve each of Candy Towers, Ms Dates and Mr Green, none of these witnesses was cross-examined by Mr Petroulias or Mr Menzies in connection with the details of this explanation. The version put by Mr Menzies and accepted by Candy Towers was that she, at her own instigation, sought to *clarify* the meaning of the handwritten 31 October 2014 minutes with Mr Green because she had difficulty understanding them, and not that she was directed by Mr Green or Ms Dates to correct them. It was also not put to Candy Towers that she had been present at any meeting involving Ms Dates, Mr Green and Mr Petroulias where the accuracy of those minutes was discussed, or even that she had corrected them at the request of Mr Petroulias.

The Commission has already rejected the proposition upon which Mr Petroulias' explanation is founded, namely, that IBU was part of a consortium that included Gows. It also rejects this evidence, and not only because the Commission has found that the underlying premise is false. As with Candy Towers' explanation, it does not account for or reconcile the fact that the typed and approved version of the minutes mirror precisely the unamended version of the handwritten minutes. On Mr Petroulias' timing, the "correction" to the handwritten minutes was agreed to in early-December 2014. It follows that if there were any veracity to this version of events, the corrections would be reflected in the typed version approved by the ALALC board and signed by Ms Dates on 28 January 2015. Instead, there is no mention of Gows in the typed minutes that were approved by the board and signed by Ms Dates as accurate.

The Commission also rejects the notion that it would be proper for Ms Dates to "correct" the ALALC board minutes in this manner, either on Mr Petroulias' suggestion, or at all. There is no instance in which it would be appropriate to add words to the minutes from a board meeting, after the event, to suggest that something was communicated at a meeting, when it was not. For Ms Dates to do so, or for Ms Dates to direct someone else to do so, would be a dereliction from her duties as a board member and chairperson. If the proposal had changed from what IBU had put to the ALALC board on 31 October 2014, then there was nothing stopping the board from discussing a variation to that proposal (including as to the prospective purchaser) at its next meeting.

In their submissions to the Commission, Counsel Assisting submitted that it was Mr Petroulias who altered the handwritten minutes of 31 October 2014 and Mr Petroulias who created the Gows Resolution. The Commission accepts these submissions. The Commission has found that Mr Petroulias was the controlling mind of Gows and is satisfied that Mr Petroulias was, in substance, Gows (see chapter 5). It has also found, in connection with Gows, that Mr Petroulias had created and falsified documents, in order to fabricate its corporate history and conceal his own involvement in the company. Given his position with respect to Gows, it is Mr Petroulias who stood to gain directly from a land transaction between the ALALC and Gows, and Mr Petroulias who stood to gain from documents that demonstrated that the ALALC had conferred some interest in or rights over its land to Gows. It follows that it was Mr Petroulias who had a direct interest in creating the impression that the ALALC board had approved a sale of its land to Gows.

Mr Petroulias submits that he had no such motive, because his evidence is that, on Ms Bakis' advice, the "corrected minutes" (that is, the amended handwritten minutes and what the Commission has found to be the improperly-created Gows Resolution) were not relied upon by Gows. In his written narrative statement, Mr Petroulias stated: "Ms Bakis did not accept with [sic] my view that they [the amended minutes] were adequate for Gows being substituted for IBU…As the KNL Cover letter to ALALC of 12 December 2014 makes express, it was contemplated by us all that the Gows Heads of Agreement would be executed by Mr Green and myself and presented to the Board ab initio: as an agreement binding on Gows and with a deposit capable of being paid on approval". The Commission rejects that evidence. Mr Green denies receiving this letter, which was addressed to him at the ALALC's office address and

dated 12 December 2014. According to the ALALC's administrator, Mr Lawler, this letter was not among the records of the ALALC, and nor was there a version of the Gows Heads of Agreement executed by Mr Green, or any document providing the board's authorisation to Mr Green to execute the agreement. Further, there was an ALALC board meeting held on 15 December 2014, which was attended by Mr Green, and subsequent meetings were also held on 28 January 2015 and 10 February 2015. Yet, the evidence of the ALALC board members is that at no ALALC board meeting did Mr Green ever raise with the board that he had executed the Gows Heads of Agreement or discuss his authority to execute that agreement on behalf of the ALALC. There is also no record in the ALALC board minutes of either the letter or the Gows Heads of Agreement being presented by Mr Green or being tabled for the board's consideration.

Tony Zong, of Sunshine, gave evidence before the Commission that he had been shown the Gows Resolution by Mr Petroulias shortly prior to the entry by the Sunshine Entities into their agreements with the ALALC on 23 October 2015. Mr Zong was not challenged on this evidence, despite being cross-examined initially by Mr Petroulias and then subsequently by Mr Menzies on Mr Petroulias' behalf. Ms Bakis also agreed, in her evidence before the Commission, that Mr Petroulias had given a copy of the Gows Resolution to the people representing the Sunshine Entities in October 2015, and that for the Sunshine Entities it was a key document in the transactional process. The inference arising from Mr Zong's evidence is that Mr Petroulias did have a use for, or motive to create the Gows Resolution, namely, so that it could be shown to Mr Zong (or other prospective purchasers) in an effort to provide him (or any other potential purchaser, such as Solstice) with some comfort that the transaction that purported to confer upon Gows certain interests in the ALALC land (which interests Mr Zong was negotiating on behalf of the Sunshine Entities to acquire) had been approved by the ALALC board.

The Commission is satisfied that it was Mr Petroulias who caused the handwritten minutes of the 31 October 2014 ALALC board meeting to be altered and also caused the creation of the Gows Resolution.

Chapter 7: The Gows Heads of Agreements

In this chapter, the Commission considers the agreements purportedly entered into by Gows and the ALALC, both styled as "Heads of Agreement", and dated 15 December 2014 (together, "the Gows Heads of Agreements" and, separately, the "First Gows Heads of Agreement" and the "Second Gows Heads of Agreement"). The drafting of, and purported entry into, the Gows Heads of Agreements raises particular questions about Ms Bakis' appointment as the solicitor for the ALALC, as well as questions regarding what authority Mr Green and Ms Dates possessed, if any, to act on behalf of the ALALC. Accordingly, in addition to considering the circumstances surrounding the purported entry into the Gows Heads of Agreements, and the terms of those agreements, the question and scope of Ms Dates' and Mr Green's authority are examined, as are the circumstances surrounding, and the terms of, Ms Bakis' retainer to act as the solicitor for the ALALC.

Ms Bakis' appointments to act for Gows and the ALALC

In 2014, Mr Petroulias introduced Mr Green to Ms Bakis. At the time, Ms Bakis was unknown to the members of the ALALC board. Ms Bakis was a solicitor who had practised as a sole practitioner through the firm, KNL, since 2011. Her practice was situated in North Sydney. Her principal areas of practice as a lawyer were commercial litigation, revenue law, and administrative law. Ms Bakis' evidence was that, in 2014, KNL had about five clients.

Ms Bakis also practised as a tax accountant through a firm called Knightsbridge Tax Pty Ltd.

On 28 November 2014, not long after Mr Green had first met Ms Bakis, he signed a formal document titled Costs Disclosure Statement and Client Service Agreement, pursuant to which KNL was purportedly retained to act on behalf of the ALALC ("the First KNL CSA"). There is no reasonable explanation for Mr Green organising the engagement of Ms Bakis, given the ALALC already had its long-serving solicitor available. Ms Bakis signed the First KNL CSA on behalf of KNL. Although Mr Green's signature appears on the First KNL CSA immediately above the words: "Authorised Representatives of Awabakal Land Council", it was common ground that Mr Green signed the document without the knowledge or authority of the ALALC board. There is no record in the minutes of the ALALC board meetings of a copy of the First KNL CSA having been presented or provided to the board. No board member recalled any discussion occurring around this time regarding the appointment of KNL or Ms Bakis, and there was no motion put or resolution made by the board (prior to 2016) regarding the approval of KNL's appointment. There was also no copy of the First KNL CSA among the records of the ALALC. The Commission finds that a copy of the First KNL CSA was never provided to the ALALC board.

However, at an ALALC board meeting on 11 January 2016, over 12 months after KNL had purportedly been retained by the ALALC pursuant to the First KNL CSA, Mr Green proposed a resolution to the effect that KNL's appointment "be ratified". The board passed the resolution.

Mr Green has no experience in legal concepts such as ratification of appointments or contracts. The inference, which the Commission draws, is that he was requested to put forward the motion for the resolution by Mr Petroulias and Ms Bakis. The Commission finds that no details regarding KNL's retainer, including the terms of the First KNL CSA, were put to the board at this meeting. For this reason, as well as others discussed below and in more detail in chapter 10, the Commission considers that the ratification of Mr Green's appointment of KNL and Ms Bakis as ALALC's solicitor was not effective. It is a requirement of effective ratification that it occur within a reasonable time of the unauthorised act (see *Hughes v N M Superannuation Pty Ltd* (1993) 29 NSWLR 653 at 665 per Sheller JA (with whom Kirby P and Meagher JA agreed)). There is no rigid rule as to what is considered a

"reasonable" amount of time (see *Life Savers (Australasia) Ltd v Frigmobile Pty Ltd* (1983) 1 NSWLR 431, per Hutley JA at 438E). However, the Commission considers that the intervening period of over 12 months between KNL's unauthorised appointment by Mr Green, and the attempted ratification of that unauthorised act by the ALALC board could not be regarded as a reasonable amount of time given that during that period KNL conducted itself (and represented itself to third parties) as if it had been validly appointed as the solicitors for the ALALC with respect to three attempted transactions.

Further, for the ratification to be effective the ALALC board, as ratifier, must have had full knowledge of the material circumstances or essential facts of the unauthorised act to be ratified, or must have intended to adopt the entering of the First KNL CSA regardless of what the material circumstances were (see *The Phosphate of Lime Co Ltd v Green* (1871) 7 CP 43 at 56–7(2006) 12 BPR 23,593 at 23606; *Taylor v Smith* (1926) 38 CLR 48 at 54–5, 59, 60 and 62; and *Wilton v Commonwealth Trading Bank of Australia* [1973] 2 NSWLR 644 at 674). Without having received and had the opportunity to consider the terms of the First KNL CSA, the Commission considers that the ALALC board lacked the requisite knowledge to render the ratification effective at law.

The cover letter from Ms Bakis enclosing the First KNL CSA is addressed to "The Directors" of the ALALC and refers in the opening paragraph to "the matter of your sourcing investors, capital, equity and debt funders, effecting the acquisition of or interest in indigenous lands and maximising their realisable value".

The scope of the retainer as set out in the terms of the First KNL CSA is broad and ambitious given the functions, purpose and budget of the ALALC on the one hand and the prior experience and resources of Ms Bakis/KNL on the other. At clause 1.1 of the First KNL CSA, it is stated that KNL would provide legal advice to the ALALC, draft sample template agreements and forms, and perform "all ancillary work" in respect of "establishing and promoting opportunities" with a view to "maximising the value of the realisation of the [Indigenous] land". At clause 9.1 of the Costs Disclosure Statement (within the First KNL CSA), under the subheading "Estimate of Costs and Expenses" it is provided as follows: "We estimate that our charges for the monthly fees in this matter will be $80,000 plus GST plus disbursements". This estimate of costs alone suggests that the ALALC board would never have entered into such an agreement, had it ever been presented to the board for its approval. In this respect, it is noted that the annual funding that the ALALC received from the NSWALC (provided on a quarterly basis) was in the order of $140,000. On any view, the ALALC was not in a position to incur legal costs anywhere near the vicinity of $80,000 on a monthly basis. Additionally, the Commission finds that there had been no agreement by the ALALC board that a project involving the "sourcing investors, capital, equity and debt funders, effecting the acquisition of or interest in indigenous lands and maximising their realisable value" had been discussed or agreed to by the ALALC board either generally, or with specific reference to retaining solicitors to assist with that project.

Mr Green's evidence was that he could not recall signing the First KNL CSA but did not deny that it was his signature that appeared on the document. His evidence was that he had a practice of signing documents that were presented to him for his signature. The Commission finds that Mr Green signed the First KNL CSA.

No compelling reason or explanation was provided to the Commission as to why Mr Green, purportedly on behalf of the ALALC, in November 2014 chose to retain Ms Bakis or KNL to act for the ALALC, either on the terms as set out in the First KNL CSA, or at all. Mr Green's evidence was that the only reason Ms Bakis was asked to perform legal work for the ALALC was because of the contact he had with Mr Petroulias. This explanation does not serve to account for the extremely broad scope of the retainer as set out in the First KNL CSA and cover letter, or the decision to seek legal services from someone other than the ALALC's existing solicitor.

In his evidence before the Commission, Mr Green denied any knowledge of the terms of the First KNL CSA and stated that he had signed the document without looking at or reading any of the information contained within it. The Commission rejects this evidence as implausible. On behalf of Mr Green, it has been submitted that absent the production of a file note recording the advice Ms Bakis is said on her evidence to have given to Mr Green in connection with the First KNL CSA, the Commission would not find that Mr Green had any awareness of its contents. This submission is rejected. There is no evidence to suggest that Mr Green was incapable of reading or understanding this document or others of this kind. To the contrary, in his evidence before the Commission, Steven Slee, who as CEO of the ALALC had cause to deal with Mr Green, stated that Mr Green was capable of reading and digesting all of the material that was put before the board for consideration. Additionally, Steven Slee noted the significant input Mr Green had provided to proposals put to the board, and also pointed out Mr Green's previous experience with LALC boards and land rights and Aboriginal advocacy. The Commission accepts that Mr Green may not have read the entirety of the First KNL CSA, but finds that he knew and understood that in signing the document he effected, or at least purported to effect, Ms Bakis' retainer as the ALALC's solicitor.

The ALALC's existing solicitor in November 2014 was Ian Sheriff. Mr Sheriff was experienced in transactions

involving land that was subject to the statutory controls under the ALR Act. He was first retained, following a pitch he and his then law firm had made to the board, to act on behalf of the ALALC in around 2006 in connection with the conveyance of ALALC property in Newcastle. He was thereafter retained by the ALALC on a transaction-by-transaction basis with respect to commercial and property matters.

Steven Slee's evidence was that Mr Sheriff had the necessary expertise with respect to the ALR Act and had been well across the matters in relation to which he had been retained to act on behalf of the ALALC. Steven Slee had not found any fault in the advice that Mr Sheriff had provided to the board in the past. He was not aware of any reason why the board would have wished to change solicitors or cease to use Mr Sheriff for the ALALC's legal work, had been unaware of any request by the board's directors for KNL's assistance, and did not know of any discussion at the board level of the matters detailed in KNL's cover letter of 28 November 2014 (that is, as to the subject and scope of the retainer). Further, Steven Slee's evidence was that a proposal to engage a new solicitor would have required board approval.

There is no record in the ALALC board minutes from around November 2014 of any discussion regarding a potential move away from the use of Mr Sheriff for ALALC's legal work, or even regarding the option of retaining Ms Bakis of KNL. The evidence of the ALALC board members was that there was never any discussion at board meetings regarding the quality of Mr Sheriff's legal work and services provided to the board or of the need to retain anyone else to provide legal services.

It is also relevant to observe that, prior to November 2014, Ms Bakis had not had any experience with documenting a land transaction on behalf of, or in any way, involving a LALC. Ms Bakis was also not familiar, up until this time, with the provisions of the ALR Act. Unlike Mr Sheriff, Ms Bakis' practice was not local to the ALALC, but was located in Sydney. In short, there was no feature of Ms Bakis' practice or experience that served to recommend her to the ALALC as a potential replacement for Mr Sheriff, nor any reason for the ALALC to seek a replacement. Also, unlike Mr Sheriff, Ms Bakis had not pitched for the work or made a proposal to the board that KNL provide its legal services to the ALALC. Instead, the arrangement was made by Mr Petroulias, without the board's knowledge. On Ms Bakis' evidence, she agreed to document the First Gows Heads of Agreement, which became the first item of work that she carried out purportedly on behalf of the ALALC and is discussed later in this chapter, after that request was made of her by Mr Petroulias, in the following terms:

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

Putting to one side the confounding circumstances surrounding the particular appointment of Ms Bakis and KNL, there are three further issues regarding the First KNL CSA that the Commission considers require specific attention. The first is Mr Green's authority to enter into the agreement on the ALALC's behalf. Mr Green accepted in his evidence before the Commission that he had no such authority and that any proposal to retain Ms Bakis and KNL would need to be raised before the board. There is nothing within the ALR Act or ALR Act Regulation that authorises Mr Green, either in his particular capacity as deputy chairperson of the board or simply as a director of the board, to enter into any agreement on behalf of the ALALC. There was also no evidence before the Commission that there was ever any formal instrument of delegation or authority created by the board authorising Mr Green to enter into agreements on behalf of the ALALC. Nor was there any evidence to suggest that the board resolved to bestow any such authority on Mr Green in any other way or form.

In her evidence before the Commission, Ms Bakis asserted that she understood that Mr Green had the authority of the board to enter into agreements on behalf of the ALALC, based on representations he is said to have made to her in late 2014. Ms Bakis also contended that at around this time, Ms Dates had represented that both she and Mr Green had this authority to act on behalf of the board, upon which representations Ms Bakis relied. However, Ms Bakis made no attempt to check, as would be expected of a lawyer, whether Mr Green and Ms Dates did in fact have authority to enter into transactions on behalf of the ALALC and the board and did not provide any cogent explanation for her failure to satisfy herself that either Mr Green or Ms Dates had such authority.

During her evidence, Ms Bakis positively asserted that at certain points during the time that she acted as the ALALC's solicitor, Mr Green had actual authority to act on behalf of the ALALC, by operation of a particular rule pertaining to the Duties of Chairperson found in the Model Rules for Local Aboriginal Land Councils ("the Model Rules"), which are found within Schedule 1 to the ALR Act Regulation. Specifically, this authority was said to be conferred upon Mr Green by model rule 19(2)(c) ("Model Rule 19"), because Mr Green was, for a time, the acting chairperson of the board:

> *So Richard Green was the acting chairman. The Aboriginal Land Rights Act says between board meetings the chairman, the chairman is the Land Council, as in the board, the chairman is the board.*

So in theory he did have authority at this point.

Ms Bakis suggested to the Commission that she had relied on this apparent source of authority in connection with Mr Green's authority to enter into a deed of guarantee with the Sunshine Entities (discussed in chapter 9). Ms Bakis also made this assertion in connection with Mr Green's authority to enter into a second fee agreement with KNL on 27 November 2015 (the "Second KNL CSA"): "Richard Green was the acting chairman at the time. The board was not meeting. He could make these decisions. That was my understanding…He's the acting chairman so he has a lot of power under the legislation".

Model Rule 19 sets out the duties and powers of the chairperson of the board. Although Mr Green was never the chairperson of the ALALC board, he was acting chairperson during the period of Ms Dates' suspension as chairperson, between 2 November and 28 December 2015. Pursuant to s 64(3)(b) of the ALR Act, when acting as chairperson Mr Green had all the functions of the chairperson and was taken to be the chairperson of the ALALC board. Accordingly, the Commission accepts that Model Rule 19 applied to Mr Green from 2 November to 28 December 2015, a period when two agreements were purportedly entered into by Mr Green on behalf of the ALALC: the Deed of Acknowledgment and Guarantee, between the Sunshine Entities and the ALALC, dated 21 December 2015; and the Second KNL CSA, dated 27 November 2015. However, the Commission rejects the contention that Model Rule 19, at any time, provided either Mr Green or Ms Dates with authority to enter into any land transactions or any other kind of agreement on behalf of the ALALC, including either the First KNL CSA, the Second KNL CSA (together, "the KNL Fee Agreements") or, as was asserted by Ms Bakis, the Deed of Acknowledgment and Guarantee.

Model Rule 19 should be read in the context of the entire provision, which states as follows.

19. Duties of Chairperson

(1) The primary duty of the Chairperson of the Board is to ensure the successful functioning of the Council and achievement of its objectives.

(2) Accordingly the Chairperson must:

(a) uphold the rules of the Council, and

(b) preside at Council meetings, and

*(c) represent and act, **subject to the instructions of a Council meeting**, on behalf of the Council in the interval between meetings.*

(3) In particular, the Chairperson must:

(a) before each Council meeting:

(i) consult with the chief executive officer in the preparation of an agenda, and

(ii) ensure that the notice of the meeting conforms with these Rules, and

(iii) check the accuracy of any minutes of previous meetings being presented to the meeting for acceptance, and

(iv) read over any correspondence or other material to be brought forward at the meeting, and

(b) open the meeting when a quorum is present, ask for any apologies to be tabled, then welcome new members and guests, and

(c) sign minutes of previous meetings as correct when they have been accepted by the meeting, and

(d) preserve order and warn any member who is causing a disturbance at a meeting that the member may be removed, and

(e) order the removal from the meeting of any member who, having been already warned, continues to cause a disturbance and may request assistance from the police to remove the member if it is considered necessary by the majority of members at the meeting, and

(f) ensure that debates are conducted in the correct manner and, in particular, that there is one speaker at a time, and

(g) rule "out of order" any motion which involves the Council acting outside its functions or powers under the Act or any other statute or rule of law, and

(h) close or adjourn the meeting when:

(i) a motion to that effect is carried, or

(ii) all business has been finished, or

(iii) the meeting is excessively disorderly and the Chairperson is unable to restore order, or

(iv) a quorum of members is no longer present.

(4) The Chairperson has, in relation to the Board and meetings of the Board, the same functions as the Chairperson has under this clause in relation to meetings of the Council.

[Emphasis added]

It is also relevant to refer to Model Rule 22, which relates to the relationship between the Model Rules, the ALR Act, and the ALR Act Regulation, and provides as follows:

> *To the extent (if any) that a Rule purports to make provision in respect of a matter provided for in the Act or the Regulation, the provision of the Act or the Regulation prevails over the Rule.*

Model Rule 19 should be interpreted according to the natural and ordinary meaning of its language. The only way that Model Rule 19 could have the meaning for which Ms Bakis appeared to contend in her evidence before the Commission would be if the phrase "subject to the instructions of a Council meeting" were removed from the provision or otherwise had no work to do. This is because the phrase "subject to the instructions of a Council meeting" places an express limitation on the duties and powers of the chairperson to act on behalf of the council in the interval between meetings. Model Rule 19 does not empower the chairperson to represent and act on behalf of the council as he or she sees fit, but rather, only within the parameters of instructions issued by the council or the board. There was no evidence before the Commission that either the ALALC or its board had provided instructions to Mr Green and/or Ms Dates to enter into the KNL Fee Agreements, either of the Gows Heads of Agreements, or the agreements the subject of the Sunshine transaction (the latter being discussed in chapter 8).

Additionally, regard must be given to Model Rule 22, which provides that any provision of the ALR Act and the ALR Act Regulation prevails over the Model Rules, to the extent that any of the Model Rules purport to make provision for matters provided for in the ALR Act and ALR Act Regulation. In that connection, were the board or the ALALC to have instructed Ms Dates or Mr Green to enter into either of the Gows Heads of Agreements, the agreements the subject of the Sunshine transaction, or even the KNL Fee Agreements (for reasons dealt with below), Model Rule 19 could not provide a legitimate source of authority for either of them to do so, as those acts, because they purport to deal with ALALC land, are outside the delegation power provided to LALC boards (pursuant to s 72 of the ALR Act).

Section 72 of the ALR Act provides that a board may delegate to the CEO of the LALC, or any other person or body prescribed by the regulation, any of the functions of the board, other than that power of delegation or any matter under the ALR Act or ALR Act Regulation that also requires the approval of the NSWALC. Pursuant to s 42E of the ALR Act, a LALC must not deal with land vested in it, except in accordance with an approval of the NSWALC, under s 42G. Accordingly, any purported delegation of authority that may have been made, in reliance on Model Rule 19, to authorise the entry by Mr Green or Ms Dates into an agreement that in any way "dealt with ALALC land" (as that phrase is defined by s 40 of the ALR Act) would be outside the bounds of the ALR Act, and therefore unlawful.

Even the briefest review of the provision of the ALR Act would have revealed to a lawyer, first, that the issue of authority of Mr Green and Ms Dates was a very live and central one and, secondly, any transaction concerning ALALC land required a board, and council, approval.

Additionally, the Commission accepts the submission made by Counsel Assisting to the effect that the fact Ms Bakis sought to rely upon Model Rule 19 to support her decision to accept Mr Green had the requisite authority, and to justify her failure to check with the board any authority he may have represented himself as having, suggests an awareness on Ms Bakis' part that there was a live issue as to Mr Green's authority to act on behalf of the ALALC. And yet, Ms Bakis allowed Mr Green to sign various agreements on behalf of the ALALC and asserted that she relied on his stated authority to do so.

Under cross-examination by counsel for Mr Green, Ms Bakis stated that she came to realise the import, as contended for by herself and Mr Petroulias, of Model Rule 19 in around mid-2015 "when the Board was in chaos… When the Sunshine transactions were starting". The Commission infers that by this time Ms Bakis must have understood, at a minimum, that there was some question as to the authority of Mr Green and Ms Dates to enter into the Sunshine transaction without board and council approval, and so looked to identify a potential statutory basis to authorise their actions. Under further questioning from Mr Green's counsel, Ms Bakis could not recall seeing the phrase "subject to the instructions of a Council meeting" within Model Rule 19 but accepted that these words placed a significant fetter on any discretion that would be afforded to a member of the board between meetings. Ms Bakis' subsequent suggestion that, in any event, the ALR Act registrar had advised Ms Dates "to make decisions and run the Land Council as best she could", would not on any view serve to authorise Ms Dates or Mr Green to enter into transactions purporting to deal with ALALC land on behalf of the ALALC. The Commission finds that Ms Bakis knew that Ms Dates and Mr Green had no such authority, at any stage.

The second issue that warrants examination in relation to the First KNL CSA is clause 4, which provides that payment of KNL's fees would be secured by way of a charge granted by the ALALC over "any interest in land, assets, bank or trust accounts or property generally that you own". The clause also permitted KNL to lodge a charge, mortgage or caveat over the ALALC's assets for

payment of KNL's costs and disbursements. Under s 40 of the ALR Act, to "deal with land" is defined as including to "sell, exchange, lease, mortgage, dispose of, or otherwise create or pass a legal or equitable interest in, land". As indicated above, pursuant to s 42E(1) of the ALR Act, a LALC is not permitted to deal with land vested in it except in accordance with an approval of the NSWALC under s 42G of the ALR Act. The Commission finds that clause 4 of the First KNL CSA purported to deal with land, within the meaning of the ALR Act, which dealing was prohibited by s 42E. Neither Mr Green, nor Ms Dates, nor any individual director of the ALALC board possessed the authority to charge ALALC land.

The same clause – granting KNL permission to lodge a charge over ALALC land – appeared in another Costs Disclosure Statement and Client Service Agreement dated 27 November 2015 (the Second KNL CSA), which is also signed by Mr Green. The contention made by Ms Bakis during her evidence before the Commission with respect to this clause as it appeared in the Second KNL CSA that Model Rule 19 led her to conclude that Mr Green had authority to charge or mortgage the ALALC's land, is rejected for the reasons given in relation to the effect of Model Rule 19 above.

The inclusion of clause 4 is consistent with every consideration being given to KNL's interest, but no adequate or proper consideration of the ALALC's interests.

Finally, it is necessary to make some observations about clause 20 of the Costs Disclosure Statement appearing in the First KNL CSA. Clause 20 provided as follows:

> *20. Instructions Through Your Agents*
>
> *You have instructed us that we may work with and take 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 work load to* [sic] *this firm.*

An almost identical clause appeared in the Second KNL CSA, with the sole difference being that only Nicholas Peterson and Mr Green were listed as ALALC "agents".

The "Nicholas Peterson" referred to is Mr Petroulias, "Peterson" being one of the aliases used by him. The effect of these clauses (assuming the validity of the agreements and that they could be relied upon by Ms Bakis) was to permit Ms Bakis to take instructions from the ALALC from the agents nominated in the clause, being, in the case of the First KNL CSA, Mr Petroulias, Mr Green, Mr Tofilau, and Mr Margi. Mr Petroulias, aside from being Ms Bakis' domestic partner at the time, was also, on Ms Bakis' evidence, the person behind Gows. Gows was the very company to whom the ALALC had apparently agreed to sell the land, which agreement (again, on her own evidence) Ms Bakis had specifically been retained to document. Of those nominated as "agents" of the ALALC, the only person known to the board – at this juncture – was Mr Green. With the exception of Mr Green, none of the ALALC board members had any knowledge of, or connection to, Mr Tofilau or Mr Margi. Steven Slee had also never heard of either individual. Mr Green's evidence was that he had met Mr Tofilau about three times, having been introduced to him by Mr Petroulias. He told the Commission he did not know of Mr Margi, and did not instruct Ms Bakis that either Mr Margi, Mr Tofilau, himself or Mr Petroulias could act as the ALALC's agents. Additionally, at no point did the ALALC board appoint any of these individuals, including Mr Green, to act as agents for the ALALC.

It has been suggested by Mr Petroulias that he drafted clause 20 of the First KNL CSA. Ms Bakis' evidence before the Commission was that it was likely that Mr Petroulias had "given me the wording for it". She conceded that the clause named people who had no connection with the ALALC but stated that the nominated agents were "associated with IBU" and that they "were all talking to each other about various opportunities and financing. I think a lot of it was around financing". The purpose of clause 20 was said, by Ms Bakis, to "protect privilege", should any of these agents give her instructions on behalf of the ALALC. Ms Bakis indicated to the Commission that she did not "agree" with the clause, and never acted on it.

In the written submissions made on behalf of Ms Bakis, her counsel conceded that the risk of a conflict of interest (between Gows and the ALALC) was enhanced by clause 20 of the First KNL CSA. Attention is drawn, seemingly by way of mitigation, to the misgivings Ms Bakis admitted to having about the clause and that she placed no reliance on it. The Commission observes that this submission is not correct, noting Ms Bakis' remark during her evidence that Mr Petroulias was the ALALC's agent (relying on clause 20 in the KNL Fee Agreements) and was therefore authorised to assemble the ALALC's legal file held by KNL in response to the summons issued to her by the Commission.

In Mr Petroulias' written submissions, he contends that the evidence supports the proposition that clause 20 was included as a costs-savings exercise, so that agents could provide input into "what was contemplated to be a major commercial enterprise". The only evidential support provided by Mr Petroulias for this contention is the text of the First KNL CSA itself, which the Commission considers does not lend the support suggested as to the purpose of ALALC agents being utilised. There is no

evidence that the ALALC had appointed these individuals as its agents, or that there was any project then being contemplated by the ALALC that could accurately be described as a "major commercial enterprise".

The Commission also observes that Mr Petroulias' submission, along with the contents of the First KNL CSA, is profoundly at odds with Ms Bakis' evidence about the scope of what she had initially agreed to do for the ALALC. Ms Bakis stated on more than one occasion during her evidence before the Commission that she only intended to carry out the one piece of work for the ALALC, namely, documenting what became the First Gows Heads of Agreement:

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

The Commission rejects Mr Petroulias' submission that clause 20 was a costs-savings initiative, as it does the further submission made by Mr Petroulias, also lacking in evidential support, that clause 20 was neither unauthorised nor improper.

Ms Bakis' evidence was that Mr Petroulias and Mr Green together asked her to include clause 20 in the First KNL CSA, and that before Mr Green signed the First KNL CSA, she "ran through the important clauses" with him. By contrast, Mr Green, in his evidence before the Commission, denied that he gave any instructions to Ms Bakis to include clause 20 in the First KNL CSA, or appoint him or any of the individuals mentioned in that clause as the ALALC's agents. Further, Mr Green's evidence was that Ms Bakis never explained the contents of the First KNL CSA to him or gave him advice specifically about the effect of clause 20. There is no record of any advice being given by Ms Bakis to Mr Green about the First KNL CSA generally, or the effect of clause 20 specifically, and the Commission finds that no such advice was given. Plainly, the clause was also unauthorised; as indicated above, there is no evidence of the ALALC appointing any of the individuals named in clause 20 as agents of the ALALC.

The Commission further finds that clause 20 was drafted by Mr Petroulias, and that Ms Bakis inserted it into the First KNL CSA at the request of Mr Petroulias alone. Clause 20 purported to enable Ms Bakis to act legitimately, pursuant to the agreement, on the instructions of Mr Petroulias and other persons unconnected with the ALALC without first consulting with the ALALC to see if they agreed with the instructions. This meant that she could act *against* the interests of her client, the ALALC, on the instructions of another party. That Ms Bakis was willing to, and in fact did, insert such a clause into the agreement at the request of someone who was not only a stranger to the ALALC at this point in time, but also the person behind Gows (the company with which the ALALC was purportedly about to enter into a dealing affecting ALALC land) so that Mr Petroulias himself (as well as two others with no connection to the ALALC) could act as agent for the ALALC in connection with that transaction, amounts to a serious and significant breach of Ms Bakis' duties owed by her as a solicitor to the ALALC.

With respect to the conflict of interest that existed due to Ms Bakis acting on behalf of Gows as well as the ALALC in relation to the Gows transaction, it is submitted by Ms Bakis that there were mechanisms in place to deal with this potential conflict. The evidence in support of this is said to be a document entitled "Memorandum of Declaration Acknowledgment and Consent", purportedly executed by Mr Green and Mr Petroulias on 2 May 2015. Putting to one side the question of this document's authenticity, the Commission notes that the "mechanisms" to which the document refers are in connection with managing a potential conflict, not with the entry into the Gows Heads of Agreements by the ALALC and Gows, but rather, a future transaction contemplated by this document, whereby Gows would "sell out its deal with ALALC to third party"[sic]. The document contains no reference to how KNL and Ms Bakis had dealt with the obvious conflict of interest arising well prior to 2 May 2015, when Ms Bakis was purportedly retained to act both for Gows and the ALALC in connection with entry into the First Gows Heads of Agreement.

The Commission also observes that the document does not appear to be one created by KNL or Ms Bakis; it is not on KNL letterhead and does not purport to be drafted by Ms Bakis, features which might be expected of the document, were it a document genuinely created in an attempt by Ms Bakis to institute or record mechanisms instituted to deal with a potential conflict of interest. Further, there are also other reasons to doubt the authenticity of the document. These reasons include, inter alia, the reference within the document to the ALALC entering into an agreement with Gows "further to unanimous Board resolution" when there was no such board resolution supporting any agreement with Gows, as well as the reference to Mr Gabey being a

representative of Gows, when his evidence was, and the Commission has found, that Mr Gabey had no association or involvement with Gows.

In her evidence before the Commission, Ms Bakis suggested that she had given written advice or notice to the ALALC about the conflict of interest that existed with respect to her acting as solicitor for both Gows and the ALALC in connection with the Gows Heads of Agreements. No file note recording any such advice could be located in KNL's legal file which Ms Bakis had produced to the Commission in answer to a summons to produce all of her legal records relating to the work she performed for Gows and the ALALC. Ms Bakis also asserted that she took as many steps as she considered reasonable at the time to manage the conflict. The Commission finds that no such advice was given to the ALALC, and further, that no steps were taken by Ms Bakis to manage the conflict.

The First Gows Heads of Agreement

The First Gows Heads of Agreement, which is dated 15 December 2014, presents as if it had been prepared by KNL, as it bears the KNL logo, name and address on the cover page of the agreement.

Ms Bakis submits that it reflected instructions that had been received by KNL from the ALALC. That submission relies on the amended 31 October 2014 ALALC board minutes, a letter dated 12 December 2014 from Ms Bakis on behalf of KNL to Mr Green enclosing a final draft of the First Gows Heads of Agreement for execution by Mr Green and a file note, also dated 12 December 2014, that purports to record a meeting between Ms Bakis, Mr Green and Mr Petroulias. This submission is rejected. Those instructions, had they been given, could only have legitimately come from either the board (on behalf of the ALALC) or the then CEO, Steven Slee (provided he had in turn received his own instructions from the board). Yet, there was no evidence before the Commission that either the ALALC board or Steven Slee provided such instructions to Ms Bakis. The Commission has already found that the 31 October 2014 ALALC board minutes were improperly amended, and so can provide no evidential support for the proposition that instructions came from the board. There was also no evidence before the Commission that the ALALC board had provided authority to Mr Green to give any instructions to Ms Bakis either generally, or specifically, in relation to any agreement with Gows.

Further, the Commission considers that there are several reasons to doubt the authenticity of the documents relied upon by Ms Bakis to make this submission. With respect to the letter from Ms Bakis dated 12 December 2014, Mr Green denies receiving it, it was not among the ALALC's records, and neither it, nor the First Gows Heads of Agreement, was tabled by Mr Green at the ALALC's board meeting just three days later on 15 December 2014. Nor were the letter and the First Gows Heads of Agreement considered or discussed at the subsequent ALALC board meetings of 28 January 2015 and 10 February 2015.

With respect to the purported file note, also dated 12 December 2014, it refers several times, albeit ambiguously, to the notion that Gows was somehow involved with "Cyril" and "Omar" (being, it may be inferred, Mr Gabey and Mr Abdullah, who presented to the board at its 31 October 2014 meeting on behalf of IBU). It refers to a "Copy of a joint presentation including Gows" being attached to the file note. That "joint presentation" is a copy of the IBU presentation with Gows' name appearing within it. Mr Abdullah denied having ever seen it before. Mr Gabey's evidence was that he had provided Mr Petroulias with a copy of the IBU presentation because he had asked for it. The Commission finds that the copy of the IBU presentation including Gows lends no support to the proposition that Gows was somehow involved in the presentation given by IBU to the ALALC board, and further that the copy of the presentation that had been given to Mr Petroulias by Mr Gabey was caused by Mr Petroulias to be doctored so as falsely to include Gows. The file note also states that "Cyril is in JV with me and on board". This too was denied by Mr Gabey and the proposition that Mr Gabey was involved in a joint venture with either Mr Petroulias or Gows, and made the presentation to the ALALC board on behalf of and in furtherance of that joint venture, has been rejected by the Commission (see chapter 6). The Commission finds the probabilities favour that the file note was prepared to create the impression that instructions had legitimately been given to Ms Bakis to prepare the First Gows Heads of Agreement, and that entry into the First Gows Heads of Agreement was authorised by the ALALC board, when in fact no such instructions had been given to Ms Bakis, and no such authority existed for the drafting of, or entry into, the First Gows Heads of Agreement.

Instead, the Commission finds that the First Gows Heads of Agreement was a false agreement drafted by Ms Bakis, with input and assistance from Mr Petroulias and Mr Green. The Commission finds that they collaborated in the drafting of the First Gows Heads of Agreement as an overt step towards facilitating a scheme each participated in to purportedly sell and/or develop properties owned by the ALALC via the use of a false agreement in order to wrongfully confer a financial benefit on each of them (hereafter referred to as "the Scheme").

In the Commission's view, Mr Petroulias, Ms Bakis and Mr Green acted in concert to create the First Gows Heads of Agreement, knowing it was false and intending to use it to on-sell the "rights" Gows had purported to acquire under the First Gows Heads of Agreement to a third party.

The Commission finds that sometime between 31 October 2014, when the ALALC board had resolved to propose a sale of properties at Warners Bay to IBU, and mid-December 2014, when Mr Green signed the First Gows Heads of Agreement, Mr Petroulias, Ms Bakis and Mr Green created, and each agreed to participate together, in the Scheme. As was submitted by Counsel Assisting, each of these individuals formed an integral element to the scheme and had a role to play:

1. Mr Green, as a director and deputy chairperson of the ALALC board, provided information regarding the ALALC, including as to its property holdings, and was able to and did execute documents in his capacity as a director and deputy chairperson, including the Gows Heads of Agreements, and the KNL Fee Agreements. In signing these agreements, he gave them the appearance of authenticity, and represented to third parties that the Gows transaction was legitimate and entered into with the approval of the ALALC board. Mr Green also had an external-facing role, which involved him appearing as a representative of the ALALC and the ALALC board in meetings and negotiations involving third parties, which again lent the appearance of legitimacy to those discussions that would otherwise be absent.
2. Mr Petroulias, as the Gows representative, played the role of an individual external to and removed from the ALALC, but whose company had "the rights" to purchase the ALALC land that was for sale, pursuant to the Gows Heads of Agreements. As the Commission addresses in later chapters, Mr Petroulias' role was unclear to many of those third parties who came into contact with him and the ALALC in connection with the Scheme, and also to people within the ALALC, including board members. Some considered him to be the ALALC's lawyer, working with Ms Bakis at KNL, others considered him to hold a role with Gows or to be working with Mr Green. The Commission finds that Mr Petroulias was deliberately ambiguous about who he was, who he represented, and the role he had to play in the transactions in which he purported to or did involve the ALALC as part of the Scheme. This ambiguity assisted Mr Petroulias, Ms Bakis, and Mr Green in the pursuit of the Scheme.
3. Ms Bakis, who, as the ALALC's solicitor, was also able to lend the appearance of legitimacy to both the Gows Heads of Agreements and subsequent negotiations and discussions involving the on-selling of the rights purportedly created by those agreements. The Commission is satisfied that the First KNL CSA was intended by Mr Petroulias, Ms Bakis and Mr Green to cloak the First Gows Heads of Agreement in legitimacy when it had none. As a solicitor purportedly retained to act on behalf of the ALALC, Ms Bakis was clothed in apparent authority to act on behalf of the ALALC and represent its legal rights and interests. It enabled both her and Mr Petroulias to communicate with third parties, apparently on behalf of the ALALC, in furtherance and to facilitate the objectives of the Scheme. As discussed in chapter 8, by involving Ms Bakis as the solicitor for the ALALC in late 2014, Mr Petroulias, Ms Bakis and Mr Green were able to represent to Mr Zong, in 2015, that the First Gows Heads of Agreement was a legitimate transaction and bona fide between the ALALC and Gows and that the ALALC board would permit the on-selling of the agreement.

As indicated above, the creation of the First Gows Heads of Agreement was an overt step that furthered and facilitated the Scheme. Each of the KNL Fee Agreements was also created in furtherance of the Scheme, as was the Second Gows Heads of Agreement discussed below.

The terms of the First Gows Heads of Agreement

The First Gows Heads of Agreement purports to be between Gows as "the Purchaser" and the ALALC as "the Vendor". It purports to be executed by "Jason Latervere" on behalf of Gows and is executed by Mr Green on behalf of the ALALC. By "Recital A" the document is said to record that the parties "have agreed in principle to enter into a contract, the particulars of which are contained in this Heads of Agreement". "Recital B" provides that a formal contract will be prepared, but that the First Gows Heads of Agreement would prevail until that contract was signed and exchanged.

Part I provides the terms of the First Gows Heads of Agreement Part I, term 1(a), provides that the agreement is for the sale of the properties identified in Schedule 1, and that the document is "a binding contract", which "is intended to be superseded by the contracts substantially similar in the draft form attached as Annexure A to this Agreement which will be complete [sic] on the conclusion of the valuation process undertaken by the Vendor".

Part II is said to contain the "Terms of Contract", that will be included in the formal contract, and include the following:

1. *Term 2.1, which provides that the Purchaser (Gows) agrees to buy and the Vendor (ALALC) agrees to sell the land identified in the schedule (Schedule 1) for the market value determined by the valuer appointed by the Vendor ;*
2. *Term 2.2, which provides that the payments will be made by way of a deposit of "$10%"* [sic] *on the execution of completed contracts, and the balance paid in 180 days.*

Schedule 1 identifies the five following ALALC properties, all within Warners Bay, that were to be sold to Gows:

- 14 Vermont Place
- 291 Hillsborough Road
- 295 Hillsborough Road
- 110 Bayview Street
- 3/79 Clarence Road.

These were the same properties that were the subject of the 31 October 2014 ALALC board resolution that a contract of sale be proposed to IBU.

Each of these properties is depicted in a separate aerial picture that is attached to the First Gows Heads of Agreement. These photos are described as "Pictures of Land Titles Sold Per Heads of Agreements 15/12/14".

There is also an annexure to the First Gows Heads of Agreement ("Annexure A"), which states simply that: "The parties agree to enter into a contract in the [sic] substantially similar terms to the following form for each property identified in Schedule 1". The draft contract for the sale of land that is attached contains the following salient details:

- the vendor is the ALALC
- the vendor's solicitors are KNL
- the completion date is the "180th day after the date of this contract (clause 15)"
- the land is not identified, with the space being left blank, other than to identify that it is in NSW.

It was submitted by Counsel Assisting that the First Gows Heads of Agreement is a sham. As stated by the High Court in *Equuscorp Pty Ltd v Glengallan Investments Pty Ltd* (2004) 218 CLR 471 at 486: "… 'Sham' is an expression which has a well-understood legal meaning. It refers to steps which take the form of a legally effective transaction but which the parties intend should not have the apparent, or any, legal consequences." In considering the sham doctrine in *Lewis v Condon* (2013) 85 NSWLR 99, Leeming JA observed (at [59]) as follows:

> *…it is essential that there be an intention that the true transaction is different from that which would ordinarily be attributed to the transaction on the face of the documents. As Lord Wilberforce put it, "to say that a document or transaction is a 'sham' means that while professing to be one thing, it is in fact something different ":* WT Ramsay v Inland Revenue Commissioners *[1982] AC 300 at 323* .

His Honour went on to note (at [70]) that every case of shamming intent involves a finding of intentional deception as to the effect of a document.

Having regard to these authorities, it is apparent that the First Gows Heads of Agreement was a sham. It states (by Recital A) that there was an agreement in principle between the parties to enter into a contract for the sale of ALALC land, and purports (by Term 1(a)) to be a binding contract for the sale of that land, when, and as the Commission has found, there was never any agreement in principle on the part of the ALALC and Gows for the sale of the five Warners Bay ALALC properties identified in Schedule 1, or indeed for the sale of any of its land to Gows. There was no ALALC board resolution to this effect, and there had been no approval sought of any such sale at any ALALC members' meeting, as was required by the ALR Act, nor any subsequent approval sought from or granted by the NSWALC.

The Commission rejects as unsound the contention advanced by both Mr Petroulias and Ms Bakis in their written submissions that execution of the First Gows Heads of Agreement was simply a step towards obtaining ALALC and NSWALC approval – that is, that the necessary approvals would or could be obtained *subsequent* to the execution of the agreement. Such a submission cannot overcome the text of the agreement, that asserts and represents that there had already been an in-principle agreement arrived at between the parties when no such agreement had been reached or even contemplated.

Further, no steps were taken around this time, or indeed, ever, to obtain approval of the First Gows Heads of Agreement at the board, the ALALC members or NSWALC level, or obtain valuations of the ALALC properties. If it had been intended that the First Gows Heads of Agreement would be taken to the board, to members or the NSWALC for appropriate approvals to be given, then the Commission expects that there would have been evidence of this, including, at a minimum, in the minutes of the ALALC board meetings. After the 31 October 2014 meeting, the ALALC board met on

7 November 2014, 1 December 2014, and 15 December 2014. In early 2015, not long after the First Gows Heads of Agreement was executed, the board met on 28 January 2015 and 10 February 2015. Yet, there is no record of any agreement having been made with Gows in the minutes of these meetings, and no discussion recorded of steps being taken or even proposed in order to obtain the approvals required for any dealings with ALALC property. There is also no record of the ALALC taking steps to obtain valuations, as it was obliged to do under the First Gows Heads of Agreement, or of Gows prompting the ALALC to obtain the valuations. The Commission finds no such steps were taken, which in turn supports the Commission's finding that the First Gows Heads of Agreement was a sham.

Further, the First Gows Heads of Agreement purported to create legal rights and obligations in relation to ALALC land when, by operation of the ALR Act, it could not do so. By Part 1, term 1(a), it was expressed to be "a binding contract" for the sale of the properties described in Schedule 1, which would be superseded by formal contracts of sale, yet to be drawn up. It therefore, as a bare minimum, purported to create or pass to Gows an equitable interest in ALALC land. Section 40(1)(a) of the ALR Act defines a land dealing as including creating or passing a legal or equitable interest in land. By s 42E(1) of the ALR Act, a LALC is prohibited from dealing with its land without first obtaining the NSWALC's approval under s 42G, which includes the approval of the land dealing by the LALC's members. There was no such approval. Accordingly, although it professed to be a binding contract for the sale of ALALC land, it was not, and could not, be so, which the Commission finds is a matter that was known to Mr Petroulias, Ms Bakis and Mr Green.

In addition, although it professed to be a binding contract, there are elements of the First Gows Heads of Agreement that suggest that it was not in fact intended to create legal rights and obligations. Specifically, although the price for the properties is provided to be determined by the valuer appointed by the ALALC (term 2.1), there is no time stipulated by which the ALALC was required to either appoint the valuer or obtain the valuation. Similarly, and as pointed out by Ms Bakis in her written submissions, there is no mechanism to facilitate the appointment of a valuer and the nomination of a purchase price, should the ALALC fail to appoint a valuer. The Commission finds that the absence of terms such as these is indicative of a disparity between what the First Gows Heads of Agreement appears, on its face, to do, and what the parties intended, which is that it should not have the apparent, or in fact any, legal consequences. Further, the Commission accepts the submission made by Counsel Assisting that these mechanisms were intentionally left out of the First Gows Heads of Agreement by its drafters, because their inclusion would risk the board becoming aware of the purported transaction, which would then put an end to the Scheme.

In Ms Bakis' written submissions, her counsel makes a series of submissions regarding what is contended, on behalf of Ms Bakis, should be the proper characterisation of the First Gows Heads of Agreement. At the heart of these submissions is the proposition that the First Gows Heads of Agreement lacked an essential condition, namely, a sale price for the properties. While term 2.1 provided for the sale price to be the market value determined by the valuer appointed by the ALALC, it is submitted that as there was no mechanism provided in the document whereby an independent valuer could be appointed, failing agreement by the parties on a valuer, it lacked an essential condition, namely, the sale price for the properties, and was on this basis incomplete and void for uncertainty.

It is further contended that if this be the proper characterisation of the First Gows Heads of Agreement, it follows that it was not a sham, because it was not a contract for the sale of land, being void for uncertainty. Equally, it did not seek to create legal rights and obligations, because it was incomplete and therefore "s 42C(1) had no work to do". It is submitted that it was "no more (and no less) than an agreement for the parties to agree upon a contract for the sale of land in the future". It is to be noted that at no point during Ms Bakis' evidence, nor in any file or briefing note purportedly authored by Ms Bakis that was put before the Commission, was this characterisation of the First Gows Heads of Agreement ever given to the document, nor is there any evidence of advice being given by Ms Bakis as to the possibility of it being void for uncertainty.

The Commission considers that Ms Bakis' submissions regarding the effect of the First Gows Heads of Agreement confuse the question of what may be the actual effect of the agreement, at law, with that of what those who drafted it intended it to do. Whether or not, upon proper analysis, the First Gows Heads of Agreement is revealed to be void for uncertainty will not serve to prove that the transaction was not a sham. By contrast, the *gap* between the apparent legal effect and the intended legal effect is a factor relevant to determining whether or not the transaction was a sham.

Accordingly, whether in this instance it is established that the First Gows Heads of Agreement was a sham depends on whether the parties intended their respective rights and obligations to derive from what appears to be a legal instrument. If there is evidenced a disparity or discordance between the parties' legal rights or obligations as described in the documents, and the actual intentions which those

parties are shown to have had as to their legal rights and obligations, a conclusion of sham will be warranted (see Kirby J's observations in Raftland Pty Ltd as Trustee of the *Raftland Trust v Cmr of Taxation* (2008) 238 CLR 516; [2008] HCA 21 at [145]–[149], and the definition of sham provided by *Diplock LJ in Snook v London and West Riding Investments Ltd* [1967] 2 QB 786 at 802, which has been generally accepted in Australia).

As indicated above, the Commission considers that the evidence shows a disparity between the legal rights or obligations of Gows and the ALALC as described in the First Gows Heads of Agreement and the actual intentions which Mr Petroulias (as the Gows representative) and Mr Green (as the purported representative of the ALALC) had as to the legal rights and obligations of Gows and the ALALC. Although the First Gows Heads of Agreement contemplated the obtaining of valuations, and the drawing up of formal contracts, and apparently assumed that the necessary statutory approvals had already been obtained or alternatively would be obtained, none of these steps was taken. However, it is not the case that the First Gows Heads of Agreement was forgotten about. To the contrary, despite none of these steps having been taken, and as discussed in chapter 8, from May 2015 a series of representations was made by Mr Petroulias and Ms Bakis to prospective purchaser third parties (including representations made in the presence of Mr Green) to the effect that Gows held the rights to acquire the five ALALC properties the subject of the First Gows Heads of Agreement, which rights would need to be "bought out" by any prospective purchaser of ALALC land.

The Commission accepts the submission made by Counsel Assisting that the First Gows Heads of Agreement was a sham, based on this evident discordance between the text of the document – what it purports to do, and the circumstances preceding and postdating entry into the agreement – which evidence the actual intentions of Mr Petroulias, Mr Green and Ms Bakis.

Mr Green's evidence

Mr Green did not dispute that he signed the First Gows Heads of Agreement but said that he had no recollection of doing so and, at the time of signing the document, no understanding that it related to the sale of ALALC land and no knowledge of Gows. Mr Green was unsure who presented the document to him, but he told the Commission that it was his general practice to sign whatever was put in front of him by either Mr Petroulias or Ms Bakis, without reading the document or understanding its meaning or effect. He said that because he did not know what he was signing he did not disclose that he had done so to the board.

The Commission rejects Mr Green's evidence about his understanding of the document. Despite being questioned on the matter on many occasions throughout his appearance before the Commission, Mr Green was unable to offer any rational explanation for having signed the First Gows Heads of Agreement. In the Commission's view, it is inconceivable that Mr Green did not know what he was signing. The document had the word "Agreement" on the title page and page 1, and Mr Green testified that he knew that at the time he signed the First Gows Heads of Agreement that he did so in his capacity as a director of the ALALC. Mr Green initialled each page of the document, including the first page of the draft Contract for Sale and the pages containing a description of the location of the properties the subject of the agreement together with aerial photographs of the lots. The Commission does not accept Mr Green's evidence that each page was "flicked over" and that he did not read anything.

It is not possible to accept that Mr Green would not have seen various details on these pages alerting him to the fact that this was an agreement related to the sale of land. For example, the words, "Contract for the sale of land" appear in bold lettering at the top of Annexure A to the First Gows Heads of Agreement and there is a reference to the "Awabakal Aboriginal Land Council" as the vendor in bold capitals below. Mr Green accepted that, if he had bothered to read the document, he would have realised that it was dealing with ALALC land. Further, it was apparent to the Commission that Mr Green had no difficulty reading the document when Counsel Assisting brought his attention to various details of this nature. As previously indicated, Steven Slee's evidence was that Mr Green was a competent board member who demonstrated no difficulties reading and understanding proposals put before the board.

The Commission is satisfied that Mr Green may not have read the document in detail but understood at the very least he was signing agreements relating to the sale of ALALC land without the knowledge or authority of the ALALC board. Additionally, and taking into account that Mr Green by this time was associating and communicating with Mr Petroulias in relation to the ALALC, the Commission is satisfied that Mr Green had agreed with Mr Petroulias and Ms Bakis to create the First Gows Heads of Agreement knowing it was false and intending to on-sell to a third party.

Mr Latervere

As noted above, the First Gows Heads of Agreement is purportedly signed by Mr Latervere, in his apparent capacity as a director of Gows. Mr Latervere died on 22 May 2013, before his purported appointment as a director of Gows on 20 March 2014 and well before the execution

of the First Gows Heads of Agreement. The Commission has found that Mr Latervere was never a director of Gows, but rather, that Mr Petroulias had stolen Mr Latervere's identity for use in connection with Gows and in the deliberate fabrication of a corporate history for Gows that was intended to conceal his own involvement in the company.

Mr Petroulias' evidence is that he signed the First Gows Heads of Agreement on behalf of Mr Latervere, pursuant to a power of attorney given to him by Mr Latervere. The Commission accepts that Mr Petroulias signed the document but rejects the contention that he was authorised to do so pursuant to a legitimate power of attorney. It follows from the findings made by the Commission in chapter 6 that there was no such power of attorney, but even if the Commission were wrong about that, the power of attorney would have ceased to operate on Mr Latervere's death (see *Berger v Council of the Law Society of New South Wales* [2013] NSWSC 1080, per Beech-Jones J at [113], where his Honour cited Re *Williams; Williams v Ball* [1917] 1 Ch 1 at 7; *Wellington Steam Ferry Company (Ltd) (in liq) v Wellington Deposit, Mortgage And Building Assn (Ltd)* (1915) 34 NZLR 913 at 915, and *Powers of Attorney Act 2003* (NSW), s 7).

Gows' "rights" pursuant to the First Gows Heads of Agreement

The question that remains for consideration is whether the 15 December 2014 First Gows Heads of Agreement could be said to have conferred any rights on Gows over the ALALC's land. In evidence given to the Commission, both Mr Petroulias and Ms Bakis asserted it did grant certain rights to Gows, and specifically, rights pertaining to the ALALC's land. In his narrative written statement, Mr Petroulias asserted that Gows had rights, which could be described as an "expectancy", although when negotiations proceeded with Sunshine and Gows was to be paid "to relinquish its rights", "the label that would be given to GH payment [was] irrelevant". Similarly, in his written submissions, Mr Petroulias contended that Gows, by virtue of both Gows Heads of Agreements, had "a contingent interest or at least expectancy". With respect to the prohibitions on land dealings in the ALR Act, and the effect of s 42C of the ALR Act, which renders void any land dealing by a LALC in contravention of s 42D or 42E, Mr Petroulias asserted that pending approval, by the members and the NSWALC, unenforceability "is only as against the Land Council".

A similar characterisation of the First Gows Heads of Agreement was put forward by Ms Bakis during her evidence before the Commission. Ms Bakis initially agreed that she knew at the relevant time that the First Gows Heads of Agreement was unenforceable and void and did not create *any* rights as between the ALALC and Gows but maintained that it created another interest which, at first, she was unable to identify. As with Mr Petroulias, she asserted that, by operation of the ALR Act, the First Gows Heads of Agreement was unenforceable only as against the ALALC and that the provisions of the ALR Act effected "a statutory void", such that the First Gows Heads of Agreement, while void "as between those two parties" (Gows and the ALALC), was "not void and unenforceable for other parties" and that the contract was not void ab initio: "The agreement is void as against the Land Council but it's not void against parties that aren't the Land Council. It's a, it's a statutory void. So I know that sounds silly and ridiculous, but that's how that statute works". Later in her evidence, Ms Bakis sought to convey the proposition that the First Gows Heads of Agreement created an "expectation", and also that it was "void" until "approved".

In her written submissions, Ms Bakis did not assert that the First Gows Heads of Agreement conferred upon Gows an interest in the ALALC's land but sought to suggest that the "expectation" she had referred to in her evidence was an expectation that the ALALC would take certain steps to further and progress the First Gows Heads of Agreement. These steps were to include obtaining a valuation, obtaining the necessary statutory approvals, and entering into negotiations regarding the price of the properties. To the extent that Ms Bakis means to assert by these submissions that she had always characterised the rights or interest created by the First Gows Heads of Agreement in this way, this is rejected. This was not the effect of Ms Bakis' evidence, and nor was this consistent with the way Ms Bakis sought to characterise Gows' interest in her dealings with Sunshine as the ALALC's solicitor.

In any event, the Commission rejects the contention that the First Gows Heads of Agreement created or conferred on Gows any rights over ALALC land. As was submitted by Counsel Assisting, any interest in ALALC land purported to be created by the First Gows Heads of Agreement would be a land dealing subject to the provisions of the ALR Act and therefore, absent the necessary statutory approvals being obtained, the document purporting to create or confer that interest would be void.

Further, the Commission considers that there is no concept akin to an "expectancy" or "expectation" of the type contended for by Mr Petroulias and Ms Bakis that is recognised at law. The term "expectation" is used in different ways in the law – both private and public. In public law, it had tentative, and ultimately short-term, acceptance as a criterion for the invocation of the principles of procedural fairness in connection with

administrative decision-making. In that field, the phrase was described as "an unfortunate expression which should be disregarded" and has been rejected as a basis for determining when procedural fairness is required by a decision-maker or the content of that obligation (see *Plaintiff S10/2011 v Minister for Immigration and Citizenship* (2012) 246 CLR 636, 658; *Minister for Immigration v WZARH* (2015) 256 CLR 326, 335). In any event, the situation is far removed from the historical use of the phrase in that context.

In private law, expectations that have been recognised are founded in legal and equitable precepts and principles. Expectations of this kind include a beneficiary under a trust having an entitlement to expect that the trustee will observe the terms of the trust and act in the interests of the beneficiaries (see *Official Receiver in Bankruptcy v Schultz* (1990) 170 CLR 306; *Commissioner of Stamp Duties (Q) v Livingston* (1964) 112 CLR 12). And, by way of further example, it also includes the expectation of a purchaser of the benefit from the increase in value of land the subject of an instalment contract – an expectation which might support relief against forfeiture (see *Stern v McArthur* (1988) 165 CLR 489, 529). Again, these examples are far removed from what is contended by Ms Bakis and Mr Petroulias. No kind of "expectation" of the type suggested by them – or anything approaching it – is recognised at law. Nor could one possibly be found: it is inconceivable that some "right" in the nature of an expectation exists bearing in mind, by operation of s 42E and s 42G of the ALR Act, the First Gows Heads of Agreement was void and unenforceable.

An expectancy, often referred to as a "mere expectancy", is future property. It refers to a right or title that one has not yet acquired and lacks a legal right to acquire, but which one *may* acquire in the future (see J D Heydon, M J Leeming and P G Turner, *Meagher, Gummow & Lehane's Equity Doctrines & Remedies* (5th ed, 2015) at [6-190], p 256). An example of an expectancy is the interest a nominated beneficiary has under the will of a person who is still living. The prospective beneficiary has no legal or equitable right or title arising from the will while the testator lives but has the prospect of acquiring a right or title if the testator dies in the lifetime of the prospective beneficiary without changing the will (see E*quity Doctrines & Remedies*, at [6-190], p 256, approved in *George v Fletcher (Trustee)* [2010]). An expectancy cannot be assigned at law (see *Norman v Federal Commissioner of Taxation* (1963) 109 CLR 9,26) but in equity, a contract to assign future property or a mere expectancy for valuable consideration operates to transfer the beneficial interest to the purchaser immediately upon the property being acquired but not before (see *Federal Commissioner of Taxation v Everett* (1980) 143 CLR 440,450).

The Commission does not accept that the interest in ALALC land created by the First Gows Heads of Agreement was an "expectancy". As indicated above, an agreement purporting to create or grant any interest in ALALC land would always attract the operation of the ALR Act and, accordingly, it could not be the case that by virtue of the First Gows Heads of Agreement Gows would acquire the property in the future.

The Second Gows Heads of Agreement

The "Second Gows Heads of Agreement" can, for present purposes, be addressed more swiftly. As with the First Gows Heads of Agreement, it presents as if it had been prepared by KNL as it bears the KNL logo, name, and address on the cover page. Again, as with the First Gows Heads of Agreement, it is also dated 15 December 2014, and was signed by Mr Green. It also appears to be signed by Ms Dates, although for the reasons identified below, the Commission finds that Ms Dates did not in fact sign the agreement. For Gows, the document again purports to be signed by or on behalf of Mr Latervere, in his purported capacity as a director of that company.

No original of the document was produced to the Commission or adduced in evidence. However, a copy of the Second Gows Heads of Agreement appears as "Schedule 'C'" to the Solstice Heads of Agreement, dated 19 November 2015, discussed in chapter 10. The role that the Second Gows Heads of Agreement was intended to play in the attempted transaction with Solstice is also addressed in that chapter.

The Second Gows Heads of Agreement purports to grant to Gows an option to purchase two properties at Warners Bay. By Recital A, it is stated that the parties (Gows and the ALALC), have agreed to enter into a contract, the particulars of which are set out in the document. By Recital B, the document is said to be "the prevailing contract" until replaced by standard form contracts upon the exercise of the options. By Recital C, the land is described as "Lot 7393 DP1164604" and "Lot 101 DP 1180001" in the Lake Macquarie Council area. Extraordinarily, the ALALC was not the proprietor of these properties; as at the date of the agreement, they were owned by the state of NSW having been the subject of a not-yet-determined land claim made by the ALALC. Despite this, there is nothing in the Second Gows Heads of Agreement to suggest that the land was not owned by the ALALC but was subject only to a yet-to-be-determined land claim made by the ALALC.

The Second Gows Heads of Agreement is divided into two parts: Part I, being titled "Heads of Agreement", and Part II, being titled "Terms of Contract". There is

only a single term in Part I, which provides that the document "subject to law is a binding contract" and is intended to be superseded by the contracts substantially similar to the standard form NSW Real Estate Institute contracts, which will be completed "upon the exercise of the option(s) on the conclusion of the re-zoning process undertaken by the Purchaser".

In Part II, it is clause 2 that sets out the details pertaining to the land and the option to purchase that land. By clause 2.1, the ALALC grants to Gows for a period of 36 months the option of purchasing the properties for "the Purchase Price", which is described as "the valuation of the properties as determined by the valuer agreed by the parties". Term 2.3 provides that upon the earlier of 36 months or the rezoning of the properties, the parties will exchange contracts. There is no option fee specified in the agreement as payable by Gows in consideration for the option to purchase the properties that was purportedly granted to it by the ALALC.

The Commission finds that, for the following reasons, the Second Gows Heads of Agreement was a sham, first and foremost because it purports to be an agreement to grant an option over the sale of ALALC land that the ALALC did not own. The contention advanced by Mr Petroulias that the document recorded an agreement regarding the sale of "future contingent property" is rejected, as is Mr Petroulias' characterisation of the document as an "option to purchase subject to approval, two parcels of land under claim, currently registered as Crown Land, where the parties to the Consortium have mutual work to do". On its face, the agreement is no such thing. There is no reference to the land being "subject to claim" or "future property". There is no reference to the agreement being subject to approvals to be obtained (either by ALALC members or the NSWALC) and no reference to the parties having any obligation other than those specified, namely, rezoning the properties and obtaining valuations for those properties. Putting to one side the question of whether an agreement matching Mr Petroulias' description would ever be enforceable – given the want of consideration, and by reason of the ALR Act, among other reasons –, it is plain that this is not what this agreement held itself out to be.

Secondly, there is no price specified by the agreement for the option, which serves to underscore that, as with the First Gows Heads of Agreement, there is a disparity between the legal rights or obligations of Gows and the ALALC as described in the document and the actual intentions which Mr Petroulias (as the Gows representative) and Mr Green (as the purported representative of the ALALC) in fact had as to the legal rights and obligations of Gows and the ALALC. If the ALALC had in fact been the proprietor of the properties the subject of the agreement, and on the face of the document there is nothing to suggest that it was not, and if the ALALC had obtained the necessary approvals to enter into the land dealing with Gows whereby it could grant an option to it to purchase that land, it would not have conferred such an interest on Gows without any valuable consideration, and the absence of it would, at law, render the agreement unenforceable.

Thirdly, contrary to what is put in Recital A, there was never any agreement between Gows and the ALALC to provide Gows with an option to purchase these properties. There is no evidence of such an agreement ever being put to the ALALC board or discussed by it, let alone any evidence of an agreement of this kind being put to members or approved by the NSWALC. Self-evidently, given that the land was not owned by ALALC, an agreement to grant to Gows an option to purchase it would never have been put to members for approval, as, not being ALALC land, it could not be dealt with by the ALALC as if it were.

Fourthly, and as with the First Gows Heads of Agreement, it purports to create legal rights and obligations when, by operation of the ALR Act, even if the land was in fact held by the ALALC, the agreement could do no such thing, absent statutory approvals that had not yet been obtained.

The Commission accepts the submission made by Counsel Assisting that the fact that this second agreement, in substantially similar form to the First Gows Heads of Agreement, and purportedly executed on the same day, ostensibly by the same parties, though with the addition of Ms Dates, is a sham, supports the conclusion that the First Gows Heads of Agreement was also a sham. Unlike the First Gows Heads of Agreement, there is not even the board resolution or a resolution involving the same properties but to a different purchaser or prospective option-holder – the agreement was not in contemplation at all by the ALALC in any form.

The Commission finds that Mr Green signed the Second Gows Heads of Agreement and purported to do so "for and on behalf" of the ALALC. Mr Green accepts that his signature appears on the Second Gows Heads of Agreement. Plainly, he did so without the authority and knowledge of the board, there being no record that the ALALC board ever provided Mr Green with authority to enter into agreements on its behalf, and no record of Mr Green ever reporting to the ALALC board the fact of his having entered into the Second Gows Heads of Agreement, purportedly on its behalf.

The position with respect to Ms Dates is different. Her signature appears to have been placed on this document electronically, as the dotted line where her signature appears in the document is missing from where

her signature begins and ends, which would not be the case if she had placed her signature on the document herself, manually, in ink. Ms Dates, in her evidence before the Commission, also knew nothing of the agreement or whether or not she had signed it. These matters combine to suggest that Ms Dates did not sign the Second Gows Heads of Agreement, and the Commission finds that she did not.

The Commission accepts that Mr Petroulias signed the document for or per Mr Latervere on behalf of Gows. The Commission rejects the contention that Mr Petroulias was authorised to do so pursuant to a legitimate power of attorney, for the same reasons relied upon and identified above in relation to the First Gows Heads of Agreement.

The question of what knowledge Ms Bakis had of the Second Gows Heads of Agreement, and whether or not she had a part in drafting it, is dealt with in chapter 10 in relation to the Solstice transaction.

Chapter 8: Events leading to the Sunshine transaction

This chapter examines the circumstances leading to the purported entry by the ALALC into an agreement for the sale of land to Sunshine Property Investment Group Pty Ltd (Sunshine). It addresses what transpired among members of the ALALC board and ALALC management in 2015, how it came to be that Sunshine commenced and carried out negotiations as a prospective purchaser of ALALC land, and the roles of the individuals involved in those negotiations, purportedly on behalf of the ALALC.

ALALC board dysfunction and the removal of Steven Slee as CEO

There are indications that, from at least late 2014, the ALALC was experiencing some problems at board level, which were having an impact on its broader capacity to function. On 24 October 2014, the ALALC board had learnt from Steven Slee that he had received a letter from the then ALR Act registrar, Mr Wright, in which Mr Wright had informed the ALALC that he would be conducting an investigation for the Commission, pursuant to s 53 and s 54 of the ICAC Act,[1] following allegations regarding the ALALC having been referred to him by the Commission. Mr Wright had not chosen to inform the board about which specific individuals involved with the ALALC or identified which transactions were to be investigated, which was cause for concern among members of the ALALC board, as was the fact of the investigation more generally.

Steven Slee's evidence was that it was not long after this that the ALALC "started to go into dysfunction, a dysfunctional state". This is reflected in the minutes of the remaining ALALC board meetings for 2014, which suggest, among other things, that there was a persistent undercurrent of conflict between board members. It is also evident that there was a relationship breakdown between certain members of the ALALC board and Steven Slee, and discord among the ALALC staff.

Steven Slee told the Commission that, towards the end of 2014, the ALALC board appeared to be divided into two factions, comprising Ms Dates, Mr Green, Ms Quinlan (Ms Dates' sister), Lenny Quinlan (Ms Quinlan's son), and Ron Jordan on the one hand, and Larry Slee (Steven Slee's father), Ellie Swan, Debra Swan, John Hancock and Michael ("Mick") Walsh on the other. The evidence of the ALALC board members given to the Commission was consistent with Steven Slee's with respect to the fact that the ALALC board became divided into two factions, and as to the membership of those factions, but recollections differed as to when the factions began to emerge. The Commission finds that eventually two factions took form along the lines described by Steven Slee, and that members of the ALALC board voted at meetings in their factions.

The ALALC board's first meeting of 2015 was held on 28 January 2015. Steven Slee's CEO report, dated 28 January 2015, was tabled at the meeting. The report refers to a "large range of internal matters that have dramatically effected [sic] the operations of the LALC to the point of being non-operational". In particular, Steven Slee conveyed his concerns about conduct of certain (unnamed) board members, which he alleged was "in breach of the ALRA [the ALR Act], fair work commission, OHS legislation". He observed that the interference by members of the board with the day-to-day operations of the ALALC was having a major impact on its operations.

In the days that followed, both Ms Dates and Mr Green made contact with Mr Wright to make complaints about the conduct of Steven Slee. Ms Dates and Mr Green then suspended Steven Slee as CEO of the ALALC on

[1] Section 53 of the the ICAC Act allows the Commission to refer a matter to a relevant authority requiring that authority to investigate or take other specified action. Under s 54 of the ICAC Act, the Commission can require the authority to submit a report to the Commission in relation to the action taken by the authority.

2 February 2015, informing him that that he was being stood down pending an investigation over concerns they were said to hold in relation to his management of the ALALC's financial matters. Mr Wright was then obliged to temporarily cease the matters the subject of his earlier investigation so that he might focus on the allegations made by Ms Dates and Mr Green about Steven Slee. Mr Wright also investigated aspects of Ms Dates' conduct that had come to his attention during his investigation of the complaints made against Steven Slee.

In Steven Slee's absence, Ms Steadman was appointed as acting CEO. Ms Steadman was the domestic partner of Mr Quinlan, who was at that time an ALALC board member. In mid-2013, she had commenced working at the ALALC as a receptionist and was promoted to the role of project officer in around mid-2014. Ms Steadman had never held a position comparable to that of CEO of a land council, had never run a business and had no training or experience in financial matters. The ALALC did not provide Ms Steadman with any training for the position, and on her own admission, she was not equipped to undertake the role.

One means of judging the functionality of the ALALC during and then immediately subsequent to Steven Slee's suspension as CEO, is to consider the outcome of the risk assessments that were conducted of the ALALC by the NSWALC. The risk assessment system operated by the NSWALC is intended to provide both the LALC and the NSWALC with a measure of the LALC's overall performance in the form of a risk rating. The risk rating measures the LALC's performance over five key areas of operation, including financial management and governance. It informs the NSWALC's assessment of the LALC's ability to operate effectively and comply with its obligations under the ALR Act.

The risk ratings given to the ALALC during Steven Slee's tenure as CEO reveal that the ALALC was moving in a positive direction, having been given a "medium" risk rating. This risk rating ensured that the ALALC's funding agreement was renewed and that it would be subject to less frequent monitoring by the NSWALC. By contrast, in March 2015, the ALALC received a risk assessment rating of "high". In late-June 2015, the ALALC was again assessed by the NSWALC, and given a risk rating of "unfunded", with multiple issues having been identified across four of the five key levels of operation that required resolution. As the name suggests, the "unfunded" risk rating meant that for so long as the ALALC held this risk rating, it would receive no funding from the NSWALC.

In mid-June 2015, there was an effort made by a number of ALALC board members to have Steven Slee reinstated to his position, so that he might assist the ALALC conduct its affairs until the outcome of Mr Wright's investigation. A meeting of the ALALC board was held on 12 June 2015, which was attended by three NSWALC representatives. The minutes of the meeting record that a resolution was proposed by Debra Swan that Steven Slee be permitted to return to work as CEO "until issues are addressed". That motion was defeated, with four members in favour, four against, and Ms Dates as chairperson making the casting vote against the motion.

On 6 August 2015, Mr Wright arranged for a meeting to be held involving ALALC board members and Mr Sheriff, who at that point was still retained as the solicitor for the ALALC. The meeting was held at the Newcastle offices of PKF Lawler, the accounting firm that had been appointed to audit the financial records of the ALALC for the financial year ending 30 June 2015. Clayton Hickey and David Hutchison of PKF Lawler had assisted Mr Wright with his investigation. The object of the meeting was for Mr Wright to report on the findings of his investigation and the recommendations he had made in his report. In addition to Mr Sheriff and the members of the ALALC board, excepting Mr Walsh who was absent, it was attended by Steven Slee, Mr Hickey and Mr Hutchison.

The minutes of the 6 August 2015 ALALC board meeting record that Mr Wright advised he had made no adverse findings against Steven Slee and saw no reason why he could not return to work. Mr Wright made a series of recommendations to the board that were read to the meeting, which included that the board meet as soon as practicable to consider his report, and that Mr Slee be returned to active duties as the CEO as soon as practicable. Mr Wright's report also detailed adverse findings made against Ms Dates, namely, that she had engaged in more than one act of misconduct, and his conclusion that he had grounds, pursuant to s 181B of the ALR Act, to initiate disciplinary proceedings against Ms Dates.

In addition to hearing from Mr Wright, the ALALC board was addressed by Mr Sheriff, who had been provided with a draft of Mr Wright's report prior to the meeting so that he could provide the board with advice as to its contents. Mr Sheriff advised the board that it should think seriously about accepting Mr Wright's recommendations and that to terminate Steven Slee's employment would be to act contrary to Mr Wright's findings, and may result in the matter going to court, with the ALALC then potentially incurring significant costs.

Despite the findings and recommendations of Mr Wright, and in the face of the advice given by Mr Sheriff, no decision was made by the ALALC board to accept Mr Wright's recommendations. Further, Mr Green proposed a motion that Steven Slee's employment as CEO be formally terminated, which motion was passed.

Ms Dates, Ms Quinlan, Mr Quinlan and Mr Green voted in favour of the motion. Debra Swan, Eleanor Swan and Mr Hancock voted against it. Larry Slee excused himself from participating in the motion on the basis of his obvious conflict of interest. There is no record in the minutes to suggest that Mr Green offered any explanation for proposing the motion that he did, which was contrary to the advice of Mr Sheriff, and the findings of Mr Wright, which had exonerated Steven Slee of any wrongdoing. There is also no evidence, in the form of the minutes of the meeting or otherwise, that those who voted in favour of the motion provided any basis for doing so.

The evidence of the ALALC board members who attended the meeting, and of Mr Sheriff, is that no explanation was provided by Mr Green for moving to terminate Steven Slee. Mr Sheriff subsequently met with Mr Green and Ms Dates in his capacity as the ALALC solicitor to discuss the likely consequences of Steven Slee's termination, whereupon Mr Green advised Mr Sheriff that he held concerns that Steven Slee was using the ALALC's resources to further his own business interests. While giving his evidence before the Commission, Mr Sheriff agreed with the proposition that this was the very subject matter that Mr Wright had investigated, and that Mr Green's position was contrary to Mr Wright's findings.

Steven Slee subsequently brought a claim against the ALALC for unfair dismissal and defamation. In September 2015, Mr Sheriff was instructed by Ms Dates and Mr Green to settle with Steven Slee, pursuant to which he was paid a substantial amount of money by the ALALC. The ALALC board was not asked to, and did not, approve the payment of the settlement sum.

The Commission is satisfied that there was no basis for Mr Slee's employment to be terminated, and that his termination entrenched the factions that existed within the board, exacerbated its dysfunctionality, and further enfeebled the capacity of the ALALC to operate. The termination of its CEO left a void in the proper governance of the ALALC, including with respect to oversight of the conduct of the ALALC board.

The Sunshine Property Investment Group Pty Ltd

As detailed in chapter 7, the Commission has found that, in late-2014, Ms Bakis, Mr Petroulias and Mr Green collaborated in the drafting of the First Gows Heads of Agreement as an overt step towards facilitating the Scheme, which was to involve the purported sale and/or development of properties owned by the ALALC via the use of a false agreement, namely, the Gows Heads of Agreements, in order to wrongfully confer a financial benefit on each of them. By early 2015, steps had been taken by Mr Petroulias to find a third party to whom the "rights" purportedly created in the First Gows Heads of Agreement could be on-sold.

The third party first identified was Sunshine. The sole director and shareholder of Sunshine was Mr Zong, who had been introduced to Mr Petroulias through an individual named Keith Rhee. Mr Rhee owned and ran a sushi business through a company called Keeju Pty Ltd, of which he and his wife were the sole directors and shareholders. Mr Rhee had previously been a tax auditor with the ATO. Although Mr Rhee knew of Mr Petroulias due to his time at the ATO, he did not come to know Mr Petroulias personally until he was put in contact with him and Mr Green through Sam Say (Samer El Sayed), one of Mr Petroulias' associates. Mr Sayed had met Mr Petroulias at the Dawn de Laos Correction Facility at Silverwater, when they were both inmates at that institution.

Mr Zong incorporated Sunshine in 2014. The company was set up to undertake property development, with Mr Zong also running a commercial fitout and building company called Sunshine Interiors. The sole employee of Sunshine during the relevant time period was Matthew Fisk. Mr Fisk had commenced working with Sunshine in April 2015 and had been employed to identify property development opportunities for Mr Zong. Mr Fisk was a qualified property valuer and held a bachelor of commerce degree in property economics.

Mr Rhee's evidence before the Commission was that, over coffee with Mr Sayed in early 2015, he had been told about an opportunity for a subdivision of a large area of land in the Newcastle or Warners Bay area, that was owned by an Aboriginal land council. Mr Sayed also told Mr Rhee that Mr Petroulias was "acting for" the land council. Mr Rhee assumed this meant that Mr Petroulias was acting for the land council as its legal representative. He agreed with Mr Sayed that he would look for potential purchasers or investors in relation to the opportunity. The potential purchaser or investor that Mr Rhee came to identify was Mr Zong, whom Mr Rhee knew socially.

Early 2015 meetings

In early 2015, Mr Sayed organised to meet Mr Rhee, along with Mr Petroulias and Mr Green, to have a general discussion about the property in Warners Bay. The meeting took place at a café in Beverly Hills. Mr Rhee's evidence, which the Commission accepts, was that at this meeting, Mr Petroulias stated that he was a representative of the ALALC and that one of his companies, which he did not name, "had the rights to deal with that property". The Commission finds that Mr Petroulias made these statements in the presence of

Mr Green, and that Mr Green did not make any attempts at the meeting to correct or clarify the information conveyed to Mr Rhee by Mr Petroulias.

During the same meeting, Mr Green told those present that he was authorised to act on behalf of the ALALC and that he could assist Mr Rhee in obtaining the property. Mr Rhee told Mr Petroulias and Mr Green that he would need to inspect the properties and he was informed that this could be arranged.

A few weeks later, Mr Rhee and Mr Sayed drove to Newcastle to meet with Mr Petroulias and Mr Green. Together, they inspected the five properties and also visited the ALALC's offices. Mr Rhee told the Commission that while at the ALALC office, Mr Green said that he was in a position to discuss matters with the rest of the ALALC members and that it was important to the ALALC that the development get done as it would assist the community. However, Mr Rhee never subsequently dealt with Mr Green alone – all his communications in relation to the proposal were with Mr Sayed or Mr Petroulias.

Subsequent to this meeting in Newcastle, Mr Rhee met with Mr Zong alone at his offices in Park Street, Sydney, to tell him about the property. Mr Rhee told Mr Zong during this meeting that Mr Petroulias was a legal representative for the ALALC. He said that because this is what Mr Petroulias had told him. A separate meeting was also convened at Mr Zong's office that was attended by Mr Zong, Mr Rhee and Mr Sayed, at which Mr Sayed provided more information about the property involved. Ultimately, a site visit was arranged for Mr Zong. Mr Petroulias had provided a copy of the IBU proposal to Mr Sayed who, prior to the site visit, emailed the document to Mr Zong.

The May 2015 site visit

Not many weeks later, Mr Fisk and Mr Zong drove with Mr Rhee and Mr Sayed up to Newcastle to meet with Mr Green and Mr Petroulias. They all met at a McDonalds restaurant on Hillsborough Road, Warners Bay. It was the first time that Mr Zong had met either Mr Green or Mr Petroulias. Mr Green was introduced by Mr Rhee as the deputy chairperson of the ALALC. In his evidence before the Commission, Mr Zong said that Mr Petroulias had been introduced by Mr Rhee as the person who "got the deal". It was also mentioned by either Mr Rhee or Mr Sayed that Mr Petroulias was the ALALC's lawyer, and Mr Petroulias himself said that he had the rights for all the property.

Together, they then visited all five of the Warners Bay sites. Mr Petroulias made clear during the site inspections that all five sites were for sale – there was no mention by Mr Petroulias or Mr Green of the prospect of a joint venture with the ALALC. Additionally, the evidence of both Mr Zong and Mr Fisk, which the Commission accepts, is that when visiting the last of the five sites (Braye Park) Mr Petroulias said that he had already put the deal together and had the rights to acquire all five parcels of land, in the form of an option over the land. The Commission accepts that these representations were made by Mr Petroulias, and that they were made in the presence of Mr Green, who did not seek to correct them. The Commission finds, and it follows from the findings made in chapter 7, that each of these representations was false and that Mr Green, by his silence, endorsed those representations.

During his evidence before the Commission, Mr Green recalled the meeting at the McDonald's restaurant, and taking Mr Zong around the various lots, but said he did not know what Mr Petroulias was saying while Mr Zong and others were being shown around the sites. He denied hearing Mr Petroulias say that he had the rights to acquire all five lots. The Commission rejects this evidence as implausible, in the circumstances. By this time, it is clear from the evidence that Mr Petroulias and Mr Green had been present together on a number of occasions when the prospect or opportunity of selling ALALC land had been the topic of a conversation. Their simultaneous presence together on these occasions was evidently not by chance but was more reflective of their common interest in discussions concerning ALALC land.

In Mr Green's written submissions, his counsel accepts that Mr Green did attend the site visit but denies that it would follow Mr Green was part of the Scheme. Instead, it is submitted that Mr Green failed to identify that he was being exploited by Mr Petroulias and thought he was "moving the land council forward". It is submitted that what is said to be witnesses' differing recollections of conversations taking place during the site visit would serve to vitiate any finding being made as to Mr Green being present, if and when Mr Petroulias made representations of his or Gows' interest in the properties on the site visit. These submissions are rejected. None of the witnesses who gave evidence before the Commission, including Mr Green, gave any evidence to the effect that Mr Green left or was absent during any point of the site visit such that he would have failed to hear the particular representations made by Mr Petroulias about his role or interest in the properties. It was also not put by Mr Green's counsel to any of Mr Fisk, Mr Zong or Mr Rhee that Mr Green left or was absent during any point of the site visit.

There is also no evidence that Mr Green made any report to the ALALC board that the site visit had taken place, or even that the ALALC had a potential purchaser or investor in the form of Sunshine. This is despite the

site visit occurring in May 2015 and an ALALC board meeting being held on 12 June 2015. In circumstances where no report was made by Mr Green to the ALALC board meeting about the site visit or the interest in the five lots expressed by Mr Zong, it cannot be accepted that Mr Green was only motivated by a desire to "move the land council forward". Rather, Mr Green's failure to disclose the fact of the site visit and Sunshine's expressed interest in purchasing the ALALC properties serves to reinforce the Commission's finding that Mr Green played an active role in the Scheme.

The Acquisition Proposal

In July 2015, an agreement titled "Offer Schedule & Exclusive Due Diligence Agreement" ("the Acquisition Proposal"), was reached, ostensibly between Sunshine and the ALALC. The agreement was that Sunshine would be permitted to conduct due diligence, in connection with its potential purchase of all five Warners Bay ALALC properties, over a 90-day period. In return, Sunshine would be required to pay a non-refundable fee of $50,000.

As the Commission has found in chapter 7, part of Ms Bakis' role in the Scheme was, as a practising solicitor, to lend legitimacy to both the Gows Heads of Agreements as well as any subsequent negotiations and discussions involving the on-selling of the rights purportedly created by those agreements. There was a number of ways that Ms Bakis used her position as a legal practitioner, and allowed her position as a legal practitioner to be used, to cloak the Sunshine and other purported transactions in authenticity, which are explored in detail in chapter 12. Among one of the initial ways this was done with respect to the Sunshine transaction, aside from the drafting of the First Gows Heads of Agreement with a KNL cover page, was by permitting Mr Petroulias to use the KNL name and its email address in communications between himself and those representing Sunshine. Another more significant way was by making available the use of her KNL trust account for the payment by Mr Zong of the $50,000 required under item 5 of the Acquisition Proposal.

On 29 June 2015, Mr Petroulias sent Mr Rhee the following email from a KNL email account, attaching a copy of the First Gows Heads of Agreement, purportedly executed by Mr Latervere and Mr Green:

From: admin@knightsbridgenorthlawyers.com

Date: 29 Jun 2015 1:37 pm

Subject: Awabakal HOA

To: [redacted]

Cc:

Keith,

Attached is the current HOA with GOWS. It does not have the DP/Lot numbers etc, but by reference to the address attached and identified by photograph.

I raise this for a number of reasons we can discuss but it may be suitable for a new HOA to be done the same way.

NP

Mr Rhee's evidence, which the Commission accepts, was that he had asked Mr Sayed for some documentation to prove that Gows had the rights to deal with the ALALC properties. This was because Mr Zong had asked for confirmation of the underlying interest in the properties that Mr Petroulias had indicated he held. Upon receiving the email from Mr Rhee, Mr Zong forwarded it to Mr Fisk, along with the attached executed First Gows Heads of Agreement. Having seen the First Gows Heads of Agreement, Mr Zong and Mr Fisk understood and accepted that Gows had been granted an option by the ALALC that allowed it to purchase the land identified in that agreement (that is, a right to deal with the ALALC properties in the way Mr Petroulias had suggested during the site visit). Accordingly, Mr Zong instructed Mr Fisk to prepare an offer to submit to the ALALC to purchase the five ALALC properties, having been satisfied as a result of the site visit, the representations made during that visit, and the First Gows Heads of Agreement, that Gows held a genuine interest in the ALALC land.

On 2 July 2015, Mr Zong sent the Acquisition Proposal to Mr Sayed and Mr Rhee, under cover of a letter dated 30 June 2015. Mr Fisk drafted the cover letter and the Acquisition Proposal, very shortly after having received a copy of the First Gows Heads of Agreement. The cover letter was addressed to Mr Sayed, because Sunshine understood that Mr Sayed was acting as an agent for the ALALC. The Acquisition Proposal (as drafted by Mr Fisk):

- set out the five ALALC properties that Sunshine proposed to acquire (item 1)
- indicated that the offer price would be determined upon Sunshine engaging a registered property valuer to prepare a market valuation of the land (item 2)
- granted to Sunshine exclusive rights to conduct due diligence for a 90-day period so that a market valuation could be procured and discussions held with "relevant Planning Authorities to understand the rezoning and development potential" of the properties (item 3)
- provided that the purchase contract would be negotiated throughout the due diligence period

and executed upon the completion of the due diligence (item 4)

- required payment of a $50,000 deposit to the ALALC's solicitors' trust account upon the commencement of the due diligence period, which would be fully refundable to Sunshine should it elect not to proceed with the acquisition following the completion of the due diligence.

On 2 July 2015, Mr Rhee emailed the Acquisition Proposal to Mr Petroulias . On 6 July 2015, Mr Petroulias replied to Mr Rhee by email (using the admin@knights-bridgenorthlawyers.com email address), suggesting only that item 5 be amended such that the $50,000 payment not be refundable were Sunshine to elect not to proceed with the acquisition, with the payment instead being applied towards "reimbursing the costs of valuation, vendors estate agent and vendors solicitors fees".
On 8 July 2015, the following email was sent, attaching an executed version of the Acquisition Proposal, with item 5 now amended in the way that had been proposed by Mr Petroulias.

From: <admin@knightsbridgenorthlawyers.com>

Date: 8 July 2015 at 10:54

Subject: RE: Fwd: Revised Letter of Offer

To: Keith Rhee <[redacted]*>*

Dear Keith,

Please find attached executed offer acceptance.

Please have Tony transfer the $50K to our trust account:

Knightsbridge North Lawyers Trust Account

Westpac

BSB:032062

Account: 464157

Regards,

Despina Bakis

Solicitor

The version of the Acquisition Proposal attached to this email (sent on the morning of 8 July 2015) is dated 8 July 2015 and appears to have been executed by Ms Bakis in her position as "Solicitor for Awabakal". Later that afternoon a further email was sent, again by Ms Bakis, attaching the original version of the Acquisition Proposal proposed by Sunshine (leaving unamended item 5 that provided for the $50,000 payment to be refundable). This version is undated, but it is executed by Mr Green.

In reality, the amended version of the Acquisition Proposal dated 8 July 2015 had been signed by Mr Petroulias on Ms Bakis' behalf, despite there being no indication on the face of the document itself that he had done so. Ms Bakis knew that he had signed the document on her behalf and also approved the change to item 5 such that the $50,000 would not be refundable, regardless of how Sunshine chose to proceed following its due diligence period.
Mr Green accepted that he signed the original version of the Acquisition Proposal and accepted that this version also included the words "Dep Chair" in his handwriting beneath his signature. Mr Green also accepted that he never discussed entry into the Acquisition Proposal with the ALALC board at any stage, and that the ALALC board did not authorise entry into the agreement, by him or Ms Bakis on behalf of the ALALC, or at all.
The Commission finds that Mr Green deliberately failed to disclose the Acquisition Proposal to the ALALC board.

On 13 July 2015, Sunshine made the payment of $50,000 into the KNL trust account in accordance with item 5 of the Acquisition Proposal.

The Commission finds that the use of the KNL trust account was a key factor in the Sunshine transaction, that was intended by Mr Petroulias and Ms Bakis to lend legitimacy to the Scheme. The use of a solicitors' trust account in these circumstances would have served to demonstrate to a prospective purchaser, such as Sunshine, that the transaction was bona fides and also given comfort to Sunshine that the monies would only be used in accordance with Ms Bakis' duties as a solicitor with respect to trust funds held in a trust account exclusively on behalf of a client. The Commission considers it to be revealing that Ms Bakis never provided a trust account statement to the ALALC in relation to these funds, and problematic that Ms Bakis never disclosed to the ALALC board that the money had been received into the trust account. As will be explored in chapters 9 and 12, it was Ms Bakis' position that such disclosure was unnecessary because that payment, and the payments that followed from Sunshine, were all intended for the benefit of Gows (despite there being no mention of Gows in the Acquisition Proposal). The Commission rejects this evidence and finds that whatever may have been subsequently agreed between the parties, at the time Sunshine made the payment of $50,000 into the "vendors solicitors Trust account" (item 5) it was for the benefit of the ALALC.

It is also no answer to the failure on the part of both Mr Green and Ms Bakis to disclose the Acquisition Proposal to the ALALC board that the board "was not meeting" and "therefore Richard was the Board" as the ALALC board did meet throughout 2015, albeit less frequently than in previous years. In particular, the ALALC board met on 6 August 2015, some three

weeks after the Acquisition Proposal was purportedly executed by Ms Bakis on behalf of the ALALC, and well before the exclusive due diligence period had concluded. The Commission finds that if there had been any legitimacy to the Acquisition Proposal, Mr Green would have tabled a copy of it at that meeting, and Ms Bakis, in her capacity as the ALALC solicitor, would have ensured that this was done.

The Commission further finds that the Acquisition Proposal, including its execution by Mr Green (without authority) and Mr Petroulias (purportedly on behalf of Ms Bakis, even though she too had no authority to enter into any agreement on behalf of the ALALC) represented a critical step, facilitated by each of them, in furtherance of the Scheme.

Chapter 9: Execution of the Sunshine agreements

The due diligence period

The terms of the Acquisition Proposal provided that the period of time in which Sunshine was purportedly entitled to conduct "exclusive" due diligence in relation to the five ALALC Warners Bay properties was to be 90 days. Again, as is apparent on the face of the Acquisition Proposal, the mutual intent of the parties to that agreement was that during the due diligence period Mr Zong, on behalf of Sunshine, would investigate the development potential of each of the five parcels of ALALC land. It was further envisaged that a purchase contract between the ALALC and Sunshine would be negotiated during the due diligence period and, assuming Sunshine was content with the outcome of its due diligence, executed at its completion.

It is clear, and the Commission so finds, that during the due diligence period Sunshine took a number of concrete steps in order to ascertain the feasibility of purchasing and developing the five parcels of ALALC land that were the subject of the Acquisition Proposal. Further, the Commission finds that in so doing, Sunshine incurred significant expenses, connected with the engagement of planning consultants and valuers, as well as the internal costs of Mr Fisk's time.

In the main, the five parcels of ALALC land were zoned as E2 Environmental Conservation, which would allow for minimal development. If purchased by Sunshine, any kind of residential development on the five parcels of land would be dependent on successful rezoning applications. Accordingly, as a first step, Sunshine retained Monteath & Powys, an integrated planning, surveying, and engineering consultancy firm based in Newcastle. Monteath & Powys was engaged to prepare a report to Sunshine addressing the feasibility and likelihood of rezoning the five parcels of ALALC land. That report was prepared and provided to Sunshine by Monteath & Powys, at an approximate cost to Sunshine of $15,000 to $20,000, in around mid-September 2015.

In or around early-August 2015, Sunshine also engaged Diamonds Property Valuers (Diamonds), a firm of registered property valuers and consultants, who prepared separate valuation reports for each of the five ALALC properties. The expense of these valuation reports, in the order of $30,000 in total, was also borne by Sunshine. Additionally, Mr Fisk dedicated a number of weeks on a full-time basis during the due diligence period to investigating the feasibility of progressing with the purchase of the five ALALC properties.

The Diamonds valuations

The valuations ultimately prepared by Diamonds managing director Stuart Rowan, and provided to the parties in mid-September 2015, valued the five ALALC lots (14 Vermont Place, 291 Hillsborough Road, 295 Hillsborough Road, 110 Bayview Street and 3/79 Clarence Road) at $12.6 million in total. Following receipt of the valuations, a meeting was convened between Mr Rhee, Mr Sayed, Mr Zong, and Mr Fisk to discuss the valuations and prospective sale price of the five ALALC properties. During that meeting, Sunshine proposed an alternative structure for the proposed sale, whereby a portion of the purchase price would be paid in cash and a portion would be paid in stock by providing certain of the blocks of land to the ALALC upon registration – a proposal that Mr Rhee and Mr Sayed indicated would need to be considered by Mr Petroulias, but may be appealing to the ALALC. A matter of days after that meeting, Mr Zong informed Mr Fisk that this alternative payment structure was acceptable to the ALALC and that a revised agreement outlining the proposed structure should be prepared. In response, Mr Fisk prepared and submitted a document titled "Offer Schedule & Exclusive Due Diligence Agreement", dated September 2015. This agreement provided for a purchase price for the five properties of $10.6 million and the transfer of $2 million of "completed stock (including both house and land)" to the ALALC "when the land is ultimately developed".

In written submissions prepared by counsel for Ms Bakis, reference is made to a letter, dated 23 September 2015, purportedly written by Mr Green to Ms Bakis. On its face, it is a letter in which Mr Green updates Ms Bakis as to the progress of the ALALC's negotiations with Sunshine and discussions apparently had at the mid-September 2015 meeting referred to above. The letter, which was produced to the Commission as part of Ms Bakis' file held on behalf of the ALALC, suggests that Mr Green and Mr Petroulias also attended the mid-September 2015 meeting at which the valuations were discussed: "We had a meeting on Monday [21 September 2015] with Sunshine and their representatives Sam and Keith. I asked Nick to help me". In the letter, the author states that at the meeting "Nick noted it [the proposed Sunshine transaction] being on 42G approval and 42M registration", that "When it appeared that Zhong [sic]was getting serious, Keith got him to make the community presentation. The one Zhong [sic] sent on 14 July 2016 [sic]is great," and that Mr Green had received "confirmation from Tony Galli [of Ray White] who says that the valuations are reasonable. He said he would certainly confirm those valuations when we go to NSWALC". Reliance is placed by counsel for Ms Bakis on this letter as evidence of what was discussed at this meeting, and also as establishing that Mr Zong was made aware of the need for a resolution from an ALALC community meeting before the properties could be purchased. In support of this proposition it is submitted, referring to the cross-examination of Mr Rhee by Mr Menzies, then counsel for Mr Petroulias, that Mr Rhee "gave evidence that this letter was 'fairly close' to what was discussed, including that the arrangement would need to go to the NSWALC".

This submission is rejected, as is the proposition that the letter could establish anything with respect to what took place at the mid-September 2015 meeting. In his evidence before the Commission, Mr Green denied sending this letter, stating that he did not have the skills to prepare such a letter, provided no instructions to anyone else to prepare the letter, and knew nothing of it at all. During her evidence before the Commission, Ms Bakis stated that she did not recall receiving the letter, also knew nothing about its creation, and that Mr Green would not have drafted it. Ms Bakis did not know who did create the letter, but stated that Mr Petroulias was "the obvious candidate". It is also not the case that Mr Rhee, in his evidence before the Commission, considered that the letter was fairly close to what was actually discussed at the mid-September 2015 meeting; this submission made by Ms Bakis' counsel misrepresents the evidence Mr Rhee gave in regard to this letter. In fact, during his cross-examination by Mr Menzies, Mr Rhee expressly disagreed with the proposition that the controls on dealing with land provided by the ALR Act were discussed at this meeting and went on to give the following evidence:

> *No, all I can recall about the meeting that we had on that day was to discuss the, the valuation, right, as to how much Mr Zong is going to pay for the, for the property and there were some discussions that we're going to make some concession to, to the local land council about maybe leaving aside certain parts of land for them to live or for them to invest or rent it out so that, that's all I can recall about the, about that meeting.*

The evidence of Mr Green, Ms Bakis and Mr Rhee provides a sufficient basis for the Commission to doubt the authenticity of the letter from Mr Green to Ms Bakis, and in turn, the veracity of its contents. However, in addition to this, the evidence provided by Mr Petroulias in his written narrative statement provides further reason for the Commission to find that the document is not authentic. Mr Petroulias admits that he drafted the letter from Mr Green to Ms Bakis, but that he did so at the ALALC's office in front of Mr Green and Mr Galli because he "wanted to document ALALCs [sic] position and instructions to KNL". This explanation is entirely

implausible and is rejected. If Mr Green had instructions regarding the meeting for Ms Bakis (assuming that he in fact attended the meeting, and there is no evidence to suggest that he did) those instructions could have been given orally, and if it was necessary to record those instructions in writing, a file note could have been taken by Ms Bakis. Further, if the letter had truly been created for this purpose, it seems unlikely that both Mr Green and Ms Bakis would deny ever having seen the document or any knowledge of it. There is no credible explanation for the letter other than it is false and was created by Mr Petroulias in order to suggest that certain matters were disclosed to Mr Zong and those representing Sunshine, when in fact they were not.

The Commission further observes that in his written narrative statement, Mr Petroulias states that he and Mr Green attended a meeting on 21 August 2015 with Mr Zong, Mr Rhee, Mr Sayed and Mr Fisk to discuss the valuations. The date that this meeting is said by Mr Petroulias to have taken place cannot be correct. It precedes the date that the valuations were provided to Sunshine by several weeks, is contrary to the evidence of Mr Fisk and Mr Rhee, and indeed the contents of the letter supposedly sent by Mr Green, which suggests that the meeting took place on 21 September 2015. While the Commission accepts that Mr Petroulias may have been incorrect about the precise date of the meeting, it rejects the further evidence provided by Mr Petroulias to the effect that at the meeting, the need for NSWALC approval of the proposed transaction with Sunshine was discussed, or that a community presentation by Sunshine to the ALALC members was considered. These propositions were not put to Mr Fisk or Mr Rhee by Mr Petroulias or by Mr Menzies on his behalf. They are also inconsistent with Mr Fisk's evidence that the need for a dealing certificate issued by the NSWALC was discovered by Sunshine's lawyer, and not until around mid-October, being only a matter of days before the transactional documents were signed on 23 October 2015. While there was a presentation prepared by Mr Fisk in around July 2015, the Commission accepts Mr Fisk's evidence that this presentation was not prepared specifically for, or in relation to, the ALALC. Mr Rhee's evidence is consistent with this: the document set out Sunshine's "company profile" and its development experience, that is, it was not in the nature of a community presentation created for the purpose of obtaining members' approval of the transaction.

Initial documentation and negotiation

In the course of undertaking its work for Sunshine Robert Monteath, of Monteath & Powys, ascertained that two lots adjacent to the five ALALC Warners Bay lots were the subject of yet-to-be determined Native Title claims lodged by the ALALC and that there was the potential for a third adjacent lot to be the subject of a future claim by the ALALC. Accordingly, on Mr Fisk's advice, Mr Zong attempted to facilitate an opportunity for Sunshine to secure that adjacent land, by way of the ALALC providing to Sunshine a right of first refusal over the land in the event that the Native Title claims were successful. One of the transactional documents negotiated during the due diligence period was a document, seemingly prepared by KNL, described as "Right of First Refusal, General Heads of Agreement", dated 2 October 2015. Pursuant to that agreement, Sunshine was to pay to the ALALC $50,000 by way of an option fee, in order to secure the right of first refusal. Ultimately, rather than appearing in a separate agreement, that right of first refusal, and the corresponding option fee, was incorporated into the Sunshine Heads of Agreement entered into between Sunshine and the ALALC that is discussed below.

In or around early-October 2015, other documentation was being prepared by Ms Bakis for the purposes of the Sunshine transaction. Draft versions of the transactional documents were sent to Mark Driscoll of BCP Lawyers and Consultants, who had been retained by Sunshine to act for it in connection with the proposed transaction with the ALALC. The suite of documents that was prepared included an agreement described as a "Surrender Agreement and Release", initially expressed as being between Sunshine and Gows. That agreement provided that Sunshine would pay to Gows $1.6 million to "buy out" what was described as Gows' "rights to acquire property at valuation from the Awabakal Land Council ('Awabakal') arising, inter alia, from its Head [sic] of Agreement 15 December 2014" (that is, the First Gows Heads of Agreement).

A number of amendments to the draft transactional documents were suggested by BCP Lawyers on behalf of Sunshine. In an email dated 12 October 2015 from Mr Driscoll marked to the attention of Mr Petroulias, and sent to the admin@knightsbridgenorthlawyers.com email address, Mr Driscoll told Mr Petroulias that he had "left a message on your office's answering machine earlier this afternoon", regarding the draft documentation, and requested an opportunity to discuss the amendments to that documentation that he had recommended to Sunshine be made. These amendments included that the ALALC be made a party to the draft Surrender Agreement and Release between Gows and Sunshine, on the basis that "what is being surrendered (or rescinded) are the rights and obligation between the Awabakal ALC and Gows Heat under the Heads of Agreement dated 15 December 2014". As an alternative, Mr Driscoll suggested that there be a separate Deed of Rescission of the First Gows Heads of Agreement between the ALALC and Gows, which could then be referenced in

the Surrender Agreement and Release. Mr Driscoll also suggested that the draft heads of agreement between Sunshine and the ALALC be in the form of a put and call option.

Although the form of the draft transactional documents was promptly changed in the manner suggested by Mr Driscoll, there was some lingering disagreement between the parties regarding further amendments and changes that were requested on behalf of Sunshine.

On or around 16 October 2015, Ms Bakis conveyed to Mr Fisk, both orally and via email, that her client, the ALALC board, was unhappy with what it perceived to be unnecessarily protracted negotiations and that if the deal was not concluded swiftly, the board would cease negotiations. In an email from Ms Bakis to Mr Fisk and Mr Zong, dated 16 October 2015 and sent at 3:17 pm, Ms Bakis stated as follows:

> *Dear Matt and Tony,*
>
> *Our client is fed up with this process. We had the agreements ready to settle on 7 October and we are getting piece by piece changes that are increasingly less favourable to our client.*
>
> *Please consider the negotiations are at an end at 5.00pm today if this delay continues.*
>
> *Yours Faithfully*
>
> *Despina Bakis*
>
> *Solicitor*

A further email was sent to Mr Zong and Mr Fisk by Ms Bakis, also on 16 October 2015, at 3:55 pm, with the subject line: "Cancellation of Negotiations". In this email, Ms Bakis again complained about the delay and queried the necessity of the further requests that had been made by Sunshine by way of additional documentation. Ms Bakis indicated in the email that the choices for Sunshine were to send through the executed copy of the agreements "plus proof of payment", or alternatively, "pay the funds to be held in trust, so that we can show our client, whilst Matt [Fisk] spends the weekend finessing and exchange when finished. The funds will not move until the parties sign a release". Again, Ms Bakis indicated that the negotiations would be terminated that afternoon, if Sunshine did not elect to proceed with one of the two choices provided. Mr Fisk responded to Ms Bakis assuring her that Sunshine had no intention of delaying the deal. However, apparently in response to a further query from Mr Fisk on 19 October 2015 about whether Ms Bakis would be completing the front pages for each of the contracts for the sale of the five properties, Ms Bakis purported to call off the negotiations entirely. On the evening of 19 October 2015, in an email bearing the subject line "Concluded negotiations", Ms Bakis wrote to Mr Zong, Mr Fisk, Mr Rhee and Mr Sayed (copying Mr Driscoll) as follows:

> *Gentlemen,*
>
> *Please be advised that discussions in respect of the matter of the Awabakal lands are concluded. Our client no longer wishes to receive any further correspondence or communication.*
>
> *Yours Faithfully,*
>
> *Despina Bakis*
>
> *Solicitor*

In her evidence before the Commission, Ms Bakis' explanation of the circumstances surrounding these communications, which were purportedly made on behalf of the ALALC, could best be described as obscure. Ms Bakis was unable to identify any actual urgency with respect to the negotiations with Sunshine and instead suggested that "the urgency was because they were wasting my time". She appeared unable to remember the circumstances that prompted her initial threat to call off what would have been, on any view, a tremendously significant transaction for the ALALC that had been many months in the making, and more particularly, the source of her instructions to issue such a threat. Ms Bakis told the Commission that it was "probably Richard" providing her with instructions at this point but that she "couldn't say for sure". There was no evidence before the Commission to suggest that instructions were ever sought from the ALALC board in connection with the Sunshine transaction and Mr Green's evidence was that he never provided Ms Bakis with any instructions in relation to the transaction. Further, there was no evidence before the Commission that there was any reason for urgency with respect to the transaction.

In his written narrative statement, Mr Petroulias refers to an "8 October deadline" and the "failure" on the part of Sunshine to meet that deadline. The significance of the 8 October 2015 date is that it marked the end of Sunshine's 90-day exclusive due diligence period, as provided for in the Acquisition Proposal. However, the terms of the Acquisition Proposal did not require that any contemplated agreement between the parties for the purchase of the five ALALC properties be concluded by the end of the exclusive due diligence period. The Commission finds that the dissatisfaction expressed by Ms Bakis in her communications with those representing Sunshine with the progress of the transaction was not genuine or based on any truthful foundation and did not represent the views of the ALALC board, who had not been consulted at that point or indeed at any time during the course of the negotiations with Sunshine.

Instead, the Commission infers that these communications were made in an effort to place pressure on Sunshine to conclude the deal and thereby limit any further scrutiny that might have been applied to the proposed transaction prior to the payment of funds by Sunshine into KNL's trust account.

In any event, at Mr Zong's request, a meeting was arranged by Mr Rhee at Mr Zong's Sydney CBD offices, in an attempt to finalise the proposed terms of the agreements. It was around this time that Sunshine learnt through its lawyer, Mr Driscoll, that a dealing certificate was required from the NSWALC in order for the ALALC, as a LALC, to transact in its land. Mr Fisk told the Commission that he raised this issue with Mr Rhee, who in turn discussed the matter with Mr Petroulias and Mr Green, and then conveyed to Mr Fisk that there would be no issue with respect to securing a dealing certificate. Mr Zong's evidence was that he also spoke to Mr Rhee about the need to obtain a dealing certificate and received a similar assurance that there would be no difficulty in obtaining one.

In his evidence before the Commission, Mr Rhee said he could not recall Mr Zong raising the issue of obtaining a dealing certificate at any time prior to the transaction documents being executed and could also not recall any discussions with Mr Petroulias about this issue at that time. However, he accepted that Mr Fisk did discuss the issue with him before the transactional documents were signed, and that after the contracts were signed he had assured Mr Fisk that there would be no issue moving forward and securing a dealing certificate. The Commission prefers the evidence of Mr Fisk and Mr Zong to Mr Rhee's with respect to the issue of when the question of a dealing certificate was raised with him, and finds that it was raised by Sunshine with Mr Rhee, at least by Mr Fisk, and that Mr Rhee conveyed to Mr Fisk and Mr Zong, prior to the parties signing the contractual documents, that Mr Petroulias had assured him that there would be no issue with obtaining a dealing certificate for the transaction.

Around the time that the meeting at Sunshine's offices took place, Mr Driscoll had separately advised Mr Zong in an email that when the deal documentation was signed and exchanged he would require evidence from the ALALC that the persons signing on its behalf had authority to do so, as well as evidence that the ALALC had approved the transaction. Mr Driscoll's email in which this evidence was requested was forwarded on to Ms Bakis by Mr Rhee. The Commission finds that it was around this time that Mr Petroulias provided Mr Zong with a hard copy of the Gows Resolution, apparently by way of proof that Gows' agreement with the ALALC (in the form of the First Gows Heads of Agreement) had received the ALALC board's approval. Ms Bakis accepted in her evidence before the Commission that she was aware that a copy of the Gows Resolution had been provided by Mr Petroulias to those representing Sunshine at this time, and that it was a key document for Sunshine in the transactional process.

Prior to signing the Sunshine transactional documents, Mr Zong provided a copy of the Gows Resolution to Mr Fisk, who advised Mr Zong that on the basis of that resolution, it was apparent that the ALALC board had approved the sale of the five Warners Bay ALALC properties to Gows, that the board had agreed to enter into that transaction and, accordingly, Sunshine could have confidence to proceed with its own transaction. The Commission accepts the evidence of both Mr Zong and Mr Fisk that Sunshine relied on the Gows Resolution as establishing that Gows had the right to purchase the five ALALC Warners Bay properties, which right Sunshine would need to "buy out" before it could purchase those properties itself.

The precise date of the meeting that was held at Sunshine's offices is unclear on the evidence, but the Commission finds that it was held at most only a few days prior to the transactional documents being signed and was attended by Mr Sayed, Mr Rhee, Mr Zong, Mr Driscoll and Mr Petroulias. Mr Zong's evidence before the Commission was that Mr Petroulias said he was attending the meeting as the ALALC's lawyer. Mr Petroulias also informed Mr Zong at this meeting, in response to questions about the ALALC's authority to sell the land, that there was no issue in that regard and that he could guarantee the ALALC had this authority.

The Commission accepts Mr Zong's evidence as to the representations made by Mr Petroulias at this meeting. In accepting that representations to this effect were made at the meeting, the Commission observes that they were consistent with Mr Petroulias' dealings with those representing Sunshine up to this point, and also consistent with the content of the documentation that he had a hand in negotiating and drafting for the Sunshine transaction. It is apparent from Mr Driscoll's email communications to Mr Petroulias around this time that Mr Driscoll understood Mr Petroulias to be one of the lawyers acting for the ALALC and was communicating with him accordingly. There is no evidence that Mr Petroulias ever sought to correct him. The evidence of both Mr Zong and Mr Fisk was that from the beginning of their dealings with Mr Petroulias, he had said that he was the lawyer for the ALALC. Consistent with this evidence is that Mr Petroulias routinely sent emails from, and received emails using, a KNL email address. It is also not clear to the Commission what other role Mr Petroulias could have been purporting to play in terms of negotiating, and at times drafting, the documentation on behalf of the ALALC if he were not acting in the capacity as one of its lawyers.

With respect to the question of the ALALC's approval of and authority to transact the deal, the documentation that was drafted in relation to the transaction, discussed below, does not provide that the agreement was subject to approval of the transaction being given by members of the ALALC and the NSWALC, or that the purchase of the properties would be contingent on a dealing approval certificate being issued by the NSWALC. The rights purported to be created by the agreements are not expressed to be qualified or conditional in any way. Rather, the terms of those documents read, consistent with Mr Petroulias' representations at the pre-signing meeting, as if there was no question that the ALALC had the requisite authority to enter into the land dealing.

On the afternoon of 21 October 2015, Ms Bakis sent an email to Mr Zong attaching a number of documents described in the email as having been made "following the instructions to change them to call options etc and add the Deed of Rescission etc. These replaced the earlier executed (signed) Sunshine Heads of Agreement. Accordingly, the attached agreements are the ones that will be accepted". The following documents were attached to the email:

- Call Option Agreement dated 12 October 2015 between the ALALC and Sunshine
- Deed of Rescission dated 12 October 2015 between the ALALC and Gows
- Put and Call Option Agreement dated 12 October 2015 between the ALALC and Sunshine
- Surrender Agreement and Release, undated, between Gows and Sunshine.

Each of the first three documents is apparently signed by Mr Green and Ms Dates "for and on behalf of" the ALALC. The copies of the Deed of Rescission and Surrender Agreement and Release appear to be signed by Mr Latervere on behalf of Gows, although Ms Bakis' evidence was that the signature of Mr Latervere was "obviously" Mr Petroulias, as "Mr Latervere wasn't alive".

In her email to Mr Zong, Ms Bakis seeks from Sunshine "a payment in good faith in part fulfillment today" to KNL's trust account and asks for Mr Zong to send a "receipt of the payment so that we can enliven our clients". This was not the first time that Ms Bakis and Mr Petroulias had asked Mr Zong to pay funds into KNL's trust account prior to the transactional documents being executed "as an act of good faith". However, Mr Driscoll had advised Mr Zong not to deposit funds into KNL's account prior to the signing and exchange of documents and had urged Mr Zong to exchange in a face-to-face meeting.

Later in the afternoon of 21 October 2015, Mr Rhee emailed Mr Zhong stating, inter alia, that:

> *It has come to my attention today the main reason for Nick* [Petroulias] *wanting to use his document dated 15 October 2015 were* [sic] *that the docs have been already executed by the Land council and far as they are concerned it has been finalized. If your solicitor make [sic] the changes he can do so in hand writing on these documents. It is easier for us to convince the land council to agree of* [sic] *these changes and rather a* [sic] *than asking them to sign a new agreement. By doing this was* [sic] *the council can't change their minds or back out of the agreement.*

Additionally, Mr Rhee himself urged Mr Zong to deposit funds into KNL's trust account:

> *In the meantime while this is done, you must transfer $400k into Northbridge* [KNL's] *trust account instruct Northbridge not to release until exchange. This will show that you want the deal done and give the land council the trust they need. I mention to you several times about this. Exchange can't happen until you transfer the funds.*

On 22 October 2015, Mr Zong emailed Mr Driscoll a draft variation agreement expressed to be between Sunshine and the ALALC with the object of varying the Sunshine Heads of Agreement dated 2 October 2015. It is not apparent from Mr Zong's email who drafted this initial version of the variation agreement, but the probabilities favour that it was Mr Petroulias given other email communications sent around this time that are in evidence before the Commission between Mr Rhee, Mr Zong, and Mr Petroulias. The Commission does not accept the submission made by counsel for Ms Bakis that the Variation Agreement was likely prepared by Mr Driscoll. It is clear that the document was not drafted by Mr Driscoll; in his email in response to Mr Zong, sent at 7:47 am on 23 October 2015, (being the day that the Sunshine transactional documents were executed), Mr Driscoll advises that he is concerned about documenting the call option by an amendment to the Sunshine Heads of Agreement dated 2 October 2015. Instead, he recommends the draft Deed of Put and Call Option that he had prepared. However, on the basis that Mr Zong wished to proceed by means of an amendment to the Sunshine Heads of Agreement, Mr Driscoll had amended the draft Variation Agreement that Mr Zong had sent to him the previous day, explaining why he had amended "the draft prepared by AALC's [ALALC's] solicitor" and attaching the version of the document that he had amended.

In the amended version of the variation agreement sent by Mr Driscoll, the parties remain Sunshine Property

Investment Group and the ALALC, but signature blocks for execution have been added to the document, which include on the first execution page, a signature block for the ALALC and then appearing immediately underneath it, a signature block for Sunshine Property Investment Group (the Sunshine entity that was originally intended to be a party to the Sunshine Heads of Agreement). Over the page, there appears a third signature block, for Sunshine Warners Bay Pty Ltd (Sunshine Warners Bay). This was the special purpose vehicle Mr Zong had incorporated for the purposes of this transaction, which was the Sunshine entity to replace Sunshine Property Investment Group as the purchaser pursuant to the variation agreement.

Execution at the ALALC offices

On 23 October 2015, Mr Sayed and Mr Zong drove together to the ALALC's offices, to attend a meeting that had been organised by Mr Petroulias. The purpose of the meeting was to execute the agreements that would together make up the Sunshine transaction. The meeting was attended by Ms Dates and Mr Green, Mr Zong, Mr Sayed and Mr Petroulias.

There were three agreements executed at the ALALC's offices that day. These were the:

- Sunshine Heads of Agreement, dated 2 October 2015 between Sunshine and the ALALC
- Variation Agreement, dated 23 October 2015 between Sunshine and the ALALC
- Surrender Agreement and Release, undated, between the ALALC, Gows and "Sunshine Warners Bay Pty Ltd".

At this time Ms Bakis was purportedly acting as the ALALC's solicitor and played a significant role in the drafting of these agreements. Ms Bakis accepted that she drafted each of them, although as indicated above, it is more likely that the Variation Agreement was drafted by Mr Petroulias and then amended by Mr Driscoll. During her evidence before the Commission, Ms Bakis accepted that she was aware that Mr Green, Ms Dates and Mr Zong had been asked to attend the ALALC's offices on 23 October 2015 to sign the documentation she had prepared, but she did not attend the meeting herself, and was unable to offer any plausible explanation as to why she chose not to attend. While Mr Petroulias attended, he could only have done so in his capacity as Gows' representative.

The Sunshine Heads of Agreement

The parties to the Sunshine Heads of Agreement were Sunshine Property Investment Group as purchaser and the ALALC as vendor. It was executed by Mr Zong on behalf of Sunshine Property Investment Group, although in handwriting adjacent to the execution block bearing Mr Zong's signature are the words "Sunshine Warners Bay Pty Limited". It was also executed by Ms Dates and Mr Green, in the presence of the other meeting attendees, purportedly "for and on behalf" of the ALALC, although neither had ALALC authority to do so. Annexed to the Sunshine Heads of Agreement are draft contracts for the sale of each of the five Warners Bay lots, which were also signed by both Ms Dates and Mr Green in the presence of the other meeting attendees.

As with the First Gows Heads of Agreement, there are a series of recitals to the agreement. These include Recital B, which states that upon signing, standard form contracts will be prepared and exchanged once rezoning has been completed, but that until exchange of those contracts, the Sunshine Heads of Agreement will be the prevailing contract. Recital C refers to the ALALC's entry into the First Gows Heads of Agreement. Recital D refers to the Acquisition Proposal, and states that Gows consented to Sunshine being granted an exclusive due diligence period. Part I of the Sunshine Heads of Agreement sets out the terms of the agreement, which consist only of a single term, providing that the Sunshine Heads of Agreement is a binding contract, which is intended to be superseded by standard form contracts to be completed on the conclusion of the rezoning process to be undertaken by Sunshine.

Part II of the Sunshine Heads of Agreement contains the terms of the contract. Relevantly, by clause 2.1 of Part II, Sunshine agrees to purchase, and the ALALC agrees to sell, the land identified in Schedule 1 for $6.3 million and to transfer to the ALALC 16 completed houses on the land to the value of not less than $6.3 million. The properties listed in Schedule 1 are the same five ALALC Warners Bay properties identified in the Acquisition Proposal.

Pursuant to clause 2.2 of Part II, Sunshine is given the rights and authority to effect the rezoning of the land for a period not exceeding three years from the date of the execution of the agreement.

By clause 2.5 of Part II, Sunshine is required to make a deposit commitment of $1,102,000 to the ALALC's solicitors' trust account. The clause also provides that the undispersed $48,000, being the amount remaining of the funds deposited by Sunshine into KNL's trust account following entry into the Acquisition Proposal, is "to be dispersed towards the payment of Gows pursuant to its surrender and release agreement and the payment of project management and agency costs".

By clause 2.6 of Part II, the ALALC is said to acknowledge and consent to the surrender and release of rights by Gows. By clause 2.8, the ALALC grants to Sunshine the right of first refusal on adjoining lands that

are the subject of Native Title claims that may be resolved in its favour, in consideration for the payment of $50,000.

When giving evidence before the Commission, Ms Bakis repeatedly stated that it was the shared intent and mutual understanding of the parties to the Sunshine transaction that the agreements would need to go through the appropriate approval processes, and that the agreements were not binding, or at least did not bind the ALALC. Similarly, in his written narrative statement, Mr Petroulias asserts that it was understood, and the parties proceeded on the basis, that nothing the ALALC signed would have any binding effect on the ALALC. The implications of these propositions in terms of Ms Bakis' duties and obligations as a solicitor are addressed in chapter 12. However, for present purposes it suffices to observe that there is no term or provision in the Sunshine Heads of Agreement that seeks to establish or put the parties on notice that the agreement was not binding on all parties, that the agreement was subject to any statutory approval process, or that the agreement was conditional upon the transaction receiving the approval of ALALC members and the NSWALC.

There is no reference to a dealing approval certificate, or the restrictions and controls on land dealings provided for in the ALR Act. Instead, the Sunshine Heads of Agreement contains several misrepresentations to the effect that the parties had, by purporting to enter into the Sunshine Heads of Agreement, entered into a binding contract for the sale of ALALC land. The Commission finds that the absence of any reference to the Sunshine Heads of Agreement being conditional in any way or subject to member and NSWALC approval was a deliberate omission on the part of Ms Bakis and Mr Petroulias.

The Sunshine Variation Agreement

The parties to the Sunshine Variation Agreement are said to be Sunshine Property Investment Group and the ALALC. The document is identical, both in content and in form, to the version that was emailed by Mr Driscoll to Mr Zong early in the morning of 23 October 2015, save for in one respect. There are only two signature blocks appearing on the document, the first being for the ALALC and the second, appearing immediately underneath it, being for Sunshine Warners Bay. The signature block for Sunshine Property Investment Group, which on Mr Driscoll's version appeared immediately underneath the ALALC's signature block, has been removed entirely, and Mr Zong's signature appears in the only signature block remaining for a Sunshine entity, being for Sunshine Warners Bay. Mr Green and Ms Dates executed the agreement in the presence of those attending the meeting, purportedly on behalf of the ALALC but without authority to do so.

The stated object of the agreement is to vary the Sunshine Heads of Agreement, in accordance with the following provisions:

1. By clause 1, the purchaser is amended to Mr Zong's special purpose vehicle, Sunshine Warners Bay Pty Ltd.
2. By clause 2, the Sunshine Heads of Agreement is varied such that the ALALC grants a call option to Sunshine, which is pursuant to payment of a call option fee (prior to this variation, the Sunshine Heads of Agreement had provided that standard form contracts would be exchanged upon rezoning, and Sunshine was required to pay a "deposit commitment").
3. By clause 3, term 1 is varied such that it is no longer envisaged that standard form contracts would be exchanged on the conclusion of the rezoning.
4. By clause 4, clauses 2.1 to 2.5 of the Sunshine Heads of Agreement are deleted and instead the ALALC grants to Sunshine a call option to purchase the properties, in consideration of an option fee, at a total price of $12,600,000. A separate call option is granted for each property, to be exercised together or independently of each other at any time prior to 24 October 2018 (or such later date that may be necessary to effect the rezoning but not exceeding a period of two years). The option fee is specified as $712,000, which on exercise of the option is the deposit payable under the contract for sale. An amount of $400,000 of the option fee is released to the ALALC, "with the balance of $316,000" (sic) to be held in KNL's trust account.
5. By clause 5, the ALALC agrees to provide to Sunshine a charge over the properties as security for the performance of its obligations and consents to a caveat being lodged by Sunshine at any time on the titles.
6. By clause 6, clause 2.7 of the Sunshine Heads of Agreement is deleted and instead, if rezoning is not achieved, the ALALC is obliged to refund the call option fee, or if the rezoning does not meet the densities assumed in the Diamonds valuation reports, the purchase price is reduced and if the call option is not exercised, $400,000 is forfeited to the ALALC. If rezoning occurs in line with the densities assumed by the Diamonds valuation reports, but the call options are not exercised, the entirety of the call option fee is forfeited to the ALALC.

As with the Sunshine Heads of Agreement, there is no indication in any of the terms of the Variation Agreement that it is anything other than immediately binding on both parties.

In their written submissions, both Mr Petroulias and counsel for Ms Bakis seek to contend that the Variation Agreement was incompetent and did not operate to vary the Sunshine Heads of Agreement because Sunshine Warners Bay was not a party to it and could not vary it, and Sunshine Property Investment Group, which was a party to the Sunshine Heads of Agreement, did not execute it. The Commission refrains from making a finding on this issue, as none of the agreements purportedly entered into on 23 October 2015 were competent or legally effective, by reason that they purported to deal with ALALC land, without regard to, and in contravention of, the land control provisions in the ALR Act.

The Surrender Agreement and Release

The parties to the Surrender Agreement and Release are Gows and Sunshine Warners Bay. It was executed by Mr Zong on behalf of Sunshine Warners Bay and Mr Petroulias on behalf of Gows, even though Mr Petroulias was not at that time a director of Gows.

In the recitals to the Surrender Agreement and Release, it is stated that Gows had rights to acquire property at valuation from the ALALC arising from the First Gows Heads of Agreement. It is further stated that Gows had provided its consent to Sunshine making an evaluation of the land that is the subject of the First Gows Heads of Agreement, that Sunshine wishes to acquire that land, and "formalise its offer to Awabakal and enter into an option agreement with Awabakal", paying to Gows a "surrender payment" in consideration of it surrendering its rights under the First Gows Heads of Agreement. A series of "operative provisions" is then set out, whereby the following is agreed:

- Pursuant to clause 1(a), Sunshine will pay Gows $1.6 million (the surrender payment), consisting of: (i) $250,000 to be paid on the date of the Option Agreement (being the Sunshine Heads of Agreement as varied by the Variation Agreement) to be released immediately to Gows; and (ii) $1.35 million to be paid into KNL's trust account and released within 14 days of settlement of Sunshine's acquisition of the properties. If only one or some of the properties are purchased, the surrender payment is reduced in a manner proportionate to the lands actually purchased, in accordance with a payment schedule set out in clause 1(d).
- Pursuant to clause 1(c), Gows rights under the First Gows Heads of Agreement are terminated upon payment of the initial portion of the surrender payment.
- Pursuant to clause 1(f), Gows agrees that the payments made by Sunshine under clause 1 are full and final payment and Gows is not entitled to additional consideration.
- Pursuant to clause 2, Gows purports to provide a release to both Sunshine and the ALALC in relation to any claims arising from the First Gows Heads of Agreement and the properties.

There is a handwritten alteration to the Surrender Agreement and Release, whereby the amount that is required to be paid by Sunshine to Gows (clause 1(a)(i)) is changed from $250,000 to $673,000. The signatures of Ms Dates and Mr Petroulias appear next to this amendment. There is a third signature on the page next to these signatures but it does not appear to be Mr Zong's. Mr Zong's unchallenged evidence, which the Commission accepts, is that Mr Petroulias made the amendment in his presence after the document was executed, that he did not sign the amendment and told Mr Petroulias that he did not agree to such an amendment, and that Mr Petroulias could not make that change. Ultimately, Sunshine paid $250,000 to Gows, and not $673,000.

In the written submissions prepared by counsel for Ms Bakis, it is submitted that Mr Zong's evidence in relation to the Surrender Agreement and Release and the handwritten alteration should not be accepted because it is not consistent with the "Running Memorandum of Declaration, Acknowledgment and Consent Addendum 3", which is suggested to be a contemporaneous record of events. This is a document that on its face presents as a kind of file note of conversations between Mr Green, Ms Dates, and Mr Petroulias. It is dated 26 October 2015, and features what appears to be the signatures of Mr Green, Ms Dates, Mr Petroulias, and a Gows' "Common Seal".

There are a number of reasons to doubt the provenance and authenticity of this document, which was produced to the Commission as part of Ms Bakis' file and is one of several documents appearing in that file described as a "Running Memorandum of Declaration, Acknowledgment and Consent". Chief among them (at least for present purposes) is that the document, which presents as a kind of file note of conversations between Mr Green, Ms Dates, and Mr Petroulias, refers to the First Gows Heads of Agreement as if it were a bona fide transaction that had been considered and approved by the ALALC board when, as the Commission has found, the First Gows Heads of Agreement was never put to or approved by the board. It also purports to be an ALALC record or

to somehow reflect the position of the ALALC, when at its highest it could only be said to record the views of Mr Green who, as deputy chair of the ALALC board, had no authority to speak or make decisions on behalf of the board or the ALALC more generally. Further, under cross-examination by Ms Bakis' then counsel, Mr Green denied ever seeing this specific document, and also could not recall the specific matters recorded in the document. The Commission considers that no weight or evidential value can be attributed to the document styled as a "Running Memorandum of Declaration, Acknowledgment and Consent Addendum 3". The Commission finds that it is not an authentic record and rejects the submission that it would provide a foundation to doubt the reliability of Mr Zong's evidence in connection with the Surrender Agreement and Release.

The authority of Mr Green and Ms Dates to act on behalf of the ALALC

After signing the agreements described above, Mr Zong indicated, in the presence of Ms Dates, Mr Green, Mr Petroulias and Mr Sayed, that Sunshine would need assistance with the rezoning process. Mr Petroulias and Mr Green indicated that there would be no problem with them doing so, and agreed to help.

A photograph was also taken by Mr Petroulias, which is in evidence before the Commission. The photograph is of Ms Dates, Mr Green, Mr Zong, and Mr Sayed, standing together side by side in the board room at the ALALC's offices. Mr Zong's evidence was that the photograph was taken because "We signed this big, big contract. I said we have to take some photos". It is clear that Mr Zong considered that, on behalf of Sunshine, he had entered into a transaction involving ALALC land on this day. Both the fact that the photo was taken and the nature of what the photo depicts suggests that an occasion of some moment was being marked. Yet in their evidence before the Commission, Ms Dates and Mr Green denied that they read the documents they signed, and denied that anyone explained the contents of the documents to them. While both Ms Dates and Mr Green accepted during their examination by Senior Counsel Assisting that it was now obvious to them, on being shown the documents, that they purported to deal with ALALC land, both contended that they did not know at the time what they were doing.

In written submissions by their respective legal representatives, Mr Green and Ms Dates both contend that they did not comprehend what they were doing in the ALALC offices on 23 October 2015, and failed to understand the significance of the documents they were purporting to sign on behalf of the ALALC.

Having regard to the documentation that they both signed, which included the draft contracts for the sale of land annexed to the Sunshine Heads of Agreement, and that they did so in the presence of Mr Zong, Mr Sayed and Mr Petroulias, the Commission considers that this submission cannot be accepted.

The Commission finds that neither Ms Dates nor Mr Green had any authority to sign the Sunshine transactional documents on behalf of the ALALC. Both Ms Dates and Mr Green accepted during their evidence before the Commission that they had no authority to sign legal agreements on behalf of the ALALC board or the ALALC, and that they knew this at the time. Further, and as the Commission has found in chapter 7, there is nothing within the ALR Act or ALR Act Regulation that authorised Mr Green or Ms Dates to enter into any agreement on behalf of the ALALC. There was also no evidence before the Commission that there was ever any formal instrument of delegation or authority created by the board authorising either Mr Green or Ms Dates to enter into agreements on behalf of the ALALC, either generally, or in relation specifically to the Sunshine transaction.

Despite knowing that they had no authority to sign legal documents or enter into agreements on behalf of the ALALC, neither Ms Dates nor Mr Green disclosed to the ALALC board that they had met with Mr Zong on 23 October 2015, or that they had signed the Sunshine transactional documents. Further, neither Ms Dates nor Mr Green provided copies of the executed documents to the ALALC board or mentioned or tabled the documents at any subsequent ALALC board meeting. There was also no attempt made for the ALALC board to approve the transaction and/or approve it being put to the ALALC members for approval.

The transfer of funds by Sunshine

On behalf of Sunshine, Mr Zong drew two bank cheques in favour of Gows totalling $250,000. The first was a St George Bank cheque, drawn on 23 October 2015, in the amount of $200,000. The second was a Westpac Private Bank cheque, drawn on 26 October 2015, in the amount of $50,000. These were deposited in a Macquarie Bank account, held by Gows, following the execution of the Sunshine documents, on 26 October 2015. The $250,000 paid by Sunshine to Gows, across the two bank cheques, represented the surrender payment payable by Sunshine to Gows, in accordance with clause 1(a)(i) of the Surrender Agreement and Release.

Separately, on 26 October 2015, Sunshine paid $512,000 into the KNL trust account. This was followed by a further payment of $200,000 into the KNL general

account on 3 December 2015, which was subsequently transferred into the KNL trust account on 10 December 2015. As discussed in chapter 8, Sunshine had already deposited $50,000 by electronic funds transfer into the KNL trust account on 13 July 2015. This brought the total paid into the KNL trust account to $762,000.

The $712,000 paid by Sunshine into the KNL trust account (across the two payments on 26 October 2015 and 3 December 2015) represented the option fee payable by Sunshine to the ALALC, in accordance with clause 4 of the Variation Agreement. Pursuant to that clause, $400,000 was to be released to the ALALC, while the balance was to be held in KNL's trust account.

As discussed briefly below, and in more detail in chapters 12 and 13, the funds paid into the KNL trust account by Sunshine were subsequently disbursed by Ms Bakis, but not in accordance with the Sunshine Heads of Agreement, as varied by the Variation Agreement. Indeed, none of the funds paid by Sunshine pursuant to the Sunshine transaction were paid to the ALALC; instead, the entirety of the option fee was paid from the KNL trust account to the benefit of Gows.

The Deed of Acknowledgment and Guarantee, and disbursement instructions

Entry into the Deed of Acknowledgment and Guarantee

Following the execution of the Sunshine Heads of Agreement, as varied by the Variation Agreement, Sunshine commenced taking further steps that it considered were required in order to progress with the rezoning of the properties. These included retaining Monteath & Powys to provide additional advice and undertake further work. In total, around a further $60,000 was incurred by Sunshine, in connection with that work. Additionally, Mr Fisk dedicated a number of additional weeks of his time attempting to progress the rezoning process.

In or around late-November 2015, it came to Mr Fisk's attention that there were some concerns surrounding the governance of the ALALC. An article, published in the *Newcastle Herald*, conveyed that an investigation was being undertaken by the then minister for Aboriginal affairs ("the minister"), the Hon Leslie Williams MP, into the affairs of the ALALC. Mr Fisk communicated this to Mr Zong, who in turn spoke to Mr Petroulias. While Mr Petroulias assured Mr Zong that the investigation would not pose a problem in relation to the work Sunshine was then undertaking, and the rights it had purportedly acquired pursuant to the Sunshine transaction, he also provided him with a further document, styled as a "Deed of Acknowledgment and Guarantee". The purpose of this document, on its face, was to confirm and provide assurances to the effect that the ALALC's deal with Sunshine would proceed, unaffected by the minister's investigation.

The Deed of Acknowledgment and Guarantee, dated 21 December 2015, is said to be between Sunshine Warners Bay and the ALALC. It was drafted by Ms Bakis, and was executed by Mr Green on behalf of the ALALC. As with the other Sunshine transactional documents, Mr Green accepted in his evidence before the Commission that he had no authority to sign the document on behalf of the ALALC, and that at no point did he disclose the fact that he had signed the document, or anything about the document at all, to the ALALC board.

There are a number of recitals in the Deed of Acknowledgment and Guarantee, which refer variously to the agreement entered into by the parties on 23 October 2015, by which Sunshine was granted an option to purchase the five Warners Bay properties, as well as an option to buy further adjacent properties, and the minister's investigation into the ALALC. The recitals also acknowledge the expenses already incurred by Sunshine, and state that the Deed of Acknowledgment and Guarantee is entered into for the purposes of providing certain reassurances to Sunshine regarding the validity of the arrangements and past and future costs to be incurred by Sunshine.

By clause 2 of the Deed of Acknowledgment and Guarantee, the ALALC provides a guarantee to Sunshine "for any loss or damage suffered" by continuing to proceed with the rezoning, development process and the project generally. This loss is said to be "not limited to any payments made by the Purchaser to Gows and Keeju, of $926,667 and $250,000". By clause 3, it is provided that Sunshine "relies upon this guarantee to continue with the project and incur thereby further costs" in connection with it.

On any view, the guarantee that was purported to have been provided by the ALALC through this document was breathtaking in its scope. In short, the ALALC was providing a guarantee in connection for any or all losses that might be incurred by Sunshine in proceeding with the rezoning and development process in consequence of the investigation that was being undertaken into it. The evidence of Mr Zong and Mr Fisk, which is accepted, was that Sunshine relied on and took comfort from the contents of the document, and that it gave them confidence to proceed, knowing that the monies Sunshine had incurred to date were now guaranteed by the ALALC. The Commission finds that the document

was arranged or facilitated by Mr Petroulias, drafted by Ms Bakis, and signed by Mr Green in order to ensure that those representing Sunshine did not take any steps that might result in the transaction being discovered, or seek to recoup the funds it had already paid into the KNL trust account. Further, the Commission finds that this conduct represented a further step in the Scheme, participated in and facilitated by each of Mr Petroulias, Ms Bakis and Mr Green.

Ms Bakis' role as a solicitor in drafting the Deed of Acknowledgment and Guarantee, and allowing Mr Green to execute it on behalf of the ALALC, is addressed separately in chapter 12.

The disbursement instructions

It was around the time that the investigation into the ALALC had been publicly ventilated, and Sunshine's concerns regarding that investigation were sought to be addressed through the purported provision of the ALALC's "guarantee", that the Sunshine funds sitting in the KNL trust account were moved out of that account and paid to Gows.

On 3 December 2015, $400,000 was transferred from the KNL trust account to Gows' Macquarie Bank account. Subsequently, on 22 December 2015, a further $327,268 was paid from the KNL trust account into the Gows' Macquarie Bank account. Each of these disbursements was made contrary to clause 4 of the Variation Agreement.

Two documents styled "Completion Instructions; Trust Account Dispersement [sic] Instructions" were in evidence before the Commission. One is dated 3 December 2015, and the other is dated 22 December 2015. Mr Zong told the Commission that he signed the one dated 3 December 2015, pursuant to which $400,000 was to be released to Gows. The explanation offered by Mr Zong for agreeing to release these funds, which were not intended for Gows, was that Mr Petroulias called him into his office and indicated that the deal would be off unless he agreed to release these funds. There is a handwritten annotation on the document that provides as follows: "$312,000 to be held on trust pending re-zoning approval and then to be reviewed in light of the densities achieved". Notwithstanding this annotation, and clause 4 of the Variation Agreement, the second set of instructions, dated 22 December 2015, provides that the balance of the amount held in trust by KNL is to be paid into Gows' account. The instructions are expressed to be given "pursuant to Deed executed 21 December 2015, attached hereto". Although no document was attached to the copy in evidence before the Commission, the Deed of Acknowledgment and Guarantee was executed on 21 December 2015. However, that document offers no explanation, and provides no provision, regarding any additional payment to Gows or the release of the Sunshine funds that were being held in trust for the ALALC.

The instructions dated 22 December 2015 also appear to bear Mr Zong's signature, although his evidence, which the Commission accepts, was that he did not sign this document, and knew nothing of it. Additionally, both sets of instructions feature handwritten notations at the foot of the documents that read as follows: "Ratified 22.12.15. Re-confirmed 11.1.16". These notations, on both documents, appear to bear Ms Dates' signature. Ms Bakis' evidence was that she sought to have these instructions ratified by Ms Dates for the purposes of transparency. This evidence is rejected. If the disbursement of funds held in trust for the ALALC was legitimately transferred to Gows then there could be no reason to or purpose in having the release of funds ratified by the ALALC. The Commission finds that Gows had no entitlement to the funds held in the KNL trust account, which were being held, pursuant to the Sunshine Heads of Agreement as varied by the Variation Agreement, for the benefit of the ALALC. The release of the funds on 3 December 2015 and 22 December 2015 was contrary to that agreement.

Chapter 10: The Solstice transaction

This chapter considers the events surrounding the involvement of Solstice Property Corporation Pty Ltd (Solstice) in negotiations involving ALALC land, or land to which the ALALC had laid claim, in late 2015 and early 2016. It also examines how it came to pass that in early 2016, Mr Petroulias and Ms Bakis commenced attending and participating in ALALC board meetings, and the matters put by them to the ALALC board at that time. In particular, the matters apparently put to and resolved by the ALALC board at its meetings of 8 April 2016 (including a proposed sale of land to Solstice) and 6 May 2016 are considered, as is the conduct of each of Mr Petroulias, Ms Bakis, Mr Green and Ms Dates at those meetings.

The Solstice proposal

Ryan Strauss is approached

In late 2015, Mr Sayed approached a property developer named Ryan Strauss, regarding an opportunity to purchase various parcels of land held by the ALALC, including lots in the Warners Bay area and the Newcastle Post Office. Mr Strauss worked for a property development organisation called Strauss Property Developments. From time to time, Mr Sayed had brought potential property development opportunities to Mr Strauss.

On 6 November 2015, Mr Sayed emailed Mr Strauss a copy of the valuations of the five Warners Bay ALALC properties that Mr Zong had paid for, being the Warners Bay properties the subject of the Sunshine transaction. The next day, Mr Strauss forwarded these valuations by email on to Andrew Kavanagh, a person with whom he had codeveloped properties in the past. Mr Strauss' understanding after he was initially approached by Mr Sayed, which he conveyed to Mr Kavanagh, was that there was a package of properties that the ALALC wished to sell; that is, the development opportunity was not limited to the Warners Bay properties but rather would include additional sites in the surrounding area, including the Newcastle Post Office.

Mr Sayed's evidence before the Commission was that he had sent the Warners Bay valuations to Mr Strauss "to sell the property to somebody else", in the event that the deal with Sunshine "fell through". Mr Sayed's understanding at this time was that there was some prospect that the Sunshine transaction would not proceed, an understanding that he said was based on what Mr Petroulias had told him. Mr Sayed told the Commission that he had informed Mr Petroulias at the time that he had provided the Warners Bay valuations to Mr Strauss, and that he had also been in contact by email with Ms Bakis in relation to his dealings with Mr Kavanagh and Mr Strauss.

Mr Sayed told the Commission that he was representing the ALALC when he communicated with Mr Strauss and Mr Kavanagh, but on the instructions of Mr Petroulias. Yet, Mr Sayed also accepted, when cross-examined by the solicitor appearing on behalf of Mr Strauss, that he had represented to Mr Strauss that he was a buyer's agent and was acting in any negotiations with the ALALC as agent for Mr Strauss and Mr Kavanagh. There was no objective evidence before the Commission in support of the proposition that either Mr Sayed or Mr Petroulias had ever been appointed by the ALALC to act as agents on its behalf in connection with the sale of any ALALC property. The Commission finds that, to the extent that either Mr Sayed or Mr Petroulias purported to negotiate or act on behalf of the ALALC in connection with its land, they were unauthorised to do so.

Mr Sayed told the Commission that he was dealing with Mr Petroulias in connection with the potential sale of the ALALC Warners Bay properties, which had initially been the subject of the Sunshine transaction, because he understood that Gows was involved and Mr Petroulias was the owner of Gows. However, in relation to the

two adjacent lots of land (that were still only the subject of land claims by the ALALC) that Mr Sayed had also proposed as development opportunities to Mr Strauss and Mr Kavanagh, Mr Sayed considered that Mr Petroulias' interest in the land was just as "an introducer", although he did not profess to know "the exact details". In that regard, Mr Petroulias contends that, at least from December 2015, Mr Sayed was acting on behalf of United Land Councils Ltd (ULC) in his dealings with Mr Strauss and Mr Kavanagh, and that the relationship that eventuated, on Mr Sayed's instigation, was between Mr Strauss and Mr Kavanagh on the one hand, and ULC on the other hand.

ULC was an organisation that Mr Petroulias established with Mr Green, which he described as an association of Indigenous communities that had its origins in the consortium said to involve Gows and IBU. When questioned about ULC, Mr Sayed's evidence was that he was engaged to perform work for ULC, and that this work was to "get all the local [Aboriginal land] councils signed up for growth and economic growth", so that those councils could become members of the ULC organisation. However, it was not suggested by Mr Sayed that his work for ULC had any connection with the Solstice transaction. Rather, Mr Sayed was clear in his evidence to the Commission (referred to above) about what he perceived to be Mr Petroulias' interests and role in any deal he initiated or brokered regarding ALALC properties and he made no mention of ULC during that evidence. Similarly, neither Mr Strauss or Mr Kavanagh suggested during their evidence before the Commission that the proposal put to them – either initially or in its expanded form in 2016 – was in some way connected to ULC. Further, the documentation that was issued by KNL in November 2015 and April 2016, including the email correspondence from KNL to the Solstice parties, made no reference to that entity. Accordingly, the notion that the Solstice transaction was connected with ULC or was brokered as part of Mr Sayed's work with ULC is rejected.

The standing of the Sunshine agreements

Given that the initial footing of the approach made to Mr Strauss and Mr Kavanagh in November 2015 was that the package of properties on offer would include the Warners Bay properties, despite Sunshine having paid for, and purportedly been granted, an option to purchase those properties, it is necessary to examine further the standing of the agreements purportedly entered into by the ALALC and Sunshine on 23 October 2015 (discussed in chapter 9). As indicated above, Mr Sayed's evidence before the Commission was that he provided the valuations of the Warners Bay properties to Mr Strauss, only two weeks after the Sunshine agreements had been executed in his presence at the ALALC's offices, because he considered that the Sunshine deal might fail. He did not seek to suggest, however, that the ALALC's purported agreement with Sunshine had not in fact gone ahead or been cancelled. Indeed, he accepted that Sunshine had paid him $125,000, through Mr Rhee's company, Keeju, as required by the Project Procurement Deed dated 2 October 2015, for his role in bringing the Sunshine transaction together, and that by November 2015 he had been paid some or possibly all of that amount.

By contrast, Mr Petroulias asserted in his written narrative statement that the Sunshine transaction had been "cancelled" on or about 26 October 2015 (three days after the signing of the transactional documents at the ALALC's offices) on the instructions of Mr Green and Ms Dates and that Mr Rhee and Mr Sayed had been informed of this. In support of this assertion, Mr Petroulias refers to the "Running Memorandum of Declaration, Acknowledgment and Consent Addendum 2" and "Running Memorandum of Declaration, Acknowledgment and Consent Addendum 3", which were documents that Mr Petroulias and Ms Bakis contended were contemporaneous records of events, and which impress as file notes of conversations purportedly conducted

between Mr Green, Ms Dates, Mr Petroulias and Ms Bakis.

In chapter 9, the Commission has found that "Addendum 3" to the "Running Memorandum of Declaration, Acknowledgment and Consent" was not an authentic record and rejected the submission made by counsel for Ms Bakis that it would provide a foundation to doubt the reliability of Mr Zong's oral evidence given before the Commission. For the reasons provided by the Commission for its findings in connection with "Addendum 3", the Commission also finds that "Addendum 2" is not an authentic record and that it can provide no support for Mr Petroulias' contention that the Sunshine agreements were "cancelled" in late October 2015 or that Mr Sayed and Mr Rhee were informed of this.

On Mr Petroulias' evidence, the deal with Sunshine fell through on 23 October 2015, meaning, no final settlement was able to be effected at the ALALC's offices, because Mr Zong did not bring sufficient funds to the settlement to pay the amounts said to be owed to both Gows and the ALALC under the various agreements. Mr Petroulias further contends that on 27 November 2015, he conveyed to Mr Zong that he would be returning a $200,000 cheque made out to KNL that had not yet been banked, in addition to a KNL trust account cheque in the amount of $512,000 if they were unable to "finalise the matter as soon as possible", and to that end, Mr Petroulias and Mr Zong agreed to meet at a Gloria Jeans café on 3 December 2015.

Mr Petroulias contends that, at the 3 December 2015 meeting held at the Gloria Jeans café, a compromise was reached, in accordance with which, Mr Zong would direct KNL to pay the $712,000 to Gows. Through this payment, Mr Zong would "get rid of Gows completely" and would have "an investment in ULC from which Sunshine would get first priority to pursue ULC projects" put together. Mr Petroulias asserts that the mechanics of this agreement involved a "2 stage settlement", whereby Mr Zong agreed to pay an initial $400,000 to Gows (directing the funds held by KNL in trust to be released to Gows) in order to "fund" ULC, with the remaining $312,000 to be held on trust by KNL pending a review of the rezoning densities likely to be achieved with respect to the land. It is not clear which land was to be reviewed. According to Mr Petroulias, Mr Zong was satisfied with the assessment of the densities likely to be achieved on rezoning and as a result, directed the release of the remaining $327,000 held in trust by KNL to Gows, on or around 22 December 2015.

The Commission does not accept this evidence. Putting to one side the basal fact (as found by the Commission in chapter 9) that no land dealing was or could have been effected by the Sunshine transaction as those purporting to act on behalf of the ALALC did so without authority, without the knowledge of the ALALC board and ALALC members, and in the absence of the necessary statutory approvals, the notion that the attempted Sunshine transaction had "failed" or was cancelled by Mr Petroulias or Ms Bakis on behalf of the ALALC finds no support in the evidence of any other witness who appeared before the Commission, including that of Ms Bakis. Ms Bakis' evidence before the Commission was that the Sunshine transaction failed in around March or April 2016, because Mr Zong did not pay an option fee required. Additionally, on any view, the proposition that no agreements were entered into on 23 October 2015 should have been put both to Mr Zong and Mr Fisk during their cross-examination by Mr Petroulias and Mr Menzies, and yet it was not. In his evidence before the Commission, Mr Zong denied entering into any agreement with the ULC or to "fund" the ULC, or entering into any other agreements with Mr Petroulias, aside from those connected with the ALALC land that he entered into on 23 October 2015. This evidence was not challenged by Mr Petroulias or by Mr Menzies on his behalf in their cross-examination of Mr Zong.

Further, the underlying premise that Mr Zong failed to bring sufficient funds to pay the amounts owed to Gows and the ALALC cannot be sustained for the very reason that the amounts paid by Mr Zong (addressed in chapter 9) precisely matched what Sunshine was obliged to pay pursuant to the agreements he executed on 23 October 2015, namely, $250,000 to Gows and the $712,000 paid into the KNL trust account (across the two payments on 26 October 2015 and 3 December 2015), being the option fee payable by Sunshine to the ALALC, in accordance with clause 4 of the Variation Agreement.

Contrary to what Mr Petroulias contends, the evidence before the Commission points to the conclusion that those representing Sunshine considered that a deal had been concluded on 23 October 2015, as did Mr Sayed, and that Mr Petroulias, Ms Bakis and Mr Green actively took steps to encourage them to believe not only that a deal had been concluded on that date, but also that there were no impediments, statutory or otherwise, to Sunshine ultimately exercising the options it had been granted pursuant to that deal. This evidence includes the steps Sunshine took after 23 October 2015 in order to progress with the rezoning of the Warners Bay properties and the Deed of Acknowledgment and Guarantee, dated 21 December 2015, which was drafted by Ms Bakis and executed by Mr Green.

There is also the correspondence Ms Bakis sent in 2016 to those representing Sunshine regarding the transaction, including responses to Mr Fisk's emails to Mr Petroulias and Ms Bakis on 18 March 2016 and 28 April 2016 respectively. In that correspondence, Mr Fisk had

requested copies of the "dealing approval certificates for the Warners Bay lands" and then more specifically "appropriate dealing certificates from the NSW Aboriginal Land Council confirming the Awabakal's right to deal in this land".

Ms Bakis, in her emailed responses to Mr Fisk's requests, did not seek to suggest that no deal had ever been concluded between the ALALC and Sunshine, but instead stated on 18 March 2016 that "the Board will meet on all this and get the process going in the next two weeks". On 28 April 2016, Ms Bakis falsely indicated that the ALALC did not require permission to enter into a land dealing, and stated (again, falsely) that a dealing approval certificate held no relevance, because Sunshine "have not sought to exercise any option to purchase land with funds for such purchase". Ms Bakis was questioned at some length by Counsel Assisting about this correspondence, and her evidence about these communications is addressed in chapter 12. For present purposes, the fact that Mr Fisk was making these enquiries in April 2016 supports the Commission's findings that Sunshine understood that it had entered into a land dealing with the ALALC in October 2015, and that at least until April 2016, Mr Petroulias, Ms Bakis and Mr Green did not endeavour to disabuse those representing Sunshine of this understanding, but rather, encouraged it.

The initial Solstice documentation and negotiations

In Mr Petroulias' written narrative statement and written submissions he asserts that Mr Sayed unilaterally presumed that "the Sunshine arrangement" was not proceeding and sought, of his own volition, to approach Mr Strauss regarding the ALALC properties. Whether or not Mr Sayed initially approached Mr Strauss at Mr Petroulias' behest, or was acting under his own steam, is unclear, but the Commission accepts Mr Sayed's evidence that he did inform Mr Petroulias and Ms Bakis that he had made overtures to Mr Strauss regarding the ALALC properties. It also appears clear from the documentation that was then issued from KNL (discussed below), both in November 2015 and into early 2016, that both Mr Petroulias and Ms Bakis were willing to negotiate, and did facilitate negotiations, with Mr Strauss and Mr Kavanagh in connection with the potential purchase of the ALALC properties consequent upon the initial offer made to them by Mr Sayed. Further, the Commission finds that to the extent that they did so, it was in their purported capacity as the legal representatives of the ALALC.

On 12 November 2015, Mr Strauss sent an email to Mr Sayed as well as to Solstice's in-house legal advisor, Dean Alcorn, with the subject heading "Warners Bay". The contents of the email were brief: "Solstice property corporation Pty ltd In house lawyer. Dean Alcorn." In his evidence before the Commission, Mr Strauss explained that Solstice was a company owned by his aunt, for whom he had worked in the capacity of development manager, and that it was the corporate vehicle which, at least in the first instance, was intended to be utilised in the attempted transaction involving the ALALC properties. It may be inferred, based on this evidence, as well as prior and subsequent email communications between Mr Strauss and Mr Sayed, that through his email of 12 November 2015, Mr Strauss intended to communicate to Mr Sayed that he had nominated Solstice as the corporate entity to transact with the ALALC with respect to any prospective purchase of ALALC property that Mr Sayed had mentioned to him.

On 18 November 2015 an email was sent, apparently by Ms Bakis, at 4:29 pm, from the admin@knightsbridgenorthlawyers.com email address, to Mr Alcorn, copying in Mr Sayed, with the subject line "Solstice – Awabakal Agreement. The email reads:

> *"Hi Dean*
>
> *I have re-scanned the document (there is only document now). I hope the quality is better.*
>
> *Despina"*

It is observed that the body of Ms Bakis' email suggests that there was some kind of email communication between Mr Alcorn and Ms Bakis prior to that email, however, no such communication was in evidence before the Commission. Attached to Ms Bakis' email of 18 November 2015 was a document styled "Heads of Agreement", dated 19 November 2015, that was expressed to be between Solstice, the ALALC, and Gows ("the Solstice Heads of Agreement").

Also on 18 November 2015, Ms Bakis apparently sent an email at 7:12 pm from the admin@knightsbridgenorthlawyers.com address, only to Mr Sayed, attaching a copy of the Solstice Heads of Agreement, with the subject line "Awabakal – Solstice Option Agreement–Part 1 of 2" as follows:

> *Sam,*
>
> *Attached are the executed agreements providing solstice property corporation the option and removing Gows from the equation as you are aware_*
>
> *They are in two parts incorporating the various agreements as schedules.*
>
> *Regards*
>
> *Despina Bakis*
>
> *Solicitor*

A second email was sent to Mr Sayed, apparently by Ms Bakis, at 7:19 pm, with the subject line "Awabakal – Solstice Option Agreement – Part 2 of 2". Mr Sayed then forwarded these emails on to Mr Strauss that same evening.

As with the bulk of the Sunshine documents and the First and Second Gows Heads of Agreements, the cover page of the Solstice Heads of Agreement bears the KNL logo and KNL address. Similarly, as with the Sunshine Heads of Agreement, and the First and Second Gows Heads of Agreements, the Solstice Heads of Agreement features a series of recitals. These include:

- Recital C, which refers to the alleged entry by Gows and the ALALC on 15 December 2014 into an agreement granting Gows the option to purchase Lot 7393, DP 1164604, and Lot 101, DP 1180001 in the Lake Macquarie Council area
- Recital D, which states that Gows and Solstice have agreed that Gows will surrender and release its option to purchase those properties and rescind the agreement between Gows and the ALALC
- Recital E, which states that the ALALC seeks to grant to Solstice and Solstice accepts the option to purchase those properties.

The agreement is in two parts, being the Heads of Agreement as Part 1, and the Terms of Contract as Part 2. Part 1 contains one term only, providing that the Heads of Agreement is an agreement for the sale of properties described in Schedule 1 and is intended to be a binding contract to be superseded by the contracts that would be completed on the conclusion of the rezoning process undertaken by the purchaser.

The substantive terms of the contract are set out in Part 2, clause 2, and grant to Solstice the option to purchase the properties known as Lot 7393, DP 1164604, and Lot 101, DP 1180001 in the Lake Macquarie Council area for the "Purchase Price", which is described as "the valuation of the properties as determined by the valuer agreed by the parties" (clause 2.2). It should be noted that these two properties were also included in the further properties to which a call option was granted in the 21 December 2015 Deed of Acknowledgement and Guarantee between Sunshine Warners Bay and the ALALC discussed in the previous chapter. These parcels of land were not owned by the ALALC but were in fact owned by the state of NSW and were the subject of land claims by the ALALC. That the ALALC was not yet the proprietor of the land is not mentioned anywhere in the agreement. Clause 2.1 provides that Gows and the ALALC rescind the Second Gows Heads of Agreement (attached as Schedule C) on the condition precedent that Solstice pays to Gows such amounts as provided for in the agreement between Gows and Solstice attached as Schedule B. The agreement appearing as Schedule B, described as a "Surrender Agreement and Release", provides that Solstice agrees to pay to Gows $400,000 to "surrender, release, disavow any and all claims arising out of or in any way related to the properties" that were the subject of the Second Gows Heads of Agreement (clause 1(a)). Appearing as Schedule A are draft contracts for the sale of land for each of the properties.

Somewhat bizarrely, the Solstice Heads of Agreement appears already to have been executed by Ms Dates and Mr Green, purportedly on behalf of the ALALC (although they had no authority to do so), and, on behalf of Gows, someone (evidently, Mr Petroulias) has signed on behalf of Mr Latervere ("per Jason Latervere"), in his purported capacity as a director of that company. It was submitted by Counsel Assisting that prior to this documentation being provided by KNL in mid-November 2015, and apparently executed on behalf of Gows and the ALALC, that a site visit had been conducted involving at least Mr Strauss and Mr Sayed and, further, that a meeting was then held at KNL's office involving Mr Green, Mr Petroulias, Mr Sayed, Mr Strauss, Mr Kavanagh, and Ms Bakis. That the prospective parties would have met at least once prior to this documentation being issued and, with that documentation ostensibly being signed on behalf of two of the three parties, would stand to reason and would be in keeping with the normal course of events in bona fide commercial property transactions. However, the Commission considers that the probabilities favour that no meeting took place between the parties, or those purporting to represent the parties, until April 2016.

Mr Strauss and Mr Kavanagh both gave evidence before the Commission, and each presented as a witness of truth. Neither Mr Strauss nor Mr Kavanagh could remember attending a meeting at KNL's office in November 2015, but both considered that the parties met in April 2016. Mr Kavanagh recalled two meetings in April 2016, and Mr Strauss recalled one. There were also no email exchanges in evidence before the Commission between those representing Solstice on the one hand, and Mr Sayed or KNL on the other, indicating that a meeting was arranged or took place in or around November 2015. By contrast, there were emails in evidence suggesting at least that two meetings were held in April 2016 – one in early April, and one later in the month – to discuss the potential deal between Solstice and the ALALC. These emails are largely consistent with the recollections of Mr Strauss and Mr Kavanagh, whose evidence the Commission accepts.

Although the Commission finds that no meeting took place prior to April 2016, it is clear from the email communications in evidence that telephone conversations

were conducted in an effort to progress the Solstice transaction in and around November 2015. Ms Bakis accepted during her evidence before the Commission that she had numerous discussions with Mr Alcorn in connection with the Solstice transaction. One of these telephone calls is referred to in an email sent to Mr Alcorn, on or around 24 November 2015, in which Ms Bakis stated as follows:

> *Dear Dean,*
>
> *I refer to your call yesterday afternoon which inquired about the original option agreement. The original option agreement is the last scheduled agreement in the body of the agreements forwarded to you below. It is Gow's* [sic] *option that is being rescinded/ surrendered and replaced with the options granted in favour of Solstice.*
>
> *The object was the* [sic] *meet the direct relationship which we understood was required. If however you prefer an assignment of the original agreement (containing the options) instead, that could be accommodated. Let us know what you prefer.*
>
> *Regards*
>
> *Despina Bakis*
>
> *Solicitor*

In Ms Bakis' written submissions, counsel for Ms Bakis observes that there is no evidence of a call between Ms Bakis and Mr Alcorn in the form of a file note or oral evidence. He also points to Ms Bakis' evidence given in response to questioning about her communications with those representing Solstice, in which she stated that Mr Alcorn "called me a few times and I just asked him to call Nick Petroulias". The Commission notes that this evidence is inconsistent with Ms Bakis' concession referred to above that she had had numerous discussions with Mr Alcorn and finds that the telephone call referred to in her email to Mr Alcorn of 24 November 2015 (set out above) was one that took place between herself and Mr Alcorn.

On the face of the email, there is no indication that Ms Bakis was referring to a call that had taken place between Mr Alcorn and someone other than she, such as Mr Petroulias. Further, in his response to Ms Bakis via email on 24 November 2015, Mr Alcorn states simply: "ok will have another look, talk to my principal and come back to you" and does not refer to Mr Petroulias, or anyone else. Additionally, in emails Mr Petroulias sent to and received from those representing Solstice around November 2015, and up until at least 1 December 2015, he used the email address "michael@knightsbridgenorthlawyers.com", and the alias "Michael Pearson", with Mr Alcorn addressing him in emails first as "Mr Pearson" and then "Michael". On 1 December 2015, Mr Alcorn sent an email to the michael@knightsbridgenorthlawyers.com email address, writing: "michael, can we have a chat? if so what is best number to ring you on?" This email correspondence tends to suggest that, at this juncture, Mr Alcorn had not communicated directly with Mr Petroulias over the telephone and had only spoken with Ms Bakis.

The Commission further observes that although it is clear that it was Mr Petroulias who was communicating with Mr Alcorn using the Michael Pearson alias, it is not evident why he was using an alias with those representing Solstice, or why Mr Petroulias had a KNL email address using that alias. Ms Bakis operated KNL as a sole practitioner and KNL did not employ any other staff to assist her in her legal practice. Ms Bakis was not asked about the existence or use by Mr Petroulias of the michael@knightsbridgenorthlawyers.com email address. However, during questioning by Counsel Assisting, Ms Bakis stated that she did not think Mr Petroulias had ever used the name "Michael Pearson", but that she was aware that he had used the alias "Nick Pearson". Indeed, "Nick Pearson" was the alias used by Mr Petroulias when he first attended an ALALC board meeting, on 8 April 2016 (discussed below).

Ms Bakis, in her written submissions, contends that she made no contribution to the negotiations that led to the Solstice agreements. In her evidence before the Commission, Ms Bakis asserted that the email apparently sent by her to Mr Sayed on 18 November 2015, referred to above was not sent by her but rather was sent by Mr Petroulias without her knowledge. Ms Bakis suggested, by way of potential explanation, that "I might have stepped away from my desk" when Mr Petroulias sent the email, and that Mr Petroulias was potentially "just drafting documents and sending them off…as a broker of property deals". Mr Petroulias, in his written narrative statement, states that he scanned the Solstice transactional documents and asked Ms Bakis to send them by email on 18 November 2015, that "Ms Bakis was not asked to and did not look through the documents" and "accepted the instructions of Mr Sayed and myself in writing the cover e-mail". The explanations given by Ms Bakis and Mr Petroulias are at odds with each other and both impress as inherently unlikely.

In support of the proposition that the email of 18 November 2015 was sent to Mr Sayed without her knowledge, as well as the broader proposition that she was not involved with and made no contribution to the Solstice negotiations, Ms Bakis asserts, in her written submissions, that apart from the email correspondence sent in her name there was no evidence of her engaging with any Solstice representatives and that, by contrast,

there is abundant evidence that Mr Petroulias was engaging with Solstice representatives (in the form of the emails sent using the alias Michael Pearson, as well as emails sent in 2016 and Mr Petroulias' attendance at a meeting on 29 April 2016).

There are several difficulties with these submissions. These include that, at this time, it was Ms Bakis (and not Mr Petroulias) who was acting as the solicitor for the ALALC and that during her evidence before the Commission, Ms Bakis made several concessions regarding her involvement with Solstice, namely, that she did have numerous conversations with Mr Alcorn, that she had corresponded with those representing Solstice during the course of the attempted transaction, that she read and amended draft versions of the transactional documents, and that ultimately, she charged the ALALC and was paid for this work that she had carried out in connection with Solstice, as the ALALC's solicitor. With respect to Mr Petroulias, the fact that he was sending emails to those representing Solstice around November and December 2015 using the KNL email address michael@knightsbridgenorthlawyers.com tends to suggest that if he had wanted to send the transactional documents he had scanned to Mr Sayed or Mr Alcorn, he could and would have done so using that email account using either his own name or the Michael Pearson alias; there was no logical or obvious reason for him to use Ms Bakis' email address, or for him to purport to be/pose as Ms Bakis when doing so.

During her evidence before the Commission, it was plain that Ms Bakis was seeking to distance herself from the Solstice transaction as a whole. This included denying any knowledge of Gows' involvement in the proposed transaction with Solstice (through the proposed buying-out of Gows' purported interest in the ALALC land that was said to rest on the Second Gows Heads of Agreement), denial of any knowledge of the underlying Second Gows Heads of Agreement, and her assertion that she "looked at", but did not draft, any of the transactional documents. The Commission accepts the submission made by Counsel Assisting that Ms Bakis' denials of any knowledge of the Second Gows Heads of Agreement, and its proposed role in the Solstice transaction, are implausible in light of the emails sent to Mr Alcorn and Mr Sayed referred to above, which the Commission finds were in fact sent by Ms Bakis, and not by Mr Petroulias. While the Commission considers it more likely than not that Mr Petroulias drafted the Solstice transactional documents (both those that were issued in November 2015 and the second round of documents that were issued in April 2016, discussed below) the Commission finds that Ms Bakis approved those documents being issued to Solstice in her capacity as the ALALC's solicitor, in order to progress the potential transaction with the ALALC. Ms Bakis did so in the knowledge that, as with the Sunshine transaction, it involved the "buying-out" of Gows' interest in the ALALC properties that was said (falsely) to have been created by the Second Gows Heads of Agreement.

The second round of Solstice documentation and negotiations

Despite the Solstice documentation having been issued from KNL in mid-November 2015, and the email exchanges that then ensued between those representing Solstice and those purporting to represent the ALALC, no agreement was reached between the parties in 2015.

In early 2016, negotiations resumed. The evidence of Mr Sayed and Mr Strauss was that sometime after initial discussions regarding the ALALC properties, a site visit was conducted, which appears to have taken place in around February or early-March 2016. Mr Sayed took Mr Strauss, along with one of Mr Sayed's associates, to see the Newcastle Post Office, the Warners Bay properties, and other properties in the Newcastle area. Mr Strauss' evidence was that Mr Kavanagh had accompanied them, but in that respect, the Commission prefers the evidence of Mr Sayed and Mr Kavanagh, who were firm in their recollection that Mr Kavanagh was not in attendance when the site visit was conducted.

On 3 March 2016, an email was sent to Mr Alcorn by Mr Petroulias, again using the Michael Pearson alias and the michael@knightsbridgenorthlawyers.com email address, asking about whether Solstice's offer had "advanced so far as documentation is concerned, because the Call Option Style has changed to a more comprehensive (and standard term) version and may require some explanation to our clients". That same day, in response, Mr Strauss (to whom Mr Petroulias' email had been forwarded) instructed Mr Alcorn to "Get the warners bay option for now", being the option that, unbeknown to those representing Solstice, had already purportedly been granted to Sunshine in October 2015.

Despite Mr Strauss' apparent intention, as expressed in his email of 3 March 2016, to confine the Solstice transaction with the ALALC to the Warners Bay properties, and despite the initial draft documentation issued in November 2015 covering only the two lots of land adjacent to those Warners Bay properties that were subject to the ALALC's land claim, it appears that from mid-March 2016 a transaction much grander in scale was being proposed. The transaction in contemplation was to include the Warners Bay properties and the Newcastle Post Office, as well as other sites. As with the Sunshine transaction, the transaction proposed was to be by way of an option granted to Solstice to purchase the various properties, with Solstice taking on the rezoning

process, and the purchase price was to include a housing package component as well as a cash amount. The deal in contemplation still involved a payment to Gows.

A second round of Solstice documentation was emailed by Ms Bakis to Mr Sayed on 1 April 2016, with the subject line "Ryan Strauss and Soltice [sic] Options re Awabakal (Part 1)". The following four documents, all dated 4 April 2016, were attached to this email:

- Call Option Agreement said to be between the ALALC as "vendor" and Solstice as "purchaser"
- Collaboration Agreement for an unincorporated Venture said to be between the ALALC as "owner", Solstice as "purchaser", Awabakal LALC Trustees as "trustee" and Able Consulting Pty Ltd as "manager of the project"
- Surrender Agreement and Release said to be between Gows and Solstice
- Deed of Rescission and Acknowledgement said to be between the ALALC as "vendor", Solstice as "purchaser" and Gows.

Ms Bakis indicated to Mr Sayed in the body of the email that she would separately email individual contracts of sale, the terms and conditions of those contracts, the title searches, and a "Manager Agreement".

During her evidence before the Commission, Ms Bakis denied sending this email of 1 April 2016 to Mr Sayed attaching this second round of Solstice documentation. Again, it appears to be suggested by Ms Bakis, though she did not in her evidence before the Commission do so expressly, that Mr Petroulias used her email address to email the second round of draft Solstice documentation to Mr Sayed, while purporting to be or posing as Ms Bakis. Insofar as this is the inference that Ms Bakis contends that the Commission should draw, it declines to do so, and also rejects Ms Bakis' evidence that she did not send the email. There is no logical reason or plausible explanation available as to why Mr Petroulias would have sent the documentation to Mr Sayed as Ms Bakis. It does not appear that Mr Petroulias was attempting generally to conceal his involvement in the transaction. Other emails regarding the Solstice transaction had been sent directly by Mr Petroulias to Mr Sayed during this time, and Mr Petroulias' involvement in the transaction was known to those representing Solstice whose evidence before the Commission was that their operating assumption, in and around April 2016, was that Mr Petroulias was the lawyer acting for the ALALC on the transaction. Accordingly, the Commission finds that Ms Bakis sent the emails of 1 April 2016 to Mr Sayed, attaching the proposed Solstice documentation.

On the face of the documents alone, it is clear that the second round of agreements was drafted to facilitate a transaction that was, as suggested above, significantly grander in scope than originally proposed to Solstice in November 2015. The suite of documents can be summarised as follows.

(a) The Collaboration Agreement for an Unincorporated Venture. In "Background" Recital C the agreement is described as "an agreement to collaborate, known as a joint venture and/or collaboration agreement, to maximise the value of the purchase price that SOLSTICE will pay for the acquisition of the lands and provide security for SOLTICE [sic] in the expenditure necessary for the re-zoning and capital improvement of the land". Under the Collaboration Agreement, Able Consulting (discussed below) was appointed as the manager, to project manage the collaborative joint venture, including doing all things necessary to effect the rezoning of the land.

(b) The Surrender Agreement and Release, through which Gows purported to surrender and release its alleged option to purchase the ALALC properties said to arise from the Second Gows Heads of Agreement, in consideration for a payment of $1.2 million (a significant increase from the $400,000 payable to Gows pursuant to the November 2015 Surrender Agreement and Release).

(c) The Deed of Rescission and Acknowledgment through which Gows and the ALALC purported to rescind the Second Gows Heads of Agreement.

(d) The Call Option Agreement pursuant to which Solstice was to be granted the option to purchase 19 ALALC lots (as opposed to the original offer of two lots), described in Schedule 1, for a purchase price of $30 million (clause 2.1) and an option fee payable of $50,000.

The probabilities favour that Mr Petroulias drafted the second round of Solstice documentation. Mr Petroulias does not, in his written narrative statement, expressly state that he drafted the suite of Solstice agreements, but he does assert that he was responsible for sending them to Mr Sayed on 1 April 2016 (a proposition that the Commission has rejected above). Ms Bakis' evidence was that Mr Petroulias drafted the agreements. However, she also accepted that she had looked at the documentation that was issued, and knew of and approved the revised set of agreements that were drafted and issued to Solstice in April 2016.

Consistent with her evidence that she had no knowledge that Gows was in any way involved in the Solstice transaction (both in November 2015 and April 2016), Ms Bakis denied ever seeing the Surrender and Release Agreement and the Deed of Rescission. It is both of these agreements that deal with Gows' purported interest in the ALALC's land said to arise from the Second Gows Heads of Agreement, with Gows surrendering the rights said to be connected with that contract pursuant to the Surrender and Release Agreement, and the ALALC and Gows rescinding the Second Gows Heads of Agreement pursuant to the Deed of Rescission. However, Ms Bakis accepted that she had seen the Collaboration Agreement, the Management Agreement and the Call Option Agreement. The Collaboration Agreement provides in clause 2.1(b) that a condition precedent to the Collaboration Agreement taking force and having effect is that:

> *SOLTICE* [sic] *has received a certificate signed by Gows Heat Pty Ltd ("Gows") and Awabakal, confirming that there are no pre-existing claims by Gows Heat Pty Ltd on any properties whatsoever and howsoever that are subject to the call option(s) Deed and that any and all agreements between Gows and AWABAKAL has* [sic] *been rescinded.*

When Ms Bakis was taken by Counsel Assisting to clause 2.1(b) of the Collaboration Agreement, which makes plain that Gows was a feature of the Solstice transaction and that the provision to Solstice of proof of the relinquishment of any prior claims held by Gows to the subject ALALC land was a condition precedent, she stated that she had not seen that document, but that she had seen a *version* of that document. Ms Bakis did not identify for, or produce to, the Commission the version of the Collaboration Agreement that she had seen. There is a further version of the Collaboration Agreement, dated 5 May 2016, which was produced to the Commission by Ms Bakis as part of her solicitor's file. However, the condition precedent clause (clause 2.1) in this version still includes a reference to Gows and has, in fact, been expanded to record a reference to the Deed of Rescission (which Ms Bakis denied in her evidence before the Commission that she had ever seen), and the payment of money to Gows for surrendering its purported rights said to arise from the Second Gows Heads of Agreement:

> *(b) The Purchaser, Gows and The Owner have executed a Deed of Rescission that Gows has no claims on any properties whatsoever and howsoever that are subject to the Deed of Call Option or otherwise and that any and all agreements between Gows and the Owner have been surrendered and/or rescinded and/or terminated;*
>
> *(c) Gows has received the funds for its surrender of its rights as specified in clause (b).*

Accepting, for present purposes, the premise that Ms Bakis had been retained by the ALALC to act on its behalf in connection with the Solstice negotiations, it would be implausible that Ms Bakis would not have seen, considered and approved *all* of the documents issued to Solstice. The notion that Ms Bakis had somehow seen each of the documents provided to Solstice except those two that expressly dealt with Gows' purported interest in the ALALC properties said to arise from the Second Gows Heads of Agreement, and had also seen a version of the Collaboration Agreement (but, conveniently, not the two versions in evidence that both include a reference to Gows' purported interest in the ALALC properties), is manifestly untenable and is rejected. The Commission finds that Ms Bakis knew that the Solstice transaction, as with the Sunshine transaction, hinged on Solstice making a substantial payment to Gows, in order to buy out Gows' purported interest in the ALALC properties, which she knew to be non-existent, based as it was, on the Second Gows Heads of Agreement.

Further, for the avoidance of doubt, although Ms Bakis was purporting to act as the solicitor on behalf of the ALALC, and although Mr Petroulias was also purporting to act on behalf of the ALALC, though in what capacity was left unclear, there was no evidence before the Commission that would support a finding that either of Ms Bakis or Mr Petroulias were given any authority to put such an offer to Solstice or to negotiate on the ALALC's behalf with Solstice in connection with the potential purchase of these 19 properties. There was also no evidence to support a finding that any board member, aside from Mr Green, was aware of the transaction at this point, let alone authorised it to be negotiated.

The Commission finds that Ms Bakis and Mr Petroulias were not authorised to act on behalf of the ALALC in connection with the Solstice transaction, and that the board did not know of it. However, as will become apparent from what follows below, Mr Green did know of, and participated in, progressing the transaction. Accordingly, it is clear, and the Commission so finds, that the negotiations with Solstice were made in furtherance of, and evidence participation by each of Mr Petroulias, Ms Bakis and Mr Green in, the Scheme. Specifically, the negotiations represented an attempt purportedly to sell ALALC land through the use of a false agreement, being the Second Gows Heads of Agreement, in order wrongfully to confer a financial benefit on each of them.

Meetings at KNL's offices

Following the issuing of the documentation to Solstice it appears that at least one, and likely two, meetings took

place, with both being held at KNL's offices. The first of these meetings was in early April, and likely occurred on or around Thursday 7 April 2016. The second meeting appears likely to have taken place on or around Friday 29 April 2016.

The first meeting was attended by Mr Strauss, Mr Kavanagh and Mr Alcorn on behalf of Solstice, Mr Sayed and one of his associates, Mr Green and Ms Bakis. While Ms Bakis denied attending this meeting, Mr Strauss (whose evidence the Commission prefers), recollected that an unidentified female person – whom he later assumed to be Ms Bakis – was also present, taking notes. Mr Kavanagh also recollected that a female person was present at this meeting, though he did not recognise Ms Bakis when she was identified to him while he was giving evidence before the Commission. As the meeting was held at KNL's offices, KNL being Ms Bakis' law firm that she ran as a sole practitioner, and given that Ms Bakis was purporting to act at this time as the ALALC's solicitor on the transaction, the probabilities favour that the unidentified female person sitting in on the meeting with the Solstice parties was Ms Bakis.

According to both Mr Strauss and Mr Kavanagh, Mr Petroulias led the discussion at the meeting, and had all the documentation before him. Based on his conduct at the meeting, both Mr Strauss and Mr Kavanagh assumed that Mr Petroulias was the lawyer representing the ALALC. The female person also in attendance did not speak but only took notes. Mr Green spoke at the meeting about the rezoning process and represented to those appearing on behalf of Solstice that he could "get the deal across the line with regard to…his council members" and could "provide influence and knowledge of the area to the [Lake Macquarie] council to facilitate that rezoning". Mr Green also made it clear that he was representing the ALALC. Mr Strauss' evidence was that he understood from Mr Green's presence and conduct at the meeting that he had the authority of the ALALC to deal on the properties that were the subject of the transaction.

At the meeting, the structure of the transaction being proposed between Solstice and the ALALC was discussed by those present. Additionally, the potential purchase price, and the prospect of that price being divided into cash and land components (as with the Sunshine transaction) was discussed, as was responsibility for managing the rezoning process. The role to be played by Gows in the transaction was also discussed. The evidence of both Mr Strauss and Mr Kavanagh was that Mr Petroulias had explained to the meeting attendees, in the presence of Mr Green, that Gows had an interest in the transaction, in that it had a pre-existing interest in the land Solstice now wished to acquire, for which it would need to be paid before the transaction with Solstice could proceed. Mr Kavanagh said that Mr Petroulias, in explaining Gows' role, stated that:

> *…the deal* [with Solstice] *needed to stick with, within pre-approved or pre-agreed parameters that had been agreed between Gows and the Awabakal LALC…*
>
> *There was, there was apparently some deal there that Awabakal* [LALC] *and Gow* [sic] *had agreed to that, where, where Gows* [sic] *was going to effectively step out of the deal, we had to pay Gows some money to do that and then we'd then go and enter into a deal with the Awabakal* [LALC].

Mr Kavanagh told the Commission that the amount proposed at the meeting that Solstice would be required to pay to Gows in order for it to relinquish its purported pre-existing interest in the ALALC land was $1.2 million.

In his evidence before the Commission, Mr Green said that he unequivocally stated to those present at the meeting that any deal involving ALALC land would require approval by the ALALC members and then by the NSWALC. Mr Petroulias also contended in his written narrative statement that Mr Green explained the approval process mandated by the ALR Act, and that he himself also explained the process by which NSWALC approval is sought and obtained for dealings involving LALC land.

By contrast, Mr Strauss and Mr Kavanagh firmly denied that Mr Green ever mentioned the requirement that the transaction would require ALALC member and then NSWALC approval. The Commission prefers the evidence of Mr Kavanagh and Mr Strauss, who, as indicated above, presented as witnesses of truth. It is also more plausible that the NSWALC process was not mentioned at this meeting by either Mr Green or Mr Petroulias because, it was only on 3 May 2016, that Mr Kavanagh sought by email the advice of a barrister regarding a notation on the certificates of title for the ALALC land the subject of the transaction, which Mr Kavanagh said he did not understand. It was only upon receiving this advice that those representing Solstice understood that there was a statutory fetter placed on what could occur with respect to the transaction. And it was only after this advice was obtained that Solstice took steps (discussed below) to attempt to structure the transaction such that no funds were released until NSWALC approval of the transaction had been obtained.

Plainly, Solstice would not have sought the legal advice either in these terms, or at this time, if Mr Green and/or Mr Petroulias had made the disclosures regarding the NSWALC when they said they did. Further, the Commission accepts the submission made by Counsel Assisting that if those representing Solstice had known about the ALR Act process, they would have sought

to make the potential transaction with the ALALC conditional upon NSWALC approval from the outset.

A second meeting between those representing Solstice and those purporting to represent the ALALC took place on Friday 29 April 2016. The day before the meeting, Ms Bakis had sent an email to Mr Sayed, Mr Kavanagh and Mr Strauss with the subject line "re Awabakal – termination of negotiations" indicating that: "our clients are no longer interested in pursuing this matter", owing to the "failure to meet and the variance of the drafts from the initial agreements". Yet, a meeting did take place the following day, attended by Mr Petroulias, Mr Sayed and Mr Kavanagh, but not Mr Green, Mr Alcorn or Mr Strauss. It is not clear whether Ms Bakis attended this meeting.

At the meeting, the changes to the various agreements proposed by Solstice were discussed, as was the timing of when Solstice could provide the deposit required. It appears a number of matters were agreed in principle between Mr Kavanagh and Mr Petroulias, with Mr Kavanagh sending a summary of those matters to Mr Alcorn (and then on to Mr Strauss) in the late afternoon, following the meeting:

> *Hi Dean,*
>
> *The following matters were agreed at our meeting with Awabakal today. Accordingly we need to update the docs to reflect the following. Nick wants the docs back asap. Please send me any drafts for approval in the first instance.*
>
> *1. That transfer of the Remaining Properties to Solstice will occur by no later than 6 months from the date of the Transaction Documents. This is OK with us, subject to the other points below.*
>
> *2. Awabakal will agree to 99 year leases (in registrable form) over ALL of the Properties incl the Remaining Properties (in addition to the WB Properties and the PO Property). To be prepared by us and signed by Awabakal and provided when we sign the docs early next week. ·*
>
> *3. All leases must be for $1. And be assignable and allow subleasing at our sole discretion + anything else you can think of to allow maximum flexibility in the leases. Also we don't want to be responsible for any upkeep, statutory requirements or rates, land tax etc under any of the property leases whatsoever. Im mindful of the huge costs associated with the upkeep of the Post Office which has been neglected and become derelict in recent years.*
>
> *4. They will also provide us consented caveats (in registrable form) in relation to ALL properties. To be prepared by us and signed by Awabakal and provided to us when we sign the Transaction Docs early next week.*
>
> *5. Full Form contracts to be produced by us and particularised with the printed standard conditions that they have sent us. They have also agreed that we can insert any standard type special conditions in that we see fit.*
>
> *6. CTs* [certificates of title] *for the Remaining Properties to be handed over to us on the day we sign the Transaction Documents for us to hold, pending transfer of same to us within 6 months.*
>
> *7. Awabakal have agreed to grant to us a full and unlimited power of attorney to enable us to do all things in their name as required by us under all of the Transaction Docs if necessary should they fail to do so. Try to find a really good Power of Attorney clause.*
>
> *8. Awabakal to provide us with full documentation evidencing who is legally empowered to execute the Transaction Docs, leases, caveats and transfers on behalf of Awabakal.*
>
> *9. Upon all of the above being in order we will pay the $50,000 fee under the Deed of Call Option and the $1.2m to Gow.*
>
> *10. Also Nick said we can continue to leave the HOA attached "A" in the Rescission Deed, but wants Awabakal to not be a party to the Surrender Deed.*
>
> *Thanks Dean,*
>
> *Regards*
>
> *Andrew*

There is no mention in this email of approval by ALALC members or the NSWALC, despite it being contemplated that the Call Option Agreement would be executed the following week, despite the grant by the ALALC to Solstice of 99-year leases being in contemplation, and despite the transaction being conditional upon the grant to Solstice of caveats over all of the ALALC subject properties. It appears to have been agreed that the documentation would be signed the following week, along with the payment of the $50,000 option fee and $1.2 million to Gows, pursuant to the Surrender Agreement and Release.

The Commission finds that following the meeting, the transaction was still on track to proceed, with the documents due to be executed on or around Wednesday 4 May 2016, and that up until 3 May 2016, Solstice remained unaware of the statutory approval requirements mandated by the ALR Act.

The 8 April 2016 ALALC board meeting

There were two ALALC board meetings held around the period that the second round of Solstice documentation was being negotiated by Ms Bakis, Mr Petroulias and Mr Green, purportedly on behalf of the ALALC. The first was held on 8 April 2016, and the second on 6 May 2016. They are both meetings of significance, given what was resolved by the board at each of them. However, the first is of particular importance, as it was the first to be attended by Ms Bakis and Mr Petroulias, given what was disclosed to the board at the meeting, and considering the matters that were *not* disclosed to those board members present. It was at the 8 April 2016 meeting that the board was asked, for a second time, to resolve to "ratify" certain payments made and conduct that took place in 2015. The board also resolved to "reject" Sunshine and approve a sale to Solstice.

The 8 April 2016 ALALC board meeting was attended by Mr Green, Ms Dates, Mr Walsh, Mr Quinlan, Ms Quinlan, and Ms Steadman (the acting CEO). The handwritten minutes of the meeting, taken by Ms Steadman, record that visitors to the meeting were: "Nick and Despina Knightsbridge North Lawyers". Mr Green told the other board members that Mr Petroulias and Ms Bakis were attending the meeting in their capacity as the ALALC's new lawyers. In her evidence before the Commission, Ms Bakis suggested with respect to this meeting that Mr Petroulias had attended in his capacity as a representative of ULC, and denied that Mr Petroulias was attending under the umbrella of KNL. This evidence is rejected. There is no mention of ULC in the handwritten minutes, nor even in the typed minutes approved by Ms Dates as chairperson which, as discussed below, Mr Petroulias had amended himself "for accuracy".

In the morning of the day the ALALC board meeting took place an email was sent, apparently by Ms Bakis, attaching a document setting out a series of "Proposed Resolutions" to Ms Steadman and Ms Dates, with the body of the email indicating by way of explanation: "Draft proposed resolutions for this evening". Ms Bakis accepted that she had drafted the resolutions, but denied that she had sent the email, the inference being, once again, that Mr Petroulias had sent the email as, or purporting to be, Ms Bakis.

This was not the first ALALC board meeting for which Ms Bakis had beforehand circulated proposed draft resolutions for the board to pass; on 7 March 2016, a series of draft proposed resolutions had also been drafted and circulated via email by Ms Bakis to Ms Steadman, Ms Dates and Mr Green. Ms Bakis had also prepared and circulated a resolution that was ultimately made by the ALALC board at an earlier board meeting held on 11 January 2016. It is also the case that ALALC board resolutions were being drafted or settled by Mr Petroulias around this time, that minutes of ALALC board meetings were being "settled" by Mr Petroulias, and Ms Bakis accepted that she was allowing him to do so. Mr Petroulias appears to suggest in his written narrative statement that he had a hand in drafting the resolution involving Solstice that was put to the board on 8 April 2016.

There is no satisfactory explanation as to how it came to pass that Ms Bakis and Mr Petroulias were invited to the 8 April 2016 ALALC board meeting, or how it was that either or both of them were, in effect, now controlling the agenda of these meetings and putting matters to the ALALC board to be resolved. Neither Ms Steadman nor any ALALC board member was able to say, in their evidence before the Commission, why it was that Ms Bakis and Mr Petroulias attended the 8 April 2016 meeting, save that they had been introduced as lawyers from KNL. What is plain, however, is that Ms Bakis and Mr Petroulias had sufficiently infiltrated the ALALC board – through the relationships they had fostered with Ms Dates and Mr Green – such that they were now able to exercise control over it, including as to the motions proposed and resolutions made; that is to say, they were now, for all intents and purposes, controlling the business of the ALALC board.

An examination of the minutes of the 8 April 2016 meeting, including a consideration of how those minutes were subsequently amended by Mr Petroulias, evidences the level of control Ms Bakis and Mr Petroulias were now exerting over the ALAC board and its business. Ms Steadman told the Commission that the handwritten minutes she took were an accurate recollection and recount of what took place at the meeting. For reasons discussed below, the Commission considers that the handwritten minutes, and not the typed minutes that were amended by Mr Petroulias and later approved by Ms Dates as accurate, are a more faithful and accurate record of what transpired at the meeting.

According to Ms Steadman's handwritten minutes, the matter which had been the subject of the second draft proposed resolution prepared by Ms Bakis was the first item of business, namely, the proposed ratification of payments and actions "during the period of non-functioning", which appears to refer to the period during which the ALALC board did not regularly meet in 2015, though this was not specified. The handwritten minutes suggest that there was a degree of confusion among board members about what the resolution was intended to address, that the board was not fully informed about what it was being asked to "ratify" or what the legal consequences of ratification would be, and that at least

two board members were not prepared to support the resolution:

> *Resolution: Was read by Nicole Steadman. Question was asked to Nick & Despina about why we need to ratifed* [sic] *this is it so that the auditor to give an opinion on the audit, either qualified or nonqualified. Richard said that we should never given Stephen Wright the right to use PKF Lawler. Motion as per resolution presented to the Board. See resolution in Board Minute Book. Moved: Richard Green. Seconded: Jaye Quinlan. Carried. For Motion: 4; 2 abstained (Micky Walsh, Larry Slee).*

Despite the confusion, and despite the apparent paucity of detail conveyed as to the meaning and import of the proposed resolution presented to the board, the resolution read by Ms Steadman and ultimately passed was that which had been drafted by Ms Bakis: "That to the extent not already ratified by the resolution of 8 March 2015, the board ratifies the payments (and actions) made during the period of non-functioning". The list of payments purported to be ratified was not disclosed to the board, nor was the list of actions or by whom they were taken, and the "period of non-functioning" was not specified. Accordingly, the Commission finds that the resolution did not effect a ratification of any payment made or act taken when the ALALC board was not regularly meeting, as the resolution was made without the board possessing full knowledge of all the material facts (see *Permanent Trustee Co Ltd v Bernera Holdings Pty Ltd* [2004] NSWSC 56, per Young CJ in Eq, at [55]).

The second matter resolved by the ALALC board related to the Sunshine transaction, in addition to an offer apparently made by an individual named David He. The handwritten minutes record, and the evidence of the ALALC board members also reflects, that Mr Petroulias spoke to the board, presenting "a summary of all proposal [sic] that have been presented to the Board for the Board to go through". It is recorded that Mr Petroulias proceeded to go through "all current proposal [sic] presented to the Board pro's & cons". According to Ms Steadman's minutes, towards the end of this presentation, Ms Steadman queried what was being asked of the board, to which Mr Petroulias' response was that the board "pick one group to go with and that group can be examined thoroughly before proceeding to presenting [sic] to the members". The resolution then recorded was as follows: "Rejected: Sunshine Group & David He". This resolution accords with the substance of what had already been proposed that morning in draft by Ms Bakis, which was as follows: "1. That the proposals for option or sale to Sunshine Group be rejected. 2. That the proposal from David He and Salamander Developments be rejected".

There is no record in the handwritten minutes of what, if anything, was discussed with respect to Sunshine, though Ms Steadman told the Commission (and the Commission accepts) that she would have written it down in the minutes, if there had been any such discussion. Similarly, Ms Steadman said that there was no disclosure by Mr Petroulias, Ms Bakis or Mr Green that a suite of agreements drafted by Ms Bakis had been signed in connection with Sunshine and, as a result of which, a payment had been made to Mr Petroulias or his company. This is consistent with the evidence given by those ALALC board members who attended the meeting. Ms Bakis also accepted in her evidence before the Commission that she did not disclose at this meeting that agreements had been signed and entered into by the ALALC on 23 October 2015 in connection with the Sunshine transaction and that it was not disclosed that pursuant to that transaction, Mr Petroulias' company, Gows, had received about a million dollars.

What is clear from the handwritten minutes of this meeting, the evidence of Ms Steadman and the ALALC board members, and even Ms Bakis' evidence, is that to the extent that Sunshine was discussed at all, it was without any real detail, and was represented as no more than one of several proposals in the mix to be considered by the ALALC board, as if that transaction were merely in its infancy. The board was not informed that the Sunshine transaction was the subject of several agreements that had been executed by Ms Dates and Mr Green, purportedly on behalf of the ALALC, and pursuant to which Mr Zong had already paid large sums of money to secure an option to purchase ALALC land and to "buy out" an interest purportedly formerly held by Mr Petroulias (or his company, Gows) in that same land.

The work Ms Bakis had already undertaken in connection with that transaction was not disclosed by her, and nor did she disclose the substance of the correspondence she had sent to Mr Fisk on 18 March 2016 (just three weeks prior) referred to above, in which she had assured him that the ALALC board would soon be meeting to discuss the Warners Bay transaction with a view to getting "the [NSWALC approval] process going". That is, it was not disclosed that Sunshine had not only purportedly been granted an option to purchase the ALALC Warners Bay properties but also now sought a dealing approval certificate from the NSWALC so that it could exercise that option. The Commission finds that the failure on the part of each of Mr Green, Ms Dates, Ms Bakis and Mr Petroulias to disclose what had taken place in relation to the Sunshine transaction, prior to the ALALC board moving to "reject" it, was deliberate.

The third and final matter to be resolved by the ALALC was in connection with the Solstice transaction.

It should be remembered that at this juncture, Mr Green had already signed an agreement with Solstice on 19 November 2015 (the Solstice Heads of Agreement), yet this was not disclosed by him at this meeting. Further, Ms Bakis had already circulated the second round of draft documentation to those representing Solstice, including the suite of four documents, involving the potential sale of 19 lots of ALALC land, the payment of $1.2 million to Gows (resting on a pre-existing interest in ALALC land that Gows was already purported to possess) and a management role for Able Consulting, through which that company would stand to earn fees in the vicinity of some $800,000. Additionally, just one day prior to this board meeting, Mr Green, Mr Petroulias and Ms Bakis had met with those representing Solstice in KNL's offices, to discuss the transaction. No reference to any of these matters is found in the handwritten minutes, and there was no other form of credible evidence put before the Commission to support a finding that any of these matters were disclosed to the board during the meeting. Ms Bakis accepted that she had not disclosed during the meeting that advanced drafts of the Solstice agreements had been prepared, and also conceded that it had not been disclosed to the board that Mr Petroulias' company, Gows, would secure a significant financial windfall if the transaction with Solstice went ahead.

The draft proposed resolution regarding Solstice prepared by Ms Bakis read as follows:

> PROPOSALS FOR THE DEVELOPMENT OF THE AWABAKAL LANDS
>
> *That the Board approves the establishment of AWABAKAL LALC TRUSTEES LTD ("TRUSTEE") as the trustee and nominee of Awabakal LALC; and the use of TRUSTEE to oversee the AWABAKAL DEVELOPMENT ADVANCEMENT project as a collaboration to maximise the economic valuation of the land through re-zoning and for ultimate sale to SOLTICE* [sic] *or such other party. That the two initial appointed representatives to the collaboration are Debbie Dates and Richard Green.*

It appears that this resolution was adopted in the form proposed by Ms Bakis and set out above, with Ms Steadman recording: "Motion: That as per resolution presented to Board Awabakal LALC go with Soltice [sic] Group", which motion was moved by Ms Dates and seconded by Mr Walsh. There is no evidence that the draft agreements with Solstice were provided to the board in support of this resolution, that legal advice was provided by Ms Bakis at the meeting in connection with either the draft agreements or as to the import of the resolution, or that the Solstice draft agreements were discussed in any detail at all.

Two fundamental planks to the proposed transaction with Solstice were the establishment of the company Awabakal LALC Trustees, and the use of Able Consulting as the manager. Yet there is no evidence of any discussion about or advice given in respect to the establishment of Awabakal LALC Trustees or what its role would be. In particular, it was not disclosed at this meeting that Awabakal LALC Trustees had *already* been established, with Mr Petroulias incorporating the company in January 2016, before anyone on the ALALC board, aside from Mr Green or Ms Dates, had met Mr Petroulias or knew of his existence, and that also in January 2016, Mr Green had replaced Mr Petroulias as its sole director and shareholder.

On any view, these matters ought to have been disclosed to the board so that it could have been sufficiently informed to vote on a resolution in the form that was proposed by Ms Bakis, not least because under the draft Collaboration Agreement, it was proposed that the ALALC would transfer its properties to Awabakal LALC Trustees to be held by it while the rezoning process took place. Similarly, as indicated above, there is also no evidence that the role of Able Consulting in this proposed "collaboration" or joint venture with Solstice was discussed. As will become clear from the discussion of Able Consulting set out below, this was another critical and deliberate omission on the part of Mr Petroulias and Ms Bakis.

During her evidence before the Commission, Ms Bakis suggested that she did not disclose the detail of the Solstice transaction to the ALALC board during the meeting because negotiations were preliminary. A similar submission is made by Mr Petroulias, who contends that as at the time of the 8 April 2016 ALALC board meeting, the Solstice negotiations were preliminary, and no resolution was proposed that any draft agreement at all be entered into. The proposition that negotiations with Solstice were at a preliminary stage is not accepted because it is clear, even on the face of the documents that had been circulated by Ms Bakis to Solstice on 1 April 2016, that the draft agreements were in a very advanced stage. Additionally, the Commission observes that this evidence conflicts with an email apparently sent by Ms Bakis (but potentially sent by Mr Petroulias), just after midnight on Saturday 30 April 2016 (following the second meeting held at KNL to discuss the Solstice transaction), which suggests that the ALALC had gone so far as to execute the Solstice agreements based on what had been assessed by and discussed with the ALALC board at the 8 April 2016 meeting. The email reads as follows:

From: admin@knightsbridgenorthlawyers.com

To: [redacted] Ryan Strauss <ryan@straussdevelopments.com.au>

Cc: Sammy Say <[redacted]>, [redacted]

Date: Sat, 30 Apr 2016 00:08:00 +1000

Dear Andrew and Ryan,

It was unfortunate that we could not conclude the agreements today based upon your changes as forwarded to us on Tuesday.

As you know, there was a board meeting that assessed a number of proposals that Awabakal had received at that time and the agreements executed was in accordance.

Awabakal continues to receive offers and proposals and as you now wish further changes, that would mean that it must review all proposals again at a future board meeting where all matters are open to debate once again.

The prospects of successfully explaining the need for the differences from the agreement executed and precluding debate on a larger number of proposals is too small to justify further work on this matter.

We appreciate that the further changes may be significant to you and accept that you decline to proceed.

Faithfully,

Despina Bakis

Solicitor

Further, in an email subsequently sent by Mr Sayed to Mr Kavanagh and Mr Strauss with the subject line "Approval by board Awabakal", dated Monday 2 May, Mr Sayed forwarded the page of the typed version of the minutes from the 8 April 2016 ALALC board meeting containing the resolution made by the board regarding Solstice. In the email, Mr Sayed directed the attention of Mr Kavanagh and Mr Strauss to the attached page of the minutes and indicated that Mr Petroulias was resisting further changes that had been requested by Solstice to the draft documents, because "The Board signed of [sic] on the agreements".

On the Monday following the 8 April 2016 ALALC board meeting, Ms Steadman, in her capacity as acting CEO, sent an email to Ms Bakis, asking for a copy of "the land dealings proposal" (without specifying which one) so that it could be placed in the board's meeting folder, "as we have to keep a copy of everything presented to the Board at meetings". Ms Bakis, rather than responding to Ms Steadman, forwarded her request to Mr Petroulias, who did not provide Ms Steadman with the draft Solstice agreements, or copies of the executed Sunshine agreements, but instead emailed her a copy of what was termed the "Property Proposals Summary", being the report apparently prepared by Able Consulting ("the Able Consulting Report"), discussed below.

Mr Petroulias suggested in his email to Ms Steadman that she type out her draft of the minutes of the meeting and send them to him, for him to "cut and paste the relevant bits to it, so that we can have a complete electronic copy." He also suggested that "We will need to write to the successful and unsuccessful tenders [sic]". It is not clear who Mr Petroulias was suggesting would write to the successful and unsuccessful tenderers, but it is plain that no letters were issued from the ALALC, or KNL on its behalf, to Sunshine notifying it that its "tender" was unsuccessful, and also that no letter was issued to Solstice indicating that its "tender" was successful.

On 12 April 2016, Mr Petroulias sent a further email to Ms Steadman, this time from the KNL email address, but also copying in Ms Bakis at a separate email address, again asking her to send to him a copy of her draft minutes. This time, Mr Petroulias suggested that KNL required the minutes, in order to "respond to the auditors on the audit", "deal with" the auditor's bill, and respond to the NSWALC, which had enquired about being reimbursed for the fees incurred in connection with the investigation into the ALALC that had been initiated by the minister. Ms Steadman duly emailed her draft typed minutes to Ms Bakis, which were then returned to Ms Steadman by email that evening, apparently by Ms Bakis, with the indication that the minutes had been amended "for accuracy".

Ms Bakis' evidence was that it was not her who settled the draft minutes, but Mr Petroulias. She told the Commission that she handed the draft minutes emailed to her by Ms Steadman to Mr Petroulias for him to "fix" them, because they were wrong, and because Ms Steadman had asked for help with the minutes. There is no indication in the emails exchanged between Ms Steadman on the one hand, and Ms Bakis and Mr Petroulias on the other, that Ms Steadman had asked for help with the minutes, but rather, only Mr Petroulias' two direct requests that she provide them, for a variety of reasons that each impress as being manufactured.

Certainly, Ms Steadman's evidence was that she provided the draft minutes to Mr Petroulias only because he had asked for them. Mr Petroulias had initially indicated to Ms Steadman that he would "cut and paste the relevant bits" from the Able Consulting Report into the minutes. Even if it were to be accepted that this document had

been tabled to or presented at the meeting, there is no legitimate reason why sections of it then should be incorporated into the minutes. Rather, as Ms Steadman had indicated, the ALALC's practice was to include a copy of what was presented in the board's meeting folder.

In any event, it is not the case that sections of the Able Consulting Report were simply incorporated by Mr Petroulias verbatim into the minutes, or that the amendments were limited to the items regarding property proposals. Indeed, Mr Petroulias asserts in his written submissions that the amended minutes incorporated text from a KNL 5 April 2016 Briefing Paper and that it was somehow appropriate that this be done, because there were matters that were "not within the expertise of [Ms] Steadman to grasp", but were within the expertise of Mr Petroulias and Ms Bakis. There is no evidence that the KNL 5 April 2016 Briefing Paper was provided to the ALALC board or tabled at the 8 April 2016 board meeting. However, even if it were established that this paper, along with the Able Consulting Report, had been tabled at the meeting, the Commission rejects the notion that it would be in any way appropriate for sections of text from those documents to be incorporated verbatim into the minutes of the ALALC board meeting, rejects the proposition that Ms Steadman was somehow unable without assistance to make an accurate record of what was put to and discussed by the ALALC board, or that it would be appropriate for Mr Petroulias as a visitor to the meeting (or even Ms Bakis as the ALALC's solicitor) to amend the record of the meeting created by Ms Steadman as he or she saw fit.

The amended minutes add, as the first item of business, "Matters arising from Larry Slee email", and refer to an email sent by Larry Slee asking for the financials to be presented to the board. While Ms Steadman's version had included this matter at the conclusion of her minutes, it did not include that Larry Slee's email had been "sent to address by Awabakal's Lawyers and Mr Slee was handed a legal letter to cease and desist baseless allegations", which was an addition made by Mr Petroulias. The evidence given before the Commission by Larry Slee was that there had been no discussion before the ALALC board at that meeting about the letter he had been given. Ms Steadman could not recall any discussion about the letter and made no note of any such discussion in her handwritten notes of the meeting. Similarly, the ratification item of business included in the amended minutes also incorporated detail not set out in Ms Steadman's version and Ms Steadman agreed that the version provided by Mr Petroulias was inconsistent with what was discussed at the meeting.

Finally, the amended minutes add to what had been the second matter of business recorded in Ms Steadman's handwritten minutes, being the property proposals presented to the board by Mr Petroulias and the resolution to "reject" the Sunshine Group and Mr He. Here, Mr Petroulias appears to paraphrase text from the Able Consulting Report:

> *On 14 November 2014, the Board of the Awabakal Local Aboriginal Land Council had resolved unanimously to sell most, if not all the land to what was then a proposal by IBU and its consortium partners, such as Gows who took out options to purchase and develop it. Due to the problems with the Board until recently, matters had not progressed and a number of proposals have been received.*
>
> *Able Consulting Pty Ltd prepared a summary of the proposals and identified matters to be taken into consideration by the Board…*

The immediate problem with this "amendment" is that it does not reflect what was discussed at the meeting and, accordingly, has no place in the minutes of the meeting. There are, however, additional difficulties with the amendment. First, the only ALALC board resolution involving ALALC land to which this could refer is a resolution that was made on 31 October 2014, not 14 November 2014. Secondly, as the Commission has found in chapter 5, that resolution specifically proposed a sale of the ALALC's five Warners Bay properties, not most of its land holdings, and certainly not all. Thirdly, as the Commission also found in chapter 5, the resolution proposed a sale to IBU, and not Gows. Fourthly, as the Commission found in chapter 6, Gows was not a member of a consortium with IBU and IBU did not make its proposal to the ALALC board on behalf of a consortium that included Gows. Finally, as the Commission found in chapter 7, the First Gows Heads of Agreement, pursuant to which Gows was purportedly granted an option to purchase the Warners Bay properties, was a sham agreement, and was never approved by or entered into by the ALALC.

In light of the above, the Commission accepts the submission made by Counsel Assisting that the minutes of the 8 April 2016 ALALC board meeting were redrafted by Mr Petroulias, with the knowledge of Ms Bakis, to misrepresent what was discussed by the board and the nature of the advice provided to the board, and finds accordingly. Further, the Commission finds that the creation of this false record of the 8 April 2016 ALALC board meeting by Mr Petroulias, with the knowledge of Ms Bakis, was a step taken in furtherance of, and evidences, participation by both of them in the Scheme.

Able Consulting

It is appropriate now to consider the evidence regarding the identity and control of Able Consulting, the company

that had been nominated as the manager of the potential joint venture between the ALALC and Solstice, and had purportedly prepared a summary of the property proposals to be considered by the ALALC board at its 8 April 2016 meeting.

At the time of the 8 April 2016 ALALC board meeting, the sole director and company secretary of Able Consulting was Mr Vaughan, who had held those positions since January 2016. On 11 April 2016, Mr Vaughan was replaced as the sole director and company secretary by Gregory Griffiths. Able Consulting's sole shareholder was an individual named Bryan Wishart. An ASIC company search revealed that Able Consulting had the same registered office as Gows.

Mr Vaughan was a long-term acquaintance of Mr Petroulias and was, by occupation, a computer programmer and cryptographer. Mr Vaughan became the sole director of Able Consulting at the request of Mr Petroulias, just as he later became a director of Gows because Mr Petroulias asked him to. In his evidence before the Commission, Mr Vaughan stated that Mr Petroulias had explained to him that Able Consulting was involved in putting together property development projects for the ALALC and that Mr Petroulias needed a director for the company. Based on the description of Able Consulting apparently provided by Mr Petroulias, Mr Vaughan did not have any experience that would have served to recommend him to be appointed as its sole director or possess qualifications that would have enabled him to carry out its projects. Indeed, Mr Vaughan's evidence was that he became Able Consulting's sole director as a favour to Mr Petroulias, and he was not paid any wage or salary in connection with the position.

Although Mr Vaughan remained Able Consulting's sole director for a period of some three months, during which time he apparently was asked to prepare a report for the ALALC board in relation to various property proposals received by the board (the Able Consulting Report), he did not know whether or not Able Consulting had an office, whether it had any employees, or whether it had any bank accounts. He was not aware of it receiving any income and did not know anything of its expenses.

As with Gows, the other company for which Mr Vaughan became a sole director at Mr Petroulias' request, Mr Vaughan's knowledge of what Able Consulting did, or even what he was doing in connection with the company, was negligible. However, he did appear to do some work for Mr Petroulias in connection with Able Consulting, and that was in around December 2015, before he agreed to be its sole director. There was in evidence before the Commission a series of emails exchanged in December 2015 between Mr Vaughan and Mr Petroulias, in which Mr Petroulias asked Mr Vaughan to assist him with creating a logo for Able Consulting, which Mr Vaughan then proceeded to do. Mr Vaughan remembered undertaking this work with Mr Petroulias. In the course of that work, when Mr Vaughan asked Mr Petroulias by email for "an overview of what Able Consulting do" for context, so that he might create a better logo, Mr Petroulias responded as follows: "It [sic] the company I use to deal with land councils that Richard can't. Eg conflict or history".

With respect to the Able Consulting Report, Mr Vaughan did not think that he had been involved in its preparation, and although he did not purport to know who had written it, he stated that because he was the director of the company, he would have perused it and signed it. Yet, Mr Vaughan also conceded that the document featured an electronic version of his signature, that he did not know whether he had attached it to the document, or if someone else did, and that he did occasionally give Mr Petroulias the authority to attach his electronic signature to documents. Mr Vaughan also could not recall whether Able Consulting was attempting to enter into a transaction with Solstice during the time that he was its sole director, and appeared to know nothing at all of that transaction, despite the fact that Able Consulting had been nominated as the manager of the joint venture between the ALALC and Solstice, and stood to gain up to $800,000 as a manager fee, pursuant to the draft Collaboration Agreement then in circulation.

Mr Vaughan did not, while giving his evidence before the Commission, identify any individual with potential control over Able Consulting other than Mr Petroulias. There was also no credible evidence before the Commission that anyone other than Mr Petroulias was, in reality, involved with or controlled Able Consulting. Mr Vaughan did not know Mr Griffiths, the individual who took over as the sole director of the company on 11 April 2016. However, Mr Green's evidence was that Mr Griffiths was a life-long friend of his, who was a bus driver for a mining company. Mr Green told the Commission that Mr Petroulias had asked Mr Griffiths to become a director of Able Consulting, but that Mr Griffiths did not possess any relevant experience in project management, finance or economics. In his written narrative statement, Mr Petroulias stated that Mr Griffiths was the chairperson of another LALC, that he was exceptionally well spoken and articulate, and that through Able Consulting, Mr Griffiths was "developing the management and project management expertise to promote and co-ordinate indigenous businesses wherever possible that could be contracted or sub-contracted to perform works necessary in a ULC sponsored project". This is at odds with Mr Green's evidence, which was that Mr Griffiths had carried about two weeks of work for Mr Petroulias while he was on holiday, and then returned home.

Mr Petroulias also asserts in his written narrative statement that he himself merely consulted to Able Consulting, and had access to its cars. It is not true to say that Mr Petroulias merely had "access to" cars owned by Able Consulting. Rather, Mr Petroulias purchased two cars in the name of Able Consulting – a white BMW X1 and a black BMW X5 – which were used exclusively by Ms Bakis and Mr Petroulias. Mr Petroulias further asserts that Able Consulting was a trust, with its beneficiaries being "majority owned aboriginal [sic] businesses or aborigines [sic] undertaking courses in property development and associated works". By way of evidential support for the proposition that Able Consulting was a trust, Mr Petroulias refers to a document produced to the Commission as part of Ms Bakis' files, styled "Able Consulting Indigenous Development Trust: Declaration of Trust", that purports to be a deed, made on 4 March 2016 by Mr Griffiths, who declares in the document that "he will hold all shares of Able Consulting Pty Ltd on trust for such beneficiaries that become admitted to the trust".

Without making any finding as to the authenticity of this document, the Commission finds that the document can provide no support for Mr Petroulias' contention that Able Consulting was, or operated as, a trust. The document purports to be executed as a deed, but is unwitnessed. It is therefore invalidly executed, according to the provisions of s 38(1) of the *Conveyancing Act 1919*.Further, at the time Mr Griffiths purportedly signed the document he was not a shareholder of Able Consulting, non-beneficial or otherwise, and nor did he subsequently become a shareholder. The Commission rejects Mr Petroulias' evidence regarding Able Consulting in its entirety. The Commission finds that, as with Gows, Mr Petroulias was the controlling mind of Able Consulting, and that he was using the company as a front to conceal his interest or role in Able Consulting, and to create the false perception that it was entirely independent of him.

As to the Able Consulting Report, it flows from what is set out above that it must have been drafted by Mr Petroulias, and the Commission finds accordingly. Ms Bakis' evidence was that Mr Vaughan prepared the report – that Mr Petroulias had briefed him, and that all he was required to do was to "summarise each proposal nicely", rather than provide any form of assessment. Similarly, in his written narrative statement, Mr Petroulias implies that Mr Vaughan prepared the report, and asserts that he was qualified to do so because it was not intended, and did not purport, to be anything other than a summary. However, the evidence of Ms Bakis and Mr Petroulias on this issue does not square with Mr Vaughan's evidence that he did not believe he had prepared it and did not know who did. Nor does it account for the fact that Mr Vaughan appeared to have no knowledge of anything to do with the Solstice transaction, knowledge he presumably would have had if he had in fact been asked to summarise the suite of documents that made up the transaction at that stage.

The finding that Mr Petroulias prepared the Able Consulting Report is also supported by the following matters. First, the report is addressed to Ms Dates as chair of the ALALC board, yet Ms Dates' evidence was that she did not instruct Able Consulting to prepare it or ask anyone else to arrange for Able Consulting to prepare it, did not know who Able Consulting was, had not in fact seen the report, and did not recall it being put before the board. There is no record in previous board minutes of anyone, including Ms Dates, suggesting that such a report should be obtained, or that Able Consulting be retained to do so.

Secondly, the report contains a number of misrepresentations and misleading statements which can be seen to have furthered Mr Petroulias' apparent objectives at this time, even if only by creating a seemingly legitimate record of these matters. These include:

- a reference to the Gows Resolution, but misstating the date of that resolution as 14 November 2014 (rather than 28 October 2014), and suggesting (incorrectly) that it involved the sale of "most, if not all" of the ALALC land, when the resolution was limited to a sale of the five Warners Bay properties to IBU alone
- a reference to the proposition (found by the Commission in chapter 6 to be false) that IBU had a number of consortium partners, of which Gows had been one
- an oblique reference to the First Gows Heads of Agreement (which the Commission found in chapter 7 to have been a sham agreement)
- the misrepresentation that "the requirements" of the ALR Act mean that potential investors in and developers of ALALC-held land "are unable to obtain sufficient security to make a sound investment"
- the false assertion that the ALALC had asked "two sets of legal advisers" to make enquiries about issues said to be adversely affecting the value of the ALALC's property
- the false assertion that the Solstice proposal "comes with fully executed and committee contracts"
- the misleading statement that the costs of rezoning with respect to the Solstice proposal are managed jointly and with an "independent manager", without disclosing that it was Able

Consulting, the company that had apparently authored the report, which was nominated as the "independent manager"

- the false assertion that the ALALC board had asked Able Consulting to assist it with the process of choosing which of the various property proposals to recommend to the ALALC members.

Thirdly, the Able Consulting Report omits certain matters that the ALALC board ought to have known about, if the object of the exercise had truly been to enable it to make a properly-informed decision about the proposals said to be before it, and are each matters that it is plain Mr Petroulias would have wished to conceal. These include:

- that Sunshine had already paid over $1 million pursuant to its "executed contracts", a proportion of which was, pursuant to those contracts, required to be held in trust by KNL for the ALALC but instead had been paid out to Mr Petroulias' company, Gows, and a proportion of which had gone straight to Gows to pay it for an interest it falsely purported to hold in the ALALC properties
- that Sunshine had already incurred considerable costs in connection with the rezoning of the Warners Bay lots, and that in December 2015, Mr Green had executed an agreement purportedly on behalf of the ALALC, pursuant to which the ALALC provided a guarantee to Sunshine for any loss or damage suffered by it in continuing to proceed with the rezoning, development process and the project generally, including all payments then already made by Sunshine to Gows and Keeju which were in excess of $1 million in total
- that Sunshine wished now to proceed with the acquisition of the ALALC's Braye Park site, by exercising the option purportedly granted to it in October 2015 and, to that end, now sought dealing approval certificates for the Warners Bay lots
- that the Solstice proposal also included a significant payment to Gows, for further interests it falsely purported to hold in the ALALC properties
- that Able Consulting, the so-called "independent manager" nominated in the Solstice agreements, was a company controlled by Mr Petroulias, and would be paid a management fee of up to $800,000.

Finally, and as is apparent from the matters outlined above, it is patently not the case that the report was only in the nature of a mere summary of the proposals, as was suggested to the Commission by Ms Bakis and Mr Petroulias. Rather, it purports to identify "issues" regarding the value of the ALALC's properties, which are said to spring from matters of statute and the ALALC's recent history, as well as the behaviour of the Lake Macquarie Council. It also lists a series of "issues for consideration", which appears to be founded on an assessment of the effect of the ALR Act on prospective land dealings, a qualitative assessment of the skills and capacity of the ALALC board members, and contains speculative opinions on the amount of revenue that might be generated by properties purchased by the ALALC using cash received from sales of its existing property.

The Commission finds that the Able Consulting Report was prepared by Mr Petroulias, under the cover of Able Consulting, to create the appearance of an objective or independent appraisal of the proposals having been provided to the board for its consideration. It is not clear, however, that the report was actually presented to the board at its 8 April 2016 meeting. The evidence of Mr Walsh and Mr Green was that it was neither discussed nor tabled at the meeting and there is no record in Ms Steadman's handwritten minutes of Able Consulting or that the Able Consulting Report had been tabled. Nonetheless, it was this document that Mr Petroulias chose to provide to Ms Steadman to be included in the board's meeting records, and an obvious purpose in him doing so, as with his amendments to the board's minutes, was to create a false paper trail of the nature of the advice and information given to the board, and by whom.

The Solstice transaction is "rejected"

Solstice obtains legal advice

The ALALC board met on 6 May 2016, when it was resolved, inter alia, to reject the Solstice proposal. The circumstances surrounding that resolution are discussed below. However, it is first necessary to consider what transpired in connection with the proposed Solstice transaction in the three days prior to that meeting.

On Monday 2 May, amended versions of the Solstice suite of documents, including the Call Option Agreement, Collaboration Agreement, Surrender Agreement and Release and Deed of Rescission and Acknowledgement (each dated 5 May 2016) were provided to Ms Bakis by email from Mr Sayed, having apparently been amended by Mr Alcorn on behalf of Solstice. The following day, an email was sent, apparently from Ms Bakis, to Mr Alcorn, Mr Kavanagh, Mr Strauss and Mr Sayed, asking that the further "round of documents for the Awabakal sales tomorrow" be forwarded to her as a matter of urgency,

so that she could review them. Around the same time, Mr Kavanagh sent the following email to a barrister, Marcel Fernandes:

> *Hi Marcel,*
>
> *Please see attached a CT in relation to a property I am looking at currently.*
>
> *I have noticed a notation in the second schedule in relation to a restriction concerning Aboriginal matters which I don't understand.*
>
> *Could you please look at this and let me know your thoughts,*
>
> *Regards*
>
> *Andrew*

Mr Fernandes responded to Mr Kavanagh that evening, indicating that the ALR Act "places significant restrictions on how sale of land owned by Awabakal can proceed". Mr Fernandes advised Mr Kavanagh that before the ALALC could transfer any of its land to a third party, it would be required to apply for and obtain NSWALC approval. Additionally, Mr Fernandes advised that a prerequisite to the grant of NSWALC approval was approval of the sale by resolution of the ALALC members (emphasising that a land dealing was not a matter within the board's power to decide), and that notwithstanding members' approval being obtained, the NSWALC could still withhold its approval if it formed the view that the sale was contrary to the ALALC members' interests. Mr Kavanagh's evidence before the Commission was that when Solstice received this advice from Mr Fernandes it "knocked us over". He forwarded the advice to Mr Strauss and Mr Alcorn that evening for discussion.

The following morning, at 10:29 am on Wednesday 4 May 2016, Mr Kavanagh also forwarded by email to Mr Sayed the advice he had received from Mr Fernandes, explaining that "In summary we require the NSW Aboriginal Land Council to agree to the transaction". Mr Sayed provided this advice to Ms Bakis and Mr Petroulias. He then exchanged a series of emails with Mr Kavanagh that appears to have been sent with the object of persuading Solstice that the transaction could go ahead the next day, as planned, notwithstanding the absence of member and NSWALC approval.

It appears, from the email chain in evidence before the Commission, that Mr Sayed was forwarding this email correspondence between himself and Mr Kavanagh to Mr Petroulias and Ms Bakis at the KNL email address, and that in turn, Mr Sayed received some input and suggestions, likely from Mr Petroulias, as to how to respond. For example, the immediate response to Mr Sayed in relation to Mr Kavanagh's initial email, sent at 11:12 am from the admin@knightsbridgenorthlawyers.com address, was as follows: "We know all this. That's why structured [sic] the way it is. Titles go to trustee company on trust for jv parties and transrerred [sic] in turn as progressed". In turn, Mr Sayed emailed Mr Kavanagh at 12:50 pm, stating "That's why Nick needed the 6 months. thats [sic] why he structured it this way. Titles go to trustee company on trust for jv parties and transrerred [sic] in turn as progressed". Mr Kavanagh responded to this email, stating, inter alia:

> *The bigger problem though is that the restriction on title speaks to legislation such that the deal between us and Awabakal requires NSW Aboriginal Land Council concurrence/consent otherwise the deal is non binding on Awabakal.*
>
> *We are happy to condition the transaction docs such that the $1.2 m* [to Gows] *and the option fee* [to the ALALC] *is payable by us upon the parties executing the docs AND the agreement of NSW Aboriginal Land Council is obtained.*
>
> *Please advise whether this is agreeable with Awabakal and I will instruct Dean to reflect the documents accordingly.*

Several more responses flowed by email from Mr Sayed to Mr Kavanagh during the afternoon of 4 May 2016. They included the suggestion that the ALALC board had already given its approval and consent to the transaction and that the NSWALC approval was "just a formality", that Solstice would have the caveats and 99-year leases which were "not under section 42m of the act", and that "there has never been a refusal" (by the NSWALC). Mr Sayed told the Commission that all of the information he had conveyed to Mr Kavanagh came from Mr Petroulias or Mr Green and that he had no independent source of the information he was providing to Solstice about the nature of the NSWALC approval and the NSWALC's practices. At 4:50 pm, Mr Sayed wrote to Mr Kavanagh indicating, inter alia, that there was no reason for the NSWALC not to approve the sale, but that if Solstice maintained that it wanted NSWALC approval of the sale, "then we are retired from any further negotiations". Mr Kavanagh responded to this email at 5:44 pm, stating "it [the transaction] will no doubt require a clause making payment of the monetary sums subject to NSWLC [sic] concurrence/agreement".

The 6 May 2016 board meeting

According to the minutes, the 6 May 2016 ALALC board meeting commenced at 11:15 am and concluded at 12:55 pm. At 12:33 pm, while the meeting was seemingly still in progress, an email was sent to the ALALC front desk, apparently from Ms Bakis, setting out a proposed

resolution regarding Solstice: "That owing to a failure to come to terms with the Soltice [sic] Group Entities, that the Soltice [sic] proposal be rejected". The minutes record that towards the conclusion of the meeting, the resolution as apparently drafted and emailed by Ms Bakis was adopted by the ALALC board, verbatim. There is no reference in the minutes of the meeting to any discussion among the ALALC board members as to why there had been a "failure to come to terms" with Solstice. Similarly, the minutes do not record any consideration having been given by the ALALC board to the merits, or otherwise, of pursuing or terminating the negotiations with Solstice, nor of advice being given with respect to these matters.

Ms Bakis denied drafting this resolution regarding the rejection of Solstice and denied sending the email in which it was set out, asserting that she was at the meeting at the time the email was sent, and so could not have sent it herself. The Commission observes that Ms Bakis is not recorded in either the handwritten or typed minutes as having attended this board meeting. However, even if it were the case that Ms Bakis was in attendance at this meeting, it is not clear that this would have prevented her from sending the email during the meeting. Further, Ms Bakis accepted that, on her version of events, she must have known that Mr Petroulias had drafted and emailed the resolution to the ALALC's offices, in her name. Accordingly, the Commission finds that she must, at a minimum, have tacitly approved the ALALC board making this resolution.

That evening, Ms Bakis sent an email to Mr Alcorn, Mr Kavanagh, Mr Strauss, and Mr Sayed, advising that the ALALC board had resolved to reject the Solstice proposal. According to Mr Kavanagh, this communication took him by surprise, as he was still in the process of ascertaining whether there was some way for the transaction to go ahead. Ms Bakis also advised in her email that the board had resolved "That the community meeting go ahead on the basis of establishing a collaboration to improve the economic value of the land with such parties as agree with the terms of the community". The import of this second resolution is considered by the Commission in the next chapter.

By this point, the Solstice parties had dedicated many weeks towards considering and refining the terms of the Solstice suite of documents. Seemingly by way of explanation to the Solstice parties, Ms Bakis advised that the ALALC had been working with the minister in relation to a "pilot program for re-zoning the local Aboriginal land council lands", and that KNL had been instructed to "design the terms of arrangements with proposed developers and investors, supporting feasibility studies, valuations etc., which are to be presented to a community meeting". There was no reference to this pilot program in the minutes of the 6 May 2016 board meeting, and Mr Green's evidence was that he knew nothing about it. There was no evidence before the Commission that the ALALC had been working with the minister in relation to any pilot program regarding the rezoning of LALC land, and also no record of instructions being given to KNL by the ALALC board in connection with such a program.

The Commission accepts the submission made by Counsel Assisting that Ms Bakis' purported explanation for the ALALC board rejecting the Solstice proposal was a complete fabrication. While the ALALC board had resolved to reject the Solstice proposal, the Commission finds it did so without any substantive knowledge of what the transaction would entail or how far the negotiations had progressed, and without any idea of whether or not the transaction would or would not be in the members' best interests.

There is not one scintilla of evidence that the ALALC board rejected the Solstice proposal because it preferred the prospect of joining the minister's pilot rezoning project, which did not in fact exist. Rather, it is plain that the ALALC board only resolved to "reject" Solstice because Ms Bakis and Mr Petroulias told it to do so. Further, the Commission finds that in communicating to the Solstice parties in the terms that she did, Ms Bakis was attempting to conceal the true reason why the Solstice transaction would not be pursued, namely, that Solstice had learnt of the ALR Act restrictions on the transfer of LALC land, understood the legal effect of those restrictions, and had made clear that it would not make any payment to Gows or pay any deposit pursuant to the agreements, until NSWALC approval had been obtained.

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Chapter 11: The Advantage transaction

In this chapter, the Commission examines the circumstances surrounding the replacement of the Solstice parties by entities referred to here as "Advantage" or "the Advantage Group" as a prospective purchaser of ALALC land. Some of the features of the proposed transaction involving Advantage are considered, as is how it came to be put to the ALALC members. The Commission considers what it was that the ALALC board understood about the transaction, and the extent to which it was informed and advised about what it involved, who was behind it, and the potential legal consequences for the ALALC.

The Advantage Group

On 3 May 2016, Mr Petroulias, using one of his aliases, "Nicholas James Piers", incorporated a company in New Zealand, called Advantage Property Experts Syndications Ltd ("Advantage NZ"). At the time of its incorporation, Nicholas Piers (Mr Petroulias) was registered as one of Advantage NZ's four directors, as were individuals named Hussein Faraj, Peter Soulios, and Rose Zhao. Although all four of the directors had residential addresses in NSW, the company's registered office and address for service was an address on the Motueka Valley Highway, in Motueka, a small coastal town in the South Island of New Zealand.

A "Consent and certificate of director or directors of proposed company" form was in evidence before the Commission. Via this form, which is prescribed by s 12(1) of the New Zealand *Companies Act 1993*, and which was apparently provided to the New Zealand Companies Office by Mr Petroulias, a director of a proposed company provides his or her written consent to be a director and certifies that he or she is not disqualified from being appointed or holding office as a director of a company by reason, inter alia, of being an undischarged bankrupt. The form was signed by Mr Petroulias on 2 May 2016, using his Nicholas Piers alias, despite him being at this time, and until March 2018, an undischarged bankrupt. Additionally, the residential address Mr Petroulias provided to the New Zealand Companies Office was an address in Ruby Bay, another small coastal town in the South Island of New Zealand, despite the fact that at this point in time he resided in NSW.

Each of the four directors, including Nicholas Piers (Mr Petroulias), was recorded by the New Zealand Companies Office as being a 25 per cent shareholder in the newly incorporated Advantage NZ. On 8 June 2016, Mr Petroulias transferred his 25 per cent shareholding to KNL. Ms Bakis is the sole director and shareholder of KNL. Another of the Advantage NZ directors, Mr Faraj, is recorded on 30 June 2016 as having registered a change in the shareholding of the company, with KNL's shares being transferred to a company called Composite Building Industries Ltd, which was said to be located in Hong Kong. On 8 June 2016, Mr Faraj had also registered that Mr Petroulias had ceased his position as a director of the company, with his removal as a director apparently effected on 5 May 2016, just two days after Mr Petroulias had registered its incorporation.

An ASIC company search reveals that on 22 April 2016, approximately two weeks prior to the incorporation of Advantage NZ, a company called Advantage Property Experts Syndications Pty Ltd was incorporated in Victoria. At the time of its registration, this company's directors were the same as Advantage NZ, save that Mr Petroulias was not a director. However, it appears that Mr Petroulias was also connected to, and held an interest in, this company through its shareholding. The company's 100 issued shares are recorded as being wholly owned by "Advantage Property Experts Syndications Pty Ltd", which was said to possess the same Motueka Valley Highway registered office as that recorded for Advantage NZ. There is no company by the name of Advantage Property Experts Syndications recorded in the New Zealand Companies Office companies register, and the only Advantage entity on that register recorded as having

the Motueka Valley Highway address is Advantage NZ. The Commission considers that the shareholder information that was lodged with ASIC must be an error, whether accidental or otherwise is unclear, and that the Australian proprietary company, Advantage Property Experts Syndications, was a wholly-owned subsidiary of Advantage NZ.

On 6 June 2016, a third Advantage entity was incorporated, this time in NSW: Advantage Property Experts Pty Ltd, with the same three directors as Advantage Property Experts Syndications. It had 100 issued shares, with its shareholders including Mr Faraj, and members who appear, based on their names, to be connected to the company's other directors. The connections and identity of two of its shareholders – "Aboud Aboud" and "Ape Investor Group" – are unclear based on the evidence before the Commission, although it is observed that each is recorded as residing at the registered office and principal place of business of Advantage Property Experts Syndications in Bexley, NSW. Further, an individual named "Abboud Abboud" has executed various documents referred to below, in his apparent capacity as general manager of Able Consulting. It is unclear whether this is the same individual who held shares in Advantage Property Experts Syndications, though it appears likely.

What is plain, based on this brief survey of the Advantage Group's early corporate history, is that as at early-June 2016, around the time that Advantage was introduced to the ALALC and agreements with it then promptly negotiated, these entities were very newly formed and each associated, directly or indirectly, with Mr Petroulias and Ms Bakis.

In his written narrative statement, Mr Petroulias asserted that he had no interest in "the Advantage Property Syndication companies", in either New Zealand or Australia. Mr Petroulias also suggested, but by implication only, that he had incorporated Advantage NZ as part of a service he offered of "company formation" (although specifically to whom this service was provided in this instance, or at whose request, he did not say) which involved "'placeholder' officers and shareholders" while "the client's position" was determined, and him continuing as a director or shareholder in a "nominee capacity as an additional service". Mr Petroulias does not explain how he could lawfully be offering such a service when he was at that time an undischarged bankrupt and therefore prohibited from being a director of a company, or why it is that Advantage NZ needed him as a placeholder director or shareholder when it apparently had three other willing directors and shareholders at this juncture.

Further, in seeming contradiction to the contention that he had no interest in the Advantage companies, Mr Petroulias also stated in his written narrative statement that the Advantage companies were formed, but not by whom, as "property syndication" companies for property projects run by ULC (being Mr Petroulias' organisation), that they were incorporated "for ULC infrastructure projects", and that he had "made myself a director for 2 days in March, and a 25% nominee shareholder of the New Zealand Company on trust for one of overseas [sic] engineering companies that were contemplated for the project".

This evidence tends to suggest that the steps Mr Petroulias took to incorporate Advantage NZ were not as part of a service offered to unnamed individuals, but rather, at his own instigation, for his own apparently ULC-related purposes, and to further his own interests. This is consistent with other evidence given by Mr Petroulias in his written narrative statement, to the effect that ULC required a "master developer" or "in-house developer" to oversee the development of property owned by the ALALC, and that this entity became "Advantage Property Experts Syndications Ltd". The Commission rejects Mr Petroulias' evidence that he had no interest in the Advantage companies and finds that he incorporated Advantage NZ, appointing himself

as both a director and 25 per cent shareholder, with a view to it (and him) being involved in the purchase and development of the ALALC's land. The Commission also rejects the implicit suggestion that Mr Petroulias played a merely passive role in the so-called determination said to have been reached around this time that the ALALC required a "master-developer" to purchase and develop its lands, and in the "selection" of the Advantage Group to fulfill this role.

The May and June 2016 board meetings

As set out in chapter 10, on 6 May 2016, the ALALC board met and resolved to reject the Solstice proposal. The board members present at this meeting were Ms Dates, Mr Green, Mr Walsh, Mr Quinlan, Ms Quinlan and Larry Slee, although he is recorded in the minutes as having left the meeting without returning before the resolution regarding Solstice was made.

A second land-related resolution was made following the rejection of the Solstice proposal, which was "That the community meeting go ahead on the basis of establishing a collaboration to improve the economic value of the land such [sic] parties as agree with the terms of the community". This second resolution is so ambiguous in its terms as to be almost entirely meaningless, and it is unclear what the board intended to achieve by making it, if, indeed, the board had any intention at all in making it, other than to follow whatever recommendation was made by Ms Bakis. Although the resolutions had apparently been emailed by Ms Bakis to the ALALC on the day of the meeting, in her evidence before the Commission Ms Bakis denied drafting or sending the resolutions and suggested that Mr Petroulias had done so while the meeting, which Ms Bakis asserts she attended, was in progress. However, as the Commission has found in chapter 10, Ms Bakis must have, at a minimum, tacitly approved the ALALC board making each of these resolutions as she allowed Mr Petroulias to send them from her email address and in her name.

It is also worth observing that although the second resolution refers to a community meeting (that is, a meeting of ALALC members) "going ahead", there is no evidence that a members' meeting had prior to then even been discussed at a board level, let alone scheduled to take place, in order that the Solstice proposal, or indeed a proposal involving any other third party, could be approved by the members. The resolution appears to suggest that an as yet unidentified third party should be proposed to members at an ALALC meeting as a substitute or replacement for Solstice and its development proposal, but it is unclear, from the minutes of this meeting, why a resolution in these terms would be necessary and why any prospective purchaser of ALALC land could not simply make a fresh proposal to the ALALC board, and then if the board so determined, that proposal then be put to the ALALC members.

Some explanation for the ALALC board's May 2016 resolutions may be found in what was put to and resolved by the ALALC board at its next meeting, which was held on 2 June 2016. The ALALC board members who attended the meeting were Ms Dates, Mr Green, Ms Quinlan, and Mr Quinlan. Mr Walsh attended by telephone. Prior to the meeting, an email was sent, apparently by Ms Bakis, to Ms Steadman and Ms Dates, attaching a document containing a draft resolution replacing Advantage for Solstice (see below).

The body of the email reads: "N, Attached is the resolution that needs to be passed to get the previous resolution back on track regarding the development and go to the community meeting ASAP". Ms Bakis denies preparing the resolution, asserting that Mr Petroulias drafted it with her knowledge and approval "because it was a deal he had put together", but she thought she had probably sent the email. The document setting out the resolution, which the Commission accepts was drafted by Mr Petroulias, also included some context to the proposed resolution, seemingly by way of explanation, and it is useful to set out the text of the document in full:

> *RESOLUTION*
>
> *Further to the board meeting of 8 April 2015* [sic], *where the Board resolved:*
>
> > *"That the Board approves the establishment of AWABAKAL LALC TRUSTEES LTD ("TRUSTEE") as the trustee and nominee of Awabakal LALC; and the use of TRUSTEE to oversee the AWABAKAL DEVELOPMENT ADVANCEMENT project as a collaboration to maximise the economic valuation of the land through re- zoning and for ultimate sale to SOLTICE* [sic] *or such other party"*
>
> *Further to the abovementioned resolution, SOLTICE* [sic] *could not complete on the proposals, and the "other party", being Advantage property* [sic] *Experts Syndications Ltd, came to replace SOLTICE* [sic] *and offer better terms, including the opportunity for Awabakal LALC to obtain the minimum of $30* [sic] *and to further benefit from the development above and beyond that figure. In addition, ADVANTANGE* [sic] *will allow for the LALC to cash out any and all of its units above the $30m during the course of the development including, where relevant, for cash flow needs and for purchasing alternative properties.*
>
> *It is therefore resolved that:*

"The Board agrees to the replacement of ADVANTAGE for SOLTICE [sic] *for the collaboration and development of the Awabakal lands and the ADVANTAGE transactions be approved"*.

The ALALC board passed the resolution in the terms proposed by Ms Bakis and drafted by Mr Petroulias. It is not clear whether the context or background contained in the email or document extracted above was communicated to the board during its meeting, as the minutes do not record any discussions about the Advantage proposal. The minutes also make no mention of the apparent urgency with which a community meeting was required to be held, as intimated by Ms Bakis in her email to Ms Steadman and Ms Dates. The minutes do reveal, however, that Ms Bakis attended the meeting, although she is not listed as an attendee or visitor, as they record that "Despina spoke about resolution they would like for board to pass". As with the 8 April 2016 ALALC board meeting discussed in chapter 10, that Ms Bakis was regularly attending ALALC board meetings and suggesting to the board the resolutions it should pass represented a significant deviation from the board's usual practice and conduct of its business. Additionally, the Commission finds that Ms Bakis' conduct in advocating for the ALALC board to resolve in favour of pursuing a particular commercial transaction was in breach of Ms Bakis' fiduciary duties owed by her to the ALALC in her capacity as its solicitor. It will be recalled that, as at 2 June 2016, the Advantage entity proposed as the purchaser, Advantage NZ, was the very recently incorporated New Zealand entity, of which Mr Petroulias was then a 25 per cent shareholder and still registered as one of its four directors. Neither these matters, nor Ms Bakis' obvious conflict, were disclosed to the board by Ms Bakis.

The resolution document attached to Ms Bakis' email to Ms Steadman and Ms Dates (set out in full above) included some context for the proposed resolution, but it is not clear whether this information was conveyed to the board as a whole. In her evidence before the Commission, Ms Bakis only stated that she discussed the Advantage proposal "in broad terms". The Commission finds that the representation made in the document attached to Ms Bakis' email to Ms Dates and Ms Steadman that Solstice "could not complete" its transaction, as an apparent basis for why it was now to be replaced as a prospective purchaser by Advantage, has no foundation in fact. It finds no support in the evidence provided by Mr Strauss and Mr Kavanagh (discussed in chapter 10), no support in the minutes from the 6 May 2016 ALALC board meeting, and no support in the email sent by Ms Bakis to the Solstice parties (also discussed in chapter 10), in which Ms Bakis had suggested that the board had resolved to reject the Solstice proposal because of the ALALC's interest in pursuing a pilot rezoning program initiated by the minister for Aboriginal affairs.

Further, the representation made in the document that Advantage NZ offered better terms than Solstice, including that the ALALC had the opportunity to obtain "the minimum" of $30 million for its land, is misleading for a number of reasons. First, because the nominated purchase price in both the Solstice and Advantage proposals was $30 million, notwithstanding that the Solstice proposal involved 19 lots of ALALC land, whereas the proposal being recommended with Advantage encompassed far more land at 32 lots in total. Secondly, although there was the capacity for Solstice to reduce the purchase price depending on the zoning achieved (see Schedule 1, Item 2(2)(a) of the Solstice Call Option Agreement: "If 1500 subdivisions are not met price is pro-rated by 10k per house lot"), the same purchase price formula and ability for the purchaser to reduce the purchase price offered depending on zoning was included in the Advantage deal (see Schedule 1, Item 4(2)(a) of the Advantage Call Option Deed, dated 10 June 2016: "If 1500 subdivisions are not met price is pro-rated by 10 k per house lot").

The Commission finds that that the ALALC board had virtually no knowledge of the Advantage transaction, let alone any meaningful understanding, prior to it resolving to "replace" Solstice with Advantage, and that no legal advice was provided to the board by Ms Bakis in relation to the transaction.

Mr Walsh, who attended the meeting by telephone, did not believe there was any discussion at all about the proposed transaction with Advantage and whether or not a resolution should be made by the board approving it. Ms Steadman, who attended the meeting in her capacity as acting CEO and took the minutes, could not recall any discussion taking place about Advantage. Debra Swan and Eleanor Swan, who were board members at the time, but who did not attend the meeting, told the Commission that they were given no notice of the resolution and had no knowledge of what it entailed. Mr Quinlan, who attended the meeting and in fact seconded the motion in support of the Advantage resolution, told the Commission that there was no discussion about why Advantage should replace Solstice, and accepted that he knew nothing about Advantage at that time. Similarly, Mr Green's evidence was that no explanation was provided to the board about who Advantage was and why the board should resolve that Advantage be substituted for Solstice.

In her evidence before the Commission, Ms Bakis stated that Ms Dates was aware of the deal and was happy with it. Yet, when questioned by Counsel Assisting, Ms Dates could not recall whether or not she was given any advice about the meaning of the resolution replacing Solstice

with Advantage, and her knowledge about Advantage apparently extended no further than that it was a company of developers. She did not know what land was to be included in the Advantage transaction and did not know in what way or ways the Advantage transaction differed from that which had been proposed by Solstice.

In the written submissions made by Ms Bakis, her counsel contends that the ALALC board had the benefit of considered advice in relation to the transaction, in the form of the "Briefing Paper on Advantage Property Agreements for Board Meeting 2 June 2015 [sic]", which is sub-titled "The Replacement of Soltice [sic] with Advantage as the Preferred Developer and Purchaser" and dated 29 May 2016. This submission is rejected for the following reasons.

First, the Commission considers that the document could not on any view be described as containing legal advice, considered or otherwise. It is perhaps more properly characterised, as its title suggests, as a "briefing paper". It sets out what the board had purportedly resolved in the past (going back to late 2014), and the recent instructions the board had allegedly given KNL (which the Commission observes go significantly beyond Ms Bakis' purported capacity and expertise as a solicitor and tend more towards commercial property development and consulting work). It also sets out the steps that would apparently be required (but not by reference to the relevant legislation, regulation or policy), to have the Advantage transaction approved by the NSWALC. Despite the paper's subtitle, there is no comparative analysis of the proposed Solstice and Advantage transactions, which one would reasonably expect if the document truly purported to be legal advice about whether or not the ALALC should "substitute" one specific transaction for another.

Further, there is a dearth of detail about the transaction the board was being asked to approve. There is no reference to which specific lots of ALALC land would be the subject of the transaction, despite the fact that, owing to the increase in the number of lots being included, it was not a simple substitution of one purchaser for another. There is no consideration given to the purchase price that had been offered by Advantage for those lots by reference to independent valuations, nor any suggestion that any such valuations had been obtained. Despite the fact that the transaction was pitched as a joint venture or collaboration between the ALALC and Advantage, there is no information regarding Advantage's property development experience (which, as a newly-incorporated entity, must necessarily have been non-existent), its expertise, its management, or its financial capacity to enter into a deal of this size and significance with the ALALC. And there is no detail regarding any due diligence that may have been conducted by KNL, save for broad-sweeping, misleading statements to the effect that "We [meaning Ms Bakis, a solo practitioner] examined the financial capacity of Advantage", and "We [Ms Bakis] can confirm Advantage, or more precisely the [unidentified] people behind it, has/ve been involved in significant property investments".

Secondly, the briefing paper contains a number of statements that are false, misleading or manifestly self-serving and which either find no support in any objective evidence before the Commission or have been found by the Commission to be untrue. The effect of these statements, taken together, is that if the paper had in fact been provided to the board (an issue the Commission considers below) it would have served only to mislead, rather than advise or inform, the board. A non-exhaustive list of these statements is as follows:

- *"You have instructed us that pursuant to section 62 of the ALRA and the implied activity reflected in the ALRA such as section 61 and 67(b), you have a duty to actively pursue the economic development of the ALALC, including the property of the ALALC"*. There is no record of any such instruction having been given to Ms Bakis. Further, there is no duty, implied or otherwise, upon the board to "actively pursue the economic development of the ALALC" found in any of the provisions of the ALR Act. The provisions specified do not give rise to such a duty. Section 62 of the ALR Act refers to the broad functions of a LALC board, which provide that the functions include directing and controlling the affairs of the council, but do not specify a *duty* to "actively" pursue the economic development of the ALALC. While the functions of the ALALC are specified in s 52 of the ALR Act and include "land acquisition", "land use and management" and "financial stewardship", those functions are more multi-faceted and complex than the pursuit of economic development, and could not be said to impose upon board members a duty to actively pursue the ALALC's economic development. The other provisions referred to do not provide any support for the proposition that the board owed such a duty: s 61 of the ALR Act provides for how the board should be constituted, and s 67(b) of the ALR Act specifies how a board member vacates his or her office
- *"Since 2014, the Board unanimously resolved to sell all the Awabakal lands"*. This appears to be a reference to the board's resolution in October 2014, when the ALALC board had resolved to sell the five Warners Bay properties to IBU, rather than all of the land held by the ALALC. The proposition that this resolution extended

to all of the ALALC's property is one that was also articulated in the Able Consulting Report, found by the Commission in chapter 10 to have been written by Mr Petroulias, as well as in the 8 April 2016 minutes that were "amended" by Mr Petroulias, and is one that the Commission found in chapter 10 to be false.

- *"ALALC has (through Richard Green as the responsible agent of the Board) scouted for potential development partners or purchasers "*. As the Commission has found in chapter 7, Mr Green was never appointed by the board to be its agent.
- *"On the commerciality of the offer, the Board relied upon on* [sic] *Tony Galli from Ray White on matters pertaining to the value on the lands and their proposed uses, the report of Able Consulting Pty Ltd and its own sources and valuations received from time to time."* There is no evidence that the ALALC board had any input or involvement in considering the Solstice transaction at all. It approved the deal at its 8 April 2016 meeting on the basis only of the recommendation made at that meeting by Mr Petroulias and Ms Bakis. There is no evidence that in relation to Solstice the board ever instructed, or received advice from, Mr Galli. Further, the Able Consulting Report was in fact written by Mr Petroulias, was not provided to or tabled at the 8 April 2016 ALALC board meeting, and even on Mr Petroulias and Ms Bakis' own evidence, was not intended to be relied upon as a qualitative assessment of the Solstice proposal, but was provided only as a "mere summary" of several proposals that had been put to the board.
- *"When pressed on these matters* [purported concerns held by KNL with respect to the Solstice deal] *Solstice would not execute an acceptable agreement that would commit them to firm up the $30m figure"*. There is no evidence that this issue was the subject of negotiations with Solstice or that KNL applied pressure to Solstice in connection with this issue. To the extent that it is suggested that this was the reason the negotiations with Solstice ceased, this is false. As the Commission found in chapter 10, Ms Bakis called the negotiations with Solstice to an end after Solstice conveyed that it would not be making any payments until after NSWALC approval had been given to the transaction.
- That the second land-related resolution made by the ALALC Board at its 6 May 2016 meeting was *"understood to mean that the board resolved to create a 'model' of template form of development proposals that would identify the community objectives "*. While it is accepted that the meaning of the second land-related resolution was unclear, there is nothing on the face of the resolution, in the minutes, or in any other evidence before the Commission that would suggest the board had intended, by this resolution, to create a "model" for development proposals.
- *"KNL was tasked to scope out the nature of the work necessary for obtaining community and NSWALC Division 4A approval for the 'model' development of land. The objective you have instructed us was to review and present the major strategies and options for such developments. The work would involve undertaking the management of planning work as to what the various options that were available."* There is no evidence, either in any board minutes from around this time or otherwise, that the board wanted KNL to undertake this "pre-planning work", which is then described, over the page, as substantial in nature and so significant a change in the work KNL was undertaking for the ALALC as to require a confirmation of variation of retainer and engagement. The work described seems wholly outside Ms Bakis' and indeed any solicitor's typical expertise as a solicitor, in addition to being outside her practical capacity as a sole practitioner. (As an aside, the Commission observes that this radical expansion of Ms Bakis' retainer, purportedly necessary if the Advantage proposal were to proceed, plainly served to amplify the extent to which Ms Bakis was deeply conflicted as the ALALC' S legal adviser.) Further, the reference to "Division 4A approval" is incorrect. Division 4 is the division of the ALR Act that addresses land dealings by Aboriginal land councils and contains provisions regarding the approval of land dealings by the NSWALC (Division 4A deals with the community development levy that is payable by a LALC with respect to a transfer of land). This reference to the wrong division in the ALR Act is repeated four more times in this paper alone, and appears elsewhere in other KNL advices and briefing papers.
- *"Richard Green approached Advantage for advice on the Solstice agreement, with particular reference to the concern regarding the purchase price targets. Richard reported that Advantage had provided some advice to him from time to time regarding the potentials for re-zoning and property development"*. There is no evidence that Mr Green was seeking advice of any nature in relation to the Solstice transaction or any advice more broadly from anyone at

> Advantage; not even from Mr Petroulias. Further, the proposition impresses as inherently unlikely, given that Advantage NZ was only incorporated by Mr Petroulias on 3 May 2016, three days prior to the ALALC board formally resolving to reject the Solstice transaction.

Thirdly, although the briefing paper is described as being "For Board meeting 2 June 2015 [sic]" there is no evidence that this briefing paper was tabled at or discussed at the board meeting held on 2 June 2016. There is a notation at the top of the front page, apparently bearing Ms Dates' signature, indicating that it had been "Received by" Ms Dates. Ms Bakis' evidence was that her process was to meet Ms Dates before a meeting and run through the briefing paper "and if she [Ms Dates] was happy with it she would sign it…to acknowledge that she'd…had it explained to her".

While this may have been Ms Bakis' practice, this evidence combined with what is apparently Ms Dates' signature on the front page of the briefing paper does not serve to establish that this particular paper was provided and explained to Ms Dates. Ms Dates was not asked about this document by counsel for Ms Bakis. It was not put to Ms Dates by counsel for Ms Bakis that she had signed the document, nor was it put to Ms Dates that she had done so after having had the document explained to her. In any event, the presence of Ms Dates' signature also does not serve to establish that the paper was provided to the board as a whole, tabled at the board meeting, or its contents explained to the board at that meeting.

Finally, as to its authorship, the Commission makes the following observations. When asked about the 2 June 2016 ALALC board meeting by Counsel Assisting, Ms Bakis was unsure about whether or not she had prepared a briefing paper that was presented at the meeting. On the other hand, in his written narrative statement, Mr Petroulias makes multiple references to the contents of this briefing paper in support of various matters for which he contends, suggests at one point that he and Ms Bakis wrote it together, and at another point that he "contributed" to it. He also asserts that it had been agreed among himself, Ms Bakis, Ms Dates and Mr Green that this and other briefing papers "provide a permanent record of the considerations taken into account as events unfolded between the presentation of the Sunshine Agreement to the Board, the consideration of the Solstice Proposal and the evolution of the Advantage Proposal". The probabilities favour that Mr Petroulias drafted the entire document, but with Ms Bakis' knowledge and approval, and that, as with the Able Consulting Report, it was drafted with the purpose of creating a false paper trail of the advice and information purportedly given to the board before it proceeded to vote in favour of resolutions proposed by Ms Bakis and Mr Petroulias.

In reality, the ALALC board did not vote in favour of the Advantage transaction based on any advice given to it as no advice was given. It is plain that the board did not understand what had been proposed; instead, the Commission finds that the board voted in favour of the transaction on 2 June 2016 only because that is what Ms Bakis and Mr Petroulias asked it to do.

On 7 June 2016, the ALALC board held a further meeting, just five days after resolving to replace Solstice with Advantage. There is no obvious explanation for the apparent urgency with which this meeting was conducted. The handwritten minutes, which were taken by Ms Steadman, record that the board members in attendance were Ms Dates, Mr Quinlan, Mr Walsh and Ms Quinlan. Mr Green is not recorded as attending, but it appears that he was present, as the minutes record that he spoke "on behalf" of the resolution that was made regarding Advantage. There were also visitors recorded as attending, though they were written in a hand other than Ms Steadman's: "Nick Pearson (Knightsbridge) [Mr Petroulias]; Hussein Faraj; Peter Soulios; Rose Zhao; Karar [Kababian] (Advantage)". The Commission observes that Mr Petroulias was noted as attending the meeting on behalf of KNL, despite him not then holding a practising certificate or working for KNL, and not on behalf of Advantage, despite him then being a 25 per cent shareholder in Advantage NZ and still being registered as one of its four directors. With the exception of Mr Kababian, the other attendees were also 25 per cent shareholders and directors of Advantage NZ. Mr Kababian's connection to Advantage NZ is not apparent to the Commission, although he appears to be connected to Mr Green and Mr Petroulias through the companies Best Industrial Sales Pty Ltd and Best Pay Custodial Pty Ltd.

The meeting was recorded as commencing at 4:05 pm. At 4:01 pm, an email was sent to Ms Steadman, apparently by Ms Bakis, which attached a document containing five proposed resolutions for the board's meeting that was shortly to commence, including a resolution "that agreements with Advantage effecting previous board resolution be executed". Each of the five resolutions sent from Ms Bakis' email address was moved and passed by the board. These included a resolution that the ALALC pursue litigation against the minister, and Mr Wright, in his capacity as registrar of the ALR Act, which litigation is referred to briefly below, and in more detail in chapter 12. The handwritten minutes do not record that any detailed discussion was had or advice provided with respect to this significant decision to commence legal proceedings although they do record that "the transfer of funds to lawyers for such purpose" was authorised. With respect to Advantage, the handwritten minutes record that the resolution made was as follows:

"That agreements with Advantage effecting previous board resolution be executed and taken to Members [sic] meeting". There is no record in the handwritten minutes of a discussion about the agreements, save that Mr Green "spoke on behalf of the resolution".

Ms Steadman left the employ of the ALALC in early-June 2016 and so did not prepare the typed version of the minutes of this meeting that were ultimately signed as approved by Ms Dates. Instead, it appears that they were prepared by Ms Bakis, as an email was sent by Ms Bakis to Candy Towers (a project officer at the ALALC who, as mentioned previously, was also Ms Dates' daughter) on 16 June 2016, attaching a copy of the typed minutes for the 7 June 2016 ALALC board meeting. These typed minutes provide that Advantage NZ "attended to give the board a presentation regarding the agreements proposed to be entered into with ALALC" and a list of objectives for the transaction was provided in bullet-point form. Yet, there is no record in these minutes that the board was informed of or discussed the identity or background of Advantage NZ, that the agreements to be executed were identified, or that the board was advised of any of even the most basic features of those agreements, such as the purchase price, the specific lots of land involved, the timing involved, the obligations that would be imposed on and liabilities incurred by the ALALC, or the various securities to be offered to Advantage NZ by the ALALC.

In the briefing paper referred to above, it was asserted, purportedly by Ms Bakis, that KNL had "examined the financial capacity of Advantage". Counsel for Ms Bakis submitted in written submissions made on her behalf that it is clear that Ms Bakis took steps to investigate the financial capacity of Advantage NZ based on this and other statements in the briefing paper. Yet, this submission is entirely undermined by the evidence Ms Bakis gave before the Commission in relation to the due diligence that she conducted for Advantage. Ms Bakis first stated that her due diligence consisted of "a lot of meetings". She then suggested that she "generally looked at their [Advantage's] credentials and experience and knowledge". When Ms Bakis was pressed to explain what this meant, and what in substance the due diligence was that was undertaken, she changed tack, and asserted that "Mr Petroulias did all the due diligence", and that this consisted of "confirming the network of people that these people alleged they knew. You know, government people, town planners, developers, there were, that's my recollection". Ms Bakis added that she had met "their Chinese investors" and had "been comforted by the fact that there appeared to be real money behind them and they weren't wasting everyone's time". Further, Ms Bakis said that at one point she had seen a bank statement, but she was unable to remember when. The Commission finds that the board resolved to execute the Advantage agreements without the benefit of any due diligence having been conducted on the ALALC's behalf in relation to Advantage NZ, including whether or not it would be able to perform the various obligations imposed on it by these agreements.

The Commission further finds that no valuations were obtained around this time on behalf of the ALALC for its 32 lots of land that were proposed to encompass the Advantage transaction. It was, therefore, impossible for the ALALC board to assess whether the purchase price of $30 million offered by Advantage was one that was in the best interests of its members.

The Advantage agreements

There were seven agreements executed in connection with the Advantage transaction. No compelling reason was provided to the Commission as to why these agreements (and indeed, the Solstice, Sunshine and Gows' agreements) were executed *prior* to the members and the NSWALC providing their approval to the land dealings contemplated in the agreements, as required by the ALR Act. How there could be any legitimate purpose behind the Advantage agreements being executed prior to the grant of the necessary statutory approvals is particularly difficult to discern in light of Ms Bakis' evidence, given when she was questioned by Counsel Assisting about particular clauses in these agreements, that "these agreements weren't final", that they would be "redrafted in the correct manner", "drafted over and over and over again", and would not be approved in their current form but were working documents.

There were two agreements that were executed as part of the proposed Advantage transaction on the day of the 7 June 2016 ALALC board meeting. These were:

- A Call Option Agreement, dated 7 June 2016, between the ALALC as owner and "Advantage Property Syndications Ltd" as purchaser. There is no such entity as Advantage Property Syndications Ltd. However, it appears that the description of the Advantage entity in the agreement is an error, and that the intended purchaser was Advantage NZ, as this is the Advantage entity referred to as the purchaser in the Collaboration Agreement (discussed below). Pursuant to the Call Option Agreement, the ALALC granted an option to Advantage NZ, in consideration of the payment of a "Call Option Fee" ($50,000) to purchase the properties listed in Schedule 1B of the agreement (clause 1.1(a); Schedule 1, Item 5). The call option fee was payable on or before the date of the agreement, and was to be paid into the ALALC's solicitor's

trust account (clause 2.1(a); clause 2. 1(c)). The call option exercise period was five years (clause 3.1; Schedule 1, Item 6), which at any time before the expiration of the initial period could be extended by a further three years (clause 3.4; Schedule 1, Item 8), and a separate call option was granted for each of the properties, which could be exercised independently of every other call option (clause 1.1(b)). Additionally, by clause 6, Advantage NZ was permitted to nominate another individual or corporation to exercise the option. The full purchase price was specified in Schedule 1, item 4 as being $30 million, comprising a cash component of $16.5 million as well as a stock component, and being subject to the Collaboration Agreement. Pursuant to clause 10.8, the ALALC granted a security to Advantage NZ for the performance of its obligations under this agreement and the contract(s) entered into pursuant to the exercise of the call option, by charging all of the properties the subject of the agreement in favour of Advantage NZ, consenting to the lodgment of caveats on the titles of each of these properties, and appointing Advantage NZ as its attorney to execute leases in respect of the properties for three-year periods with options to renew. There is no clause in the agreement indicating that it is subject to the statutory approval regime with respect to land dealings provided by the ALR Act or conditional upon the approvals required by that regime being sought and obtained. The agreement is executed by Ms Dates on behalf of the ALALC and Mr Faraj on behalf of Advantage NZ. There is also an "Acknowledgement of receipt of option fee/ deposit" on the execution page, by which the ALALC is said to acknowledge receipt of the call option fee, which is signed by Ms Dates. A further version of the Call Option Agreement, dated 10 June, was also executed by the parties.

- A "Collaboration Agreement – Awabakal Economic Advancement Strategy", also dated 7 June 2016 and entered into by the ALALC as the owner, Advantage NZ as the purchaser, Awabakal LALC Trustees as the trustee, and Able Consulting as the manager. The Commission observes that on the cover page of the agreement, the Advantage entity listed as the purchaser appears to be Advantage Property Experts Syndications (the Australian proprietary company), but on the parties' details page, Advantage NZ is described as the purchaser along with its New Zealand Business Number, so the inclusion of the Australian entity appears to have been an error. Essentially, by this agreement, the parties agreed to form an unincorporated collaborative venture, known as the "Awabakal Development Advancement". Pursuant to clause 4.1, the parties agree to form the Awabakal Development Advancement, for the purpose of improving the development of the properties of the ALALC subject to the Call Option Agreement, or establishing a special purpose vehicle in the form of a unit trust to acquire the properties the subject of the Call Option Agreement at "the enhanced value" and allow the ALALC "to participate to the extent it considers appropriate for its purposes and at its discretion in the further and on-going development of the properties". Clause 6.3 contains a series of "Promises effecting objectives". These include, by clause 6.3(a), that Able Consulting is appointed as the manager to project manage the Awabakal Development Advancement and by clause 6.3(b), that Able Consulting is appointed as nominee and agent to manage the rezoning process and activities necessary to meet the objectives specified in clauses 5.1 and 5.2. By clause 6.3(d), the ALALC promises to appoint Awabakal LALC Trustees to hold such of the ALALC's property as is considered "necessary and expedient" to give effect to the Collaboration and Call Option Agreements. Pursuant to clause 6.3(e), Advantage NZ can then elect to exercise its call option and either the ALALC or Awabakal LALC Trustees will transfer the property selected to Advantage NZ. Also included among these series of promises is clause 6.3(f), which provides as follows:

  > *In order to secure the costs incurred by the Purchaser by the collaboration (including, as defined, the costs of enhancing the value of the land), the Owner and the Trustee hereby charge each of the properties in favour of the Purchaser with the repayment of those costs and any interest thereon, and the Owner and the Trustee respectively will, in addition to consenting to any caveats over the properties lodged by the Purchaser, enter into a lease agreed to by the parties of 3 year auto-renewal or extendable terms to a maximum term of 99 years; and transfer title of property at 59 James Street, Hamilton, being Lot 1 in Deposited Plan 795449 in the Newcastle Local Council to the Purchaser as required by the expenditure and resources so committed.*

As with the Call Option Agreement, and despite the fact that through, inter alia, clause 6.3(f), the agreement

effects a land dealing within the meaning of the ALR Act, there is no clause in the agreement indicating that it is subject to the statutory approval regime with respect to land dealings provided by the ALR Act or conditional upon the approvals required by that regime being sought and obtained. The agreement is executed by Ms Dates on behalf of the ALALC, Mr Faraj on behalf of Advantage NZ, Mr Green on behalf of Awabakal LALC Trustees, and Mr Abboud on behalf of Able Consulting as its "general manager".

Several observations may be made about these two agreements.

First, although the board resolved on 7 June 2016 that the Advantage agreements be taken to members for approval, and Ms Bakis' evidence was that they were subject to change and would certainly be renegotiated, in accordance with the wishes of the ALALC members, they were executed as if they were the final agreements, with no qualification or clauses contained within the agreements stipulating that they would only take effect upon member and NSWALC approval.

Secondly, both agreements included "entire agreement" clauses, such that, whatever may have been "understood" between the parties as to the agreements being works in progress, or working documents, the agreements were said to constitute the entire agreement of the parties and supersede all prior agreements, discussions and undertakings.

Thirdly, the Call Option fee payable under the Call Option Agreement was payable *on or before* 7 June 2016, and was purportedly paid to, and acknowledged by, the ALALC pursuant to a Bill of Exchange paid by Advantage in the amount of $50,000 (as to which, see further below). These characteristics tend to suggest that contrary to Ms Bakis' evidence, the agreements were intended to document the final agreement reached between the parties and were intended to bind the parties.

Fourthly, as at the date of execution, *each* of the parties to the agreement (aside from the ALALC) was in reality, if not on paper, companies Mr Petroulias controlled or in which he held a significant interest. As at 7 June 2016, Mr Petroulias was a 25 per cent shareholder in the purchaser, Advantage NZ, being a company he had incorporated, and of which he remained registered as one of its four directors. The "Trustee" under the agreements, to whom various ALALC properties were to be transferred, was Awabakal LALC Trustees, being a company that was also incorporated by Mr Petroulias (under his Nicholas Piers alias), in January 2016. As at 7 June 2016, he remained registered as its sole director and shareholder, although on 9 June 2016, the ASIC register was updated by him (under his Nicholas Piers alias) to reflect that Mr Green had become its sole director as at January 2016, and that Mr Petroulias ceased to be a director on 1 February 2016. Yet, Mr Green's evidence before the Commission was that he had no knowledge at all of Awabakal LALC Trustees, and did not know that the corporate records indicated that, on and from 20 January 2016, he was the sole director and shareholder of that company. The Commission finds that, as with Gows, although the corporate register may suggest differently, in reality Awabakal LALC Trustees was controlled by Mr Petroulias. Finally, Able Consulting, the manager under the Collaboration Agreement, was a company that the Commission has found (in chapter 10) was controlled by Mr Petroulias.

It is plain, and the Commission finds, that as put to the ALALC board on 7 June 2016, the agreements that Mr Petroulias and Ms Bakis encouraged the board to approve and execute would stand to benefit Mr Petroulias financially. Further, it is not just Mr Petroulias who stood to derive a financial benefit from the agreements relating to this proposed transaction. An additional agreement executed on 7 June 2016 was the "Confirmation of Variation of Retainer and Engagement" between the ALALC and KNL. Unlike the Advantage agreements referred to above, there was no resolution made by the ALALC board at its 7 June 2016 meeting approving the execution of this agreement. There is also no evidence before the Commission to suggest that it was even discussed by the board at that meeting. However, by this agreement, executed on behalf of the ALALC by Mr Green and Ms Dates without the authority of the ALALC board, the ALALC confirmed its retainer of KNL pursuant to the engagement letter of 27 November 2015, as varied to include the Advantage transaction. By clause 2, the work KNL is retained to undertake for the ALALC includes:

> *… 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.*

The nature of this work was also described in the briefing paper discussed by the Commission above, and appears to be wholly outside Ms Bakis' expertise as a solicitor. It is also, manifestly, a significant expansion to the scope of the work she was to carry out.

Pursuant to clause 4 of the Confirmation of Variation of Retainer and Engagement, the ALALC agreed to provide security for the payment of fees incurred by KNL, or any third party appointed by KNL, by a further or

separate charge in favour of KNL over its assets, including any interest in bank or trust accounts, land, realty or otherwise, and authorised KNL to lodge a charge, mortgage, security interest or caveat over those assets. The agreement is said, by clause 5, to have retrospective effect. The Commission notes that KNL did lodge caveats over the ALALC's property, in order to secure payment of its fees.

In the written submissions filed on behalf of Ms Bakis, it is submitted that it is wholly unclear how Ms Bakis stood to benefit had the land dealing with Advantage been approved, and, noting that Gows did not stand to benefit from the transaction, that the evidence does not prove how Ms Bakis might have participated in a fraud on Advantage. The Commission accepts that the Advantage transaction differed from those involving Sunshine and Solstice, in that it did not hinge on the on-selling of the purported interest held by Gows in ALALC land and did not rest on the Gows Heads of Agreements. However, although the Scheme had by now evolved, it appears that the object remained the same, namely, the improper advancement of the property proposal (on this occasion, using Advantage), in order to confer a financial benefit on each of Mr Petroulias, Ms Bakis, and Mr Green.

On the same day that the Collaboration Agreement was executed, a purported addendum to that agreement was entered into, dated 7 June 2016, described as an "Agreement Addendum regarding Community Housing– Awabakal Economic Advancement Strategy", between the ALALC as owner, Advantage NZ as purchaser and KNL as nominees. It was executed by the ALALC, Advantage NZ and KNL. This agreement is described as a memorandum of trust with respect to the shareholding of Advantage NZ. Pursuant to the terms of the agreement, KNL was to hold on trust a 25 per cent shareholding in Advantage "effective ab initio" as bare trustee, agent and/ or nominee for the party selected by the ALALC on or before 30 June 2016.

This was said to be for permitting the ALALC to have a role in selecting its preferred partners or potential shareholders, presumably with respect to Advantage NZ, including by selecting a party to be involved in the construction of community housing. The true purpose of this agreement and arrangement is entirely unclear on the face of the document, and there is no explanation to be found elsewhere in the evidence before the Commission. Ultimately, as indicated below, KNL's shareholding was transferred to Composite Building Industries Limited (CBI), but there is no record in the ALALC board minutes of this party being selected or why. Further, it is not apparent why the capacity for the ALALC to elect CBI as a shareholder of Advantage NZ would or could facilitate the ALALC taking an "active participation in the material, production and end product to be built" in the collaborative venture with Advantage, which was expressed to be the purpose of this memorandum of trust. Nor is it apparent what, if anything, would render CBI, apparently based in Hong Kong, most suitable to the ALALC's needs or "most adaptable to the circumstances facing indigenous [sic] housing management", as provided in clause 4.

On 8 July 2016, another purported addendum to the Collaboration Agreement was entered into, described as "Agreement Addendum – Awabakal Economic Advancement Strategy". This agreement, which is between the ALALC as owner, Advantage NZ as purchaser, Awabakal LALC Trustees as trustee, Able Consulting as manager and KNL as agents and attorneys, was executed by Ms Dates on behalf of the ALALC, Mr Green on behalf of Awabakal LALC Trustees, Mr Faraj on behalf of Advantage, and Ms Bakis on behalf of KNL. The agreement records that CBI's "building technology" was agreed to be the "preferred building system and building technology to achieve the purposes of the collaboration" (clause 1). By clause 2, it was provided that an individual named Gavin Rea, of Mirror Developments Pty Ltd, would be engaged to provide a "feasibility report/analysis", and by clause 4, it was agreed that KNL "as agents and attorneys" for the ALALC, would "manage the work undertaken by Mirror Developments Pty Ltd". Clause 5 provided that a fee proposal provided by Forlife Development Pty Ltd, dated 13 June 2016, regarding the preliminary work "for improving the Owner's land" be accepted and entered into on behalf of the ALALC and in respect of which the fees would be "primarily the responsibility" of the ALALC. The work to be undertaken by Forlife Development would be managed by Advantage NZ (clause 6). By clause 7, the ALALC charged its assets in favour of Advantage NZ and KNL and authorised KNL and Advantage NZ to lodge a charge, mortgage, security interest or caveat over those assets as security for the payment of legal costs and disbursements incurred as a result of performing the services arising from the agreement, including obligations arising to third parties appointed or engaged. That is, clause 7 purported to effect a further land dealing over ALALC land by creating an equitable interest in its land in favour of Advantage NZ and KNL.

The Forlife Development fee proposal referred to in the Agreement Addendum dated 8 July 2016 referred to above was provided by Mohammad Hussein, a director of Forlife Development, and addressed to Advantage NZ. The "client" is indicated as being the ALALC and Advantage NZ as joint venture partners and KNL is described as the "agents and attorneys" of the ALALC and the joint venture. An "acceptance form" is included in the proposal, which was required to be provided to Forlife

Development. It is signed by Ms Dates and Mr Green, and Ms Bakis as "KNL for Awabakal". Mr Faraj signed on behalf of Advantage. In addition to the acceptance form, an initial payment of $300,000, which was described as "Progress Payment 1", was required to be paid before commencement of works. This was a liability that the ALALC incurred immediately upon execution of the agreement (as indicated by clause 5 of the Agreement Addendum dated 8 July 2016), before it was known and irrespective of whether or not the ALALC members and the NSWALC would approve the transaction with Advantage.

The $300,000 progress payment required by Forlife Development was never paid and no work was undertaken by that entity. In her evidence before the Commission, Ms Bakis asserted that the initial $300,000 progress payment wasn't payable by the ALALC until certain conditions were met. However, Ms Bakis was unable to say what these conditions were, when specifically the liability *would* arise, and she did not point to any evidence in support of this contention. Certainly, there is no suggestion in the fee proposal itself that the liability would only be incurred if, and when, the ALALC members and the NSWALC approved entry into the Advantage transaction, nor is there any other evidence before the Commission that would provide support for the notion that the liability would not arise unless certain unidentified conditions were met. Ms Bakis' evidence on this issue is rejected. That Ms Bakis permitted the ALALC to incur this not inconsiderable liability to commence work on the "Awabakal Economic Advancement Project" with Advantage, well prior to the agreements with Advantage being approved, tends to suggest, contrary to the evidence of Ms Bakis and Mr Petroulias, that the Advantage agreements were not intended to be working documents or open to further discussion or negotiation and that they were intended (at least by Advantage) to bind the parties, and the Commission so finds.

As indicated earlier in this chapter, a further indication that the Advantage agreements executed by the parties were intended, at least by Advantage, to be final and to bind the parties is that Advantage purported to pay to the ALALC the option fee of $50,000 required by the Call Option Agreement through a Bill of Exchange dated 7 June 2016. The document is signed by Mr Green as "accepted" on behalf of the ALALC, and by Mr Faraj on behalf of Advantage. The Commission accepts the submission made by Counsel Assisting that the Bill of Exchange is invalid by reason of s 8(1) and s 8(2) of the *Bills of Exchange Act 1909* (Cth), because it does not identify the drawee; that is, it is not addressed to another person requiring that person to pay the ALALC on demand, or at a fixed or determinable future time, the sum of $50,000.

In her evidence before the Commission, Ms Bakis accepted that she had approved the option fee being paid to the ALALC through the Bill of Exchange, but did not know whether or not the Bill of Exchange provided by Advantage was valid, and could not recall how it had come to pass that a Bill of Exchange was provided to the ALALC by way of purported payment of the option fee, as opposed to the payment of money. The words "sans recours" appear underneath Mr Faraj's signature on the Bill of Exchange. Ms Bakis could not explain the legal significance of those words; she could not explain the legal requirements of a valid Bill of Exchange and she suggested, incorrectly, the instrument was entirely a common law concept (when it is in fact a creature of statute).

It is clear that Ms Bakis gave no consideration at the time to whether the Bill of Exchange was valid or enforceable, and yet, allowed the ALALC to accept the instrument from Advantage NZ as consideration for the option purportedly granted by the ALALC to it under the Call Option Agreement. The Commission observes that Ms Bakis also did not attempt to reconcile, either in the evidence she gave before the Commission, or in her written submissions, her contention on the one hand that the various Advantage agreements were not final and were subject to negotiation, with her evidence that, on the other hand, she had approved the purported payment to the ALALC by Advantage NZ of the option fee.

In his written narrative statement, Mr Petroulias asserted that the Bill of Exchange was being "developed by ULC" as a means to create a secondary market for the exchange of underlying value that ULC would create with, and over, the ALALC and other LALC's land as a means of providing liquidity, and also so that the LALCs could access working capital. He suggests that ULC would "provide the market" for the exchange of these instruments, and that ULC would pay the LALC on "its endorsement of the bill to market". These are, frankly, astonishing contentions, for which no support can be found in any other evidence before the Commission, including the oral evidence of Ms Bakis, who made no mention of the Bill of Exchange having any purpose other than to serve as payment of the option fee to the ALALC. Mr Petroulias' evidence is rejected, but the Commission observes that Mr Petroulias' attempt to explain the use of the instrument in connection with the Advantage transaction is telling. The Commission infers, based on Mr Petroulias' evidence, that the provision to the ALALC by Advantage NZ of the Bill of Exchange – an entirely worthless instrument – was at Mr Petroulias' instigation, as part of a yet-to-be established "secondary market" that Mr Petroulias was allegedly creating, and of which, manifestly, the ALALC board was entirely unaware.

Mr Petroulias also asserts in his written narrative statement that the validity of the instrument was in any event "irrelevant" because binding the ALALC at the time the Bill of Exchange was offered was "not legally possible". No plausible explanation was offered as to why an entirely worthless instrument would be offered by Advantage NZ, and seemingly accepted by the ALALC, if all parties were operating on the assumption that binding the ALALC was not legally possible.

Before addressing the attempts that were made to put the Advantage proposal to ALALC members, it is necessary to make some further observations about the drafting of the Advantage transactional documents. Counsel for Ms Bakis suggests that there is no evidence that Ms Bakis was involved in either negotiating or drafting the Advantage agreements and that it was likely that Mr Petroulias was involved in preparing them. While the Commission accepts the submission that it was likely Mr Petroulias was involved in preparing the various Advantage agreements, on Ms Bakis' own evidence before the Commission Ms Bakis had a hand in drafting the documents. Ms Bakis accepted that she had drafted the Collaboration Agreement:

[The Chief Commissioner]: Well, you drafted this agreement whilst solicitor for the Land Council?

[Ms Bakis]: Yes.

She also accepted that she had drafted the Call Option Deed. Ms Bakis attempted to explain to the Commission why she had drafted certain clauses in these agreements and the bases on which the ALALC was negotiating with Advantage. Ms Bakis asserted that she had received instructions in relation to these agreements from Ms Dates and Mr Green. Those instructions apparently extended to including the ALALC's offices among the ALALC property to be sold in the transaction, despite both Mr Green and Ms Dates denying any knowledge that the ALALC's offices were to be included in the transaction and denying that they gave any instructions to this effect. At no point during her evidence did Ms Bakis deny that she had a part in drafting and negotiating the documents. The Commission finds that each of Ms Bakis and Mr Petroulias was involved in drafting and negotiating the Advantage transaction agreements.

The attempts to obtain ALALC member approval of the Advantage transaction

Following execution of the Advantage transaction documents referred to above, steps were taken by Mr Petroulias and Ms Bakis to have the Advantage proposal taken to an ALALC members' meeting for approval of the land dealings that comprised the transaction. It is clear from the measures taken and direction given to the ALALC board members and ALALC office staff by each of them, over the course of June and July 2016, that their control over the ALALC board was effectively complete. Mr Petroulias and Ms Bakis continued to prepare the proposed resolutions for ALALC board meetings, one or both of them attended the ALALC board meetings and, according to the minutes, the ALALC board understood that Mr Petroulias was attending in his purported capacity as one of the ALALC's solicitors. Both appeared to be involved in preparing the typed version of the ALALC board minutes, as it was no longer the case that the typed minutes were prepared by ALALC staff and then potentially reviewed and/or amended by Ms Bakis or Mr Petroulias; instead, they were wholly prepared by Mr Petroulias or Ms Bakis.

Mr Petroulias was emailing Candy Towers directly in relation to administrative matters regarding the organisation of, inter alia, the impending ALALC member's annual general meeting (AGM). Ms Bakis was also liaising with Candy Towers and Ms Dates in relation to the proposed members' meeting and was, at this time, dealing with the ALALC's auditors. She was also advising and ultimately appearing on behalf of the ALALC in connection with the Land and Environment Court proceedings that were brought by the ALALC, on her advice ("the LEC proceedings").

It is necessary briefly to address here the LEC proceedings in so far as they are relevant to the Advantage transaction. On 20 June 2016, the minister wrote to Mr Green in his capacity as a board member of the ALALC to notify of the appointment of an administrator to the ALALC, as required by s 223A of the ALR Act. The minister enclosed a copy of a report, dated 22 May 2016, prepared by investigator Kelvin Kenney, whom the minister had appointed to investigate the affairs of the ALALC in November 2015. Mr Kenney made findings in that report in relation to governance, finance, operations and other matters, and those findings included substantial breaches of the ALR Act and ALR Act Regulation. It is relevant to observe that several of the findings of breaches of the ALR Act directly related to the conduct of Ms Bakis and Mr Petroulias, Ms Dates and Mr Green. These included:

- a failure to act appropriately on the recommendations of the registrar (Mr Wright) and Mr Sheriff to reinstate Steven Slee as CEO, which resulted in a significant compensation payment to Steven Slee (see the Commission's consideration of this issue in chapter 8)

- purporting to ratify minutes of board meetings, from December 2014 to 8 April 2016, without reference to the particulars of those meetings and purporting to ratify payments made by the ALALC without supporting documentation or specific approval of payments made (it will be recalled that these ratification resolutions were prepared and put to the board by Ms Bakis, as to which, see chapter 10)
- the failure to appoint a CEO of the ALALC, following the termination of Steven Slee.

The minister indicated that based on the findings in Mr Kenney's report, she was considering appointing an administrator to the ALALC, pursuant to s 222 of the ALR Act. The substantial breaches of the ALR Act would, on their own, have provided a basis for the appointment of an administrator. The minister invited submissions to be provided within 21 days of the letter addressing the matters set out in her notice. She also indicated that, pending her decision as to whether to appoint an administrator, she proposed to issue a notice pursuant to s 223B(1) of the ALR Act prohibiting the ALALC from exercising certain specified functions or taking specified actions, except with the approval of the minister, for a period of 28 days from 20 June 2016. These included prohibiting the ALALC from selling, exchanging, leasing or disposing of or otherwise dealing with the land vested in it. The ALALC was invited to provide written submissions to the minister within five days if it objected to this further notice being issued.

The ALALC board met on 22 June 2016 and 24 June 2016. The only ALALC board members to attend these meetings were Ms Dates, Mr Green, Mr Quinlan, Ms Quinlan and Mr Walsh.

Mr Petroulias attended both meetings, and the handwritten minutes for both meetings were taken by Ms Quinlan. The handwritten minutes of the 22 June 2016 board meeting do not record that there was any discussion about the minister's 20 June 2016 notice, its significance or implications, nor any advice given about whether or not to proceed with litigation against the minister, what the alternatives were to litigation and what the respective merits and risks (including costs) would be with respect to these options for the ALALC.

Instead, the handwritten minutes simply record as follows: "Nick (solicitor) states it is best for the Board to have him address the investigation from the Minister". Although this does not appear to be a resolution, it was then recorded as moved by Ms Dates, seconded by Mr Green, and passed. The typed version of the minutes appears to have been prepared by Mr Petroulias, as it was emailed to Candy Towers, the ALALC office manager, as an attachment. The email was not from the KNL email address but instead an email address that appears to be associated with ULC. The email, dated 22 June 2016, is not signed off by anyone and contains no text, but the body of the email contains a ULC footer and logo.

Candy Towers professed not to know who the email was from but suggested it was probably Mr Green. This evidence, and the suggestion that Mr Green prepared the typed minutes, is implausible for two reasons. First, Mr Petroulias at this juncture had a practice of emailing Candy Towers in relation to matters relating to the business of the board, including the preparation of resolutions, minutes, and other matters, and Candy Towers accepted that at around this time, Mr Petroulias was "assisting" Ms Bakis with her ALALC-related work.

Secondly, the suggestion that Mr Green had prepared the minutes cannot be accepted. Mr Green told the Commission with respect to another document purportedly written by him (the letter to Ms Bakis dated 23 September 2015 referred to in chapter 9) that he would not have the skills to prepare such a letter. The Commission accepted that evidence and considers, without meaning any disrespect to Mr Green, that his skills would also not extend to preparing this particular set of typed minutes, which were far more detailed and voluminous in nature.

Further, the minutes contain information bearing no relation to the handwritten minutes of which Mr Green would have had no knowledge. The typed minutes state, inter alia, "Report from Kelvin Kenny and Minister received and was discussed. Critical errors were identified and discussed. Appropriate response was discussed. Resolution: That Awabakal continues to support the strategy and confirms Instructions to KNL". The disparities between the handwritten minutes and typed minutes prepared by Mr Petroulias (which extend well beyond the differences that exist in relation to that in the minister's notice) serve to cast considerable doubt on the typed minutes as an accurate record of what was discussed at the meeting. The Commission considers that the handwritten minutes, and not the typed minutes, are the authentic record of what was discussed and resolved at the 22 June 2016 meeting. On that basis, the Commission finds that, just days before the ALALC commenced proceedings in the Land and Environment Court, on the apparent advice of Ms Bakis, there was no substantive discussion by, or advice provided to, the board about the minister's notice or as to the appropriate response.

Based on the handwritten minutes, the item of business to which most attention was afforded was a proposal that the ALALC join Mr Petroulias' organisation, ULC. The handwritten minutes record that this item was

discussed as follows: "United Land Council [sic] Ltd. Nick wants to unite all Land Councils. He explains the ULC developes [sic] Land Council Land and helps Land Councils develop housing etc. Richard Green is one of its directors and Nick also explains everything to do with the ULC. The proposal is for Awabakal to join the ULC … Motion: To join United Land Council Ltd the board agrees and Awabakal will have shares in this proposal. To be further introduced to members". The timing of the ULC resolution made at the 22 June 2016 ALALC board meeting is noted by the Commission because it was suggested at various times during the evidence given by Ms Bakis and in Mr Petroulias' written narrative statement that the transaction with Advantage was "a ULC deal", and that this would serve to explain, at least in part, Mr Petroulias' active involvement with the ALALC with respect to the transaction; that is, that he was assisting the ALALC with the transaction as part of his work for ULC. Yet, the minutes of this meeting establish that the ALALC board was only informed of the existence of ULC on 22 June 2016, and only agreed that the ALALC would join ULC as a member on this date. There is no evidence to support the proposition that the role Mr Petroulias played in this transaction was because of his role in, or the ALALC's membership of, ULC.

The ALALC board met two days later, on 24 June 2016. Prior to the meeting, a series of proposed resolutions was emailed to the ALALC office's reception (Candy Towers), as well as Ms Dates at a hotmail email address and Mr Green at an "indigenouslands.com" email address. The email was from a different email address to the admin@knightsbridgenorthlawyers.com address typically used by Ms Bakis and Mr Petroulias. Although the text of the email suggests that the email and the attached draft resolutions were from "Nick and Despina", it appears to be written by Mr Petroulias as it states: "Can you please hook me in on skype by laptop in boardroom? My skype name is berkey_boy" and the handwritten minutes record that only Mr Petroulias attended, and that he did so by telephone: "Solicitor Nick Peterson on phone" [as previously noted, Nicholas Peterson was one of Mr Petroulias' aliases]. The minutes then begin with the following statement: "Nick explains about resolutions to be made".

It is not clear why it was necessary for the board to meet on this occasion, only two days after its 22 June 2016 meeting, as the business discussed does not appear to possess any urgency. However, two of the proposed resolutions merit comment. The first, which was passed, and which was in relation to the Advantage transaction, was that the board clarify to members, at the forthcoming members' meeting, that the community housing to be included in the joint venture with Advantage was to be retained to the benefit of the land council, subject to renovation and replacement under the "total care strategy", which was said to mean "replacement of bathrooms and kitchens every three years, re-paint and extension for growth in the family", with the potential opportunity for housing to be purchased by members with "deposit advanced and preferential loan under the community benefit scheme". These purported "features" of the Advantage transaction were picked up and included in the notice dated 11 July 2016 provided to members of the meeting to be held on 20 July 2016, which had been prepared by Mr Petroulias.

The notice indicated that certain community properties were to be renovated, with "new kitchens and bathrooms every 3 – 5 years and, with newly developed properties, become potentially available for purchase by members under a community benefit scheme". Despite these features being given prominence in communications with the ALALC board and ALALC members, Ms Bakis was unable, when giving evidence before the Commission, to identify where, among the suite of documents she had drafted and/or approved for the transaction, an obligation was imposed to provide for the renovation of existing community housing properties. Ms Dates was also unable to identify the source of this obligation, despite this notice to members, drafted by Mr Petroulias, coming from Ms Dates as chairperson of the board.

The second proposed resolution to be noted, which does not appear to have been passed, was the extraordinary proposal that the entirety of funds in the ALALC bank account be transferred to KNL's trust account to operate the ALALC's affairs until an injunction was obtained against the minister and it was "safe to return the funds". The rationale for this proposed resolution was suggested, in the attachment containing the proposed resolutions prepared by Mr Petroulias, to be that the minister had indicated that until she had made a decision about the appointment of an administrator she would "issue the freezing order on the bank account", the effect of which would be "that it will be impossible to pay tax debts, superannuation and conduct the litigation against the Minister. Penalties and interest and fines will accrue".

Two observations may be made about this proposed resolution. First, it seems calculated unlawfully to circumvent the measure that the minister had indicated she would take, pursuant to s 223B(1) of the ALR Act. Secondly, it grossly misrepresented the nature and effect of the prohibition that the minister had indicated by her notice dated 20 June 2016 that she would take. The measure was to prohibit the ALALC from "paying or authorising any invoices, where the sum total of the invoices received from a single supplier, or to be paid to a single supplier, exceeds $20,000, in any 28 day period", and was only to last for a period of 28 days. Plainly, this measure, had it been taken, would not have extended

to prohibiting the payment by the ALALC of any tax debts, or the payment of superannuation. It would also not necessarily have prevented the conduct of litigation by the ALALC against the minister, given that invoices up to $20,000 could be paid, and it was only intended at that stage to be for a period of 28 days. The handwritten minutes do not suggest that this proposed resolution was either put to the board or passed.

On 27 June 2016, the ALALC filed a summons in the Land and Environment Court against the minister for Aboriginal affairs, Mr Wright as registrar of the ALR Act, and the NSWALC. There were two main objects of the proceedings, namely, to restrain the minister from taking any action under s 223B(1) of the ALR Act (to prohibit the ALALC from taking any specified actions or exercising specified conduct, such as dealing with its land, for a limited period of time), and restraining the minister from appointing an administrator to the ALALC pursuant to s 222 of the ALR Act. Other declaratory relief in relation to Mr Kenney's report was also sought. Ms Bakis was the solicitor on record for the proceedings, and prepared and filed an affidavit in support, sworn 27 June 2016. In that affidavit, Ms Bakis referred to the Collaboration Agreement with Advantage NZ, and indicated that if the minister were to prohibit land dealing as foreshadowed in her notice of 20 June 2016, then the ALALC would suffer financial loss as "the deal involves above market consideration and renovation of all community housing and the deal may not be able to be resurrected with this party or a deal entered into with some other party on such [sic] favourable basis".

A members' meeting took place on 29 June 2016, the same day as the ALALC AGM was due to be held. Prior to the meeting, a notice was prepared by Ms Bakis and emailed to Candy Towers and Ms Dates. The draft cover letter to the notice states that the purpose of the meeting was to "approve the land dealing proposed". The notice goes on to assert, falsely, that "the Board had resolved back in November 2014 to sell most of the land but owing to a search of better opportunities available, numerous options have been explored with the best selected". The resolutions proposed included the approval of the transaction with Advantage NZ, as well as a resolution that appears directed to meeting the statutory requirement regarding resolutions made by members of a LALC approving a land dealing, namely, a statement that the impact of the land dealing on the cultural and heritage significance of the land to Aboriginal persons has been considered in determining whether to approve the dealing (ALR Act, s 42G(5)). That statement, as it appeared in the notice drafted by Ms Bakis, was as follows: "The impact of land dealing does not have any cultural and heritage and [sic] where scared [sic] trees of any cultural or heritage significance are identified, there are measures to protect them". There is not a skerrick of evidence before the Commission to suggest that the impact of the proposed land dealing in terms of its cultural and heritage significance of the land to Aboriginal persons had been given any consideration with respect to the Advantage transaction, nor any evidence to suggest that any attempt had been made either to identify sacred trees or put in place measures to protect them.

As events happened, there was no mention of the proposed transaction with Advantage at the members meeting held on 29 June 2016, as the meeting fell into disarray and it appears no formal proposals were able to be voted on.

On 1 July 2016, the first directions hearing for the LEC proceedings took place. At that directions hearing, mutual undertakings were given by the parties, whereby the minister undertook not to issue a notice under s 223B of the ALR Act or to appoint an administrator, and the ALALC undertook to refrain from

> *…selling, exchanging, leasing or disposing of or otherwise dealing with the land vested in it, apart from progressing to and holding a meeting of its voting members on 20 July 2016 for a resolution as to whether the members approve the agreement referred to in annexure 'F' of the affidavit of Despina Bakis dated 27 June 2016 and if so on what conditions.*

On 11 July 2016, Ms Bakis prepared notices for the meeting to be held on 20 July 2016. On 20 July 2016, the ALALC convened the community meeting in relation to the Advantage land dealing proposal. The notices prepared breach the terms of the undertaking, as the proposal extended beyond simply approving the Collaboration Agreement and instead seek to have members approve the land dealing with Advantage as a whole. The Commission accepts the submission made by Counsel Assisting that at least one of the objectives of the LEC proceedings, and likely the sole objective, was to prevent the appointment of an administrator to the ALALC until the Advantage transaction had obtained the required statutory approvals (member and NSWALC approval). This is clear from the haste with which Ms Bakis and Mr Petroulias attempted to move the Advantage proposal forwards, convening increasingly frequent ALALC board meetings and suggesting that there was some urgency for the community meeting to be held, their timing in commencing the LEC proceedings, and the steps that they took to put the proposal to members even after the ALALC had provided the undertakings referred to above.

The failure of the transaction

As with the community meeting held on 29 June 2016, no resolution regarding the proposed land dealing with Advantage was passed at the members' meeting held on 20 July 2016. Mr Petroulias attended the meeting, and although he attempted to explain the proposal to those present, those attempts were unsuccessful as there was a significant level of agitation among ALALC members at that meeting, and people had begun to leave the meeting.

A new ALALC board was appointed at the AGM conducted on the same evening. With the introduction of the new board came the engagement of new solicitors who replaced KNL and Ms Bakis. It appears that the members of the new ALALC board had no interest in pursuing the Advantage transaction.

Chapter 12: The role of Ms Bakis

In this chapter, the Commission considers the role of Ms Bakis across each attempted transaction, and as the ALALC's solicitor more broadly. While in the preceding chapters, the Commission generally examined Ms Bakis' conduct alongside that of Mr Petroulias, Ms Dates and Mr Green, this chapter specifically addresses what it was that Ms Bakis, did or purported to do, for the ALALC as its solicitor. The Commission also considers the extent to which Ms Bakis and Mr Petroulias worked together, and communicated with the ALALC and third parties, using the cover or under the guise of Ms Bakis' firm, KNL, in relation to each attempted transaction. Finally, this chapter examines two particular instances of Ms Bakis' conduct as the ALALC's solicitor that have not directly been considered elsewhere in this report: her communications with the ALALC's auditors, PKF Audit and Assurance Limited (PKF) in Newcastle, and her carriage of the LEC proceedings.

The second KNL fee agreement

In chapter 7 of this report, the Commission considered the purported engagement of Ms Bakis and KNL by Mr Green, apparently on behalf of the ALALC, through the First KNL CSA, which Mr Green signed on 28 November 2014. After agreement was purportedly reached between the ALALC and the Sunshine parties in relation to the Warners Bay properties and after negotiations with the Solstice parties had commenced, Mr Green, as the ALALC's "authorised representative", signed a further costs disclosure statement and client service agreement prepared by KNL for the ALALC, dated 27 November 2015, being the Second KNL CSA.

The copy of the Second KNL CSA in evidence before the Commission, comprising the Costs Disclosure Statement and Client Service Agreement, appears behind a cover letter from Ms Bakis addressed to the ALALC board at its offices, dated 27 November 2015, which bears a handwritten notation: the initials "RG". As indicated above, the Second KNL CSA is also signed by Mr Green. While Mr Green accepted that he had signed the Second KNL CSA, the evidence of every other board member, including Ms Dates, was that they had never seen the agreement, and that Mr Green never disclosed to the board that he had signed it. This is consistent with the evidence of Mr Lawler, who was appointed as the ALALC's administrator on 13 October 2016, which was that neither the Second KNL CSA nor the cover letter from Ms Bakis were among the ALALC's records when he considered, as part of his appointment as administrator, the authority of the ALALC board to appoint KNL. Mr Lawler told the Commission that he first saw a copy of the cover letter and Second KNL CSA when they were provided by KNL at the request of the solicitors retained by Mr Lawler in his capacity as the ALALC's administrator, and that he had never seen the originals. The Commission finds that the Second KNL CSA was never provided by either Ms Bakis herself or Mr Green to the board, and that their failure to do so was a deliberate act of concealment, taken in furtherance of the Scheme.

Several features of the Second KNL CSA and its covering letter warrant mention. First, it appears from the contents of the covering letter that the purpose of the Second KNL CSA was to vary and expand KNL's retainer, although when one looks to the provisions of the Second KNL CSA, it does not appear that it effected either an expansion of or variation to the scope or nature of the work to be carried out by KNL. According to the covering letter, KNL was apparently asked by the board to provide legal services in connection with, among other things, "property dealings including sales and joint ventures", establishing "corporate governance policies and procedures", assisting with the investigation into the affairs of the ALALC, identifying "causes of action against the Registrar and other parties", and defending or prosecuting litigation in relation to any of these matters.

Ms Bakis' evidence to the Commission, consistent with what is suggested by the covering letter, is that

the purpose of preparing the Second KNL CSA was to widen the scope of her retainer, owing to the work that she anticipated she would need to carry out on behalf of the ALALC in connection with the appointment by the minister of Mr Kenney to investigate the affairs of the ALALC. However, when one looks to the terms of the Second KNL CSA itself, the "Work" KNL was retained to carry out, as described in clause 1.1 of the Second KNL CSA, remained identical to the "Work" described in clause 1.1 of the First KNL CSA – that is, no variation or expansion appears to be contemplated.

Secondly, Ms Bakis estimated the monthly fees payable to KNL by the ALALC at $10,000 plus GST plus disbursements (Costs Disclosure Statement, clause 9.1), although in the covering letter, her estimate of monthly fees was put higher at $15,000, plus GST and disbursements. Although either amount would represent a sizeable decrease in the estimated monthly fees of $80,000 plus GST and disbursements included in the equivalent clause in the First KNL CSA, suggesting a *narrowing* rather than expansion of KNL's retainer, this would still represent significant expenditure on legal fees – if incurred on a monthly basis, as suggested – for a LALC whose annual funding, it will be recalled, was in the vicinity of $140,000. Invoices received by the ALALC for work apparently carried out pursuant to the Second KNL CSA were in evidence before the Commission and reveal that KNL's monthly fees during the period from December 2015 to September 2016 ranged from either just below the estimate provided to well in excess of that estimate.

Thirdly, as with the First KNL CSA, clause 20 of the Second KNL CSA permits KNL to receive instructions from the ALALC through its agents, which are said to include Nicholas Peterson (Mr Petroulias) and Richard Green. It provides that "it is contemplated that drafts of documents will be prepared and compiled to assist the work load [sic] to this firm". As the Commission noted in chapter 7 in connection with the equivalent clause in the First KNL CSA, there is no evidence of the ALALC appointing Mr Petroulias or Mr Green as its agents. The Commission finds that no such appointment was ever made, and that Ms Bakis had no proper basis to include such a clause in the Second KNL CSA. The explanation Ms Bakis gave to the Commission for including the clause was that it was for the purpose of taking instructions from Mr Petroulias in relation to property transactions, if he had discussions with Ms Dates, Mr Green or the board in relation to those transactions. The Commission regards this explanation for the inclusion of the clause as implausible.

Further, it will be recalled that at the time in which the Second KNL CSA was purportedly entered into, Mr Petroulias had a continuing financial interest in the property transactions that were apparently in contemplation for the ALALC. His company, Gows, was a part of the ongoing negotiations between the ALALC and the Solstice parties (in that those negotiations hinged on the buying-out of Gows' so-called pre-existing interests in ALALC property) that continued into 2016, and following the failure of that transaction the companies Mr Petroulias either controlled or had a direct interest in were involved in the attempted transaction between the ALALC and Advantage. That Ms Bakis would allow Mr Petroulias to act as an agent for the ALALC and provide instructions on behalf of the ALALC in connection with those transactions, permitting her to act on those instructions whether or not it would serve the ALALC's interests, amounted once again to a serious and significant breach of the duties she owed as a solicitor to the ALALC.

Fourthly, as with the First KNL CSA, by clause 4 of the Second KNL CSA, the ALALC agreed to provide to KNL a charge over any interest in land, assets, bank or trust accounts or any property it owned and authorised KNL to lodge a charge, mortgage or caveat over those assets as security for payment of fees and disbursements incurred as a result of performing work pursuant to the agreement. Through this clause, Ms Bakis (and Mr Green, on behalf of the ALALC) purported to enter into a land dealing, contrary to the land dealing provisions of the ALR Act, as its effect was to create an equitable interest in the ALALC land, in favour of Ms Bakis. Mr Green had no authority to agree to the ALALC providing Ms Bakis a charge over its land and by operation of s 42C of the ALR Act the land dealing was, in any event, void. In her evidence before the Commission, Ms Bakis was defensive of her decision to include this clause but did not appear to appreciate that it amounted to a contravention of the ALR Act or that, by operation of that Act, it would not be enforceable.

Finally, by way of a more overarching but critical observation in relation to the Second KNL CSA, the Commission notes that there is no credible evidence before it that the ALALC board had expressed a desire or intention to enter into that CSA. That is, there is no evidence that Ms Bakis received a request from the ALALC board, documented in meeting minutes or otherwise, to the effect that it wished to enter into the Second KNL CSA, that it wished to vary or expand the terms of her engagement along the lines set out in the covering letter (noting that the retainer of KNL on any terms was still entirely unknown to all members of the ALALC board, other than Mr Green and Ms Dates), or that it was prepared to charge its assets as security for the payment of any fees incurred.

In evidence before the Commission is a letter from Ms Bakis to Ms Dates and Mr Green, dated 7 January 2016, regarding a "Governance Checklist Process for Engagement of Professionals". It refers to the work

KNL would do for the ALALC going forward, in line with the covering letter to the Second KNL CSA, and suggests that Ms Bakis would create a checklist governance form, relevant to KNL's engagement, that would include tabling both the First and Second KNL CSAs for ratification. A "governance checklist" dated 8 January 2016 is also in evidence, which is said to be regarding the "Renewal of Costs Agreement by Costs Agreement dated 27 November 2015" and includes, as a matter apparently checked and initialled by Mr Green and Ms Dates, that the First and Second KNL CSAs were "tabled/amongst board papers" at the 11 January 2016 ALALC board meeting. The Commission considers that there is good reason to doubt the authenticity of these documents and does not regard either document as establishing that the board agreed to the expansion of Ms Bakis' retainer or was provided with a copy of the Second KNL CSA. The documents were not produced by Ms Bakis as part of her file, nor were they among the documents produced to the Commission by K & L Gates (the law firm representing Lawcover to whom Ms Bakis had previously provided her legal file regarding the ALALC). The Commission notes that Ms Bakis' evidence was that those two files together would represent a complete set of her signed files. Instead, the letter and checklist were among the documents produced to the Commission by Mr Vaughan on behalf of Gows. This is sufficient reason to find that the documents are not authentic. There is no legitimate reason why these documents, which on their face appear to have been prepared by Ms Bakis and then received and annotated by Mr Green and Ms Dates, would be in Gows' possession at all, let alone *only* in Gows' possession. Further, Mr Green denied that Ms Bakis ever took him through the checklist or explained to him the matters contained within it, and there is no record in the minutes of the 11 January 2016 board meeting that any agreement with KNL was tabled or provided. As the Commission found in chapter 7, when Mr Green moved to "ratify" KNL's appointment at the 11 January 2016 meeting, he did not put any details regarding KNL's retainer to the board. He did not table at that meeting or provide to the board at any time either the First or Second KNL CSAs. As the Commission indicated above, the failure of both Mr Green and Ms Bakis to provide this agreement to the ALALC board was deliberate, and a step taken in furtherance of the Scheme.

Relatedly, despite Ms Bakis having been retained by Mr Green on behalf of the ALALC first in November 2014, and that retainer apparently being renewed, varied and expanded in November 2015, there is no evidence before the Commission of any invoices being issued by KNL for work carried out by Ms Bakis for the ALALC until March 2016. Mr Lawler (the ALALC's administrator) told the Commission that having reviewed the financial records and records generally of the ALALC, the first tax invoice issued by KNL to the ALALC that he was able to identify and evidence being paid was dated 16 March 2016. This invoice was for KNL's professional fees "for the period to 31 December 2015" in acting for the ALALC in relation to the investigation being carried out by Mr Kenney. The explanation for the absence of KNL invoices prior to March 2016 cannot be that Ms Bakis carried out no work for the ALALC until around December 2015. This is because it is clear that she was acting on behalf of the ALALC in connection with the Sunshine transaction and on her own evidence she acted for the ALALC on a regular basis from the time that she drafted the First Gows Heads of Agreement, in around November 2014, until KNL and Ms Bakis were replaced as the ALALC's solicitors in mid-September 2016. This included her work in connection with drafting the First Gows Heads of Agreement in late 2014, drafting various documents and conducting negotiations in connection with the Sunshine transaction throughout 2015, and reviewing and drafting documents relating to the Solstice transaction from late 2015 into 2016. The explanation offered by Ms Bakis during her evidence before the Commission was that Gows was going to pay for her work (she did not identify specifically which work), but that she never got paid for it. This explanation is rejected. There is no indication in the First or Second KNL CSAs that any arrangement had been reached such that the ALALC would not be liable to pay KNL's fees, or that no fees would be charged for the work undertaken. The Commission considers that no invoices were issued by Ms Bakis until March 2016 for the same reason that her First and Second KNL CSAs were not provided to the board, namely, to conceal her conduct and the transactions in which she was involved more generally from the board, and to further the Scheme in which she was a participant.

Advices provided by Ms Bakis to the ALALC board

There was a series of written advices in evidence before the Commission, apparently prepared by Ms Bakis for the ALALC board. The contents of some of these will be addressed individually below. However, it is first necessary to make some broad observations in connection with these written advices. First, as with the invoices issued by KNL, it appears that no written advices were prepared by Ms Bakis for the ALALC board prior to March 2016. The first of the written advices prepared for the board is dated 6 March 2016. Despite Ms Bakis purporting to act on behalf of the ALALC in connection with the Gows and Sunshine transactions, no written advices were produced by Ms Bakis to the Commission in connection with any of them, and Ms Bakis' own evidence was that she did not provide any written advice

to the board about the effect of the Sunshine transaction. Ms Bakis suggested to the Commission that the absence of written advices in connection with those transactions reflected a deliberate choice on her part, based on her knowledge that Ms Dates and Mr Green did not like reading documents so "writing them another letter of advice was pointless and all it would serve was to protect me. So, my practice was to explain things to them as best I could, running through the documents". When Ms Bakis was asked why she did not put her advice in writing and send it to the board, she responded that the board was not meeting at the time of these transactions. This is no answer at all. The board was still meeting regularly around the time of the Gows transactions in late-2014 and it also met throughout 2015, only less frequently than it had in previous years. Further, the fact that the board was meeting less frequently was all the more reason why advice given only to individual members of the board, but apparently received on behalf of the board as a whole, should have been documented. In any event, Ms Bakis' explanations are at odds with the existence of the lengthy written advices that she apparently prepared from March 2016 onwards. The Commission accepts the submission made by Counsel Assisting that the absence of written advice in connection with the Gows and Sunshine transactions is consistent with efforts made by Ms Bakis to conceal these transactions and evidences her participation in the Scheme.

Secondly, despite written advices apparently having been prepared for the ALALC board by Ms Bakis in every month between March and August 2016, there is no reference to them in any of the invoices that were issued by KNL to the ALALC in the period from March to September 2016, with one possible exception. That is, Ms Bakis did not bill the ALALC for preparing these advices. The one exception is a reference in the final invoice issued by KNL, dated 19 September 2016, to the "on-going preparation of legal brief". The date this work was performed is not indicated in the invoice, nor is the extent of the work performed, however, this may be a reference to the "Joint Legal and Financial Brief To Board of ALALC Priorities for the ALALC to comply with the ALRA" dated 18 August 2016 ("the Joint Legal and Financial Brief"), which is an advice apparently prepared by Ms Bakis for the then newly-constituted board. The non-inclusion of all other written advices in KNL's invoices, particularly when regard is had to other matters referred to below, serves to cast doubt on their authorship, the purpose for which they were created, and when.

Thirdly, relatedly, and again with the exception of the Joint Legal and Financial Brief, there is no credible evidence that the written advices apparently prepared by Ms Bakis were actually provided to the board, either by way of being tabled at its meetings or otherwise. There is no reference to them being tabled in the handwritten minutes of the meetings, and no indication in the minutes that any of their contents were discussed. Ms Bakis did positively assert that written advices were provided by her to the board during her evidence to the Commission and also made submissions to this effect. However, the only board member who was cross-examined about Ms Bakis' written advices by her then counsel was Larry Slee. It was put to him that three written advices prepared by Ms Bakis were made available to the board at its 8 April 2016 meeting, namely, the Briefing Paper on Potential Property Agreements dated 5 April 2016, the Briefing Paper on Governance Ratification Resolutions dated 6 March 2016 and the Briefing Paper on Advantage Property Agreements for Board Meeting 2 June 2015 [sic] dated 29 May 2016 (despite the latter post-dating the 8 April 2016 board meeting). Larry Slee told the Commission that he was unaware of those papers having been made available to the board at that meeting. Further, when questioned about each of them individually by Counsel Assisting, he could not recall ever having seen the Briefing Paper on Potential Property Agreements dated 5 April 2016, the Briefing Paper on Advantage Property Agreements for Board Meeting 2 June 2015 [sic] dated 29 May 2016, or the Briefing Paper on Governance Ratification Resolutions dated 6 March 2016. The Commission finds that, with the exception of the Joint Legal and Financial Brief, the written advices apparently prepared by Ms Bakis were not tabled at board meetings or otherwise provided to the ALALC board. Again, this suggests that they were not in fact created for the purpose of providing the board with legal advice, but for a different purpose, which is considered below.

Fourthly, as is apparent from the discussion of some of the individual advices appearing below, when regarded collectively it is clear that a characteristic common to each of them is a shared intention on the part of the author(s) to create a record of what KNL had, apparently, been instructed to do, or of matters that were apparently conveyed to KNL (usually by Ms Dates or Mr Green), or of acts carried out by KNL on the basis of those alleged instructions. Further, there is a sufficient number of representations and statements (referred to below) contained throughout these advices that are plainly false to enable the Commission to find that the object in preparing them and placing them on Ms Bakis' file was to generate a false record or account of what had already taken place, and what had been authorised and approved by the board – that is, to create a false history of conduct that had been engaged in by Mr Petroulias, Ms Bakis, Mr Green and Ms Dates. This finding is supported by the fact that certain statements that are demonstrably false feature repeatedly in these advices and briefing papers. Examples include that:

- Ms Dates or Mr Green were appointed as agents for the ALALC by the board, when they had never been so appointed
- the ALALC board had unanimously resolved to sell all, or close to all, of its land in November 2014 when it had never so resolved
- the ALALC had been a long-standing member of ULC when, at its earliest, the board resolved to become a member of ULC at its 22 June 2016 meeting
- the ALALC board had determined that it was appropriate for agreements regarding the sale of ALALC land to be executed by all parties to avoid "tyre-kickers", notwithstanding that the ALR Act approval processes in relation to those agreements had not yet commenced.

It is not possible for the Commission to make a finding about precisely when each of the advices was prepared but given that they were not referred to in Ms Bakis' invoices, and were not provided to the ALALC board at its meetings, the Commission considers that the dates appearing on the papers can provide no reliable indication of when they were created.

Briefing paper for the 8 March 2016 board meeting

This paper is dated 6 March 2016, is addressed to Ms Dates as chairperson of the ALALC board, and is signed by Ms Bakis. It begins with a statement regarding Ms Dates' authority to act as an agent on behalf of the ALALC during the period of "at least February 2015 to August 2015 where the Board did not meet". It states that "the position of ALALC has been that during the period of conflict" Ms Dates acted within her authority as agent of the ALALC. The Commission notes that the paper does not indicate when, where or how this became the position of the ALALC and, further, that no such statement of the ALALC's position was recorded in any ALALC board minutes or any other documents found within the ALALC's records. It impresses as an entirely self-serving statement, and the Commission finds that it has no foundation in truth. The paper goes on to suggest that Ms Dates had ostensible authority to act as the ALALC's agent, a proposition that is said to find support in the common law and Rule 19 of the Model Rules. With respect to ostensible authority, the Commission finds that the ALALC did not confer ostensible authority on Ms Dates to act as its agent during 2015. With respect to Model Rule 19, Ms Bakis cites part of Model Rule 19(2) only, omitting the words "subject to the instructions of a Council meeting", which, as the Commission observed in chapter 7, places an express limitation on the duties and powers of the chairperson to act on behalf of the council in the interval between meetings. In chapter 7, the Commission rejected the proposition that Model Rule 19 provided Ms Dates with authority to enter into any land transactions or any other kind of agreement on behalf of the ALALC, and finds that the statement to the contrary in the advice is both wrong as a matter of law, and deliberately misleading.

Despite suggesting that Ms Dates was acting with authority, the advice goes on to suggest that actions carried out by Ms Dates can be ratified by the board. The advice does not then explain the legal concept of ratification, or what would be the requirements in order effectively to ratify any of Ms Dates' acts or conduct, and although a form of resolution to ratify Ms Dates' conduct is then suggested: "That the Board ratifies and regularises the decisions and payments during the period of disfunction when the Board did not meet…", it does not specifically identify the conduct to be ratified. Accordingly, even if the board were empowered to ratify Ms Dates' purported entry into the Sunshine transaction (which it was not, because the board could not enter into a land dealing on behalf of the ALALC without members' and NSWALC approval), the recommended form of resolution would not have been effective to ratify that conduct, because, without more, the resolution would be made without the board possessing full knowledge of all the material facts (see *Permanent Trustee Co Ltd v Bernera Holdings Pty Ltd* [2004] NSWSC 56, per Young CJ in Eq, at [55]). The same conclusion was reached by the Commission in chapter 10 in connection with the ratification resolution proposed by Ms Bakis at the 8 April 2016 board meeting. As events happened, a resolution in a similar form to that proposed in the advice was sent by Ms Bakis to Ms Steadman and Mr Green prior to the ALALC board meeting on 8 March 2016. Although this resolution was passed by the board, the Commission finds it was not effective to ratify the "decisions and payments during the period of disfunction when the Board did not meet".

As indicated above, the minutes of the 8 March 2016 ALALC board meeting do not record any reference to this briefing paper being tabled or provided to the board, and the Commission finds that it was not provided by Ms Bakis (or anyone else) to the board. This suggests that the briefing paper was not prepared for the purpose of actually providing legal advice to Ms Dates and the ALALC board. A further indicator that the briefing paper was not drafted with the intention of providing legal advice, but for some other purpose, is that it does not address the conduct of Ms Dates and Mr Green in purporting to enter into the Sunshine transaction. The Commission considers that if there were any genuine desire on the part of Ms Bakis, Ms Dates and Mr Green to have the ALALC board deal with and/or ratify the

conduct of Ms Dates and Mr Green during the period "where the Board did not meet", then the matter that would have been front and centre in this advice and dealt with expressly would have been the Sunshine transaction. That it was not addressed serves to indicate that the creation of this briefing paper was not an exercise in the provision of legal advice but instead part of a process engaged in by Ms Bakis and Mr Petroulias to, first, create the appearance or perception that the board had received legal advice from Ms Bakis when it had not, and second, to create a primary record that, on its face, suggested that the conduct of Mr Petroulias, Ms Bakis, Mr Green and Ms Dates was undertaken with the knowledge and approval (either tacit or express) of the ALALC board and/or alternatively on the instructions of the ALALC board.

Memorandum of Advice–Instruction: "The Division 4A ALRA Process – Community and NSWALC approval"

This advice is dated 4 April 2016 and was apparently prepared by Ms Bakis, in that it was written on KNL letterhead and purports to be legal advice, although Ms Bakis' signature does not appear on it. There is a handwritten notation on the front indicating that it was "Received by:" Ms Dates, next to Ms Dates' signature. The title of the paper, "The Division 4A ALRA Process – Community and NSWALC approval" incorrectly refers to Division 4A (an error that is repeated elsewhere in the advice), when the community and NSWALC approval process for land dealings (which the paper purports to explain) is found in Division 4 of the ALR Act. In chapter 11, the Commission considered one of the other briefing papers apparently prepared by Ms Bakis, being the Briefing Paper on Advantage Property Agreements for Board Meeting 2 June 2015 [sic], which the Commission considered was in fact likely prepared entirely by Mr Petroulias, but with Ms Bakis' knowledge and approval. The Commission noted that the incorrect reference to Division 4A approval recurred throughout that paper.

The advice purports to explain the approval process that any land dealing proposed by a LALC must go through, as prescribed by the ALR Act. The reason for this advice being prepared is, at least on the face of the document, a complete mystery. The paper does not state that the advice was requested, or identify the question sought to be considered, and does not refer to a specific land dealing then in contemplation. It asserts that there is a "continuum of approvals" after the board decides to enter into a land dealing, and sets out the various provisions of the ALR Act that relate to the approval process. However, it does not do so in a way that would be of any great utility to the ALALC; it does not explain the steps the ALALC must take to obtain approval of any proposed land dealing in a chronological fashion, or explain the material that the ALALC must prepare and present in order to obtain the necessary statutory approvals of a proposed land dealing. Rather, the paper sets out in a bewilderingly haphazard fashion the various provisions contained in Division 4 of the ALR Act. It appears to the Commission that through this paper, the author is endeavouring to propose a particular answer to a very specific question: what is the legal effect of a land dealing entered into by a LALC in contravention of the land dealing provisions contained within Division 4 of the ALR Act? Yet, there is no evidence before the Commission that KNL was asked to consider this question, and there is no reference in any of the minutes taken of board meetings around this time that this was a question in relation to which the ALALC board needed, or had sought, legal advice.

In section 2 of the advice, the provisions that render a land dealing that is entered into in contravention of the ALR Act unenforceable are set out. In section 4 of the advice, it is impliedly suggested that it would not be unlawful for a LALC to purport to enter into a land dealing in contravention of the approval process but rather that the land dealing in question would simply be void, or rather, have no legal validity, *until* approval is obtained. The legal analysis in this section is at best, strained, and at worst nonsensical, and reads as follows:

> *The references in section 42C to any land dealing in "contravention" of the approval regime being successfully completed,* ***being void does not mean that it is illegal to undertake the very approval regime.*** *It simply provides its own consequence: that until such time as the approval process is complete, the transactions have no legal effect (as per section 42E(4) and (5)). Division 4A is read as providing entering into contracts conditional upon the relevant approval being applied for an obtained:* Redglove Projects Pty Ltd v Ngunnawal LALC *[2005] NSWSC 892* esp *para [36].*
>
> (Original emphasis)
>
> *Otherwise, any land dealing that is not approved by the NSWALC is a "contravention" that won't be known until after the decision of the NSWLC* [sic] *(and any appeals process is exhausted). Indeed, the "approval resolution" must exist before the NSWALC can consider it as part of the application to it: section 42G(5).*

It is plain that section 4, and the document as a whole, is an attempt on the part of Ms Bakis and/or Mr Petroulias to suggest that the Gows and Sunshine transactions were not unlawfully entered into, and that entry into those transactions was simply an appropriate step for the

ALALC to take as part of its participation in the approval "continuum". In reality, the ALR Act provides that a land dealing cannot be entered into absent members' and NSWALC approval (s 42G and s 42E) and that a land dealing in contravention of s 42E is void, according to s 42C of the ALR Act. There is nothing in the ALR Act preventing the *negotiation* of land dealings prior to obtaining the required statutory approvals but it is a breach of the ALR Act, and therefore unlawful, to create a legal or equitable interest in LALC land prior to those approvals being obtained. A land dealing entered into in the absence of those approvals is not simply awaiting approval in order to be valid, it is rendered, permanently, void. Again, as with the briefing paper dated 6 March 2016 discussed above, there is no evidence that the paper was tabled or discussed at the ALALC board meeting on 8 April 2016, despite Ms Bakis attending this meeting, and no reference to the preparation of this paper in the two invoices issued by Ms Bakis for this period. The Commission considers that it was not drafted with the purpose of providing legal advice to the board, but instead as part of the creation of a false paper trail of the advice and information purportedly given to the board and to create the misleading impression that the steps taken by Mr Petroulias, Mr Green, Ms Dates and Ms Bakis in connection with the Gows, Sunshine and Solstice transactions were legitimate and part of a considered and lawful process.

Briefing paper on potential property agreements for 8 April 2016 board meeting

This briefing paper, dated 5 April 2016, was also apparently prepared by Ms Bakis, in that it is written on KNL letterhead, purports to be legal advice, and refers throughout to "instructions" given to KNL by the ALALC board. It is not signed by Ms Bakis. Her evidence to the Commission was that "Mr Petroulias would have written most of this". The paper features a handwritten notation on the first page indicating that it was "Received by:" Ms Dates, next to Ms Dates' signature. The subtitle of the paper is "Legal issues in the selection of property proposals". However, there is scant attention given to legal issues in the paper – on one view the only legal issue addressed is, again, the question of whether or not a land dealing entered into absent the approvals required by the ALR Act is contrary to that Act, or put another way, whether it will "offend the ALRA [sic] that you have agreements executed". In the main, rather than addressing legal issues, the paper purports to consider for the benefit of the ALALC board the commerciality of the Sunshine and Solstice proposals and the advantages and disadvantages of these proposals relative to each other. As Counsel Assisting observe in their written submissions, the paper rests on a false premise because, as at its date, the Sunshine transaction had already been accepted (by Ms Dates and Mr Green purportedly on behalf of the ALALC), documented, and executed. As the Commission found in chapter 10, those representing Sunshine considered that a deal had been concluded on 23 October 2015, and Mr Petroulias, Ms Bakis and Mr Green had actively taken steps to encourage them to believe not only that a deal had been concluded on that date, but also that there were no impediments, statutory or otherwise, to Sunshine ultimately exercising the options it had been granted pursuant to that deal. The notion that the deal was now being presented as merely one of a number of options for the ALALC board to consider is thoroughly misleading and a misrepresentation of the events that had already transpired.

Before noting some of the detail included with respect to the Sunshine transaction, it must be observed that the briefing paper includes, as with other KNL briefing papers, statements that the Commission finds (or has already found in previous chapters) to be false. These include:

- the opening statement, which is an assertion that, in November 2014, the board had unanimously resolved to sell all the land owned by the ALALC. This is assumed to be a reference to the resolution made by the board in October 2014 to sell its five Warners Bay properties to IBU. There was, as the Commission found in chapter 10, no resolution that the board sell all of its land
- the assertion that the board had been provided with a review of the property proposals and an executive summary from Able Consulting, being a reference to the Able Consulting Report, which the Commission found in chapter 10 was in fact prepared by Mr Petroulias and was not provided to the board at its 8 April 2016 meeting
- the suggestion that the ALALC had benefited from having ULC as its agent, with "Nick Peterson [Mr Petroulias] doing much work to assist us." The ALALC never appointed ULC or anyone connected with ULC, including Mr Petroulias, to act as its agent, and there was no "work" carried out by Mr Petroulias as part of ULC or otherwise for the assistance of the ALALC
- the contention that the ALALC board had "adopted a policy of asking for the execution of agreements before taking them [prospective purchasers] seriously enough to introduce the proposal to the community", when there is no record in the evidence before the Commission of the ALALC board possessing any such (manifestly ill-advised) policy or giving any such instructions to KNL

- the assertion that the ALALC board had "instructed us that your designated agent Richard Green or the Chairperson or both can sign agreements with developers" when, as the Commission found in chapter 9, neither Mr Green or Ms Dates had been given authority by the ALALC to sign agreements on behalf of the ALALC board, and Ms Bakis told the Commission she was unsure of where it was recorded that Ms Dates and Mr Green had been so authorised.

The "comments" provided in the briefing paper on the Sunshine transaction are equally misleading and also omit matters that it would have been critical to include if it were a genuine attempt to inform and advise the ALALC board. It is asserted, ambiguously, that the Sunshine proposal "was considered favourable last year and expected to be approved", without stating by whom it was considered to be favourable, what "favourable" means in this context, or by whom it was expected to be approved (if the reference to anticipated approval was to ALALC members or NSWALC approval, the Commission notes that it found in chapter 10 that no steps were taken by Ms Bakis, Mr Green or Ms Dates towards obtaining those statutorily required approvals after the agreements were executed). The paper omits any reference to the fact that in October and December 2015, agreements had been executed by Sunshine and by Ms Dates and Mr Green, ostensibly on behalf of the ALALC. The paper omits any reference to the fact that the agreements with Sunshine hinged on it "buying out" an interest in ALALC land said to be held by Gows, how much Gows was paid by Sunshine in order to acquire that interest, and how much money was paid to the ALALC by way of an option fee and held in trust for it by KNL. It refers, in vague terms, to Sunshine having "paid to co-operate with Gows (and Keeju)", without identifying the amount that was paid to those entities, what was meant by "cooperation", who those entities were, and who stood behind them. It states, as if by way of criticism of the "proposal", that "the money they put in was directed back out" without explaining that this money was an amount that, pursuant to the Sunshine Variation Agreement, was to be held by KNL on trust for the ALALC, but in breach of that agreement was directed by Mr Petroulias to be paid to his company (Gows), and that Ms Bakis approved and facilitated this happening.

When asked about this statement by Counsel Assisting, Ms Bakis said that it was "just an incorrect statement", and not made by her, as the paper was mostly written by Mr Petroulias. It is also asserted in the paper that the Sunshine "proposal" had changed, allowing Sunshine to "cherry pick" two pieces of land in the Warner's Bay area when in fact this entitlement was not the result of any change to the agreements: the capacity for Sunshine to elect to exercise individual options was provided for in the Sunshine Variation Agreement that Ms Bakis had approved and which Mr Green and Ms Dates had executed purportedly on behalf of the ALALC in October 2015.

The description provided in relation to the Solstice proposal is also replete with misleading and false statements. The briefing paper implies that Solstice, as a means of obtaining security in relation to its investment, had proposed that ALALC property be transferred to a unit trust to hold the property that was the subject of the transaction. This is a reference to the establishment of Awabakal LALC Trustees, an entity that had been incorporated in New Zealand by Mr Petroulias in January 2016, and a structure for the transaction that had been proposed, not by Solstice, but by Mr Petroulias and Ms Bakis who (as the Commission found in chapter 10) had drafted the Solstice transactional documents, including the Collaboration Agreement. On Ms Bakis' own evidence, it was she who had advised the ALALC that Awabakal LALC Trustees be incorporated and used in both the Solstice and Advantage transactions. During her evidence before the Commission, she explained that she "felt that the, that structure needed a corporate entity and it's just cheaper to do these in New Zealand and, and that was my advice". The paper suggests that the transaction is structured such that, after the NSWALC issues a dealing approval certificate, Solstice will deal with the unit trust (Awabakal LALC Trustees). Yet none of the agreements that were in draft as at the purported date of the briefing paper made any reference to the approval process under the ALR Act, or the requirement that a dealing approval certificate be issued by the NSWALC, and, as the Commission found in chapter 10, Solstice was unaware of the need for a dealing approval certificate until 3 May 2016, when it obtained advice from its barrister, Mr Fernandes.

Another issue identified in the briefing paper with respect to the Solstice transaction, which was said to be "of more pressing concern", was the "purchase price formula", found in Schedule 1 to the Solstice Call Option Agreement, in item 2. The paper suggests that the capacity for Solstice to reduce the purchase price depending on the zoning achieved may leave the ALALC "with much less than you bargained [for]", and that KNL was not in a position to advise as to whether the formula is commercial. The implied suggestion that this formula would not, in KNL's opinion, be in the ALALC's bests interests is impossible to reconcile with the fact that the very same formula was adopted, verbatim, in the Advantage Call Option Deed that the Commission found in chapter 11 was drafted by Mr Petroulias and approved by Ms Bakis.

With respect to the proposed structure involving Awabakal LALC Trustees, the briefing paper states:

> *As you know from the audit process the ALALC is currently undergoing, there are reporting obligations for corporations established by a LALC. We don't believe that ALALC being (a) unit holder(s) in a unit trust which is the holding trust for a development project, offends section 52(5B), especially if in fact it is only a portion of your property value.*

The proposal, as at the purported date of the paper, was that the ALALC would establish Awabakal LALC Trustees, despite the company having already been incorporated by Mr Petroulias, as a vehicle for the transaction to proceed. The legal advice contained in this paper, ostensibly provided by Ms Bakis, was that this was permitted by the provisions of the ALR Act. Yet, at this time, s 52(5B) of the ALR Act prohibited a LALC from establishing or acquiring a corporation within the meaning of the *Corporations Act 2001* unless authorised to do so by any applicable policy of the NSWALC or the regulation. No such policy or regulation was in place at that time and, as a result, the contention in the paper that the ALALC could lawfully establish Awabakal LALC Trustees as part of the Solstice transaction was incorrect. Ms Bakis' evidence before the Commission on this issue was entirely unsatisfactory. She was unable to recall whether or not she researched whether there were any regulatory requirements or prohibitions connected with a LALC establishing a corporation, and did not know whether there was, around the time that she recommended this structure, any embargo on a LALC establishing a corporation.

Finally, there are, as with the review of the Sunshine transaction, some conspicuous omissions in the briefing paper with respect to the Solstice proposal. There is no reference to Gows' part in the proposal, namely, that the terms of the draft Surrender Agreement and Release between Gows and Solstice, pursuant to which Gows purported to surrender and release its alleged option to purchase the ALALC properties said to arise from the Second Gows Heads of Agreement, required Solstice to pay to Gows $1.2 million. There is also no reference to the proposed function of Able Consulting as the manager of the proposed joint venture between Solstice and the ALALC, the amount that Able Consulting could stand to benefit in playing this role, and the fact that, as the Commission found in chapter 10, Able Consulting was controlled by Mr Petroulias. The omission of these features that were central to the Solstice proposal, along with the omission of the matters that were key to the Sunshine transaction, leads the Commission to find that, once again, the paper was drafted by Mr Petroulias (with Ms Bakis' knowledge and approval) not with the intention of providing legal advice. Instead, they were omitted to generate a false record of the board receiving legal advice about the proposals when it had not, and the appearance that the conduct of Mr Petroulias, Ms Bakis, Mr Green and Ms Dates was undertaken with the knowledge and approval of the ALALC board, when it was not.

Briefing Paper on Advantage Property Agreements for Board Meeting 2 June 2015 [sic]

This briefing paper, dated 29 May 2016, was considered in some detail in chapter 11. The Commission observed that it contained a number of statements that were false, misleading or manifestly self-serving, and which either found no support in any objective evidence before the Commission or which had been found by the Commission to be untrue. The Commission found that the paper was drafted entirely by Mr Petroulias, with Ms Bakis' knowledge and approval, and that it was not tabled or discussed at the ALALC board meeting held on 2 June 2016.

Ms Bakis' involvement in the transactions

The extent to which it was Mr Petroulias, rather than Ms Bakis, who drafted the briefing papers or legal advices referred to above, but with the knowledge and approval of Ms Bakis, leads to a more general question about Ms Bakis' role and function as the ALALC's solicitor. Was Ms Bakis in fact carrying out legal work on behalf of the ALALC, in the form of drafting transactional documents, preparing and giving legal advice, and communicating and negotiating on ALALC's behalf with third parties such as Sunshine, Solstice, and Advantage? Or was Mr Petroulias carrying out this work, under cover of KNL, with Ms Bakis' knowledge and approval, despite Mr Petroulias during this entire period of time not possessing a practising certificate, and being an undischarged bankrupt?

The Commission has found, in chapter 7, that Ms Bakis drafted the First Gows Heads of Agreement, and in chapter 10, that she drafted each of the Sunshine transactional documents with the exception of the Variation Agreement. However, it is also clear that Mr Petroulias assisted Ms Bakis in the drafting of the Sunshine documents. Similarly, also in chapter 10, the Commission found that Ms Bakis played a role in drafting the Solstice agreements, with assistance from Mr Petroulias, and that she also approved each of them (in her purported capacity as the ALALC's solicitor). In chapter 11, the Commission found that Ms Bakis and Mr Petroulias were involved in drafting and negotiating the Advantage transaction agreements.

On numerous occasions while giving evidence before the Commission, Ms Bakis indicated that Mr Petroulias had drafted certain clauses within agreements that she had ostensibly prepared, and that she allowed him to do so. This included clauses within her fee agreements (such as clause 20 in both the First and Second KNL CSAs), and clauses within the Sunshine Variation and Advantage Collaboration Agreements. She also suggested that she had no role at all to play in drafting certain of the Solstice transactional documents (involving the Second Gows Heads of Agreement) and that those agreements were drafted by Mr Petroulias, a proposition that the Commission rejects. Ms Bakis indicated that a wide range of documents that appeared on her file and/or were ostensibly prepared by her for the ALALC were in fact prepared by Mr Petroulias. These included, inter alia, legal file notes, notes purportedly recording instructions regarding the Sunshine trust account disbursements in December 2015, letters both to and ostensibly *from* Mr Green and Ms Dates, and the Advantage Bill of Exchange.

Ms Bakis' evidence was that to the extent that file notes were drafted by Mr Petroulias, she would have read and approved them. Ms Bakis also told the Commission that Mr Petroulias drafted various resolutions that were put to the board, and "settled" minutes of various board meetings. She also told the Commission, with respect to the Advantage transaction, that she allowed Mr Petroulias to carry out the due diligence, although the Commission found in chapter 11 that no due diligence of any sort was carried out by anyone. It is also clear that, throughout 2015 and 2016, Mr Petroulias was sending emails from the KNL email address, sometimes using Ms Bakis' name, and sometimes using his own, and Ms Bakis allowed him to do so. Ms Bakis accepted that she was working hand-in-hand with Mr Petroulias all throughout 2015 and 2016 on these attempted transactions.

Ms Bakis did not, either in her evidence before the Commission or in her written submissions, seek to provide any clarity around the arrangements that were apparently in place between her and Mr Petroulias as to their dealings with the ALALC and on behalf of the ALALC. She also did not offer any plausible justification for her conduct in allowing Mr Petroulias to perform solicitor's work under her name or that of KNL. At times during her evidence, she sought to justify Mr Petroulias' involvement in negotiating property deals and drafting transactional documents as assistance that he was providing to the ALALC, in his capacity as a representative of ULC, which she said overlapped with her role. There are multiple difficulties with this theory which lead the Commission to reject this evidence as a possible explanation, including that:

- the ALALC board only resolved to become a member of ULC in June 2016 after each of these deals, including the Second Gows Heads of Agreement that was drafted by Mr Petroulias in late 2014, had purportedly been put together by Mr Petroulias for the ALALC
- on Ms Bakis' own evidence, ULC's role was in the nature of a lobbying or advocacy role, that is "to talk to land councils and see what land they couldn't sell or couldn't use and try and help those land councils with commercial outcomes, and the idea was that they'd get a commission…. So it was, it was a way of helping land councils make money and also for ULC to make money". By contrast, Mr Petroulias' involvement with the ALALC extended to drafting legal agreements, drafting legal advices, attending ALALC board meetings and drafting resolutions, minutes, and communications with members (as to which, see below), communicating and negotiating with third parties on behalf of the ALALC, ostensibly in the capacity as its solicitor or else purporting to in fact be Ms Bakis – that is, in effect, standing in the place of Ms Bakis or KNL. Even if the ALALC were a member of the ULC at all relevant times, a proposition that is not supported by the evidence, this conduct extended far and beyond anything that ULC could legitimately have been doing on behalf of the ALALC
- in the vast majority of cases, Mr Petroulias did not indicate that he was involved at all, let alone that he was involved as part of his work for, and the ALALC's membership of, ULC. Rather, the documents, communications and legal advices prepared or drafted by Mr Petroulias in relation to the ALALC were typically on KNL letterhead, bore no reference to ULC, were typically sent to others using the KNL email address, and if sent using the KNL email address, were often sent in Ms Bakis' own name
- even if Mr Petroulias' involvement was in his capacity as a ULC representative (which is not accepted), this would be a particularly troubling proposition for Ms Bakis, as the ALALC solicitor, to justify as she would have been allowing him to put deals together for ULC's commercial gain, with those deals being transactions that involved Mr Petroulias' interests and him obtaining financial gain through those interests (through Gows, Able Consulting, and his interests in Advantage). No solicitor, acting in accordance with their fiduciary duties, could sanction such an arrangement.

The Commission finds that although Ms Bakis played a role in drafting and negotiating documents in each of the attempted transactions, she also allowed Mr Petroulias to carry out work, and draft documents, advices, and communications, both to the ALALC and to third parties under the guise of KNL and/or in her own name. The Commission finds that Ms Bakis' facilitation of Mr Petroulias' conduct was a critical part of her participation in the Scheme. Further, the "appointment" of KNL, and then allowing Mr Petroulias to draft and convey to third parties transactional documents under the cover of that firm, and to provide "advice" from KNL to the ALALC in connection with the attempted transactions, was intended to give, and to a degree did provide, a veneer of legitimacy to each attempted transaction.

These findings are also supported by records created by Ms Bakis and Mr Petroulias, including the First and Second KNL CSAs, and covering letters to those agreements, and the various KNL briefing papers, in which it was suggested that KNL and Ms Bakis were carrying out work for the ALALC that self-evidently extended beyond Ms Bakis' expertise and qualifications as a solicitor, and that was in the realm of commercial property development and consulting work. For example, it will be recalled that in the briefing paper entitled Briefing Paper on Advantage Property Agreements for Board Meeting 2 June 2015 [sic], dated 29 May 2016 (discussed in chapter 11), it is stated that KNL's work included scoping out the nature of the work

> *necessary for obtaining community and NSWALC Division 4A approval for the "model" development of land. The objective you have instructed us was to review and present the major strategies and options for such developments. The work would involve undertaking the management of planning work as to what the various options that were available.*

The Commission has found that the ALALC board never instructed KNL to undertake this "pre-planning work" and no such work was conducted. Instead, these records were created to give the impression that the transactions engineered and put forward by Mr Petroulias (involving Sunshine, Solstice, and Advantage) were legitimate and conducted at arm's length by disinterested professionals.

The conduct of Ms Bakis and Mr Petroulias at ALALC board meetings

In chapter 10, the Commission discussed the presence of Ms Bakis and Mr Petroulias at ALALC board meetings, a practice which commenced with the 8 April 2016 meeting. It is apparent from the handwritten minutes of each of the ALALC board meetings that Mr Petroulias attended, and the evidence of the board members other than Mr Green and Ms Dates, that the ALALC board considered Mr Petroulias was a solicitor who worked with Ms Bakis at KNL and was attending board meetings in that capacity. There is no evidence that Ms Bakis sought to disabuse the ALALC board of the notion that Mr Petroulias was one of its solicitors. Ms Bakis' evidence was that she was aware that Mr Petroulias was communicating with the ALALC using her email address; she was aware that Mr Petroulias was preparing draft resolutions and minutes and, therefore, aware that Mr Petroulias was in effect, directing the business of the board.

Putting to one side Mr Petroulias' conduct, there was also no legitimate explanation for the extent of involvement and sway that Ms Bakis, as the ALALC's solicitor, appeared to have in and over the business of the ALALC board from around March 2016 onwards. Notwithstanding her degree of involvement in and frequency of contact with the board and its business, Ms Bakis did not disclose certain critical matters at the first meeting she attended on 8 April 2016, including the Gows Heads of Agreements, the Sunshine transaction, and the role of Gows in both the Sunshine transaction and the proposed transaction with Solstice. These are matters that Ms Bakis would surely have disclosed, had she been acting in good faith and in accordance with the duties that she owed to the ALALC as its solicitor. Further, at the June ALALC board meetings, Ms Bakis did not disclose her and Mr Petroulias' interests in the Advantage Group, and did not provide any advice to the board about the substance of the proposed transaction with the Advantage Group. The Commission considers that Ms Bakis' conduct at board meetings supports a finding that she was an active and willing participant in the Scheme.

Communications with the ALALC's auditors

In 2016, Ms Bakis, in her capacity as a legal advisor to the ALALC, was involved in assisting with the audit that was conducted of the ALALC by Mr Hickey, of PKF. Mr Hickey, who had conducted a number of audits of LALCS over the previous 10 years, had been appointed in September 2015 to audit the financial records of the ALALC for the financial year ended 30 June 2015.

As part of the process of preparing the audit report and opinion, in addition to securing the primary financial information, being the ALALC's accounting records, Mr Hickey also requested other information from the ALALC to ensure that the audit report captured a full and accurate financial picture of the ALALC. This included obtaining management representation letters for the financial year, and obtaining disclosures from the board, management, and their advisors for events occurring from 1 July 2015, being the date after the end

of the financial reporting period, through until the date the accounts were approved for signing and the audit opinion was issued which, in this case, was 20 July 2016. Mr Hickey, who gave evidence before the Commission, explained that obtaining disclosures made during the subsequent events period is an important element of the Australian auditing standard, in order that the auditor identifies events that may require adjustment of, or disclosure in, the financial report. Mr Hickey was assisted in his communications with the ALALC and Ms Bakis by his staff members, including Hayley Keagan.

On 18 June 2016, PKF sent a letter to Ms Bakis, being a "Confirmation and disclosure request for Awabakal Aboriginal Land Council" in connection with its audit. The letter noted that it understood that no legal services were provided by Ms Bakis for the period under review (1 July 2014 to 30 June 2015). Mr Hickey told the Commission that this statement was based on PKF's review of the ALALC's records and that it was never disputed by Ms Bakis, despite Ms Bakis initially being retained by Mr Green in November 2014, ostensibly to prepare the First Gows Heads of Agreement, and purporting to act in relation to the Sunshine transaction in 2015. The letter then asked Ms Bakis to identify a list of the matters for which she was acting for the ALALC and details relating to those matters, including the anticipated outcome, a list of invoices from 1 July 2015 to the date of the letter, and any other information that she considered may be relevant in relation to her dealings with the ALALC from 1 July 2015 to the date of the letter. In response, by letter dated 19 July 2016, Ms Bakis set out a list of matters that made no mention of any property transaction other than the proposed transaction with Advantage, in relation to which she stated that the expected outcome was a community meeting on 20 July 2016.

Ms Bakis did not disclose in this letter, or in any other subsequent communications that she had with PKF, the following agreements that had been entered into by the ALALC while she was acting or purporting to act as its solicitor.

- The First and Second Gows Heads of Agreements.
- The Sunshine Heads of Agreement dated 20 October 2015.
- The Sunshine Variation Agreement.
- The Surrender Agreement and Release.
- The Sunshine Deed of Acknowledgement and Guarantee.
- The letter of demand that the ALALC had recently received from Sunshine's lawyers regarding the Sunshine transaction, dated 15 July 2016.

Mr Hickey's evidence to the Commission was that each of the documents identified above ought to have been disclosed to PKF as the ALALC's auditors.

In the evening of 19 July 2016, Ms Keagan responded to Ms Bakis' letter. Ms Keagan noted that as part of her review of the ALALC board minutes, she had identified a "reference to Advantage Property Experts Ltd or the Advantage Group" and the resolution that "agreements with Advantage effecting previous board resolution be executed". Ms Keagan asked Ms Bakis for a copy of these agreements, as she was interested to know if there were any capital commitments or subsequent events that may require disclosure. In response, Ms Bakis initially wrote to Ms Keagan as follows:

> *As you know under the Aboriginal Land Rights Act, until and such time as the NSWALC has issued a certificate, anything before hand is of no significance whatsoever.*
>
> *The first step on this process is the presentation of the proposal to the community meeting tomorrow. If an 80% vote is achieved, the proposal goes before the NSWALC who appoint a panel of experts to access* [sic] *it. Therefore before the community meeting approval, there is nothing.*

The following morning, Ms Bakis wrote to Ms Keagan by email again, stating: "The Advantage agreements are attached". The documents that Ms Bakis attached were not the full suite of the Advantage transactional documents, and were limited to two unsigned versions of the Advantage Collaboration Agreement dated 7 June 2016, and the Advantage Collaboration Agreement Addendum dated 7 June 2016. Mr Hickey told the Commission that PKF was not sent any other information about any other agreements entered into between the ALALC and Advantage, and that PKF was not told that there were a number of other agreements that had been signed involving the ALALC and Advantage. Mr Hickey's evidence was that these agreements ought to have been disclosed as part of the ALALC's audit process.

Ms Bakis' evidence before the Commission was that she told Ms Keagan over the telephone about the executed versions of the Advantage agreements, stating words to the effect of "I've got signed agreements. They're in my office. There is no way I can get them to you today". Ms Keagan, who gave evidence before the Commission, agreed that she had spoken to Ms Bakis over the telephone on 20 July 2016 in relation to the Advantage agreements, among other matters, and that Mr Petroulias, whom Ms Bakis introduced as her "associate, Mr Peterson", joined the call. In an email sent to Ms Keagan the previous day, Ms Bakis had told Ms Keagan in relation to an earlier telephone conversation

that she had had with Ms Keagan that "the guy who I had on speaker was one of my staff Nick Peterson". Contrary to Ms Bakis' evidence, Ms Keagan stated that Ms Bakis made it clear to her that there were no documents that had been entered into or executed because they were still awaiting members' approval.

Ms Keagan also stated that Ms Bakis did not mention any other agreements other than the two that she had emailed through to Ms Keagan. Ms Keagan took a file note of this conversation, as part of her audit evidence. On this issue, the file note records: "DB [Ms Bakis] explained that the New Zealand entities are still being established so there is no signed agreement with Advantage". Ms Keagan expressly denied that Ms Bakis ever told her that there were signed agreements with Advantage, and stated that if Ms Bakis had so informed her, it would have been recorded in her file note of the conversation, and also would have had a very different impact on the audit. Ms Keagan also stated that Ms Bakis did not disclose that there were two call option agreements with Advantage, and that if she had been so informed, she would have recorded this in her file note and asked to review them. The Commission rejects Ms Bakis' evidence and accepts the evidence of Ms Keagan, who was plainly a witness of truth, and whose evidence is supported by the file note that she took at the time. The Commission finds that Ms Bakis deliberately failed to disclose the executed versions of the Advantage Collaboration Agreement and the Call Option Agreements dated 7 and 10 June 2016, which failure was part of her attempt to conceal their existence, and her and Mr Petroulias' conduct in relation to that transaction.

Ms Bakis' communications with PKF were characterised by misrepresentations, false statements and omissions. Her failure to disclose the full suite of the Advantage agreements and assertion that none had yet been executed was but one example. In response to queries from Ms Keagan in relation to Awabakal LALC Trustees, Ms Bakis asserted, in an email to Ms Keagan dated 19 July 2016, that KNL was "in the process of incorporating Awabakal LALC Trustees Ltd which will be owned by Awabakal LALC but this entity has not been incorporated as yet". She did not reveal that Awabakal LALC Trustees had been a party to the Advantage agreements that had been executed in June 2016. She stated at least twice, falsely, that Mr Petroulias was a member of her staff. The Commission notes that Ms Bakis did *not* tell PKF, who had asked directly about the identity and role of Mr Petroulias, that his participation and involvement in the work she was carrying out was in his capacity as a representative of ULC. This behaviour was not the behaviour of an honest solicitor, acting in good faith on behalf of her client. It is evidence of conduct that was manifestly dishonest and calculated to prevent certain matters involving her conduct and that of Mr Petroulias' coming to light.

The LEC proceedings

As discussed in chapter 11, on 27 June 2016, the ALALC filed a summons in the Land and Environment Court against the minister, Mr Wright as registrar of the ALR Act and the NSWALC. The principal objects of the LEC proceedings were to restrain the minister from taking any action under s 223B(1) of the ALR Act (to prohibit the ALALC from taking any specified actions or exercising specified conduct, such as, dealing with its land, for a limited period of time), and restraining the minister from appointing an administrator to the ALALC pursuant to s 222 of the ALR Act. Other declaratory relief was also sought. Ms Bakis was the solicitor on record for the proceedings. The Commission has not considered the relative merits of the proceedings, which were in any event discontinued by the ALALC on 23 September 2016, approximately 10 days after Ms Bakis' retainer with the ALALC was terminated. However, it is relevant to examine elements of the proceedings and Ms Bakis' involvement in them in order to consider what they reveal about Ms Bakis as a legal practitioner, her role in the Advantage transaction, and her continuing arrangements with Mr Petroulias.

In support of the summons and interim relief sought by the ALALC, Ms Bakis prepared an affidavit, sworn 27 June 2016. In that affidavit, she referred to the Collaboration Agreement with Advantage NZ, and indicated that if the minister were to prohibit land dealings as foreshadowed in her notice of 20 June 2016, then the ALALC would suffer financial loss as "the deal involves above market consideration and renovation of all community housing and the deal may not be able to be resurrected with this party or a deal entered into with some other party on such [sic] favourable basis". Although Ms Bakis' affidavit referred to the Advantage deal providing "above market consideration", she did not refer to or annex a copy of the Advantage Call Option Deed, which contained the relevant clauses regarding purchase price. Instead, Ms Bakis referred to and annexed a copy of the Collaboration Agreement, which makes no reference to the consideration offered by Advantage NZ. Further, the copy of the Collaboration Agreement that was annexed to Ms Bakis' affidavit was unexecuted.

Ms Bakis did not refer to the full suite of the Advantage transactional documents in her affidavit, and nor did she annex them. She did not note in her affidavit that the Collaboration Agreement to which she referred had in fact been executed by all parties on 7 June 2016. Ms Bakis' entirely unsatisfactory explanation for this partial and incomplete disclosure to the Land and Environment

Court in relation to the matters for which she sought urgent injunctive relief was that she was having "printing troubles" at the time, and that she considered that mention of the Collaboration Agreement was all that was required to give the court a flavour of the transaction. Ms Bakis knew, as a legal practitioner, that she owed the court a duty of absolute candour, and an application for urgent injunctive relief was one which required full and frank disclosure to the court of all material facts. Yet, as with her communications with the ALALC's auditors, she omitted mention of a number of salient facts that were of immediate and pressing relevance to the task with which she was involved, and misrepresented the facts that she did elect to disclose. The Commission accepts the submission made by Counsel Assisting in their written submissions that Ms Bakis deliberately sought to conceal the progress that had already been made with respect to the Advantage transaction, including that the agreements had already been executed. The Commission notes that these two instances of Ms Bakis concealing that executed agreements had been entered into in relation to the Advantage transaction (in her dealings with PKF and the court) suggest that, contrary to the "advice" purportedly given to the ALALC, as well as what she had misrepresented to Ms Keagan about the significance of non-approved agreements, Ms Bakis knew and understood that it was unlawful and a contravention of the ALR Act for the ALALC to execute agreements concerning land dealings absent the necessary statutory approvals.

As previously noted, on 1 July 2016, at the first directions hearing of the LEC proceedings, mutual undertakings were given by the parties. The minister undertook not to issue a notice under s 223B of the ALR Act or to appoint an administrator, and the ALALC undertook to refrain from "selling, exchanging, leasing or disposing of or otherwise dealing with the land vested in it, apart from progressing to and holding a meeting of its voting members on 20 July 2016 for a resolution as to whether the members approve the agreement referred to in annexure 'F' of the affidavit of Despina Bakis dated 27 June 2016 and if so on what conditions".

As the Commission found in chapter 11, despite these undertakings, which were extended on three occasions between 25 July and 8 August 2016, Ms Bakis prepared two notices for the members' meeting to be held on 20 July 16 which breached the terms of the undertaking. This was because the proposal put to members was that they approve the land dealings the subject of the Advantage agreements, in the form of resolution required for land dealings by s 42G(5) of the ALR Act. That Ms Bakis was prepared to risk and, in fact, took steps to facilitate the ALALC acting in breach of the undertakings it had given to the minister so that the ALALC members could approve the Advantage transaction, suggests once again a dereliction of her duties as a solicitor and a preparedness to put her interests, and those of Mr Petroulias, above those of her client.

A further and final illustration in relation to Ms Bakis' conduct in connection with the LEC proceedings is found through an examination of the invoices that were issued by solicitors Jackson & Associates, who appear to have been retained by Ms Bakis as her agents to conduct the LEC proceedings, even though Ms Bakis remained as the solicitor on the record. These invoices reveal that Mr Petroulias was attending conferences with Jackson & Associates and counsel retained by the ALALC in the LEC proceedings. Mr Petroulias is recorded as giving instructions to Jackson & Associations, presumably on behalf of the ALALC, and assisting with the preparation of evidence and submissions. While Ms Bakis also figures in these invoices as a person from whom Jackson & Associates received instructions, it is clear that Ms Bakis was permitting Mr Petroulias to provide instructions without her and, in effect, act in her place.

Ms Bakis told the Commission that she knew that Mr Petroulias was helping Mr Jackson of Jackson & Associates with the LEC proceedings, although the only explanation she could offer as to why Mr Petroulias was acting in this capacity was that Mr Petroulias was helping her out. There is no possible plausible explanation for why Mr Petroulias was providing instructions on behalf of either Ms Bakis or the ALALC in connection with the LEC proceedings. In so doing, Mr Petroulias, who owed no duties to the ALALC, was given free rein to pursue his own interests rather than those of the ALALC. The Commission finds that Ms Bakis knew of, permitted, and facilitated the arrangement, which permitted her and Mr Petroulias to pursue their own interests through the LEC proceedings, in buying time for the Advantage deal to progress, at the expense of the ALALC's interests.

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Chapter 13: Financial benefits

In this chapter, the Commission examines the financial benefits received by each of Mr Petroulias, Mr Green, and Ms Bakis and the connection between those benefits and their involvement in the attempted land dealings over ALALC land. The Sunshine transaction was the only potential source of financial benefits, as it was the only attempted transaction that resulted in the payment of funds by the prospective or would-be purchaser. These funds were paid out by Sunshine to KNL's general and trust accounts, and also to a bank account held by Gows. Monies then flowed either directly from the Gows account, or first from the KNL accounts to Gows, and then to a large number of bank accounts. In this chapter, the Commission traces the flow of funds from the Sunshine transaction and how and by whom they were then used to determine whether each of Mr Petroulias, Mr Green, and Ms Bakis received a financial benefit as a result of their participation in the Scheme.

The Sunshine funds

It will be recalled from the Commission's consideration of the Sunshine transaction in chapters 8 and 9 that Sunshine had made a number of payments to KNL, into both its general and trust accounts, and Gows between June and December 2015. Sunshine made the following payments:

- $50,000, paid into the KNL trust account on 13 July 2015. As the Commission found in chapter 8, at the time Sunshine made the payment of $50,000 into the "vendors [sic] solicitors Trust account" (Acquisition Proposal, item 5) it was for the benefit of the ALALC. In the original version of the Acquisition Proposal, the $50,000 was fully refundable to Sunshine should it elect not to proceed with the acquisition following the completion of due diligence. However, in the amended version of the Acquisition Proposal, signed by Mr Petroulias on Ms Bakis' behalf, the $50,000 payment was not refundable were Sunshine to elect not to proceed with the acquisition, with the payment instead being applied towards "reimbursing the costs of valuation, vendors estate agent and vendors solicitors fees". The Commission found in chapter 9 that the costs of the valuations obtained, in the order of $30,000 in total, were in fact borne by Sunshine. There was no evidence before the Commission of estate agent fees either being incurred or paid by the ALALC in connection with the Sunshine transaction, and, as the Commission found in chapter 12, no solicitors' fees were invoiced by or paid to KNL by the ALALC in connection with the Sunshine transaction (nor did KNL issue invoices to, or have fees paid by, Gows). Pursuant to clause 2.5(b) of the Sunshine Heads of Agreement the then remaining $48,000 ($2000 having been paid out to Mr Green, as to which, see below) was to be paid to Gows. However, this clause was varied by clause 4 of the Sunshine Variation Agreement, which deleted clauses 2.1 to 2.5 of the Sunshine Heads of Agreement, the result of which was that no funds were to be released to Gows.
- $250,000, on 26 October 2015, by way of two bank cheques drawn in favour of Gows which were then deposited into a Macquarie Bank account held by Gows. As the Commission found in chapter 9, the $250,000 paid by Sunshine to Gows across the two bank cheques represented the "surrender payment" payable by Sunshine to Gows, in accordance with clause 1(a)(i) of the Variation Agreement.
- $512,000, by bank cheque paid into the KNL trust account on 26 October 2015.

- $200,000, by bank cheque, which was paid into the KNL general account on 3 December 2015, but then subsequently transferred into the KNL trust account.

Those funds that were not paid directly to Gows, but instead into the KNL accounts and subsequently on to Gows (with the exception of the first entry), can be traced as follows:

- $6,666 was paid on 29 October 2015 into an account held by Mr Sayed
- $20,000 was paid on 30 October 2015 into an account held by Gows
- $26,666 was paid on 2 November 2015 into an account held by Gows
- $400,000 was paid on 3 December 2015 into an account held by Gows
- $327,268 was paid on 22 December 2015 into an account held by Gows.

Additionally, on 22 September 2015, $2,000 was withdrawn from the KNL trust account and paid to Mr Green by way of a cheque made out to him which was then deposited into a Commonwealth Bank account held by Mr Green. The evidence of Mr Zong and Mr Rhee was that Mr Zong was asked by Mr Rhee to agree to release $2,000 from the $50,000 that had been paid into the KNL trust account (pursuant to the Acquisition Proposal) for the benefit of the ALALC rugby league team, which had asked for sponsorship. Yet, the evidence establishes that rather than being used to fund an ALALC rugby league team, the $2,000 was spent by Mr Green on mattresses, furniture and cash withdrawals.

When questioned about this expenditure by Counsel Assisting, Mr Green asserted that the money was used by him for a men's shed that he ran from his home for men in crisis to have somewhere to meet and talk. This evidence is rejected and the evidence of Mr Zong and Mr Rhee, who were both clear in their recollection that the $2,000 was released from KNL's trust account for ALALC sports sponsorship purposes, is preferred. Mr Green's evidence on this topic is rejected not only because it conflicts with the evidence given by Mr Zong and Mr Rhee, but also because his evidence, which shifted and evolved under questioning from Counsel Assisting, lacked credibility. Initially, Mr Green asserted that he only purchased a dining suite comprising "table and chairs for the shed". He then stated that his purchases were of a slightly higher magnitude, consisting of a "table and chairs and a lounge and little urn and coffee and all that stuff". Then, when Mr Green was asked about records suggesting that he also purchased mattresses, he stated that he purchased mattresses for people to camp at his house, which he asserted served as "sort of a half away [sic] house".

Further, when Mr Green returned to the Commission several months later in order to complete his evidence, he suggested that the $2,000 cheque he had received and deposited into his account on 22 September 2015 related to him having asked "for sponsorship for a rugby league football team", seemingly forgetting about, and not making any reference to, the evidence he had given previously about the men's shed/half-way house he was said to be running. Mr Green also asserted that he had no knowledge, despite receiving the cheque from KNL's account, that the funds had any connection with Sunshine and the purported entry by the ALALC into the Acquisition Proposal, suggesting perhaps that it was KNL that had provided the sponsorship rather than Sunshine. Mr Green's evidence on this topic is also rejected as false. The Commission finds that Mr Green knew that the money had come from Sunshine, after he had signed, purportedly on behalf of the ALALC, the Acquisition Proposal with Sunshine, and also finds that he spent the full amount for his personal benefit.

As the Commission found in chapter 9, the $712,000 paid by Sunshine into the KNL trust account, across the two

payments on 26 October 2015 and 3 December 2015, represented the option fee payable by Sunshine to the ALALC, in accordance with clause 4 of the Variation Agreement. Pursuant to that clause, $400,000 was to be released to the ALALC, while the balance was to be held in KNL's trust account. Despite the terms of the Sunshine Heads of Agreement, as varied by the Variation Agreement, Ms Bakis paid $773,934 from the KNL trust account to Gows, being the entirety of the option fee and some additional funds, including what remained of the $50,000 paid by Sunshine pursuant to the Acquisition Proposal. Gows had no entitlement to the funds held in the KNL trust account and Ms Bakis' release of the funds on 3 December 2015 and 22 December 2015 was contrary to that agreement. Ms Bakis had no plausible explanation for her conduct in releasing funds held in trust for her client, the ALALC, to Gows. Although she sought to suggest during her evidence before the Commission that as events happened, Gows was in fact entitled to the amounts that she disbursed from her trust account, she never identified for the Commission what she said was the source of Gows' entitlement to the funds.

The Commission finds that Ms Bakis deliberately released the Sunshine funds held in her trust account to Gows, despite Gows having no entitlement to those funds.

On several occasions throughout giving her evidence before the Commission, Ms Bakis asserted that it had been agreed between the parties that Gows would be paid before the ALALC: it was "part of the deal, that Gows would be paid first", it was "black and white that that money was not for Awabakal, it was for Gows", and "Gows was always going to be paid first". Ms Bakis was never able to point to a particular document that supported this contention, which is reason enough for the Commission to reject it. Additionally, however, there are particular matters regarding the way in which funds were initially transferred by Sunshine and then subsequently transferred to Gows that belie the theory that "Gows was always going to be paid first". The first is that funds were paid by Sunshine directly into Gows' account in the amount of $250,000, and then separately, funds were paid to KNL. There would have been no reason for Sunshine to split the payments in this manner if the parties had agreed that Gows was always entitled to, and would be paid the entirety of, the funds paid by Sunshine. Indeed, it was not put to Mr Zong by either counsel for Ms Bakis or Mr Petroulias that the money he had paid was intended always to go to Gows; his unchallenged evidence was that the $712,000 paid to KNL was for the benefit of the ALALC.

Secondly, when the remaining Sunshine funds were paid out of KNL's trust account on 3 December 2015 and 22 December 2015, it was purportedly pursuant to "disbursement instructions", that is, two documents styled "Completion Instructions; Trust Account Dispersement [sic] Instructions". The Commission found in chapter 9 that although both documents bear Mr Zong's signature, he had only signed the first one and knew nothing of the second. Additionally, both sets of instructions feature handwritten notations at the foot of the documents that read as follows: "Ratified 22.12.15. Re-confirmed 11.1.16". These notations, on both documents, appear to bear Ms Dates' signature.

In chapter 9, the Commission rejected as false the evidence Ms Bakis gave about these notations, which was to the effect that she sought to have the disbursement instructions "ratified" for the purposes of transparency. As the Commission found in that chapter, if the disbursement of funds held in trust for the ALALC was legitimately transferred to Gows then there could be no reason to have, or purpose in having, the release of funds ratified by the ALALC. Equally, if the funds had always been intended for Gows, then there could have been no reason for Mr Zong to sign either set of instructions, or for Ms Dates to attempt to ratify either of them. The Commission finds that these "instructions" were created by Ms Bakis and Mr Petroulias in an effort to create the perception that Ms Bakis was authorised to transfer the remaining Sunshine funds to Gows and that those payments were legitimately made when they were not, as Gows had no entitlement to those funds.

Before examining the flow of the Sunshine funds from the Gows account, it is necessary to deal with the proposition made by Mr Petroulias in his written submissions that Gows was a co-trustee for the Gows Heat Collection Agency Trust and received funds in that capacity, with no benefit accruing to Mr Petroulias or anyone else involved in the Scheme. Mr Petroulias submits that the "ULC Trust No 4" was a sub-trust for the Gows Heat Collection Agency Trust, and its purpose was to invest in and establish the capability of a number of businesses such as Best Industrial Sales. Mr Petroulias points to no evidence in support of this proposition. Mr Petroulias also did not identify any evidence substantiating the identity of the beneficiaries of the Gows Collection Agency Trust, and Mr Petroulias was unable to recall who the beneficiaries were, when he was asked by the Chief Commissioner to name them during the public inquiry. There is also no Gows Heat Collection Agency Trust deed in evidence before the Commission – it was not included in the material produced to the Commission by Mr Vaughan on behalf of Gows, despite Mr Petroulias asserting in his written submissions that the material produced by Mr Vaughan establishes that Gows is a co-trustee of the Gows Heat Collection Agency Trust.

The Commission accepts the submission made by Counsel Assisting that if Gows received the Sunshine funds in its capacity as trustee of the Gows Heat

Collection Agency Trust, then the First Gows Heads of Agreement and the agreements entered into by Gows with Sunshine would have been entered into by Gows in that capacity. However, those documents do not refer to the Gows Heat Collection Agency Trust or Gows' role as trustee. Nor does any correspondence purportedly sent to the ALALC in relation to the First Gows Heads of Agreement, or any correspondence sent in relation to the Sunshine transaction, which tends to suggest that Gows did not receive the Sunshine funds in a trustee capacity. In any event, as the Commission found in chapter 6, Mr Petroulias was the controlling mind of Gows and was, in substance, Gows. It follows from this finding, as well as the matters identified above, that Gows was not a trustee, and did not receive the proceeds of the Sunshine transaction in its capacity as a co-trustee of the Gows Heat Collection Agency trust. Rather, the funds were received by Mr Petroulias.

The Commission also makes the following observations. As found in chapter 10, there was no agreement on the part of Mr Zong for Gows to use the proceeds of the Sunshine transaction to "fund ULC". Mr Zong denied entering into any such agreement, or entering into any other agreements with Mr Petroulias aside from those connected with the ALALC land that he entered into on 23 October 2015, and this evidence, which was unchallenged, was accepted by the Commission. Additionally, ULC was an organisation that Mr Petroulias established with Mr Green. Accordingly, even if the Commission had not rejected the proposition that Gows was a co-trustee of the Gows Heat Collection Agency Trust, as Mr Zong never agreed to the funds he had paid for the benefit of the ALALC being used to fund or invest in ULC, the transfer of funds to Gows (purportedly for the benefit of ULC) would still be neither authorised nor legitimate, and their purported use by ULC would still be to the financial benefit of Mr Petroulias and Mr Green. ULC, its operations and its funding, is addressed further below in connection with the contention that financial benefits Mr Green received were in connection with, and as recompense for, his work for ULC.

The proceeds group

After the Sunshine funds were received by Gows, a series of transactions transpired involving 63 different bank accounts. The account names, date upon which they were opened, and with whom, are set out in the table below ("the Table of Accounts"). Some of these accounts are not relevant to the analysis that follows, being Mr Green's Commonwealth Bank account (item 34 below), into which he deposited the $2,000 cheque from the KNL trust account discussed above, the KNL trust account and general account (items 2 and 3 below), and the two accounts opened in the name of Advantage Property Experts Syndications (being the Advantage entity that was a wholly-owned subsidiary of Advantage NZ), which were both opened jointly by Mr Petroulias (using his alias, Nicholas Peterson, and signing the account opening documents in his purported capacity as "General Manager" of Advantage Property Experts Syndications Pty Ltd), Mr Soulios, and Mr Faraj. The two accounts opened in the name of Advantage were not the subject of any of the transactions now to be discussed. However, the remaining 58 accounts either received Sunshine funds directly or indirectly from Gows (hereafter, these 58 accounts are referred to collectively as "the proceeds group").

There was an extraordinary number of transactions conducted among the accounts belonging to the proceeds group between 2015 and 2018, involving the transfer and receipt of the Sunshine funds that possessed no apparent legitimate purpose. For example, a Macquarie Bank account opened by Ms Bakis in January 2016 (item 57 in the table) received a total of 141 deposits between January 2016 and February 2018, in the amount of just over $3.7 million. In that same period, there were 368 withdrawals made from that account, amounting to approximately $3.7 million. Ms Bakis' evidence was that this account was not used by her to operate her legal business, that the funds circulating through the account were "the same money round and round", and that she circulated this money through her account because that is what she was directed to do by Mr Petroulias. Her only attempt at an explanation for this conduct, which the Commission rejects, is that this account, opened in the name of her firm, was a "paymaster account and that's where they wanted to put the money so that they can transfer it to other places". However, Ms Bakis also acknowledged with respect to this account that all of the money circulated through it had Gows as its source. An analysis of the circular transfers across the proceeds group reveals that they could have been made with no purpose other than to disguise the source and ultimate use of the Sunshine funds, and the Commission so finds.

Financial benefits received by Mr Green

It is apparent that Mr Green received a financial benefit as a result of his involvement in the Scheme; that is, the part he played in relation to each of the purported or attempted transactions involving Gows, Sunshine and Solstice, as well as, finally, Advantage. The financial benefits Mr Green received were both direct and indirect. The direct financial benefits received by Mr Green were of two kinds, as described on page 130:

Table of Accounts

No	Bank	Account Name	Account Opened
1	Macquarie Bank Limited	Gows Heat Pty Ltd ATF Gows Heat Collection Agency Trust	3/06/2011
2	Westpac	Knightsbridge North Lawyers Pty Ltd	10/01/2013
3	Westpac	Knightsbridge North Lawyers Pty Ltd Law Practice Trust Account	7/03/2013
4	Australia and New Zealand Bank	Nicholas James-Dimitrios Peterson	8/04/2013
5	Macquarie Bank Limited	Daphne Regina Diomedes	27/05/2013
6	Macquarie Bank Limited	Daphne Regina Diomedes	16/06/2013
7	Bankwest	Point Partners Consulting Pty Ltd	21/06/2013
8	Macquarie Bank Limited	Nicholas James-Dimitrios Peterson	17/07/2013
9	Macquarie Bank Limited	Nicholas James-Dimitrios Peterson	17/07/2013
10	Macquarie Bank Limited	Michael Felson	18/07/2013
11	National Australia Bank	Nicholas Berkley	26/07/2013
12	National Australia Bank	Nicholas Berkley	26/07/2013
13	Macquarie Bank Limited	Michael Nicholas Rockforth	30/07/2013
14	Macquarie Bank Limited	Nicholas Berkley	30/07/2013
15	National Australia Bank	Michael Nicholas Rockforth	30/07/2013
16	Macquarie Bank Limited	Johan Pieter Latervere	31/07/2013
17	AMEX	Michael Nicholas Rockforth	8/08/2013
18	Macquarie Bank Limited	Nicholas Berkley	29/09/2013
19	National Australia Bank	Daphne Regina Diomedes	2/11/2013
20	National Australia Bank	Peter Robert Provest	2/11/2013
21	Australia and New Zealand Bank	Nicholas James Dimitrios Peterson	2014 or prior
22	Australia and New Zealand Bank	Nicholas James-Dimitrios Peterson	2014 or prior
23	Wesfarmers Finance	Daphne Regina Diomedes	3/03/2014
24	Mastercard	Michael Felson	11/07/2014
25	Macquarie Bank Limited	Nicholas James Piers	28/11/2014
26	Commonwealth Bank of Australia	Nicholas James-Dimitrios Peterson	2015 or Prior
27	National Australia Bank	Johan Pieter Latervere	2015 or prior
28	National Australia Bank	Michael Nicholas Rockforth	2015 or prior
29	Bankwest	Daphne Regina Diomedes	15/01/2015
30	Bankwest	Nicholas James-Dimitrios Peterson	2/02/2015
31	Bankwest	Best Pay Custodial Pty Ltd	7/04/2015
32	Bankwest	Best Pay Custodial Pty Ltd	7/04/2015

No	Bank	Account Name	Account Opened
33	Bankwest	Best Pay Custodial Pty Ltd	7/04/2015
34	Commonwealth Bank of Australia	Richard John Green	17/04/2015
35	HSBC	Nicholas Berkley	30/05/2015
36	Bank of Sydney	Nicholas James Piers	21/08/2015
37	Qudos Bank	Daphne Regina Diomedes	24/08/2015
38	Qudos Bank	Nicholas James-Dimitrios Peterson	26/08/2015
39	Macquarie Bank Limited	Nicholas Piers	22/09/2015
40	Macquarie Bank Limited	Johan Pieter Latervere	5/12/2015
41	Macquarie Bank Limited	Michael Felson	5/12/2015
42	Macquarie Bank Limited	Nicholas James Dimitrios Peterson	5/12/2015
43	Macquarie Bank Limited	Nicholas James Piers	5/12/2015
44	Macquarie Bank Limited	Richard John Green	5/12/2015
45	Macquarie Bank Limited	Best Industrial Sales Pty Ltd	7/12/2015
46	Macquarie Bank Limited	Best Pay Custodial Pty Ltd	7/12/2015
47	Macquarie Bank Limited	Michael Nicholas Pearson	7/12/2015
48	Macquarie Bank Limited	Peter Robert Provest	7/12/2015
49	Macquarie Bank Limited	Richard John Green	7/12/2015
50	Macquarie Bank Limited	United Land Councils Ltd	7/12/2015
51	Macquarie Bank Limited	United Land Councils Trustees Ltd	7/12/2015
52	Mastercard	Richard John Green	7/12/2015
53	Qudos Bank	Richard John Green	8/12/2015
54	Qudos Bank	Nicholas James-Dimitrios Peterson	10/12/2015
55	Qudos Bank	Richard John Green	11/12/2015
56	Qudos Bank	Daphne Regina Diomedes	15/12/2015
57	Macquarie Bank Limited	Knightsbridge North Lawyers Pty Ltd	11/01/2016
58	Macquarie Bank Limited	Gregory Steaven Vaughan	8/04/2016
59	Macquarie Bank Limited	William Reginald Campbell	8/04/2016
60	Macquarie Bank Limited	Able Consulting Pty Limited	11/04/2016
61	Macquarie Bank Limited	Techno Group Enterprises Pty Ltd	11/04/2016
62	Bankwest	Advantage Property Experts Syndications Pty Ltd	10/03/2017
63	Bankwest	Advantage Property Experts Syndications Pty Ltd	10/03/2017

- money transferred into 10 bank accounts, from the proceeds group; which he accessed and used for personal expenditure, in the amount of $144,126.83
- the provision of a Mercedes car from Ms Bakis, which according to the "Bill of Sale/Receipt" signed by Ms Bakis on 3 May 2016, and the registration transfer document completed by Mr Green later that month, had a value of $36,000 at that time. In April 2017 he traded that vehicle in for $15,000 in order to purchase a Toyota Kluger.

The indirect financial benefits relate to the purchase by Mr Green of an excavator and truck using, in part, Sunshine funds (received via Gows) which were then hired out initially by him, and then through his company, Murris United Pty Ltd, at a fee to Gomeroi Contracting, through which Mr Green received a financial benefit in the order of around $85,733.74.

Direct financial benefits: the proceeds group

Of the accounts listed in the Table of Accounts above, Mr Green was connected with 13, including the Commonwealth Bank account in his name, into which he deposited the $2,000 cheque from the KNL trust account in September 2015. These accounts were as follows:

- Four accounts in the name of Best Pay Custodial, each established jointly with Mr Petroulias: three with Bankwest (opened in April 2015), and one with Macquarie Bank (opened in December 2015) (see items 31 – 33 and item 46 in the Table of Accounts, respectively). Mr Green was the sole director and secretary of Best Pay Custodial in the period from 1 April 2015 to 1 November 2016. He was succeeded in those positions in November 2016 by Mr Kababian, who, it may be recalled, attended a meeting of the ALALC board on behalf of Advantage on 7 June 2016 (see chapter 11). Ms Bakis' evidence was that Best Pay Custodial was a company "set up for ULC", that Mr Green was behind it, and that Mr Petroulias helped establish it. However, while Mr Green told the Commission that he was aware that he had become a director and secretary of that company, which he said he did at the request of Mr Petroulias, and agreed that he had opened the three bank accounts at Bankwest with Mr Petroulias in Best Pay Custodial's name, he did not know the nature of its business, did not provide any funds to any of the accounts, and denied having anything to do with the opening of the fourth account, with Macquarie Bank.
- One account in the name of Best Industrial Sales, which Mr Green and Mr Petroulias established jointly at Macquarie Bank in December 2015 (see item 45 in the Table of Accounts). Mr Green was the sole director and secretary of Best Industrial Sales from 30 April 2015 until 10 November 2016. As with Best Pay Custodial, Mr Green was succeeded in those positions by Mr Kababian. Mr Green's evidence was that he knew nothing of the nature of this company's business, had no association with it, and had not put any funds into its account, but accepted that he had become a director and secretary of the company, at Mr Petroulias' request. He could not recall opening the Macquarie Bank account for the company.
- Six accounts were in Mr Green's name (including the Commonwealth Bank account referred to above into which only the $2,000 KNL trust account cheque was paid). Of the five remaining accounts in Mr Green's name, two were with Macquarie Bank and opened in the period from 5 to 7 December 2015 (items 44 and 49 in the Table of Accounts), one was a prepaid Mastercard account with Heritage Bank and opened on 7 December 2015 (item 52 in the Table of Accounts) and two were with Qudos Bank, opened in the period from 8 to 11 December 2015 (items 53 and 55 in the Table of Accounts). Mr Green's evidence before the Commission was that, aside from the Commonwealth Bank account, he did not put any funds into these accounts.
- One account was in the name of ULC, being an account opened with Macquarie Bank on 7 December 2015 (item 50 in the Table of Accounts). Mr Green had become the sole director and shareholder of ULC when it was incorporated in New Zealand on 4 May 2015. The residential address for Mr Green registered with the New Zealand Companies Office when ULC was incorporated was on Old South Head Road, Rose Bay, NSW, and was the same postal address given to Macquarie Bank in the account opening documents. Mr Green told the Commission that he did not know that address and did not know anybody who occupied premises at that address. Mr Green said that he did not know anything about the ULC account with Macquarie Bank, did not deposit any funds into it, and did not even know that ULC had a bank account; indeed, he agreed that it would not need one, as on his own evidence, it did not derive any income.

- The final account was in the name of United Land Council Trustees Limited ("ULC Trustees"), and was also opened with Macquarie Bank on 7 December 2015 (item 51 in the Table of Accounts). As with ULC, ULC Trustees was incorporated in New Zealand on 4 May 2015, with Mr Green as its sole director and shareholder. The account opening records for this account annex minutes from a meeting of ULC Trustees, purportedly held on 20 December 2015 in Westport, New Zealand, attended only by Mr Green, at which it was resolved that the company establish a cash management account with Macquarie Bank with Mr Green as the sole signatory. Although these minutes appear to bear Mr Green's signature, his evidence to the Commission was that he did not attend a meeting of that company at Westport, and had never been to Westport. He said he knew nothing of this account.

In written submissions lodged with the Commission on behalf of Mr Green, his counsel submitted that Mr Green was not the person who opened or operated the Macquarie Bank accounts that, on the face of the relevant account opening records, appear to have been opened by him. The Commission accepts that Mr Green did not open the accounts connected with him identified above that were opened online with Macquarie Bank and finds that these accounts were opened by Mr Petroulias. It further finds that of the 13 accounts identified above that were connected with Mr Green, three of these were not used or in any way operated by Mr Green, namely, the ULC and ULC Trustees accounts with Macquarie Bank (items 50 and 51 in the Table of Accounts respectively) and the account in his name also held with Macquarie Bank (item 49). This is because each was involved in a very large number of transactions from the time they were opened until early 2018, with funds circulating in and out within the proceeds group in the same fashion as funds circulated in and out of the KNL account held with Macquarie Bank referred to above about which Mr Green evidently knew nothing, and was unable to explain. It is apparent that these three accounts were not only opened by Mr Petroulias but also that their dedicated and only purpose was the circulation of funds through other accounts within the proceeds group.

However, an analysis of the transactions made from the 10 remaining accounts associated or connected with Mr Green reveals that Mr Green used these accounts to obtain financial benefits. These transactions are examined below, and the analysis is taken from submissions made by Counsel Assisting, the substance of which has not been challenged by any interested party in this inquiry. However, it should first be observed that Mr Green does not dispute that he received funds in the amount of approximately $144,000 from these accounts. Rather, Mr Green's evidence was that these funds, and other benefits, were received as payment for the work he carried out for Mr Petroulias in relation to ULC and to reimburse him for expenses he had incurred in performing that work.

In the written submissions made by Mr Green's counsel, to support this contention it is submitted that, first, the fact that ULC didn't earn any money (a matter readily acknowledged by Mr Green) does not discredit the payment of Mr Green for services rendered, and secondly, that the expenditure pattern exhibited through the accounts used suggests that Mr Green spent the money in them as if they were his own personal accounts, which is said to be "consistent with the belief that he thought it was payment for services rendered in relation to the work with ULC".

While the Commission accepts that ULC's failure to earn any income is not necessarily determinative of the question of whether or not Mr Green was paid by it for work he contends that he carried out on its behalf, it is a relevant factor that tends to detract from the plausibility of Mr Green's explanation, particularly when one has regard to the "services" for which he was allegedly paid (discussed below). As for the second submission, the Commission considers that the pattern of expenditure, including the nature of the transactions undertaken from these accounts, is equally if not more consistent with the proposition that the funds were made available to Mr Green for his use, as and when he needed them, as a financial reward for his participation in the Scheme. That this is the more likely explanation is supported by a number of additional factors, now outlined.

Mr Green's evidence was that the funds he accessed from these accounts were paid to him as wages by Mr Petroulias, as well as payment of his expenses for ULC work. Mr Green explained that he and Mr Petroulias had not agreed on a specific amount for him to be paid, stating instead that "I just worked for what I was given". Further, the payments made by Mr Petroulias were not referable to the specific work carried out by Mr Green, that is, Mr Green did not provide Mr Petroulias with invoices or advise him even informally of the work he had done, the amount of travel he had undertaken or expenditure he had incurred so that he could be appropriately or sufficiently recompensed.

Even if one were to accept the unlikely proposition that Mr Green had entered into such a potentially uncommercial or improvident employment arrangement with Mr Petroulias, an analysis of the accounts accessed by Mr Green simply does not support Mr Green's explanation. The payments made into the accounts

accessed by Mr Green do not bear the characteristics of wage payments – they are not the same or similar amounts, and they are not paid with any discernible regularity. They are not even paid from the ULC or ULC Trustees accounts with Macquarie Bank that the Commission has found were opened by Mr Petroulias in December 2015. Mr Green stated by way of explanation for his conduct and the unorthodox arrangement that he contended was in place that "If someone puts money in my bank account I'll spell it, spend it". Yet, money was not paid into one specific account then accessed by Mr Green, for example, Mr Green's Commonwealth Bank account, nor was the money accessed and spent by Mr Green only what was paid into those accounts within the proceeds group, bearing his name. Rather, the money accessed and spent by Mr Green was paid into several accounts within the proceeds group – including those in his name, but also Best Pay Custodial and Best Industrial Sales. Mr Green did not identify how it is that he knew which of the funds paid into these accounts represented payments to him for wages and were his to spend; indeed, his evidence about the arrangement in place with Mr Petroulias suggests that Mr Green would have no way of knowing.

Further, both the substance of Mr Green's evidence, and the manner in which it was given, weigh heavily against the proposition that the financial benefits he received were for his work and expenses incurred on behalf of ULC. The direct financial benefits received by Mr Green, identified below, amounted to $159,114.78. The work, on his evidence, that Mr Green carried out consisted of him attending meetings at various LALCs in order to discuss the prospect of developing their land, and providing those councils with draft agreements, which was said to involve travel by Mr Green "up and down the south coast, north coast, out west, out to Bathurst and Orange and all them places, so I could have fuel money, meals". It is not clear how long it was that Mr Green spent carrying out this work; Mr Green was unable to recall when he carried out the work and, as indicated above, created no records of his visits to the various land councils for wage purposes or any other purpose. However, the evidence is clear, and Mr Green accepted, that ULC never obtained any work as a result of these meetings or otherwise, and did not make any money.

The Commission notes that in the Joint Legal and Financial Brief, dated 18 August 2016 and apparently prepared by KNL for the ALALC board, the work of ULC is described as "an association of Land Councils and Traditional Owner groups across Australia to deal with common issues, especially how to advance economic development issues". It is then noted in the paper that ULC didn't make any money but rather: "It costs money. It is currently funded through pro-bono assistance from this firm and personal financial assistance".

This description is consistent with Mr Green's evidence about ULC's actual activities – in addition to telling the Commission that ULC had made no money, Mr Green also agreed that after ULC was formed in 2015, it never actually got going and did nothing. Accordingly, the notion that Mr Green would be paid close to $160,000 for the work he described to the Commission by ULC – a company that had not and never did make money – defies belief.

As to the manner in which Mr Green's evidence was given, the Commission considers that the way in which Mr Green's evidence changed under questioning by Counsel Assisting, both with respect to the nature of the work he carried out for ULC and also the amounts that he was paid for it, suggests that it was false, as does his inability to identify with any degree of precision what it is that he did, when, or how much he was paid with any precision. Although unable to be precise about it, Mr Green initially stated that the work he did for ULC took place over the course of up to four months in 2015, was not full time, and involved trips of one or two days at a time to various LALCs.

To recompense for this work, Mr Petroulias would put money into Mr Green's bank account for food, accommodation and fuel, amounting to a couple of hundred dollars here and there. Mr Green agreed that, in total, the amount paid by Mr Petroulias to him for this work was in the order of a few thousand dollars. Mr Green also told the Commission that he was given a Mercedes car by Ms Bakis for driving around in, as a work car, which he subsequently traded in for the Toyota Kluger, as previously noted. Mr Green confirmed that this vehicle, and the payment of expenses in the order of a few thousand dollars, was the sum total of what he received from Mr Petroulias, which he characterised as "assistance in working. I thought I had a job".

Yet, this evidence changed when Mr Green was asked about certain personal purchases and transactions that he had made, including those made using his MasterCard issued in connection with the Best Pay Custodial Bankwest account (discussed below). These purchases included a quad bike, which he agreed had no connection to his ULC work, a nine-caret gold necklace, a Foxtel subscription, and a payment of just under $5,000 for his daughter's car. From that same account, Mr Green made 90 cash withdrawals totalling $27,630. When confronted with this evidence, and in particular, that he had received a benefit in the amount of $144,000 as a result of the funds he had accessed and used from the accounts funded by Mr Petroulias, Mr Green said that it could have been more time than he initially suggested that he spent working from ULC, and that he thought everything he had received was a payment for the work he was doing. He did not offer, either in his evidence before the Commission, or through his written submissions made by his counsel,

any explanation for the disparity between the evidence he initially gave and the evidence he subsequently asked the Commission to accept. The Commission rejects the explanation offered by Mr Green to the effect that the financial benefits he received related to the work he is said to have performed by ULC, and instead finds that these benefits were received by Mr Green as a financial reward for his participation in the Scheme.

The Best Pay Custodial accounts (Table of Accounts items 31, 32, 33 and 46)

As indicated above, Mr Green's evidence was that he did not provide funding to any of the Best Pay Custodial accounts in the proceeds group (referred to in the Table of Accounts at items 31, 32, 33 and 46). The benefits derived from each of them by Mr Green were as follows:

- Best Pay Custodial account with Bankwest bearing account number ending in 9230 (item 31): Mr Green used the MasterCard issued with this account in New Zealand on 20 April 2016 to make a purchase in the amount of $178.66. Mr Green had travelled to New Zealand at this time for the purpose of obtaining a New Zealand driver's licence, and accepted that he used one of the accounts that he had opened with Mr Petroulias to pay for the licence. The total benefit the Mr Green derived from this account was $178.66.
- Best Pay Custodial account with Bankwest bearing account number ending in 9248 (item 32): Mr Green was also issued with a MasterCard for this account. Mr Green made 294 transactions using this card from 9 November 2015 to 30 January 2018. The financial benefits derived by Mr Green amounted to a total of $60,717.51, after refunds of $567.67, which comprised cash withdrawals in the amount of $27,630, personal items including the necklace and quad bike referred to above to the value of $25,987.98, travel and accommodation in the amount of $2,560, and vehicle-related expenses that included paying the balance outstanding on his daughter's car loan, to the value of $5,107.
- Best Pay Custodial account with Bankwest bearing account number ending in 9256 (item 33): Mr Green accepted that he purchased a Mercedes Benz C180 vehicle on 29 October 2015 for $10,000, using funds provided by Mr Petroulias paid into this account. Mr Green also made a purchase using funds from this account on 4 December 2015 at Tyrepower, in the amount of $1,700. The financial benefit Mr Green derived from this account was $11,700.
- Best Pay Custodial account with Macquarie Bank bearing account number ending in 9858 (item 46): Mr Green part purchased an excavator using funds from this account. He acknowledged in his evidence before the Commission that Mr Petroulias had helped him to purchase this piece of equipment, through funds that Mr Petroulias had put into this account. The purchase price for the excavator was $50,600, with $10,120 paid from this account, which, in turn, had come from the Macquarie Bank Best Industrial Sales account, to Earthmoving Equipment Australia. The financial benefit Mr Green derived from this account was $10,120.

The Best Industrial Sales account (Table of Accounts item 45)

Mr Green's evidence was that he did not provide funding to the Best Industrial Sales account with Macquarie Bank, bearing account number ending in 9833 (item 45). Yet, he used funds from this account in the amount of $11,980 as a down-payment for a tipper truck that he purchased for $59,900 from Sydney Trucks & Machinery on or around 14 September 2016. Mr Green accepted that the funds for this deposit did not come from him, but from Mr Petroulias. He also then used this account to finance both the balance of the purchase price for the truck ($47,920) and the balance of the purchase price for the excavator ($40,480) that had been part-purchased from the Best Pay Custodial account with Macquarie Bank.

Mr Green signed the finance contract for the excavator, which was with Capital Finance, on 16 September 2016 and on the same day, he signed a guarantee and indemnity and direct debit request. Mr Green initially provided authority to Capital Finance to direct debit one of the Macquarie Bank accounts in his name (the account bearing the account number ending in 9841 at item 49 above), but the initial payments were dishonoured on 20 September 2016 due to insufficient funds being in that account. Subsequently, and until 18 April 2017, finance payments were direct debited by Capital Finance from the account held by Best Industrial Sales. The payments debited from this account for the excavator and truck total $15,087.36. These payments, combined with the part-payment for the truck, total $27,067.36, which is the total amount that Mr Green derived as a financial benefit from this account.

The accounts in Mr Green's name (Table of Accounts items 34, 44, 52, and 55)

The accounts in Mr Green's name from which he received direct financial benefits were the Commonwealth Bank account (item 34), the Macquarie Bank account bearing the account number ending in 3180 (item 44), the prepaid

MasterCard account bearing the account number ending in 9418 (item 52), and the Qudos Bank account bearing the account number ending in 3718 (item 55). The benefits derived from each of them by Mr Green were as follows:

- Commonwealth Bank account (account number ending 1587): it was into this account that Mr Green, on 22 September 2015, deposited the $2,000 cheque drawn on the KNL trust account. The benefit that Mr Green derived from this account is the full $2,000, which the Commission has found was donated by Mr Zong for sponsorship of the ALALC rugby league team, but was instead spent by Mr Green for his own benefit on furniture and bedding, and through cash withdrawals totalling $760. The financial benefit Mr Green derived from this account was $2,000.
- Macquarie Bank account (account number ending 3180): Mr Green was issued with a card for this account, yet, when first asked about this account denied any knowledge of it. When presented with the expenses paid from this account (for example, accommodation at a motel near Yamba, and a purchase in the amount of $839 at Tyrepower in Newcastle), he accepted that he had used the card from this account to make these transactions. Mr Green was the only person issued with a card for this account and it follows, given this and the purchases that he accepted he made using it, that the multiple balance enquiries made of the account not long after it was opened on 5 December 2015 (between 24 December 2015 and 4 February 2016) were made by him, and were made in order to establish whether or not funds had been deposited into it by Mr Petroulias. The benefit Mr Green derived from this account, across 10 transactions that included the purchase of personal items, accommodation, and withdrawals of cash, was $2,982.53.
- Prepaid MasterCard account (account number ending 9418): Mr Green accepted that he used this prepaid MasterCard to pay for his expenses. Although he initially told the Commission that he was unsure where the money on the card had come from, or even how the card had come into his possession, he accepted that there was no-one other than Mr Petroulias who would have given him the card for his general use. Mr Green used the account between 31 December 2015 and 7 March 2016 to make 15 transactions, from which he derived a financial benefit of $2,985.33.
- Qudos Bank account (account number ending 3718): Mr Green told the Commission that the Visa credit card issued with this account was obtained for him by Mr Petroulias. Mr Green was the only authorised user of this account and the only person issued with a credit card connected with it. He accepted that the expenditure on the account was incurred by him. Mr Green made 100 transactions from this account in the period between 23 January 2016 and 23 June 2017, from which he derived a financial benefit of $26,375.44 (after subtracting refunds of $400). These transactions included $5,000 towards the purchase of a BMW on 21 January 2016; $9,920 across 16 cash withdrawals; 79 personal transactions totalling $11,386.18; and $469.26 in accommodation expenses.

Direct financial benefits: the Mercedes car

In addition to the money Mr Green accessed and used from the bank accounts in the proceeds group identified and discussed above, Mr Green obtained a direct financial benefit in the form of a Mercedes car that was given to him by Ms Bakis in May 2016. Mr Green's evidence was that he received the vehicle, and traded it in to purchase a Toyota Kluger. Mr Green traded in the vehicle for $15,000 on 18 April 2017.

The submission made by counsel for Mr Green, that the vehicle was of de minimis value, is rejected. At the time it was given to Mr Green, it had a value of $36,000, and at trade-in, a value of $15,000 enabling him to purchase the Toyota Kluger. Mr Green asserted that it was given to him in order to carry out his work for ULC. Ms Bakis corroborated this evidence, suggesting that she gave it to Mr Green at the suggestion of Mr Petroulias so that "it could be used by people to run around the countryside". While the vehicle was registered in the name of First Peoples Advancement Charity Pty Ltd (of which Mr Green was said to be the sole director) it was used only by Mr Green.

Indirect financial benefits: $85,733.74

Mr Green also received indirect financial benefits, which were connected with the use that he made of the excavator and tipper truck that the Commission has found he had purchased in part with funds from the accounts within the proceeds group held by Best Pay Custodial and Best Industrial Sales respectively.

After purchasing this equipment, Mr Green hired it out in September 2016 to Gomeroi Contracting for it to be used at the Whitehaven mine. Initially, he hired it out himself and then from around July 2017, he hired out the equipment through his company, Murris United. This is not disputed by Mr Green. Nor is it disputed by Mr Green

that he received approximately $4,000 per month from Gomeroi Contracting for the use of this equipment, and that his monthly financing costs for the equipment were $2,000, resulting in a profit to Mr Green of $2,000 per month. On the basis of these figures, the benefit to Mr Green from September 2016 until the date of Mr Green giving evidence to the Commission in July 2018 (a period of 22 months) was around $88,000, not allowing for the cost to him of financing the equipment.

There is in evidence before the Commission, however, a summary of invoices issued by Murris United to Gomeroi Contracting for the period from 1 July 2017 to 9 March 2018 which indicates that the hiring fees for both pieces of equipment were significantly higher during this period. This summary indicates that Murris United invoiced a total of $37,047.15 for the hire of the tipper truck during this eight-month period, and a total of $48,686.59 for the hire of the excavator. In total, this amounts to $85,733.74, just for this eight-month period. Mr Green, in his written submissions, does not comment upon or challenge this summary of invoices. Mr Green's counsel does submit, however, that it is unsustainable to suggest that, because Mr Green found a commercial opportunity and exploited it, he received an indirect financial benefit. His counsel submits that there is no basis to say that Gomeroi Contracting or Whitehaven were uncommercially benefiting Mr Green and, accordingly, the Commission should find that Mr Green did not receive any indirect financial benefit relating to this equipment supply enterprise. This submission is rejected as it seems to misunderstand what is put against Mr Green. The indirect financial benefit stems not from any uncommercial benefit bestowed upon Mr Green by Gomeroi Contracting or Whitehaven, but rather, from Mr Green earning an income from equipment that he purchased using funds from accounts within the proceeds group, that is, the Sunshine funds.

The Commission accepts the submission made by Counsel Assisting that, on the basis of this summary of the invoices that recorded the fees invoices during the eight-month period between July 2017 and March 2018 referred to above, it is likely that Mr Green earned substantially more in the entire period between September 2016 and July 2018. Accordingly, the Commission finds that Mr Green received an indirect benefit through the hiring of this equipment of not less than $85,733.74.

Accordingly, the Commission finds that Mr Green received direct financial benefits in the amount of $159,126.83, and indirect financial benefits in the amount of $85,733.74, totalling $244,860.57. Mr Green received these benefits as a reward for his role and participation in the Scheme, including assisting with the attempted transactions with Sunshine, Solstice, and Advantage.

Financial benefits received by Ms Bakis

An analysis of the flow of funds from the accounts within the proceeds group reveals that Ms Bakis received a direct financial benefit as a result of her involvement in the Scheme; that is, the part she played in the deception of Mr Zong and Sunshine in relation to the attempted Sunshine transaction, and more broadly, the role she played in the purported transactions involving Gows, Solstice, and Advantage. The financial benefits Ms Bakis received involved:

- the payment of her credit card debt from an account within the proceeds group (the Macquarie Bank account held by Gows Heat with account number ending in 9314 – see item 1 in the Table of Accounts)
- the payment by Ms Bakis of her personal expenses from funds in another proceeds group bank account (the Bankwest account held by Point Partners with account number ending in 0624 – see item 7 in the Table of Accounts)
- the use by her of a credit card issued by Qudos Bank in the name of "Daphne Diomedes" (account number ending 0004 – see item 56 in the Table of Accounts) to make a series of purchases for her own benefit
- the use by her of a further credit card issued in the name of "Daphne Diomedes" (the Wesfarmers Finance/Coles MasterCard account, bearing an account number ending in 6001 – see item 23 in the Table of Accounts) to make a series of purchases for her own benefit.

The transactions relating to these accounts are examined below, and the analysis is taken from submissions made by Counsel Assisting, the substance of which has not been challenged.

The Commission observes that from time to time during her evidence, when confronted with certain transactions that appeared to have been made by her using accounts within the proceeds group, Ms Bakis would suggest that it was Mr Petroulias who had made those transactions or paid for the particular expenses incurred. However, Ms Bakis was also aware that for the entire relevant period, Mr Petroulias was an undischarged bankrupt, and had no source of funds, other than those that had come to him through the Sunshine transaction. That is, Ms Bakis was aware that the transactions she made from the accounts within the proceeds group, discussed below, and/or from which she personally benefited, represented a direct financial benefit that she received as a result of her involvement in the Sunshine transaction and the part

she played in the deception of Mr Zong and Sunshine. In total, the Commission finds that the financial benefit Ms Bakis derived as a result of these transactions was in the amount of $179,532.31.

Before turning to examine the financial benefit Ms Bakis received in more detail, it is necessary to address the submissions made by Ms Bakis' counsel on her behalf in response to Counsel Assisting's submission that Ms Bakis was a financial beneficiary of the land transactions. These submissions may be summarised as follows. First, it is contended that Ms Bakis did not participate in a fraud on Sunshine, and as a corollary, the Sunshine funds were not the proceeds of a fraud. This is said to be because the First Gows Heads of Agreement "spoke for itself", in that, not having specified a price for the sale of the subject ALALC land, it was not binding as a contract. Accordingly, it provided Gows with "limited rights to expect that the ALALC would take reasonable steps to fix a price and to obtain the statutory consents", and it was a matter for Sunshine as to whether it wished to acquire those rights. This submission is rejected. It is rejected first because, as the Commission found in chapter 7, the First Gows Heads of Agreement could not have bestowed any rights on Gows – the agreement was a sham.

Secondly, it is contrary to the suite of transactional documents drafted and/or approved by Ms Bakis in connection with the Gows and Sunshine transactions discussed in chapters 7 and 9, as well as the representations made by Ms Bakis and Mr Petroulias in connection with the Sunshine transaction discussed in chapter 9. The Sunshine transactional documents (in the main, drafted by Ms Bakis) reveal that it was premised on Sunshine acquiring the right to purchase the five lots identified in the Sunshine Heads of Agreement and in the five standard form contracts for the sale of land (signed by Mr Zong, Ms Dates, Mr Green and Mr Petroulias) that were attached to this agreement. This right was purportedly held by Gows, being created by the First Gows Heads of Agreement, and it was this right that Sunshine was required to "buy out"; it was never put that the right Sunshine was purchasing from Gows was merely a limited right to expect that the ALALC would take reasonable steps to fix a price and obtain the necessary statutory approvals. Indeed, the Commission has found that the statutory approvals required were never discussed in negotiations or the documentation at all until, in Sunshine's case, well after the agreements were executed and funds were paid. The notion that Sunshine would be persuaded to purchase from Gows a "right" of the kind now put by Ms Bakis in her submissions, which is no more than what the ALALC would be required to do in the event that it had independently entered into a land transaction with Sunshine, and that it would pay Gows over a million dollars by way of consideration for this "right" is outright implausible, and also inconsistent with the evidence. The proposition that Sunshine had in fact done so was not put to either Mr Zong or Mr Fisk.

Third, the submission is rejected because Ms Bakis did not behave in a manner consistent with this being the right that Sunshine had purchased. Ms Bakis did not recommend to the ALALC board that it convene a members' meeting so that the necessary statutory approvals could be sought. Ms Bakis did not take any steps to facilitate the ALALC obtaining NSWALC approval. Instead, as discussed in chapter 10, the ALALC board rejected the Sunshine proposal at its 8 April 2016 meeting, without there being any mention of the proposition that Sunshine had secured for itself a right to have the ALALC take reasonable steps to obtain the necessary statutory approvals of the proposed land dealing.

Finally, the submission is rejected because even if the First Gows Heads of Agreement was a legitimate, bona fide agreement, there is no equitable or legal right of the kind for which Ms Bakis now contends.

The second submission made by counsel for Ms Bakis is that "the credit card funds were not financial benefits because they were repaid". In support of this proposition, reference is made to the evidence Ms Bakis gave to the Commission, in which she stated that the payment of her credit card debt "was effectively a loan", which was not evidence that the monies used to pay off her credit card debt were repaid, but only evidence that it was intended as a loan. Ms Bakis was expressly asked by the Chief Commissioner if there was any evidence that it was a loan, and any evidence that it was paid back, and Ms Bakis was unable to point to evidence of either, other than a bare assertion that she did in fact pay back Mr Petroulias. Ms Bakis' counsel, in his written submissions, points to no objective evidence in support of this assertion and the Commission finds that there is none.

Finally, the Commission observes that counsel for Ms Bakis does not attempt to deal in any way with the other means by which it has been suggested by Counsel Assisting that Ms Bakis obtained a financial benefit, that is, through the use of the two credit cards in the name of Daphne Diomedes, and the use of funds held in the Point Partners Consulting Pty Ltd account. It is inferred that Ms Bakis has no answer to what has been put against her in connection with these funds, in that she does not deny that she received them but submits only that these funds were not the proceeds of a fraud on Sunshine for the reasons referred to above.

The repayment of Ms Bakis' credit cards from the Sunshine funds

The Commission finds that in early-November 2015, the balance on four of Ms Bakis' credit cards was paid directly from the Sunshine funds held in Gows' Macquarie Bank account (ending in 9134 – see item 1 in the Table of Accounts), a matter which, as indicated above, Ms Bakis did not seek to deny. The Commission notes that Ms Bakis initially sought to suggest that the payments were not of "net benefit" to her because she had carried out a lot of work (for Gows and the ALALC), which should have resulted in her being paid legal fees. However, as noted in chapter 12, Ms Bakis never issued any invoices to Gows, and did not issue any invoices to the ALALC until March 2016, and she conceded that she was not entitled to any fees from the ALALC in 2015. Ultimately, Ms Bakis sought to suggest that the payment of her credit card debt was by way of a loan, but as indicated above, Ms Bakis did not, either in her evidence before the Commission or through her written submissions, point to any objective evidence in support of the proposition that her credit card debts were paid by way of a loan, or that they were repaid. Accordingly, this evidence, such as it is, is rejected.

In total, Ms Bakis secured a financial benefit through the payment of her credit card debt in the amount of $51,915, which can be broken down as follows:

- the balance on Ms Bakis' 28 Degrees MasterCard (account number ending 7421), being $13,870, was paid by funds from the Gows Macquarie Bank Account (account number ending 9134) on 3 November 2015
- the balance on Ms Bakis' Myer Visa card (account number ending 1604), being $3,065, was paid by funds from the Gows Macquarie Bank Account (account number ending 9134) on 3 November 2015
- the balance on Ms Bakis' Commonwealth Bank business credit card (account number ending 7256), being $5,080, was paid by funds from the Gows Macquarie Bank account (account number ending 9134) on 4 November 2015
- The balance on Ms Bakis' Commonwealth Bank MasterCard credit card (account number ending 2325), being $28,335.65, was paid by funds from the Gows Macquarie Bank account (account number ending 9134) in two instalments: $14,900 on 4 November 2015 and $15,000 on 9 November 2015.

The Commission finds that Ms Bakis received these financial benefits as a reward for the part that she played in the deception of Mr Zong and Sunshine.

Financial benefits derived from the Point Partners Consulting Bankwest account

Point Partners Consulting is the former name of Ms Bakis' tax practice, Knightsbridge Financial Pty Ltd. Ms Bakis opened an account for this entity with Bankwest in June 2013. A business debit MasterCard was attached to the account in Ms Bakis' name, and the only authorised user of the account was Ms Bakis.

Between 28 October 2015 and 29 December 2017, the Point Partners Bankwest account was funded entirely by the Sunshine funds, but with those funds flowing through five different accounts within the proceeds group, namely, the Gows Macquarie Bank account, the Best Pay Custodial Account with Bankwest, the Best Pay Custodial Account with Bankwest, the KNL account with Macquarie Bank, and the Macquarie Bank account in the name of Michael Nicholas Pearson (an alias of Mr Petroulias).

The Commission finds that Ms Bakis used this account to derive a financial benefit, in the following ways:

- The loan for her Mercedes car (being the vehicle transferred to Mr Green in 2016), which she had purchased on or around 18 December 2012, was paid out on 4 December 2015 for $39,684.47. Ms Bakis accepted that the Sunshine funds had been used for this purpose.
- The payment, using the debit MasterCard, of personal expenses across 37 transactions, totalling $3,674.42. The Commission considers that it may comfortably make this finding, based on the fact that the account was opened by Ms Bakis, the MasterCard was issued to her, in her name, she was the only authorised user of the account, and the expenses incurred using the card were incurred in places near where Ms Bakis lived and shopped.
- Through 15 separate cash withdrawals, which totalled $47,000, specifically:
  - 30 October 2015–$8,000
  - 30 October 2015–$1,000
  - 5 November 2015–$1,000
  - 9 November 2015–$1,000
  - 11 November 2015–$1,000
  - 16 November 2015–$8,000
  - 16 November 2015–$1,000
  - 7 January 2016–$1,000
  - 18 January 2016–$5,000

– 25 January 2016–$8,000
– 29 February 2016–$8,000
– 27 September 2016–$1,000
– 21 October 2016–$1,000
– 22 May 2017–$1,000
– 24 May 2017–$1,000.

The Commission finds that the total financial benefit that Ms Bakis derived from the Point Partners Consulting Bankwest account was $90,358.89.

Financial benefits derived from the Qudos Bank account in the name of Daphne Diomedes (account number ending 0004)

On or around 6 December 2013, Ms Bakis went to Tasmania with Mr Petroulias where she applied for and obtained a Tasmanian driver's licence in the name of Daphne Diomedes, using an improperly-obtained passport in that name. Ms Bakis told the Commission that Mr Petroulias had obtained the Slovenian passport that she used to secure the licence. Ms Bakis' evidence was that she did not use the licence after it was obtained, but that she was aware that Mr Petroulias had used it subsequently to open bank accounts in the name of Daphne Diomedes. She told the Commission that although she was aware that bank accounts were opened in that name, ("there were a few bank accounts and I think there was a credit card") because Mr Petroulias had informed her of this fact, she knew nothing further of them, had no involvement with those accounts, and no further involvement with the name Daphne Diomedes.

The Diomedes identity was used to open several accounts within the proceeds group, including the Qudos Bank account attached to a Visa platinum credit card (bearing account number ending in 0004 – see item 56 in the Table of Accounts). The Commission finds, based on Ms Bakis' evidence referred to above and on an analysis of the transactions that were made using that platinum Visa card (referred to in more detail below), that Ms Bakis knew of, and used, this account.

Additionally, the Commission finds that Ms Bakis was aware of the Diomedes identity being used in another way, namely, to avoid incurring demerit points associated with traffic offences committed by either her or Mr Petroulias when driving the Mercedes vehicle then registered in her name. On 7 October 2014, that vehicle was detected driving at 71 km/h in a 60 km/h speed zone and, on 16 October 2014, a penalty notice was issued to Ms Bakis at her home address. Before the penalty amount of $109 was paid, "Daphne Diomedes" was nominated as the driver of the vehicle at the time of the offence, through a statutory declaration apparently completed by Ms Bakis on 30 October 2014 and submitted to the Office of State Revenue. The fine was then reissued in the name of Daphne Diomedes and the amount paid. Records held by the State Debt Recovery Office show that a "Despina" had been in contact with that office on or around 31 October 2014 in relation to payment of the fine, and Ms Bakis also subsequently received a letter from the State Debt Recovery Office, dated 14 November 2014, confirming that it had received her statutory declaration. The Commission notes that Ms Bakis denied any knowledge of this having occurred but rejects that evidence and finds that, at a minimum, Ms Bakis knew that the Diomedes identity was being used in this way.

The Qudos Bank account in the name of Daphne Diomedes was opened on 15 December 2015 (item 56 in the Table of Accounts). The funds in the account came from other accounts within the proceeds group, namely, another Qudos Bank account in the name of Diomedes (item 37), the Best Pay Custodial account with Macquarie Bank (item 46), the ULC Trustees account with Macquarie Bank (item 51), and the Best Pay Custodial account with Bankwest bearing the account number ending in 9230 (item 31). Between 15 November 2015 and 23 February 2018, the account at item 56 was used to pay for expenses in the amount of $24,908.37. The Commission finds that it was Ms Bakis who was using the Visa card during this period and who obtained the corresponding financial benefit.

Although Ms Bakis denied any knowledge of this card and denied that she used it, this evidence is rejected by the Commission, given the objective evidence that establishes that on numerous occasions Ms Bakis was in fact using the card, including:

- the online purchase by Ms Bakis of an ottoman on 20 November 2016 from Brosa Design for $698, which was delivered to an apartment then leased by KNL in Burwood, and which was invoiced to Ms Bakis. It was Ms Bakis who signed for the ottoman on delivery
- the part purchase of a queen mattress and base from Fantastic Furniture on 19 November 2016 in the amount of $853, which was made in the name of Daphne Diomedes and delivered to Ms Bakis' home address. An additional card in the name of Daphne Diomedes (the Coles/Wesfarmers Finance card bearing the account number ending in 6001) was used to pay the remaining balance of the purchase price
- the payment of the Supreme Court filing fee for the filing of a summons ($2,951) and the fee for the request of a copy of an order ($59) in

connection with the proceedings KNL had filed against the ALALC that was paid by Ms Bakis on 29 March 2017

- on 26 occasions in the period between 26 November 2016 and 8 December 2016, when Mr Petroulias was overseas, both in the Sydney metropolitan area and in the area near where Ms Bakis then lived, which totalled $1,062.52 and were as follows:
  - 26 November 2016 – $159.00 at B Pierre Cosmetics, Rose Bay
  - 26 November 2016 – $12.85 at Coles, Five Dock
  - 26 November 2016 – $7.90 at X Macquarie, Sydney
  - 26 November 2016 – $7.90 at X Macquarie, Sydney
  - 27 November 2016 – $38.46 at Coles, Burwood
  - 28 November 2016 – $22.50 at Muffin Break, Burwood
  - 28 November 2016 – $6.79 at Sutcliffe Meats, Burwood
  - 28 November 2016 – $22.00 at Domo Sushi, Newington
  - 28 November 2016 – $2.00 at Kmart, Burwood
  - 29 November 2016 – $111.00 at Big W, Chullora
  - 29 November 2016 – $1.49 on Apple ITunes
  - 29 November 2016 – $49.95 at David Jones, Burwood
  - 30 November 2016 – $3.30 at Espresso Ha, Sydney
  - 30 November 2016 – $10.00 at Espresso Ha, Sydney
  - 30 November 2016 – $18.20 at McDonald's, Syd Air Ga Mascot
  - 30 November 2016 – $9.90 at Soul Origin, Burwood
  - 2 December 2016 – $122.73 at Officeworks, Five Dock
  - 2 December 2016 – $5.50 at HJ, Burwood
  - 2 December 2016 – $59.91 at Woolworths, Burwood
  - 3 December 2016 – $44.83 at Coles, Five Dock
  - 5 December 2016 – $110.20 at Target, Burwood
  - 5 December 2016 – $17.80 at Muffin Break, Burwood
  - 5 December 2016 – $77.00 at Kmart, Burwood
  - 6 December 2016 – $8.71 at Sutcliffe Meats, Burwood
  - 7 December 2016 – $13.20 at X Macquarie, Sydney
  - 8 December 2016 – $73.40 at Target, Burwood.

Financial benefits derived from the Wesfarmers Finance/Coles account in the name of Daphne Diomedes

This Coles MasterCard account (item 23 in the Table of Accounts) was opened in the name of Daphne Diomedes on 3 March 2014, using a false NSW driver licence in that name. On 9 October 2015, there were no funds in the account, but it subsequently received funds from four of the bank accounts in the proceeds group, namely, the Best Pay Custodial account with Bankwest (bearing the account number ending in 9230 (item 31), another Best Bay Custodial account with Bankwest (bearing the account number ending in 9256 (item 33), the Macquarie Bank account in the name of Mr Vaughan (item 58), and the Macquarie Bank account in the name of Daphne Diomedes (bearing the account number ending in 4196– item 5).

This account was used on 459 occasions between 9 February 2016 and 11 November 2016, with the transactions totalling $12,350.05. The Commission finds that Ms Bakis knew of and used the account, and as a result derived a financial benefit in the amount of $12,350.05, for the following reasons:

- many of the transactions in question were made in suburbs near where Ms Bakis then lived
- the card was used in Sydney during the period when Mr Petroulias was overseas and so would not be using it himself
- there is other evidence which establishes that Ms Bakis incurred certain expenses using this card, for example:
  - the card was used to pay the balance remaining on the purchase from Fantastic Furniture referred to above

  - the card was used to pay for accommodation booked in Ms Bakis' name at Discover Parks Forster on 18 June 2016.

By way of final observation in relation to Ms Bakis, the Commission notes that, in the written submissions made by her counsel on her behalf, it is suggested that Ms Bakis appropriately conceded that she should not have applied for the driver's licences in the name of Daphne Diomedes. While this concession was appropriately made, it has little value and impresses as disingenuous when Ms Bakis also plainly knew (and indeed accepted that she knew) that the Diomedes identity had been used to open a number of bank accounts; and when she also denied having anything further to do with that identity, in the face of evidence plainly establishing that, to the contrary, she had accessed and used the accounts in the Diomedes name on a multitude of occasions for her own benefit.

Financial benefits received by Mr Petroulias

It follows from the findings that the Commission has already made, namely, that Mr Petroulias was the controlling mind of Gows and was, in substance, Gows, and also that Gows received the Sunshine funds both directly, and via the KNL trust account, that Mr Petroulias received the Sunshine funds. It also follows from what is set out above that Mr Petroulias allowed Mr Green and Ms Bakis to access and use some of those funds for their own benefit, as a reward for their involvement in the Scheme.

In what follows below, the Commission considers the flow of the Sunshine funds following their receipt by Gows/Mr Petroulias, and how they were used by Mr Petroulias. The evidence establishes that, aside from that portion of the funds discussed above that was accessed and used by Mr Green and Ms Bakis, Mr Petroulias used the Sunshine funds for his own personal benefit.

As with the discussion of the financial benefits received by Mr Green and Ms Bakis above, the detailed analysis of the transactions within the proceeds group as they affect or relate to Mr Petroulias is taken from submissions made by Counsel Assisting, the substance of which has not been challenged by Mr Petroulias. Rather than challenge the analysis of the flow of Sunshine funds, that is, the mechanics of the transactions, Mr Petroulias challenges the matters that can be inferred from this analysis.

First, he contends that the seemingly circular payments, in and out of the accounts within the proceeds group, are "notional circular payments" that did not benefit any particular individual but rather represented "'notional' attributions of value to projects within ULC and related Pinnacle 8 projects reflecting the use of human resources and accumulated intellectual property". The Commission rejects this contention, for reasons discussed further below. As the Commission found above, the only purpose of the circular movement of funds across the proceeds group was to disguise the source and ultimate use of the Sunshine funds.

Secondly, Mr Petroulias contends that the "real payments," as opposed to the "notional circular payments", were related to the development of the ULC business, and thus, there was no financial "windfall" to him. This submission is also rejected. As indicated above, it follows from the Commission's findings in chapter 10 that Mr Zong never agreed to the funds he had paid for the benefit of the ALALC being used to fund or invest in ULC, that the transfer of funds to Gows (purportedly for the benefit of ULC) would still be neither authorised nor legitimate and, further, that the purported use of the funds for the development of ULC would still be to the financial benefit of Mr Petroulias. In any event, the perilously thin explanation offered by Mr Petroulias for his expenditure (namely, the furtherance of ULC work) is not supported by any objective evidence and is, given the extremely limited scope of what ULC in fact appeared to do, simply not plausible.

The transfer of Sunshine funds to Gows

As addressed previously, Gows received funds from Sunshine directly, and also through the KNL trust account, which totalled $1,023,934. The relevant transactions were as follows:

- On 26 October 2015, Gows received $250,000 directly from Sunshine.
- Between late-October 2015 and early-December 2015, Gows received a further $773,934 through the following four transfers from the KNL trust account:
  - $20,000 on 30 October 2015
  - $26,666 on 2 November 2015
  - $400,000 on 3 December 2015
  - $327,268 on 22 December 2015.

It is clear that the funds received by Gows were received by Mr Petroulias, and the Commission so finds.

This finding is supported by the fact that Mr Petroulias operated the Gows Macquarie Bank account, as it is by the evidence (discussed below) that establishes that Mr Petroulias spent the money. It is also supported by the fact that, in October 2018, Mr Petroulias attempted to withdraw the remaining money from the accounts within the proceeds group and also instructed Ms Bakis to make

a formal complaint to the Financial Services Ombudsman in connection with Macquarie Bank's refusal to release those funds. In any event, Mr Petroulias does not deny that he received the Sunshine funds, but rather, states that they were "periodically depleted consistent with, causally and correlatively, the development of the ULC business" and that his "personal benefits are less than a basic salary over 3 years and entirely consistent with an expense allowance whilst and in furtherance of ULC work".

Following the receipt of the Sunshine funds into the Gows account, Mr Petroulias transferred those funds into other accounts within the proceeds group, which were also operated and controlled by him.

Tracing the initial deposit of $250,000

Two days after the $250,000 was deposited into the Gows account on 26 October 2015, it was moved by Mr Petroulias through three transactions: $200,000 to the Point Partners Consulting account with Bankwest (item 7 in the Table of Accounts), $30,000 to the Nicholas Peterson account with Qudos Bank (item 54) and $20,000 to the Nicholas Peterson account with Macquarie Bank (item 8), Nicholas Peterson being an alias used by Mr Petroulias.

There were approximately 37 personal transactions effected through the Point Partners Consulting account in the period from 30 October 2015 to 24 May 2017, in the amount of around $50,000. These expenses exceeded the balance in the account prior to the injection of the Sunshine funds. The Qudos Bank account in the name of Nicholas Peterson was opened by Mr Petroulias on 26 August 2015, and had a credit balance of $4.19 when $30,000 of the Sunshine funds was deposited into that account on 28 October 2015. On 5 November 2015, $11,341 was transferred into the account from the Best Pay Custodial account held with Bankwest (bearing the account number ending in 9230 – see item 31).

By 24 November 2015, the bulk of the money deposited into the Qudos Bank account in the name of Nicholas Peterson had been transferred out, leaving only $101.38. These transactions were:

- $25,000 on 6 November 2015 to the Best Pay Custodial account with Bankwest (bearing the account number ending in 9256 – see item 33)
- a $1,000 cash withdrawal on 11 November 2015
- a further $1,000 cash withdrawal on 16 November 2015
- a transfer of $14,250 to the Gows account on 24 November 2015.

In relation to the Macquarie Bank account in the name of Nicholas Peterson, prior to the deposit of $20,000 into that account on 28 October 2015, the account balance was $18.37. The funds did not remain in this account but were transferred out in their entirety that same day to the Best Pay Custodial account with Bankwest (bearing account number ending 9256 – see item 33).

Tracing the $400,000 deposit

Prior to the $400,000 being paid into the Gows account on 3 December 2015, the balance in the account was $14,347.77. After being paid into the Gows account, funds were transferred to four accounts controlled and operated by Mr Petroulias, namely, the Best Pay Custodial account with Bankwest (account number ending 9230), the Point Partners Consulting account with Bankwest, the Nicholas Peterson account with Qudos Bank, and an account in the name of Johan Latervere, held with Macquarie Bank, leaving a balance of $165.77 on 15 December 2015. These transfers were as follows:

- on 4 December 2015, Gows transferred $120,000 to the Best Pay Custodial account with Bankwest (account number ending in 9230)
- on 4 December 2015, Gows transferred $120,000 to the Point Partners Consulting account with Bankwest
- on 4 December 2015, Gows transferred $34,000 to the Nicholas Peterson account with Qudos Bank
- on 7 December 2015, Gows transferred $31,182 (through three transactions) to the Macquarie Bank account in the name of Johan Latervere (account number ending 7791)
- on 8 December 2015, Gows transferred $8,500 to the same Macquarie Bank account in the name of Mr Latervere
- on 15 December 2015, Gows transferred $117,000 to the Point Partners Consulting Bankwest account.

The total amount of these transfers is $430,682, which is more than the $400,000 received from the initial transfer from the KNL trust account. However, this disparity can be explained through credits that the Gows account received from other accounts within the proceeds group, when:

- on 7 December 2015, $5,000 was transferred to Gows from the Nicholas Peterson account with Macquarie Bank (account number ending 8528)
- on 7 December 2015, $10,000 was transferred to Gows from the Nicholas Peterson account held with ANZ (account number ending in 0088)

- on 8 December 2015, a further $1,500 was transferred to Gows from the same Nicholas Peterson account held with ANZ.

In relation to the use by the Best Pay Custodial account with Bankwest (account number ending 9230), on 4 December 2015, the balance of the account was initially $16,539.26. It then received a transfer of $23,000 from the Best Pay Custodial account with Bankwest (account number ending 9256), following which the account was debited in the amount of $39,023 by way of a "batch payment" that left a balance of $516.26. This batch payment effected transfers to four accounts held in the name of Nicholas Peterson (Mr Petroulias): $11,341 to a Nicholas Peterson account held with ANZ (account number ending 0088); $11,341 to a Nicholas Peterson account held with Qudos Bank (account number ending 4226); $11,341 to a Nicholas Peterson account held with the Commonwealth Bank (account number ending 1201); and $5,000 to a Nicholas Peterson account held with Macquarie Bank (account number ending 9258). After these transactions, the Gows deposit is made, leaving a balance of $120,516.26. Prior to that deposit, the balance was $516.26.

A further batch payment of $83,506 was then made on 7 December 2015 to 10 accounts within the proceeds group, as follows:

- $11,341 to an account in the name of Nicholas Piers (an alias of Mr Petroulias) held with Macquarie Bank (account number ending 7140)
- $11,341 to the Nicholas Peterson account held with Bankwest (account number ending 5296)
- $9,456 to the Diomedes account held with NAB (account number ending 5723)
- $9,456 to the Michael Rockforth account held with NAB (account number ending 9335)
- $9,456 to an account in the name of Nicholas Berkley (an alias of Mr Petroulias) held with NAB (account number ending 4826)
- $9,456 to the Diomedes Qudos Bank account (account number ending 4051)
- $6,000 to the Diomedes Macquarie Bank account (account number ending 4196)
- $6,000 to the Michael Rockforth account held with Macquarie Bank (account number ending 6991)
- $6,000 to the Nicholas Berkley account held with Macquarie Bank (account number ending 7007)
- $5,000 to the Nicholas Piers account held with Bank of Sydney (account number ending 3708).

On 7 December 2015, a transfer of $11,341 was made by the Best Pay Custodial account with Bankwest (account number ending 9230) to another Best Pay Custodial account held with Bankwest (account number ending 9248). Although $4,904.90 was transferred back, two further batch payments were made, of $29,000 and $1,480, which were described as "expense reimbursements". The $29,000 batch payment effected transfers as follows:

- $6,500 to the Nicholas Berkley account held with NAB
- $7,500 to the Diomedes account held with Macquarie Bank
- $7,000 to the Michael Rockforth account held with Macquarie Bank
- $8,000, to the Diomedes account held with Qudos Bank.

The $1,480 batch payment effected transfers to the following accounts:

- $100 to a Michael Rockforth AMEX account
- $80 to an HSBC account in the name of Nicholas Berkley
- $1,100 to an NAB account in the name of Nicholas Berkley
- $100 to a Coles MasterCard account in the name of Diomedes
- $100 via a BPAY payment to a Commonwealth Bank card in the name of Nicholas Peterson.

In relation to the use of the money by Point Partners Consulting, at the time that the $120,000 was deposited into this account on 4 December 2015, the balance of the account was $142,084.33. On 4 December 2015, there was a transaction described as a "payout", in the amount of $39,684.47. Between this deposit and the next deposit by Gows into this account, which was $117,000 on 15 December 2015, there were two transactions:

- a payment of $43.23 to the NZ "Companies office" on 8 December 2015
- a $200 payment from Mr Green's Macquarie Bank account on 10 December 2015.

In relation to the use of the money from the Nicholas Peterson Qudos Bank account (account number ending 4226), the balance of this account as at 30 November 2015, until 4 December 2015, was $101.38. Two deposits were then made into the account, of $34,000 from the Gows account, and $11,341 from the Best Pay Custodial Bankwest account (account number ending 9230).

Subsequently, the following payments were made:

- on 22 December 2015, $195 into the Qudos account held in the name of Nicholas Peterson
- on 22 December 2015, $24,800 into the Best Pay Custodial account held with Bankwest (account number ending 9256)
- on 23 December 2015, $20,000 into the Qudos Bank account held in the name of Mr Green (account number ending 9708).

The Commission is satisfied that the Macquarie Bank account number ending 7791 in the name of Johan Latervere, who died in May 2013 and which was opened later that year after his death, was in fact, opened and operated by Mr Petroulias in Mr Latervere's name. As at 7 December 2015, the balance in this account was $14.00. On 7 December 2015, three transfers were made totalling $31,182 from the Gows account into this account as follows:

- $11,341 – described as "PAY NOV"
- $8,500 – described as "RENT"
- $11,341 – described as "PAY DEC".

Of the money deposited into this account, $19,500 was then transferred on 7 December 2015 into the Best Pay Custodial account with Bankwest (account number ending 9230).

On 8 December 2015, a further $8,500 was transferred from the Gows account into the Macquarie Bank account in the name of Mr Latervere. This transfer was described as "RENT DEC". On 9 December 2015, $11,650 was transferred from this account to the Best Pay Custodial account held with Bankwest (account number ending 9230) and a further $8,500 was transferred into that account on the same day. The remaining balance, as at 9 December 2015, was $16.00.

The $327,268 received by Gows

On 22 December 2015, $327,268 was transferred from KNL's trust account to Gows' account. The following day, transfers were made from the Gows account to the Nicholas Peterson account held with Qudos Bank, in the amount of $150,000, and $177,000 was transferred into the Point Partners Consulting account held with Bankwest. The money transferred to the Nicholas Peterson Qudos Bank account was transferred to either Best Pay Custodial or back to Gows. As at 23 December 2015, the balance of the Nicholas Peterson Qudos Bank account was $447.38. Then the balance increased by the $150,000 deposit to $150,447.38. Following the Gows deposit, the money was then paid as follows:

- on 5 January 2016, $25,000 was transferred to the Best Pay Custodial account with Bankwest (account number ending 9256)
- on 6 January 2016, $25,000 was transferred to Gows
- on 7 January 2016, $25,000 was transferred to Gows
- on 8 January 2016, $25,000 was transferred to Gows
- on 9 January 2016, $25,000 was transferred to Gows
- on 10 January 2016, $25,000 was transferred to Gows.

There is a further payment of $11,341 made to Gows, on 8 January 2016, but this is the result of a transfer from the Best Pay Custodial account with Bankwest (account number ending 9230).

In relation to the use of the Point Partners Consulting Bankwest account, on 23 December 2015 Gows transferred $177,000 into this account, and the account was subsequently used to pay for personal items.

The $20,000 and $26,666 received from the KNL trust account

On 30 October 2015, the balance of the Gows account was $101.13 when $20,000 was transferred into the account from the KNL trust account. The balance as at 2 November 2015 was $20,116.49, following the payment of interest and tax. On this date, a further $26,666 was transferred into the account from the KNL trust account, bringing the balance in the account to $46,764.49. The amount of $20,100 was then transferred to the Best Pay Custodial Bankwest account (account number ending 9230). Two transfers were then made into Gows' account on 3 November 2015, comprising:

- $20,000, which is described as a "loan repayment" from Ms Bakis, although the money in fact came from the Point Partners Consulting Bankwest account, which Ms Bakis told the Commission she had given to Mr Petroulias to use and control
- a further $25,000 from the Point Partners Consulting Bankwest account (the Commission observes that this account had received $200,000 from Gows on 28 October 2015).

On 3 November 2015, the balance of the account was $71,682.49. A series of transactions was then effected from this account. Some related to the payment of private expenses, specifically, Ms Bakis' credit card debts and a payment to AGL with respect to an account

in Mr Petroulias' name (totalling $52,547.89). Other transactions were in the nature of the circular payments or recurring debits and credits among the proceeds group, which form of transactions continued until the subsequent payment from the KNL trust account in the amount of $400,000 on 3 December 2015.

Mr Petroulias' contentions regarding the use of Sunshine funds

As indicated above, Mr Petroulias provides two explanations to account for the expenditure once the Sunshine funds were initially transferred into Gows' account. The first, in relation to the circular payments or recurring debits and credits among the accounts within the proceeds group, is that these were "notional circular payments", which were a means of attributing value to projects within ULC and related Pinnacle 8 projects. The value attributed to these projects, it is contended, was to reflect their use of human resources and accumulated property.

The apparent objective was to value the various ULC projects said to be on foot, or in contemplation, to attract third party investors. However, Mr Petroulias did not in his written narrative statement or in his written submissions, identify what these projects were, what valuations were arrived at, who it was that was contemplating investing in ULC or how it was that this valuation process could be assessed and analysed by third parties. Mr Petroulias points to the affidavit of Mr Vaughan, sworn on 8 May 2018 (annexed to Mr Petroulias' written narrative statement), in support of this explanation, but Mr Vaughan does not state in that affidavit that notional circular payments were made as a means of valuing ULC projects, and in fact, does not refer to payments of this description at all. Furthermore, Mr Vaughan's evidence before the Commission revealed him to have no understanding at all of Gows' business, operations or the accounts operated by it, which would serve to cast doubt on any explanation he purported to provide of Gows' business in his affidavit. In any event, there is no evidence that any projects developed by ULC were in existence at this time, let alone ready to undergo any process of valuation, and the notion that this frankly bizarre method of valuation could even be understood by, let alone be acceptable to third party investors, is entirely implausible.

The second explanation offered by Mr Petroulias is in relation to the use of the Sunshine funds in furtherance of ULC work. In his written narrative statement, Mr Petroulias suggests that a large proportion of payments made were to him by way of expenses "attributable to tax free 'living away from home' and 'travel allowance' payments to me of a personal 'living' nature". As indicated above, even if it could be accepted that the Sunshine funds were spent in furtherance of ULC work, it would not follow that this use was somehow authorised, legitimate and not ultimately for Mr Petroulias' benefit. Such a finding could only be made if the Commission were first to accept Mr Petroulias' evidence that Mr Zong agreed to the funds he had paid pursuant to the Sunshine transaction being used as an "investment" in ULC. The Commission has already rejected this evidence.

Putting this to one side, the Commission also rejects Mr Petroulias' explanation for similar reasons that it rejected Mr Green's submission that the financial benefits received by him were a form of recompense for the work he carried out for ULC. ULC never obtained any work, and never made any money. It is therefore not possible for the Commission to accept that the funds Mr Petroulias admits to spending could have been spent on the development of a business that, it is plain, did not achieve anything. This is particularly the case given that, as with Mr Green, Mr Petroulias' explanation regarding his ULC work was not accompanied by even a scintilla of detail as to precisely what he did on behalf of ULC and when, or the particular nature of the expenses incurred.

The Commission rejects both of the explanations offered by Mr Petroulias and finds that Mr Petroulias was a financial beneficiary as a result of his involvement in the Scheme, in that he received the entirety of the funds provided by Sunshine of $1,023,934, and used this money for his own benefit and the benefit of Ms Bakis and Mr Green.

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Chapter 14: Corrupt conduct and s 74A(2) statements

Corrupt conduct

The Commission's approach to making findings of corrupt conduct is set out in Appendix 2 to this report.

First, the Commission makes findings of relevant facts based on the balance of probabilities. The Commission then determines whether those facts come within the terms of s 8(1), s 8(2) or s 8(2A) of the ICAC Act. If they do, the Commission then considers s 9 of the ICAC Act and the jurisdictional requirements of s 13(3A).

In addressing the jurisdictional requirement in s 13(3A) for the purpose of subsection 9(1)(a), the Commission considers whether, if the facts as found were to be proved on admissible evidence to the criminal standard of beyond reasonable doubt and accepted by an appropriate tribunal, there would be grounds on which such a tribunal would find that the person has committed a criminal offence.

The Commission then considers whether, for the purpose of s 74BA of the ICAC Act, the conduct is sufficiently serious to warrant a finding of corrupt conduct.

Mr Green

At all relevant times, Mr Green was deputy chairperson of the ALALC board and a public official for the purposes of the ICAC Act.

The Commission is satisfied that Mr Green knowingly participated in a dishonest scheme with Mr Petroulias, Ms Dates and Ms Bakis that involved him acting contrary to his public official duties in relation to the purported sale and/or development of properties owned by the ALALC as a means to wrongfully confer a benefit on himself and others.

Mr Green's role in the Sunshine transaction and the attempted Solstice and Advantage transactions was central to achieving the objectives of the Scheme.

His conduct in relation to each transaction was deliberate and undertaken with the objective of dishonestly obtaining financial benefits for himself and others. His conduct in relation to these transactions includes not only individual acts but those taken jointly or in collaboration with the others involved in the Scheme.

He deployed his authority and power as an ALALC board member and deputy chairperson so as to give the appearance of legitimacy to the Gows Heads of Agreements, the Sunshine transaction and the attempted Solstice and Advantage transactions. Not only was he instrumental in progressing these transactions by executing agreements on behalf of the ALALC, when he was not authorised to do so, but he deliberately did not disclose to the ALALC board members (other than Ms Dates) the fact of and his participation in the Sunshine transaction and the attempted Solstice or Advantage transactions, including that he had executed a number of agreements forming part of those transactions, purportedly on behalf of the ALALC.

As found in this report, Mr Green exercised his official functions to promote and support the abovementioned Scheme in a number of ways, including:

1. Providing information to Mr Petroulias and Ms Bakis regarding the ALALC, including its property holdings (chapter 7).
2. Bypassing the then existing solicitor to the ALALC by signing the KNL Costs Disclosure Statement and Client Service Agreement dated 28 November 2014 as the authorised representative of the ALALC to effect Ms Bakis' retainer as the ALALC's solicitor, despite knowing he had no such authority to retain Ms Bakis and that any proposal to retain her or KNL would need to be first raised before the ALALC board (chapter 7).

3. Purporting to execute for and on behalf of the ALALC, but without the authority of the ALALC board, the 15 December 2014 First Gows Heads of Agreement, knowing it was a sham and knowing it would be used to on-sell the "rights" Gows had purported to acquire under it to a third party. He knew the Heads of Agreement falsely represented to third parties that the Gows transaction was legitimate and entered into with the approval of the ALALC board and provided the means for wrongfully acquiring a financial benefit for the participants in the scheme, namely, himself, Mr Petroulias and Ms Bakis (chapter 7).

4. Purporting to execute for and on behalf of the ALALC, but without the authority of the ALALC board, the Second Gows Heads of Agreement, also dated 15 December 2014 (chapter 7).

5. At meetings in 2015 with Mr Sayed, Mr Rhee, Mr Fisk, Mr Zong and Mr Petroulias, making no attempts to make clear that Mr Petroulias was not a representative of the ALALC or that Mr Petroulias or Gows had no rights to deal with ALALC property at Warners Bay and failing to disclose those meetings to the ALALC board (chapter 8).

6. Signing the 30 June 2015 Acquisition Proposal between Sunshine and the ALALC for and on behalf of the ALALC without authority from the ALALC board to do so and deliberately failing to disclose the agreement to the ALALC board (chapter 8).

7. Signing the Sunshine Heads of Agreement dated 2 October 2015, the Sunshine Variation Agreement dated 23 October 2015 and the undated Surrender Agreement and Release in October 2015 for the Sunshine transaction without informing the ALALC or its board. He signed the agreements falsely representing that he did so with the authority of the ALALC when he had no such authority (chapter 9).

8. Signing, without the knowledge or approval of the ALALC board, the Deed of Acknowledgement and Guarantee with Sunshine Warners Bay dated 21 December 2015 in order to ensure that those representing Sunshine did not take any steps that might result in the transaction being terminated or seek to recoup funds it had paid into the KNL trust account and failing to disclose to the ALALC board that he had signed the document (chapter 9).

9. Participating in progressing the Solstice transaction (including signing the Solstice Heads of Agreement on 19 November 2015 while falsely representing that he did so with the authority of the ALALC board) in an attempt to purportedly sell ALALC land through the use of the Second Gows Heads of Agreement in order to obtain a financial benefit for himself, Mr Petroulias and Ms Bakis (chapter 10).

10. Deliberately failing to disclose to the ALALC board at the meeting of 8 April 2016 what had taken place in relation to the Sunshine transaction (chapter 10).

11. Deliberately failing to provide to the ALALC board the KNL Costs Disclosure Statement and Client Service Agreement dated 27 November 2015 which provided that KNL could receive instructions from the ALALC through him or Mr Petroulias (chapter 12).

12. Receiving for his personal benefit approximately $144,000 and a Mercedes car with a trade-in value of $15,000 as a reward for the part he played in the Scheme (chapter 13).

13. Receiving indirect financial benefits of approximately $85,000 from the hiring out of an excavator and truck he purchased using, in part, Sunshine funds received by him through Gows as a reward for the part he played in the Scheme (chapter 13).

Mr Green's participation in the scheme was corrupt conduct for the purposes of s 8(1)(b) of the ICAC Act as it could constitute or involve the dishonest or partial exercise of his public official functions.

Under s 62 of the ALR Act, his functions as a board member included directing and controlling the affairs of the ALALC. This function requires the board and individual board members to manage the affairs of the ALALC both in an operational sense (management of the ALALC and its property and affairs) and also in a broader sense in terms of overall stewardship. The position of board member is a statutory position under the ALR Act and, as such, carries with it obligations of honesty and loyalty that attach to offices of a public nature and statutory obligations as prescribed by the ALR Act. As an ALALC board member and deputy chairperson of that board, Mr Green occupied a position of public trust. The functions conferred on him were granted for the benefit of Aboriginal persons within the ALALC area, not to enable him to benefit himself, Mr Petroulias or Ms Bakis.

Mr Green's conduct, as set out above, was also conduct by him that constitutes or involves a breach of public trust within the meaning of s (8)(1)(c) of the ICAC Act.

For the purposes of s 9 of the ICAC Act, it is relevant to consider s 192E and s 249B of the *Crimes Act 1900* ("the Crimes Act") and the common law offences of misconduct in public office and conspiracy to defraud.

Section 192E(1) of the Crimes Act provides as follows:

> *A person who, by any deception, dishonestly—*
>
> *(a) obtains property belonging to another, or*
>
> *(b) obtains any financial advantage or causes any financial disadvantage,*
>
> *is guilty of the offence of fraud.*
>
> *Maximum penalty—Imprisonment for 10 years.*

Section 192D(1) of the Crimes Act provides that the phrase "obtain a financial advantage" includes:

> *(a) obtain a financial advantage for oneself or for another person, and*
>
> *(b) induce a third person to do something that results in oneself or another person obtaining a financial advantage, and*
>
> *(c) keep a financial advantage that one has,*
>
> *whether the financial advantage is permanent or temporary.*

Section 192D(2) of the Crimes Act provides that the phrase "cause a financial disadvantage" means:

> *(a) cause a financial disadvantage to another person, or*
>
> *(b) induce a third person to do something that results in another person suffering a financial disadvantage,*
>
> *whether the financial disadvantage is permanent or temporary.*

Mr Green caused financial disadvantage to Sunshine/Mr Zong within the terms of s 192E(1)(b) of the Crimes Act in connection with the Sunshine transaction, the financial disadvantage being the payment of money, and the incurring of expenses, by Sunshine/Mr Zong. He also obtained a financial advantage (being the direct and indirect financial benefits he received) within the terms of s 192E(1)(b) of the Crimes Act.

It was Mr Zong's unchallenged evidence that, based on what he was told, he considered that there was a genuine interest in the land held by Gows, and that it was safe to proceed further with the transaction. He also gave unchallenged evidence that, when provided with a copy of the Gows Heads of Agreements (which had been executed by Mr Green purportedly on behalf of the ALALC), he believed that Gows did have an agreement with the ALALC. These matters establish a causal link between the dishonesty and the deception and the financial disadvantage within s 192D(2)(a) of the Crimes Act.

Section 249B(1) of the Crimes Act provides:

> *If any agent corruptly receives or solicits (or corruptly agrees to receive or solicit) from another person for the agent or for anyone else any benefit—*
>
> *(a) as an inducement or reward for or otherwise on account of—*
>
> *(i) doing or not doing something, or having done or not having done something, or*
>
> *(ii) showing or not showing, or having shown or not having shown, favour or disfavour to any person,*
>
> *in relation to the affairs or business of the agent's principal, or*
>
> *(b) the receipt or any expectation of which would in any way tend to influence the agent to show, or not to show, favour or disfavour to any person in relation to the affairs or business of the agent's principal,*
>
> *the agent is liable to imprisonment for 7 years.*

Section 249A(g) of the Crimes Act defines "agent" to include "a Board member of a Local Aboriginal Land Council within the meaning of the *Aboriginal Land Rights Act 1983* (and in this case a reference in this Part to the agent's principal is a reference to the Local Aboriginal Land Council)". Thus, for the purpose of this offence, Mr Green is the "agent" and the ALALC is the "principal".

As set out above, Mr Green received substantial financial benefits as a reward for his involvement in the Scheme. Those benefits were funded by Mr Petroulias, and the funding itself can be sourced to the monies paid by Sunshine.

The elements of the offence of misconduct in public office were stated by the Victorian Court of Appeal in *R v Quach* (2010) 27 VR 310, 313 and 323 (Redlich JA; Ashley JA and Hansen AJA agreeing), as follows:

> *... the elements of the offence are:*
>
> *(1) a public official;*
>
> *(2) in the course of or connected to his public office;*
>
> *(3) wilfully misconducts himself; by act or omission, for example, by wilfully neglecting or failing to perform his duty;*
>
> *(4) without reasonable excuse or justification; and*
>
> *(5) where such misconduct is serious and meriting criminal punishment having regard to the responsibilities of the office and the officeholder, the importance of the public objects which they serve and the nature and extent of the departure from those objects.*

This statement of the elements of the offence was endorsed in *Obeid v R* (2015) 91 NSWLR 226, at 252-254 (per Bathurst CJ, Beazley P and Leeming JA) and, again, in *Obeid v R* (2017) 96 NSWLR 155 at [60]-[61] (Bathurst CJ).

In relation to the first element, Mr Green was clearly a public official.

In relation to the second element, in terms of the relevant "connection", the misconduct is not required to occur while the officer is in the course of performing a duty or function of the office: rather, as was explained in *R v Quach* (2010) 27 VR 310, 320, the

> *offence may be made out where the misconduct is inconsistent with those responsibilities. It may be connected to a duty already performed or to one yet to be performed or it may relate to the responsibilities of the office in some other way. The misconduct must be incompatible with the proper discharge of the responsibilities of the office so as to amount to a breach of the confidence which the public has placed in the office, thus giving it its public and criminal character.*

In the present case, Mr Green purportedly exercised his functions as an ALALC board member and deputy chairperson by executing agreements involving ALALC land. His position ("his public office") provided him with the opportunity to take these steps, and act in this way. As was explained in *R v Quach* (2010) 27 VR 310, 321, the "official's conduct will be linked to their office when in doing the impugned act, the official did something he or she was duty bound to refrain from doing, according to the responsibilities of the office". Mr Green's conduct was incompatible with the proper discharge of the responsibilities of his office so as to amount to a breach of the confidence which the public had placed in that office.

With respect to the third and fourth elements of the offence, Mr Green's relevant conduct was wilfull and there was no reasonable excuse or justification for it.

In relation to the fifth element, as was explained in *Quach* and later by the Court of Appeal in *Obeid*, a necessary condition of the offence is that the misconduct have the requisite serious quality – viz., "meriting criminal punishment, in light of the nature and importance of the office and public objects served" (see *Obeid v R* (2015) 91 NSWLR 226, 254). Mr Green's misconduct meets this criterion because it involves the dishonest and partial conduct on his part for personal gain or advantage.

In relation to the common law offence of conspiracy to defraud, a conspiracy consists of an agreement, in two or more, to do an unlawful act. Here the relevant conduct involved an agreement to prejudice another person's economic right or interests, or inducing another person (being Sunshine/Mr Zong) to act or refrain from acting to his or her economic detriment, by the use of dishonest means (see *Peters v R* (1998) 192 CLR 493, at 525). In relation to this type of conspiracy, it is sufficient that the conspirators intended to obtain some advantage for themselves by putting another person's property at risk or depriving another person of a lawful opportunity to obtain or protect property (see *Peters v R* (1998) 192 CLR 493, at 507 and 525).

For the Sunshine proposal, the central element of the conspiracy was the creation of a false instrument, being the Gows Heads of Agreements, between the ALALC and Gows. The object of the agreement was to on-sell this agreement to third parties as a means to wrongfully cause disadvantage to the prospective "purchaser" and confer a financial benefit on Mr Green, Mr Petroulias and Ms Bakis.

Mr Green was not only a principal party in the scheme but also the public official who was induced to act (and did so act as a willing party) contrary to his duties. The public officials are also the board members of the ALALC who participated in the meeting that approved a transaction involving Solstice on 8 April 2016, and those who participated in the meeting that approved a transaction involving Advantage on 2 June 2016 and approved the execution of the agreements on 7 June 2016. Each was deflected from their duties.

The Commission is satisfied that Mr Green's conduct comes within of s 9(1)(a) of the ICAC Act because it could constitute or involve the criminal offences of fraud (s 192E of the Crimes Act), corruptly receiving commissions (s 249B of the Crimes Act) and the common law offences of misconduct in public office and conspiracy to defraud.

For the purposes of s 13(3A) of the ICAC Act the Commission is satisfied that, if the essential facts as found were to be proved by admissible evidence to the criminal standard of proof and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that Mr Green had committed criminal offences of fraud contrary to s 192E(1) of the Crimes Act, corruptly receiving a commission contrary to s 249B of the Crimes Act and the common law offences of misconduct in public office and conspiracy to defraud.

For the purposes of s 74BA of the ICAC Act, the Commission is satisfied that Mr Green's conduct is serious corrupt conduct. His conduct as set out in the report and as summarised above involved criminal offences, a significant amount of money, a premeditated level of sophistication and planning involving unauthorised dealings using ALALC assets (namely, certain of ALALC's land holdings) to obtain money by deception in relation to those assets over an extended period of time and a substantial breach of public trust.

Ms Dates

Ms Dates was a member of the ALALC board from 2010 and occupied the position of chairperson of the board from September 2013. Aside from a brief period of suspension from the board, between 2 November and 28 December 2015, she continued in that role until 13 October 2016. She was a public official for the purposes of the ICAC Act. She was aware of her obligations under the ALR Act and the obligation to ensure that the board, of which she was a member, and the ALALC complied with the provisions of the ALR Act. In acting as a member and chairperson of the ALAC board, Ms Dates was subject to obligations under s 176 of the ALR Act to:

> *(a) act honestly and exercise a reasonable degree of care and diligence in carrying out her functions*
>
> *(b) act for a proper purpose in carrying out her functions*
>
> *(c) not use her office or position for personal advantage, and*
>
> *(d) not use her office or position to the detriment of the ALALC.*

The Commission is satisfied that Ms Dates knowingly exercised her official functions as an ALALC board member and chairperson of the ALALC board partially in connection with the Sunshine and Advantage transactions to favour the interests of Mr Petroulias, Mr Green and Ms Bakis, and to the detriment of the ALALC.

Ms Dates joined with Mr Petroulias in actively devising and progressing the Sunshine transaction and the attempted Advantage transaction. Despite knowing that all dealings concerning or involving ALALC land were subject to the control of the ALALC, and required the full knowledge and authorisation of the ALALC board in accordance with the provisions of the ALR Act, she deliberately failed to inform the ALALC board or obtain its authorisation in order to progress the Sunshine transaction and the attempted Advantage transaction.

Her relationship with Mr Petroulias – who instigated and with Mr Green, Ms Dates and Ms Bakis, developed the transactions – became a collaborative enterprise. Mr Petroulias, Ms Bakis, Mr Green and Ms Dates together worked towards the common goal or objective of implementing each of these transactions. In her public official role she frequently communicated with Mr Petroulias, Ms Bakis and Mr Green in progressing the Sunshine transaction, and subsequently the attempted Advantage transaction including by attending meetings, in relation to the transactions, participating in negotiations with third parties and in executing agreements without the authority of the ALALC board. Her conduct also included:

1. Signing each of the Sunshine Heads of Agreement dated 2 October 2015 and the Sunshine Variation Agreement dated 23 October 2015 for and on behalf of the ALALC despite knowing she did not have the authority to do so (chapter 9).
2. Failing to disclose to the ALAC board that she had met with Mr Zong of Sunshine on 23 October 2015, that she had signed the above documents or to provide copies of them to the ALALC board or mention them at any subsequent ALALC board meeting or make any attempt to have the ALALC board approve the Sunshine transaction and/or approve it being put to the ALALC members for approval (chapter 9).

3. At the ALALC board meeting of 8 April 2016 (where she voted against the ALALC pursuing any agreement with Sunshine and in favour of an agreement with Solstice), knowingly failing to disclose what had taken place in relation to the Sunshine transaction, namely that Sunshine had purportedly been granted an option to purchase ALALC land or her role in that transaction (chapter 10).

4. Signing for and on behalf of the ALALC the Call Option Agreement dated 7 June 2016 between the ALALC and Advantage Property Syndications granting an option to the latter to purchase ALALC land, despite knowing she did not have the authority to do so (chapter 11).

5. Signing the Collaboration Agreement dated 7 June 2016 between the ALALC, Advantage Property Experts Syndications and others as an authorised officer of the ALALC despite knowing she did not have the authority to do so (chapter 11).

6. Executing on behalf of the ALALC the Agreement Addendum – Awabakal Economic Advancement Strategy between the ALALC, Advantage and other parties to amend the Collaboration Agreement despite knowing she did not have the authority to do so (chapter 11).

7. Signing, on behalf of the ALALC, the Confirmation of Variation of Retainer and Engagement dated 7 June 2016 between the ALALC and KNL (confirming the retainer and engagement of KNL and varying the agreement of 27 November 2015 to include further work arising from the Advantage transaction) despite knowing she did not have the authority to do so (chapter 11).

The above conduct on the part of Ms Dates was corrupt conduct for the purposes of s 8(1)(b) of the ICAC Act as it involved the partial exercise of her official functions.

Her conduct also comes within s 8(1)(c) of the ICAC Act as it could constitute or involve a breach of public trust.

As an ALALC board member and chairperson, Ms Dates occupied dual positions of "public trust". The duties and functions conferred upon her in those roles were public ones ultimately directed to benefiting members of the public (members of the ALALC). Yet, she exercised her duties and functions in a manner that did not benefit the members of the ALALC or in pursuit of the objects of the ALALC, but rather to favour the interests of Mr Petroulias, Ms Bakis and Mr Green.

Ms Dates' conduct comes within of s 9(1)(b) of the ICAC Act because it could constitute or involve a disciplinary offence within s 9(1)(b) – specifically a breach of s 176(1) of the ALR Act and breaches of clauses 2, 5, 6, 7 and 9 of the Code of Conduct as prescribed by Schedule 3 of the ALR Regulation and s 177 of the ALR Act.

Clause 2 of the Code of Conduct requires LALC officers to observe the highest standards of conduct and ethical behaviour, to abide by the ALR Act, refrain from conduct or action that detracts from the reputation of the LALC, exercise complete probity, honesty and diligence in carrying out their duties and responsibilities, at all times safeguard the interests of the LALC and its members and not knowingly be party to any illegal or unethical activity.

The fact that Ms Dates is no longer a board member is no bar for the purposes of determining whether her conduct could constitute or involve a disciplinary offence for the purposes of s 9(1)(b) of the ICAC Act. This is because s 9(2) of the ICAC Act provides that it does not matter that such action can no longer be taken.

The Commission is satisfied for the purposes of s 13(3A) of the ICAC Act that if the essential facts as found were proved on admissible evidence to the appropriate standard of proof and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that Ms Dates had committed a disciplinary offence or reasonable grounds for dismissing or dispensing with the services of Ms Dates as a public official. Accordingly, the jurisdictional requirement of s 13(3A) of the ICAC Act is satisfied.

The Commission is satisfied for the purposes of s 74BA of the ICAC Act, that Ms Dates' conduct is serious corrupt conduct. It involved her using her official functions partially in relation to a deliberate and dishonest Scheme (the Sunshine and Advantage transactions) with Mr Petroulias, Mr Green and Ms Bakis the object of which was to benefit Mr Petroulias, Ms Bakis and Mr Green.

Her conduct associated with those transactions involved considerable planning and deceit. Ms Dates made herself and the power and authority she possessed as a member and chairperson of the ALALC board available to Mr Petroulias, Ms Bakis and Mr Green in assisting and supporting the transactions underpinning the above Scheme. In so acting she breached her obligations to act with honesty and loyalty to the ALALC. Instead, she intentionally acted in the interests of Mr Petroulias, Mr Green and Ms Dates over the interests of the ALALC.

Ms Dates' conduct would impair confidence in public administration associated with LALCs given the official position held by her as a member of the ALALC board. Further, her conduct involved serious disciplinary offences.

Mr Petroulias

The Commission is satisfied that Mr Petroulias knowingly instigated and participated in a dishonest Scheme with Mr Green, Ms Dates and Ms Bakis that involved Mr Green and Ms Dates acting contrary to their public official duties and involving the purported sale and/or development of properties owned by the ALALC as a means to wrongfully confer a benefit on himself, Mr Green and Ms Bakis.

As found in this report, his involvement in this Scheme included the following:

1. Using the identities of others to hide his involvement in Gows, a company he controlled and used to further his involvement in the Scheme (chapter 6).
2. Altering the 31 October 2014 handwritten minutes of the ALALC board meeting and creating the fraudulent Gows Resolution so it could be shown to prospective purchasers as evidence that Gows had certain interests in ALALC land (chapter 6).
3. Drafting clause 20 for inclusion into the KNL Costs Disclosure Statement and Client Service Agreement with the ALALC dated 28 November 2014 and the KNL Costs Disclosure Statement and Client Service Agreement dated 27 November 2015 with the ALALC which purported to enable Ms Bakis to act on the instructions of himself and/or Mr Green without consulting with the ALALC to ascertain if it agreed with the instructions (chapter 7).
4. Providing input and assistance in the drafting of the 15 December 2014 First Heads of Agreement between Gows and the ALALC (and the Second Gows Heads of Agreement also dated 15 December 2014) for the purpose of facilitating Gows being able to represent it had the right to on-sell the rights it purported to acquire under the agreement and arranging for Mr Green to execute it in order to wrongfully confer a financial benefit on himself, Ms Bakis and Mr Green while knowing that it was not and could not be a binding contract and was a sham (chapter 7).
5. From May 2015, making a series of representations to prospective purchaser third parties (including in the presence of Mr Green) to the effect that Gows held the rights to acquire ALALC land which rights would need to be brought out by any prospective purchaser (chapters 7 and 8).
6. Arranging or facilitating the drafting by Ms Bakis of the 21 December 2015 Deed of Acknowledgement and Guarantee between Sunshine and the ALALC and its signing by Mr Green, ostensibly on behalf of the ALALC, in order to ensure that those representing Sunshine did not take any steps that might result in the transaction being discovered or seek to recoup funds it had paid into the KNL trust account (chapter 9).
7. Engaging in negotiations with Solstice in an attempt to sell it ALALC land through the use of a false agreement, being the Second Gows Heads of Agreement, in order to wrongfully confer a benefit on himself, Ms Bakis and Mr Green (chapter 10).
8. Redrafting the minutes of the 8 April 2016 ALALC board meeting to misrepresent what was discussed by the board and the nature of the advice provided to it (chapter 10).
9. Involving himself in drafting and negotiating the Advantage transaction agreements in order to progress the Scheme (chapter 11).
10. Contrary to the provisions of the Sunshine Heads of Agreement as varied by the Variation Agreement between Sunshine and the ALALC, directing or arranging for Ms Bakis to disburse monies paid into the KNL trust account by Sunshine to the benefit of Gows knowing that Gows had no entitlement to those funds (chapter 12).
11. Allowing Mr Green to access funds received by Gows from Sunshine, including through the KNL trust account, for Mr Green's benefit and as a reward for Mr Green's involvement in the scheme (chapter 13).
12. Receiving $1,023,934, being funds provided by Sunshine, which he used for his benefit (chapter 13).

The Commission is satisfied that Mr Petroulias' instigation of and participation in the Scheme involved conduct that adversely affected, or that could adversely affect, either directly or indirectly, the honest or impartial exercise of official functions of Mr Green and Ms Dates and therefore comes within s 8(1)(a) of the ICAC Act.

For the purposes of s 9(1)(a) of the ICAC Act, his conduct could constitute or involve criminal offences of fraud pursuant to s 192E of the Crimes Act (with respect to the Sunshine transaction), giving a corrupt commission or reward pursuant to s 249B of the Crimes Act (with respect to the benefits provided to Mr Green), conspiracy to defraud (including conspiracy to deflect a public official

from carrying out their duty), and aiding and abetting misconduct in public office by Mr Green.

For the purposes of s 13(3A) of the ICAC Act, the Commission is satisfied that, if the facts as found were to be proved on admissible evidence to the criminal standard of proof and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that Mr Petroulias had committed offences of fraud contrary to s 192E of the Crimes Act, giving corrupt commissions or rewards contrary to s 249B of the Crimes Act, conspiracy to defraud and misconduct in public office. Accordingly, the jurisdictional requirement of s 13(3A) of the ICAC Act is satisfied.

The Commission is satisfied that this is serious corrupt conduct for the purposes of s 74BA of the ICAC Act. This is because the conduct involves criminal offences, a significant amount of money, and a high level of sophistication and planning in that the Scheme was premeditated and involved more than one attempt to defraud third parties over an extended period of time.

Ms Bakis

The Commission is satisfied that Ms Bakis knowingly participated in a dishonest Scheme with Mr Petroulias, Mr Green and Ms Dates that involved Mr Green and Ms Dates acting contrary to their public official duties and involving the purported sale and/or development of properties owned by the ALALC as a means to wrongfully confer a benefit on herself, Mr Petroulias and Mr Green.

As found in this report, Ms Bakis' involvement in this scheme included the following:

1. Making no attempt to ascertain whether Mr Green and/or Ms Dates had any authority to enter into transactions on behalf of the ALALC and the ALALC board and knowing that, at all relevant times, neither Mr Green nor Ms Dates had authority to enter into transactions purporting to deal with land on behalf of the ALALC (chapter 7).
2. Failing to provide advice to the ALALC about her conflict of interest with respect to her acting as solicitor for both the ALALC and Gows, a company she knew to be effectively controlled by Mr Petroulias or to take steps to manage that conflict (chapter 7).
3. Incorporating clause 20 into the KNL Costs Disclosure Statement and Client Service Agreement dated 28 November 2014 and the KNL Costs Disclosure Statement and Client Service Agreement dated 27 November 2015 which purported to enable her to act on the instructions of Mr Petroulias and/or Mr Green knowing that she had no authority to do so without consulting with the ALALC to ascertain if it agreed with the instructions (chapter 7).
4. Creating the KNL Costs Disclosure Statement and Client Service Agreement dated 28 November 2014 and having it signed by Mr Green for the ALALC to lend the appearance of legitimacy to the 15 December 2014 Heads of Agreements between Gows and the ALALC and subsequent negotiations and discussions and to enable her and Mr Petroulias to communicate with third parties apparently on behalf of the ALALC with respect to the sale and/or development of ALALC land (chapter 7).
5. Drafting, with input and assistance from Mr Petroulias and Mr Green, the 15 December 2014 Heads of Agreements between Gows and the ALALC, which was signed by Mr Green on behalf of the ALALC, for the purpose of facilitating Gows being able to represent it had the right to on-sell the rights it purported to acquire under the agreement in order to wrongfully confer a financial benefit on herself, Mr Petroulias and Mr Green while knowing that it was not and could not be a binding contract and was a sham (chapter 7).
6. Using her position as a legal practitioner (and allowing her position as a legal practitioner to be used) to cloak the Sunshine and other purported transactions in authenticity including by permitting Mr Petroulias to use the KNL name in communications between himself and those representing Sunshine and by making available the use of her KNL trust account for the payment by Mr Zong of the $50,000 required under the Acquisition Proposal (chapter 8).
7. Contrary to the provisions of the Sunshine Heads of Agreement, as varied by the Variation Agreement between Sunshine and the ALALC, disbursing monies paid into the KNL trust account by Sunshine to the benefit of Gows, a company she knew was controlled by Mr Petroulias knowing that Gows had no entitlement to those funds (chapters 8 and 13).
8. Drafting the 21 December 2015 Deed of Acknowledgement and Guarantee between Sunshine and the ALALC, which was signed by Mr Green, in order to ensure that those representing Sunshine did not take any steps that might result in the transaction being discovered or seek to recoup funds it had paid into the KNL trust account (chapter 9).

9. Approving the Solstice transactional documents of November 2015 and April 2016 being issued to Solstice in her capacity as the ALALC's solicitor in order to progress the potential transaction involving the buying out of the Gows interest in the ALALC properties which she knew was falsely purported to have been created by the Second Gows Heads of Agreement (chapter 10).

10. Deliberately failing to disclose to the ALALC board at the meeting of 8 April 2016 what had taken place in relation to the Sunshine transaction (chapter 10) or the improper nature of the Gows Heads of Agreements, the Sunshine transaction and the role of Gows in both the Sunshine transaction and the proposed transaction with Solstice (chapter 12).

11. Deliberately failing to disclose to the ALALC board at the meeting of 8 April 2016 that advanced drafts of the Solstice agreements had been prepared or that Mr Petroulias' company, Gows, stood to secure a significant financial benefit if the transaction with Solstice went ahead (chapter 10).

12. Deliberately attempting to mislead the ALALC board at its meeting of 6 May 2016 by concealing the true reason why the Solstice transaction would not be pursued (chapter 10).

13. Involvement in drafting and negotiating the Advantage transaction agreements in order to progress the Scheme (chapter 11).

14. At the ALALC board meeting of 2 June 2016, advocating for the ALALC board to approve the motion agreeing to the replacement of Advantage for Solstice and the approval of the Advantage transactions without providing relevant legal advice and in breach of the fiduciary duties owed by her to the ALALC as its solicitor and deliberately failing to disclose the interest of herself and Mr Petroulias in the Advantage Group (chapter 11).

15. Although undertaking work for the ALALC from about November 2014, deliberately failing to issue any invoices to the ALALC board until March 2016 to conceal her conduct and relevant transactions from the ALALC board (chapter 12).

16. Deliberately failing to provide written advice to the ALALC board in connection with the Gows and Sunshine transactions (chapter 12).

17. Preparing advices, which were deliberately not provided to the ALALC board, and placing them on the KNL file to generate a false record or account that, on its face, suggested the conduct that had been engaged in by Mr Petroulias, Mr Green, Ms Dates and herself was undertaken with the knowledge and approval (either tacit or express) of the ALALC board and/or on the instructions of the ALALC board. These include:

    a) the briefing paper dated 6 March 2016 for the ALALC board meeting of 8 March 2016

    b) the memorandum of advice instruction dated 4 April 2016

    c) the briefing paper on potential property agreements dated 5 April 2016 for the ALALC board meeting of 8 April 2016

    d) the briefing paper on the Advantage property agreements dated 29 May 2016 for the ALALC board meeting of 2 June 2016 (chapter 12).

18. Permitting Mr Petroulias to carry out work, draft documents, advices and communications both to the ALALC and to third parties under the guise of KNL and/or her own name (chapter 12).

19. In her letter of 19 July 2016 (or any other subsequent communication), deliberately failing to disclose to PKF, which she knew was conducting an audit of the ALALC and had requested details of the matters for which she was acting for the ALALC and details relating to those matters, any of the following agreements that had been entered into by the ALALC while she was acting as its solicitor:

    a) the First and Second Gows Heads of Agreements

    b) the Sunshine Heads of Agreement dated 20 October 2015

    c) the Sunshine Variation Agreement executed on 23 October 2015

    d) the Surrender Agreement and Release

    e) the Sunshine Deed of Acknowledgement and Guarantee executed by Mr Green on 21 December 2015

    f) the letter of demand dated 15 July 2016 that the ALALC had received from Sunshine's lawyers regarding the Sunshine transaction (chapter 12).

20. In July 2016, deliberately failing to disclose to Ms Keagan of PKF the executed versions of the Advantage Collaboration Agreement and the Call Option Agreements dated 7 and 10 June 2016 in order to conceal their existence and the involvement of Mr Petroulias and herself in relation to the Advantage transaction (chapter 12).

21. In an email to Ms Keagan on 19 July 2016, not revealing that Awabakal LALC Trustees had been a party to the Advantage agreements executed in June 2016 and falsely stating that Mr Petroulias was a member of her staff (chapter 12).

22. In her affidavit of 27 June 2016, in support of the summons and interim relief sought by the ALALC against the minister from taking action under s 223B(1) of the ALR Act and from appointing an administrator, she deliberately sought to conceal the progress that had been made with respect to the Advantage transaction, including that agreements had been executed (chapter 12).

23. Knowingly facilitating the arrangement which permitted her and Mr Petroulias to pursue their own interests through the LEC proceedings (in buying time for the Advantage deal to progress) at the expense of the interests of the ALALAC (chapter 12).

24. Providing a Mercedes car to Mr Green in May 2016 with a trade-in value of $15,000 as a reward for his role and participation in the scheme (chapter 13).

25. Deriving a financial benefit of about $179,000 as a reward for the part she played in the deception of Mr Zong and Sunshine and more broadly in relation to the purported transactions involving Gows, Solstice and Advantage (chapter 13).

The Commission is satisfied that Ms Bakis' participation in the scheme involved conduct that adversely affected, or that could adversely affect, either directly or indirectly, the honest or impartial exercise of official functions of Mr Green and Ms Dates and therefore comes within s 8(1)(a) of the ICAC Act.

For the purposes of s 9 of the ICAC Act, her conduct could constitute or involve criminal offences of fraud pursuant to s 192E of the Crimes Act, aiding and abetting the receipt or giving of corrupt commissions pursuant to s 249F of the Crimes Act, conspiracy to defraud (including conspiracy to deflect a public official from carrying out their duty), and aiding and abetting misconduct in public office by Mr Green.

In connection with, and in the events leading up to, the signing and execution of the Acquisition Proposal on or around 30 June 2015 and during the due diligence period that followed, Ms Bakis caused financial disadvantage to Sunshine/Mr Zong within the terms of s 192E(1)(b) of the Crimes Act – the financial disadvantage being the payment of money, and the incurring of expenses, by Sunshine/Mr Zong.

Her deception and dishonesty derived from her role in drafting the Gows Heads of Agreement knowing it was a sham and would be used for the purpose of facilitating Gows on-selling the rights it purported to acquire under the agreement. She knew no later than when the Sunshine Acquisition Proposal was signed that the Gows Heads of Agreements formed an essential part of that transaction. Her deception was intentional.

The deception employed by Ms Bakis was not limited to the creation of and representations made about the false Gows interest in ALALC land. Rather, it embraced her knowingly participating in a scheme by which ALALC land would, by dishonest means, be used to extract payment from prospective purchasers, such as Sunshine, without any intention of ultimately effecting a land dealing on behalf of the ALALC. At all relevant times she knew that the Gows Heads of Agreements created no legal or equitable interest in the ALALC land and were worthless. Despite this, she participated in the Sunshine transaction by negotiating and drafting the suite of agreements issued to Sunshine and acting as the solicitor for the ALALC in the negotiations that ensued with Sunshine/Mr Zong. As explained earlier, $962,000 was paid into KNL accounts controlled by her, and monies were disbursed from those accounts for the benefit of Mr Petroulias and Mr Green, and she ultimately enjoyed the benefit of some of the funds disbursed to Mr Petroulias.

Ms Bakis' conduct could also constitute or involve the commission of the offence of aiding and abetting the receipt by Mr Green of a corrupt commission or reward pursuant to s 249B(1) of the Crimes Act and aiding and abetting the giving of a corrupt commission or reward by Mr Petroulias to Mr Green (pursuant to s 249B(2) of the Crimes Act) contrary to s 249F(1) of the Crimes Act.

Section 249F(1) of the Crimes Act provides that a person who aids, abets, counsels, procures, solicits or incites the commission of an offence under Part 4A (corruptly receiving commissions and other corrupt practices) is guilty of an offence and is liable to imprisonment for seven years.

Her conduct could also constitute or involve the criminal offence of conspiracy to defraud in connection with the Sunshine proposal and, separately, in relation to the Solstice and Advantage dealings, to deflect a public

official from acting or refraining to act contrary to their public duty.

Her conduct could also constitute or involve the criminal offence of conspiracy to defraud – specifically in that there was an agreement involving Mr Green and Mr Petroulias to use dishonest means to deflect a public official, being Mr Green, from acting or refraining to act contrary to his public duty in relation to the relevant transactions. The object of the conspiracy was the improper advancement of each transaction. Mr Green was a public official induced to act (and did act) contrary to his duties. The other public officials are the board members of the ALALC who participated in the meeting that approved a transaction involving Solstice on 8 April 2016, and those who participated in the meeting that approved a transaction involving Advantage on 2 June 2016 and approved the execution of the agreements on 7 June 2016. Each was deflected from their duties.

Her conduct could also involve the offence of aiding and abetting misconduct in public office in relation to Mr Green. This form of liability – where the secondary party is regarded as a principal – arises where the principal offence is a serious indictable offence (see s 346 of the Crimes Act). Misconduct in public office is such an offence, within s 4 of the Crimes Act, because it is an indictable offence "that is punishable by imprisonment for…a term of 5 years or more". See also *R v Obeid* (2017) 96 NSWLR 155 at [341].

In connection with the offence of aiding and abetting misconduct in public office, the elements are: (a) that the principal offence is established; (b) there is encouragement or assisting of the principal (in this case, Mr Green) to commit the offence, intending to bring about the crime later committed by the principal; and, (c) the "secondary party" knows all the essential facts and circumstances – *not* the legal knowledge that the conduct to be committed by the principal actually amounts to a criminal offence – which would make what was done later a crime (see *Giorgianni v R* (1985) 156 CLR 173 at 487-488; 491; 506-507; *R v Stokes & Difford* (1990) 51 A Crim R 25 at 37-38).

For the purposes of s 13(3A) of the ICAC Act, the Commission is satisfied that, if the facts as found were to be proved on admissible evidence to the criminal standard of proof and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that Ms Bakis had committed offences of fraud contrary to s 192E of the Crimes Act, aiding and abetting the receipt or giving of corrupt commissions contrary to s 249F of the Crimes Act, conspiracy to defraud and aiding and abetting misconduct in public office by Mr Green. Accordingly, the jurisdictional requirement of s 13(3A) of the ICAC Act is satisfied.

The Commission is satisfied that this is serious corrupt conduct for the purposes of s 74BA of the ICAC Act. This is because the conduct involves criminal offences, a significant amount of money, and a high level of sophistication and planning in that the Scheme was premeditated and involved more than one attempt to defraud third parties over an extended period of time. In addition, it involved the conduct of a solicitor purporting to act in the face of significant conflicts of interest.

Section 74A(2) statements

In making a public report, the Commission is required by the provisions of s 74A(2) of the ICAC Act to include, in respect of each "affected" person, a statement as to whether or not in all the circumstances the Commission is of the opinion that consideration should be given to the following:

(a) obtaining the advice of the Director of Public Prosecutions (DPP) with respect to the prosecution of the person for a specified criminal offence

(b) the taking of action against the person for a specified disciplinary offence

(c) the taking of action against the person as a public official on specified grounds, with a view to dismissing, dispensing with the services of or otherwise terminating the services of the public official.

An "affected person" is defined in s 74A(3) of the ICAC Act as a person against whom, in the Commission's opinion, substantial allegations have been made in the course of, or in connection with, the investigation.

The Commission is satisfied that Mr Green, Ms Dates, Mr Petroulias and Ms Bakis are "affected" persons for the purposes of s 74A(2) of the ICAC Act.

Richard Green

The Commission is of the opinion that consideration should be given to obtaining the advice of the DPP with respect to prosecution of Mr Green for the following offences:

- fraud pursuant to s 192E of the Crimes Act
- corruptly receiving commissions pursuant to s 249B of the Crimes Act
- the common law offence of misconduct in public office
- the common law offence of conspiracy to defraud.

The Commission is satisfied that there is admissible evidence that would be available to be used against Mr Green in criminal proceedings. This evidence includes that of witnesses (including Mr Zong) as to Mr Green's participation in the Sunshine transaction, records of the ALALC, other documentary evidence and electronic evidence of communications between Mr Petroulias, Ms Dates and Mr Green with respect to the Sunshine transaction and thereafter with respect to the attempted Solstice and Advantage schemes.

Debbie Dates

In their May 2021 submissions, Counsel Assisting did not recommend that the Commission make a statement that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of Ms Dates for any criminal offences.

The Commission notes that Ms Dates is no longer a member of the ALALC board. Under the ALR Act, disciplinary action may be taken by the registrar but, as required by s 181K(1) of the ALR Act, the registrar must refer any alleged misconduct of an officer or member of staff of a LALC for consideration to the NSW Civil and Administrative Tribunal (NCAT) instead of taking disciplinary action in cases where the Commission has recommended in a report that consideration be given to the taking of disciplinary action. The Commission notes that NCAT has previously determined it does not have the power to sanction a former officer for misconduct. In these circumstances, the Commission is not of the opinion that consideration should be given to the taking of action against Ms Dates for any disciplinary offence.

Nicholas Petroulias

The Commission is of the opinion that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of Mr Petroulias for the following offences:

- fraud pursuant to s 192E of the Crimes Act
- giving false commissions or reward pursuant to s 249B of the Crimes Act
- the common law offence of conspiracy to defraud
- the common law offence of aiding and abetting misconduct in public office.

The Commission is satisfied that there is admissible evidence that would be available to be used against Mr Petroulias in criminal proceedings in respect of the possible offences referred to above. This evidence includes the evidence of witnesses (including Mr Zong) as to Mr Petroulias' participation in the Sunshine transaction including, in particular, evidence as to false representations made by Mr Petroulias, as to the Sunshine transaction, records of the ALALC, other documentary evidence and electronic evidence of communications between him, Ms Dates and Mr Green with respect to the Sunshine transaction and thereafter with respect to the attempted Solstice and Advantage schemes.

Despina Bakis

The Commission is of the opinion that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of Ms Bakis for the following offences:

- fraud pursuant to s 192E of the Crimes Act
- aiding and abetting the receipt or giving of corrupt commissions pursuant to s 249F of the Crimes Act
- conspiracy to defraud (including conspiracy to deflect a public official from carrying out their duty)
- aiding and abetting misconduct in public office.

The Commission is satisfied that there is admissible evidence that would be available to be used against Ms Bakis in criminal proceedings. This evidence includes the evidence of witnesses such as Mr Zong and others (including ALALC board members) and documentary and electronic evidence.

Chapter 15: Corruption prevention

The ALR Act provides for the development of land rights for Aboriginal people in NSW and the operation of the network of LALCs.

There are 120 LALCs in NSW with a combined membership of 25,000. LALCs aim to develop cultural and financial benefits for their communities and provide employment and training opportunities for their members. The peak body of the LALC network is the NSWALC.

LALC land dealings and economic development

Provisions under the ALR Act help LALCs to achieve their goals by entering into land dealings and undertaking economic activities. Mechanisms for doing so include:

- acquiring land, either by land claim or purchase
- establishing commercial enterprises and community benefits schemes to create a sustainable economic base for Aboriginal communities
- managing traditional sites to enhance Aboriginal culture, identity and heritage.

While many LALCs successfully engage in land dealings to benefit their communities, it is more common for LALCs to be "cash poor" financially but asset rich in terms of the potential value of their land holdings. Moreover, without available capital it is difficult for LALCs to progress development opportunities, and this challenge can be exacerbated when LALCs lack the necessary expertise or experience to undertake large projects.

To unlock the latent value of their land, some LALCs enter joint ventures with experienced property developers, while others fund their own ventures by selling land they deem not to have cultural heritage value.

LALCs based on the eastern coast of NSW own land with the most potential commercial value. ALALC is one such LALC. At the time of the investigation, the main source of the ALALC's income was the funding it received from the NSWALC with some income earned from heritage site work and a gardening business. The ALALC had limited experience or expertise in land dealings.

LALC vulnerability

The Commission's investigations into land dealings have shown that LALCs can be vulnerable to unscrupulous approaches from external parties such as developers, and/or dishonesty and exploitation by their own officers. One critical investigation was Operation Unicorn, in which the Commission found that officers from the Koompahtoo LALC accepted cash payments and other benefits from developers in return for influencing Koompahtoo LALC members to approve land dealing proposals.[2] The Commission made corrupt conduct findings against three Koompahtoo LALC officers and five external persons.

While land dealing provisions in the ALR Act were strengthened following that investigation, LALCs are still vulnerable to such approaches. Moreover, conduct of the type revealed by this investigation could occur at other LALCs, especially if some of the following risk factors applied:

- the LALC owns land that has commercial value
- the LALC has a poorly functioning or divided board, for example, one dominated by self-interested individuals or factions to the detriment of inclusive and reasoned discussion and decision-making
- one or more LALC board members are willing to breach the ALR Act for a corrupt benefit
- the LALC board does not fully understand the land dealing provisions of the ALR Act and the

[2] *Report on investigation into certain transactions of Koompahtoo Local Aboriginal Land Council*, NSW ICAC, Sydney, April 2005.

many steps required to complete a successful land dealing, including obtaining independent legal advice and complying with statutory planning requirements such as local environmental plans

- LALC members are alienated from their LALC, either because board (or board factions) have deliberately discouraged their involvement or because members have become disillusioned with the board
- the LALC board and its members too readily believe offers that are "too good to be true"
- there is potential for developers to exploit the above factors for their own gain.

The costs and reputational damage associated with improper land dealings can be substantial for a LALC.

Given the potential risk of LALCs engaging in improper land dealings, it is useful to consider the regulatory regime that governs LALCs.

The regulatory regime governing LALCs

LALCs are autonomous in that they are separate legal entities, have their own membership, elect their own boards, employ their own staff, manage their capital and assets, and make decisions for their communities. However, they are also subject to regulation under the ALR Act by the NSWALC and the registrar[3] of the ALR Act.

The ALR Act assigns NSWALC a range of LALC oversight functions. The two most relevant to this investigation are listed under s 106:

> *(g) to mediate, conciliate and arbitrate disputes relating to the operation of this Act or the regulations between Aboriginal Land Councils, between those Councils and individuals and between individual members of those Councils and to refer such disputes to the Registrar or independent mediators, conciliators and arbitrators,*
>
> *(h) to approve land dealings by Local Aboriginal Land Councils.*

The key functions of the registrar are set out in s 165 of the ALR Act. They include administrative functions concerning the registration of land claims (either by the NSWALC or LALCs), maintaining a register of land claims, maintaining the membership rolls of LALCs, and approving the rules of the NSWALC and LALCs. Pertinent to this investigation, the registrar's other functions, pursuant to s 165 of the ALR Act, include:

> *(f) to issue compliance directions to Aboriginal Land Councils, officers of Aboriginal Land Councils and councillors relating to the administration of the Act and the regulations and to refer failures with such directions to the Court,*
>
> *(g) to mediate, conciliate or arbitrate disputes relating to the operation of this Act and the regulations or to refer such disputes to independent mediators, conciliators or arbitrators,*
>
> *(h) to investigate complaints regarding the non-disclosure of pecuniary interests, misconduct by councillors, Board members and members of staff of, and consultants to, Aboriginal Land Councils and breaches of this Act and the regulations.*

Consequently, while the registrar has the authority to investigate LALCs, the NSWALC does not have the

[3] As noted in this report, Mr Wright was the registrar of the ALR Act during the time of the conduct examined in this investigation. Mr Wright resigned from the position in January 2017. In April 2017, Nicole Courtman commenced as registrar and was in the position during the Commission's investigation and public inquiry. Ms Courtman completed her five-year term as registrar in April 2022. Accordingly, both Mr Wright and Ms Courtman are described in this chapter as "former registrars".

authority to do so even if its regulatory activity uncovers information that would warrant an investigation. The NSWALC's options are to recommend that the minister for Aboriginal affairs appoint an investigator or administrator to the LALC. The NSWALC has a duty to report reasonable suspicions of corrupt conduct to the Commission.

Governance of the ALALC

Prior to the current investigation commencing, the Commission had received various allegations concerning the ALALC. It had referred these allegations to the then registrar, Mr Wright, to investigate under s 53 and s 54 of the ICAC Act. As previously noted in this report, under these provisions of the ICAC Act, Mr Wright was required to investigate the allegations and report back to the Commission.

While these allegations were not directly related to the matters later investigated by the Commission, they did indicate issues of entrenched poor governance, failures to follow the ALR Act, and a breakdown of communication at the ALALC.

These factors made the ALALC vulnerable to the corrupt conduct carried out by Mr Petroulias, Ms Bakis, Mr Green and Ms Dates. Indeed, Mr Green and Ms Dates took actions designed to further weaken governance of the ALALC, including failing to manage conflicts of interest, undermining the role of the CEO, and calling board meetings at times that not all members could attend.

Failures to manage conflicts of interest

One basic requirement to ensure accountability and transparency in any organisation is that conflicts of interest are identified and managed.

In LALCs, conflicts of interest are usually inevitable, are generally known, and can be difficult to manage. This is especially the case in regional areas where there may only be two or three extended Aboriginal families in the community, many members of whom are also members of their LALC.

Under s 182 of the ALR Act, a pecuniary interest is an interest that a person has in a matter because of a reasonable likelihood or expectation of appreciable gain or loss to themselves. Section 183(2) expands a person's pecuniary interest to include those held by key associates:

> *A person is taken to have a pecuniary interest in the matter if—*
>
> *(a) the person's spouse or de facto partner or a relative[4] of the person, or a partner or employer of the person, has a pecuniary interest…*

Section 184 sets out the provisions for "Disclosure and presence at meeting" including, under s 184(2), that:

> *Unless the Aboriginal Land Council determines otherwise, the officer or member of staff must not be present at, or in sight of, the meeting of the Aboriginal Land Council—*
>
> *(a) at any time during which the matter is being considered or discussed by the Council, or*
>
> *(b) at any time during which the Council is voting on any question in relation to the matter.*

As noted above, conflicts of interest arise frequently in LALCs and it can be a challenge to transparently manage them.

For example, as noted in chapter 8, Ms Steadman was appointed as acting CEO while she was the domestic partner of Mr Quinlan, who was at that time an ALALC board member. Similarly, the minutes of another board meeting record that Ms Dates was reminded that she had a conflict of interest in a matter being discussed which concerned a close relative and that she should leave the room. However, the minutes record that Ms Dates refused to leave the room and told the meeting that "she had plenty to say".

During her term as registrar, Ms Courtman developed a code of conduct for board members and staff of LALCs, and a code of conduct for LALC members. These codes include enhanced provisions and guidance concerning the management of pecuniary and non-pecuniary conflicts of interest.

The Commission understands that LALCs will have the choice of adopting one or both of the registrar's codes of conduct, developing their own code(s) of conduct, or being subject to the Model Code of Conduct for LALCs. Given the then registrar's work in this area, the Commission does not make any recommendation on the issue of managing conflicts of interest.

[4] Section 4 of the ALR Act defines "relative" as:

> *(a) the parent, grandparent, brother, sister, uncle, aunt, nephew, niece, lineal descendant or adopted child of the person or of the person's spouse or de facto partner,*
>
> *(b) the spouse or de facto partner of the person or of a person referred to in paragraph (a).*

Improper removal of CEO

Steven Slee commenced as the CEO of the ALALC in January 2014 and soon demonstrated his commitment to improving its governance and accountability. For example, in the months following his appointment the ALALC's risk rating under the NSWALC's Risk Assessment System (RAS)[5] improved from "medium" in April 2014 to "low" in October.

However, during 2014, Steven Slee grew increasingly concerned about breaches of confidentiality and failures by some board members to follow correct processes. He informed Mr Wright of this, also advising that he was subject to abuse, bullying and harassment by some board members, and had been accused of misusing ALALC resources.

On 14 December 2014, Steven Slee wrote to the board with his concerns. His letter notes that the board's conduct was in breach of the Model Code of Conduct for LALCs and the Model Rules of the Regulation, the latter bequeathing the board with a duty of care towards him.

Despite these difficulties, Steven Slee continued to focus on measures to improve governance and accountability in the ALALC. For instance, in late 2014, he developed a conflicts of interest policy which was endorsed by the board at a November meeting.

Critically, in early 2015, Steven Slee engaged a consultant to prepare a new Community Land and Business Plan (CLBP) for the ALALC. The ALALC's existing CLBP was about to expire and all LALCs are required to develop a CLBP at least once every five years (unless the NSWALC grants an exemption). Further details about CLBPs are discussed in chapter 4 of this report.

Steven Slee's actions to improve governance at the ALALC also threatened the corrupt schemes of Ms Dates and Mr Green. In particular, the development of a new CLBP would focus members' attention on the ALALC land holdings and proposed ventures, and require independent advice to be obtained. Together, these may have deterred the corrupt land dealing plans then under way.

As discussed in the public inquiry, this led to a deterioration in Steven Slee's working relationship with Ms Dates and Mr Green, and they ultimately sought to remove him as CEO.

[Chief Commissioner]:	*And in general terms what was your relationship with her* [Ms Dates] *in terms of you as CEO and her role?*
[Steven Slee]:	*Initially over the first six to eight months it was pretty supportive. The board overall was pretty supportive of me. Come to later in the year, unfortunately I was aware of the agenda to try to get rid of me as CEO.*
[Q]:	*And who did you believe was behind that agenda?*
[A]:	*I was informed and provided evidence that* [it was] *Debbie and Richard.*
[Q]:	*What was the source of that information, do you recall?*
[A]:	*A fellow board member. The, the primary one was in December. Received a call from board member John Hancock advising me he'd just received a call from Debbie, stating she was in the Land Council trying to gather evidence on me and get rid of me and needed to find something to get rid of me.*

An opportunity to temporarily remove Steven Slee arose on 6 February 2015. The then registrar, Mr Wright, attended a meeting at the ALALC to discuss his ICAC Act s 53 s 54 investigation with Ms Dates and Mr Green. Rather that discuss the matters at hand, Ms Dates and Mr Green used the occasion to make allegations of misconduct against Steven Slee. These included that he had misused the ALALC credit card, was transferring funds between ALALC accounts without board approval, and was engaging in unapproved secondary employment.

Mr Wright commenced an investigation into the allegations against Steven Slee, which took six months to complete. Ms Dates and Mr Green used this period to weaken the governance of the ALALC and gain greater control over its actions.

Shortly after Mr Wright's visit on 6 February 2015, Ms Dates and Mr Green suspended Steven Slee from his position. They did not have approval from the board to do so and, although they sought retrospective approval,

[5] The RAS is conducted by the NSWALC's Zone Offices. It consists of a standard series of questions that measure LALC performance over five key areas of operation. The RAS score affects when the LALC receives funding, how often it is required to report to the Zone Office and how frequently the LALC is required to undergo the RAS process.

this was not forthcoming. The suspension of Steven Slee exacerbated the already existing tensions between board members to the point where two factions emerged, one that wanted Steven Slee to be reinstated and one that did not.

The faction supporting Steven Slee's suspension ("the Dates/Green faction") consisted of Ms Dates, Mr Green, Ms Quinlan, and Mr Quinlan. The faction wanting Steven Slee's reinstatement ("the Slee faction") was Larry Slee (Steven Slee's father), Mr Walsh, Mr Hancock, Eleanor Swan and Debra Swan.

Steven Slee was ultimately dismissed due to the efforts of the Dates/Green faction.

Undermining board oversight

Friction and division in the board impeded its proper functioning during 2015 and the board met infrequently. What is noticeable, however, from the minutes of these meetings is that members of the Dates/Green faction were always in attendance, and therefore able to dominate discussion and the outcome of resolutions.

There were two key reasons why the Dates/Green faction was able to dominate meetings:

- While Larry Slee attended meetings, he absented himself when matters concerning his son were discussed (as required under the pecuniary interest provisions of the ALR Act).
- Ms Dates deliberately scheduled meetings at times that members of the Slee faction could not attend.

In relation to this second issue, Eleanor Swan gave evidence at the public inquiry about improper scheduling of board meeting times:

[Counsel Assisting]:	*When you were a board member, were you in employment at the time?*
[Eleanor Swan]:	*Yes.*
[Q]:	*Were you working full-time?*
[A]:	*Yes. Oh, no, sorry, part-time. I work permanent part-time.*
[Q]:	*I see. In the latter part of 2014, many of the meetings of the board of the council appear to be held during the day, quite often in the mornings.*
[A]:	*Yes.*
[Q]:	*And that presented some difficulties with you professionally, attending to your work commitments and the board commitments, did it not?*
[A]:	*It did.*
[Q]:	*And you raised it at a board meeting, didn't you, about…?*
[A]:	*I raised it at a board meeting and specified that I don't work on Fridays. I could, could we have the meetings on a Friday, all day, any time Friday, or of an afternoon. And the board did agree with me, and then Debbie* [Dates] *and Jaye* [Quinlan] *put in objections and scheduled meetings when I could not attend.*
[Q]:	*And so quite often the case — this will be apparent from the minutes — the minutes the meetings of the board were held on days when you were working?*
[A]:	*Yes*
[Q]:	*But also it was held in the morning. So sometimes from 10.30 or 11 o'clock or 12.30 … And that affected your capacity to discharge your duties as a board member.*
[A]:	*Yes.*

Setting meeting times to make it difficult for members to attend is unacceptable and detrimental to the proper functioning of boards. If a faction in a LALC wants to ensure a particular course of action, one ruse to facilitate this is to call meetings at times when dissenters are unable to attend.

During her term as registrar, Ms Courtman advised the Commission that her office had received many complaints about LALCs allegedly scheduling board meetings to prevent particular board members from attending. Consequently, Ms Courtman developed a standard advice for LALCs on scheduling board meetings including that, if the board wished to call an extraordinary meeting, *all* board members must agree to the proposed date and time.

The Commission adapted the registrar's standard advice as a proposed recommendation in the corruption prevention submissions which were sent to relevant

agencies inviting their comments. The NSWALC responded that it supported the recommendation in general but suggested that it be amended to a majority of, rather than all, ALALC board members being required to agree to the proposed dates and times of extraordinary meetings. The NSWALC's reasoning included the practical difficulties the ALALC could face finding a time that suited all board members and support staff but, more pertinently, noted that a requirement that all members agree to the date and time of an extraordinary meeting could be used by one board member to delay or stop board meetings and that this tactic has been used in the past to avoid disciplinary action.

Having considered NSWALC's response, the Commission has made the following recommendation.

RECOMMENDATION 1

That the Awabakal Local Aboriginal Land Council (ALALC) includes the following provisions about board meetings in its Model Rules:

- **The ALALC provides reasonable notice for all board meetings. This requires at least seven (7) days clear notice to all board members in the method approved by the board.**
- **If the board wishes to call an extraordinary meeting at shorter notice, a two thirds majority of board members must agree to the proposed date and time for the meeting, and the ALALC must maintain a record of how and when it contacted, or attempted to contact, board members.**

Improper approval of acting CEO

Under s 78C of the ALR Act, LALC boards must immediately appoint an acting CEO when the CEO position becomes vacant. After suspending Steven Slee, Ms Dates and Mr Green appointed Ms Steadman to be the acting CEO without taking the matter to the board.

Ms Steadman had been working at the ALALC for 18 months, first as receptionist and later as a project officer. During the public inquiry, she acknowledged that she did not have the experience or skillset to be the acting CEO and found the job stressful.

[Counsel Assisting]: *… Now, prior to the time that you assumed the position as the acting CEO, you hadn't held a comparable position, had you not?*

[Ms Steadman]: *No.*

[Q]: *And you hadn't worked or run a business, had you?*

[A]: *No.*

[Q]: *You hadn't had any experience or training in financial matters?*

[A]: *No.*

[Q]: *Financial reporting or matters of that kind?*

[A]: *No.*

…

[Q]: *Right. And did the Land Council itself provide any training for you to properly perform that job?*

[A]: *No.*

…

[Q]: *You're aware that Mr Kenney, an investigator, was appointed to have a look into some of the affairs of the Land Council?*

[A]: *Yes.*

[Q]: *And you understood he prepared a report, did you not?*

[A]: *Yes.*

[Q]: *And he made the remark, without intending any criticism to you and nor do I, that perhaps you weren't equipped to undertake the role as the CEO?*

[A]: *Yes.*

[Q]: *Would you agree with that?*

[A]: *Probably, yes.*

[Q]: *It caused you a good deal of anxiety and stress, the role, didn't it?*

[A]: *Yes.*

[Q]: *And that's partly or significantly because you didn't have really the skillset to be able to properly perform the functions. Is that so?*

[A]: *Yes.*

In addition to commencing her position at a time of great turmoil, Ms Steadman had a strong connection, as set out above, to three members of the Dates/Green faction, namely, Mr Quinlan, Ms Quinlan, and Ms Dates, who was her de facto aunt.

Ms Steadman's lack of relevant skills, and close relationship with members of the Dates/Green faction, reduced her capacity and confidence to impartially observe and comment upon their actions. It also made her compliant to their directions, consequently resulting in her being unable to detect or disrupt the corrupt activities of Ms Dates and Mr Green.

The effect of losing oversight

There was limited scrutiny on the activities of Ms Dates and Mr Green once Ms Steadman had been appointed as acting CEO and the Dates/Green faction was able to dominate board meetings. Ms Dates and Mr Green were able to consolidate their involvement with Mr Petroulias and Ms Bakis, culminating in the Sunshine agreement being signed at the ALALC office on 23 October 2015.

In addition, the effective administrative governance of the ALALC declined sharply during this time. Examples include the ALALC breaching the ALR Act by not holding members' meetings and not preparing its CLBP, despite Steven Slee's earlier efforts. Further, the NSWALC ceased funding the ALALC in April 2015 because it had failed to submit its budget to the NSWALC as required under the provisions of the funding agreement.

The administrative, financial and governance failings continued to the point where the NSWALC's June 2015 assessment determined that the ALALC's RAS risk rating was so high that it warranted the NSWALC's funding being formally withdrawn. By contrast, as noted earlier, the ALALC's risk rating had been improving during 2014, while Steven Slee was CEO, to the point of being assessed as "low" in October 2014. In a few short months Steven Slee's efforts to improve governance were undone.

In the absence of regular and representative board meetings, and accountable financial and administrative management, the delineated roles and responsibilities of the ALALC board members and its acting CEO were ignored by Ms Dates. While Ms Steadman oversaw the LALC's day-to-day operations, Ms Dates frequently intervened, most notably by taking control of the ALALC's bank accounts and online banking tokens.

With Ms Dates in control of the ALALC's bank accounts, basic financial controls, such as segregation of duties and regular reconciliation of transactions, fell away. The previously mentioned investigation report completed by Mr Kenney found that Ms Dates "… made many payments from the Awabakal LALC bank accounts that were not authorised by any other person, or presented to the Awabakal LALC Board for approval. As a result of the Registrar's investigations into the conduct of Ms Debbie Dates, she served a two-month suspension from her position of Chair, in part for being the sole authorising person for Awabakal payments to herself and related parties".

By the time the minister appointed an administrator to the ALALC in October 2016, its governance failings had resulted in substantial issues including:

- significant rental arrears (over $100,000)
- accounting and financial records that were inadequate and out of date
- an out-of-date CLBP
- difficulty in identifying ALALC creditors and how much they were owed
- unpaid insurances, including for the ALALC's vehicle, which was also unregistered
- a significant number of outstanding membership applications dating back to 2013.

Capacity of the registrar's office

As noted above, the registrar has both investigative powers and wide-ranging administrative functions. During their terms as registrar, both Mr Wright and Ms Courtman advised the Commission that limited funding to their office severely curtailed its ability to robustly fulfil its functions.

When Mr Wright investigated the allegations against Steven Slee, he had only six staff members to attend to its myriad functions. Such limited staff and financial resources may have contributed to the time it took to complete the investigation, consequently lengthening the period under which Ms Dates and Mr Green were subject to minimal scrutiny.

Ms Courtman stated that, until 2019, the registrar's office had not received a substantial increase of funding in over 10 years. While the office received a funding increase in 2019–20, Ms Courtman stated that it is still "not possible to properly discharge all the statutory functions of the registrar with the current level of staff and funding" and that further funding would allow for earlier intervention when a LALC is in breach of the ALR Act or Regulation.

In the Commission's view, increased funding to the registrar would increase the investigative capacity of the registrar's office, its capacity to deal with its administrative functions, and reduce the likelihood of delays in conducting investigations. Importantly, additional

resources would also allow the office to provide proactive advice and assistance to LALCs to improve their governance and help prevent intractable levels of dysfunction developing.

RECOMMENDATION 2

That the Minister for Aboriginal Affairs reviews the funding of the Office of the Registrar of the ALR Act to ensure:

- **that the registrar has the capacity to undertake the full range of investigative and enforcement options available in relation to misconduct by board members and LALC staff**
- **that the registrar has sufficient resources to fulfil its role in building capacity in LALCs.**

Steven Slee is terminated from his position

At a 6 August 2015 meeting, the registrar reported that he had found no evidence to support the allegations against Steven Slee. He consequently recommended that Steven Slee be reinstated.

The minutes show that, after very little discussion, Mr Green then moved that Mr Slee "be sacked". While one board member demurred about voting on the matter that day, Mr Green put the motion again. It was seconded by Mr Quinlan and carried four to three. It is worth noting that the Dates/Green faction was able to carry the vote because:

- as mentioned previously, in accordance with the ALR Act, Steven Slee's father absented himself from meetings when matters concerning his son were discussed
- Mr Walsh was in hospital at the time of the vote. Mr Walsh gave evidence at the public inquiry that, had he been able to attend the meeting, he would have voted against the motion to terminate Steven Slee
- neither Mr Quinlan nor Ms Quinlan declared a pecuniary interest in accordance with the ALR Act provision, despite both of them being a relative of the acting CEO, Ms Steadman, who stood to benefit from Steven Slee's dismissal.

This action helped ensure that Ms Dates and Mr Green continued to remain subject to reduced scrutiny. Ms Steadman continued to act as CEO and, indeed, had her acting position formally approved by the board in January 2016, and she remained in this position until 7 June 2016. The LALC was without a CEO for two months until the board appointed Ms Anna as acting CEO, who commenced on 8 August 2016.

Parallels between LALCs and local councils in NSW

The situation Steven Slee experienced has parallels with local councils in NSW, where elected councillors employ general managers and have the power to terminate them. The Standard Contract for general managers, mandated by the former Office of Local Government, includes six provisions for terminating their employment. One of these is "dismissal without explanation by providing 38 weeks' written notice to the general manager, or alternatively by providing a termination payment pursuant to subclause 11.3 of the Standard Contract". The dismissal-without-explanation provision of the Standard Contract is often referred to as the "no reason" provision.

The Commission explored these issues in its March 2021 report, *Investigation into the conduct of councillors of the former Canterbury City Council*, also known as Operation Dasha.[6] The investigation arose, in part, from a complaint about attempts by two councillors to terminate the position of the then general manager. The Commission's report noted that

> *securing a simple majority of votes of councillors present at a meeting is all that is required to terminate a general manager's employment. A small number of influential councillors, or even a single influential councillor, can have a significant role in determining whether a general manager keeps his or her job*

and that

> *This situation, combined with the threat of no reason termination, can make it difficult for general managers to resist bullying or to provide frank and fearless advice. It may also create an incentive for general managers to acquiesce to the personal demands of influential councillors, as opposed to acting on the direction of council as a collegiate body.*

As previously noted in regard to Steven Slee, allegations of misconduct against him had been investigated by the registrar and found to have no substance. The registrar recommended that Steven Slee be reinstated. The Dates/Green faction did not accept this finding and, by a vote of four to three, the ALALC terminated Steven Slee's employment on 6 August 2015.

[6] ICAC NSW, *Investigation into the conduct of councillors of the former Canterbury City Council and others*, NSW ICAC, Sydney, 2021.

The Commission considers it wrong that the registrar's findings and recommendations from his investigation into the allegations against Steven Slee were not binding on the ALALC.

It is to be observed that, although Steven Slee's employment contract was summarily terminated by a majority of the board subsequent to the registrar's decision, such termination was invalid as there were no grounds for any allegations of misconduct by Steven Slee. That Steven Slee was subsequently awarded compensation, after taking his matter to the Fair Work Commission, supports the fact that his termination was wrong.

The investigative powers of the registrar, including his or her powers to make findings of misconduct and take disciplinary action, are dealt with under s 181D, and s 181E to s 181F in Part 10, Division 3A of the ALR Act. Division 3A also provides that persons can appeal against the registrar's findings and any disciplinary actions that have been imposed.

However, there appears to be no provisions in the ALR Act that specifically deal with situations such as the one Steven Slee experienced. That is, when allegations of misconduct made against a LALC CEO are investigated by the registrar and found to be unsubstantiated, and the registrar makes recommendations to the board in accordance with the findings – in this case, to reinstate the suspended CEO to his position. Yet, despite this, the employee is still subject to decisions by a hostile board, or faction thereof, some of whom have demonstrated by their previous actions that they are not impartial.

Thus, in the Commission's view, the majority decision to terminate Steven Slee's employment was both improper and unlawful in that:

1. the peremptory dismissal of Steven Slee was done without any evidence of misconduct against him
2. it constituted a wilful and unjustified refusal to act in accordance with the registrar's findings and recommendations which were made in accordance with the ALR Act.

In addition, it could be argued that the board (or the dominant faction) was acting in breach of their duty as public officers which could constitute misconduct in public office.

Like LALCs, local councils are autonomous organisations. Nevertheless, as the Commission said in the Operation Dasha report:

> *...the Commission holds the view that public confidence in the integrity of the actions of general managers would be enhanced by establishing more onerous procedures for terminating their employment and highlighting the availability of alternative options. Given that any such reforms should be proportionate and not have unintended consequences, including undermining the stability of a council, the question then arises of where to draw the line.*

In its Operation Dasha report, the Commission provided the following options for reforming the no reason termination provision in the Standard Contract for general managers:

- requiring a unanimous vote (as proposed by the City of Canterbury Bankstown Council in its submission to the Commission)
- requiring a two-thirds majority vote (as proposed by the Commission in its submissions)
- requiring an absolute majority vote
- providing the Department of Planning, Industry and Environment[7] a veto power over all no reason terminations
- prohibiting use of the no reason option more than twice during the term of the council
- introducing a mandatory cooling off period
- mandatory consideration of mediation.

These could be modified to be relevant to LALCs, for example, that:

- the NSWALC's funding agreement with LALCs be amended to include a mandatory requirement that LALCs report to the NSWALC/registrar any motion to dismiss the CEO (possibly accompanied by reasons or supporting documentation)
- terminating a CEO's position requires a two-thirds majority vote of the board
- LALCs be required to provide the CEO with a statement of reasons for their dismissal, which would effectively ban a no reason dismissal
- the NSWALC introduces a standard contract of employment for CEOs, which includes an enhanced performance management framework, that could feature elements such as:
  - a performance management system for the CEO
  - the requirement for NSWALC Zones to assist a LALC in conducting performance appraisals

[7] Since the publication of the Operation Dasha report, this is now the Department of Planning and Environment.

  - the existence of a performance management system being a RAS assessment factor
  - the RAS capturing CEO underperformance
- LALCs with a high RAS score, or which lack an acceptable performance management system, have to get NSWALC consent to terminate the employment of their CEO.

In its corruption prevention submissions, the Commission suggested that the ALR Act be amended so that employees of LALCs have recourse to the NSWALC or the registrar if their dismissal involved a potential breach of that Act. In reply, the NSWALC indicated that this proposed reform was not consistent with principles of self-determination for LALCs, would have cost implications and could duplicate existing functions of the Fair Work Commission and the registrar.

Despite those concerns, the Commission sees the removal of Steven Slee as a key factor that allowed, encouraged or caused the corrupt conduct detailed in this report. Consequently, the following recommendation is made.

RECOMMENDATION 3

That the Minister for Aboriginal Affairs, the NSWALC and the registrar of the ALR Act discuss and implement legislative or policy measures that protect CEOs from arbitrary dismissal or without due process. Among other things, this discussion should consider requiring councils to provide reasons for dismissing a CEO and creating powers for the registrar or other entity to, in certain circumstances, approve or otherwise intervene in the proposed dismissal of a CEO.

Capacity of the ALALC board

There are no legislated skills or experience that LALC board members are required to have. People generally become board members because of their commitment to their community and LALC. While this commitment is commendable, LALC boards need to make informed decisions about important and complex matters, and their members need to have the capacity to make those decisions wisely.

Board members who lack capacity can be more vulnerable to improper influence. For instance, in this investigation, members of the Dates/Green faction supported the decisions of Ms Dates and Mr Green despite the fact that these decisions markedly weakened the ALALC.

Under the ALR Act, new board members are required to undertake mandatory governance training within six months of being elected, unless otherwise determined by the NSWALC.[8] Ms Dates and Mr Green had attended this training but did not act in accordance with its tenets.

While all the other board members had undergone the mandatory training, some did not appear to be alert to the risks posed by the land dealings proposed by Ms Bakis and Mr Petroulias.

It was only after KNL was "ratified" as the ALALC's legal representative in early 2016, and Mr Petroulias and Ms Bakis began attending board meetings, that the board was informed about the various land dealing proposals. However, while KNL, in the months that followed, purported to be representing the best interests of the ALALC, the advice it gave the board was aimed at advancing the Scheme described in earlier chapters.

Under s 62(1)(a) of the ALR Act, one of the main functions of the board is to "direct and control the affairs of the Council".

Additionally, under s 176(1) of the ALR Act, a board member of a LALC must:

a) act honestly and exercise a reasonable degree of care and diligence in carrying out his or her functions under this or any other Act, and

b) act for a proper purpose in carrying out his or her functions under this or any other Act, and

c) not use his or her office or position for personal advantage, and

d) not use his or her office or position to the detriment of an Aboriginal Land Council.

In the Commission's view, the general nature of s 176(1) is consistent with fiduciary duty and the conduct by Mr Green and Ms Dates can be regarded as breaches of this duty.

Section 176(1)(a) and s 176(1)(b) are prescriptive duties and adequately cover the field of imposing standards of duties. As set out in the earlier chapters of this report, there are numerous instances where Mr Green and Ms Dates did not act honestly and did not carry out their functions for a proper purpose.

Section 176(1)(c) and s 176(1)(d) impose a prohibitive duty consistent with fiduciary-like duties. Ms Dates and Mr Green deliberately, and frequently, breached these duties. Their deliberate conduct included:

[8] Board members can be exempted from undertaking the training if they have undertaken it before, or if their employment and other experience indicates that they have the requisite skills.

- supporting the unauthorised and improper schemes devised by Mr Petroulias and Ms Bakis
- signing heads of agreements and other documents without the board's knowledge or approval
- using their positions to allow Ms Bakis and Mr Petroulias to influence the board, including preparing and amending resolutions, to favour proposals that would be to the detriment of the ALALC
- in the case of Mr Green, using his office to gain personal financial and other advantage.

While the ALR Act does not contain provisions concerning fiduciary duty, the Commission believes it is incumbent on the NSWALC to ensure that LALC board members are made aware that their duties under s 176(1) of the ALR Act are inherently aligned with the duty of fidelity and trust known as "fiduciary duty" under the Australian Institute of Company Directors "General duties of directors":

> *Good faith–This duty requires a director to act in good faith in the best interests of the company and for the proper purpose (s 181), including to avoid conflicts of interest, and to reveal and manage conflicts if they arise. This is a duty of fidelity and trust known as 'fiduciary duty' imposed by common law and a duty required in the* Corporations Act 2001.

While not making a recommendation to this effect, the Commission suggests that discussion about fiduciary duty could be included in the mandatory governance training for board members.

Additional training for LALC boards

As noted earlier, LALC land dealings contain inherent risks and challenges. Moreover, amendments to the ALR Act made in 2015 have encouraged LALCs to pursue economic development activities. While such activities can be highly beneficial for LALCs, these amendments have resulted in LALC boards dealing with matters of increased complexity.

The operational reality for many LALCs is that they may not have kept pace with the volume and complexity of commercial land dealings. In addition to any business activities they undertake, LALCs (particularly in rural and regional areas) perform human services functions such as providing social housing and other social welfare services. Some LALCs face a real risk of being over-stretched in such a resource-intensive environment.

Board members of LALCs across NSW have told the Commission they feel they would benefit from follow-up sessions on the mandatory training, financial management training, and practical case studies to help them consolidate the content of their training. This would help them navigate the complex decisions they need to make to benefit their communities.[9]

RECOMMENDATION 4

That the ALALC devises an outline of the skill mix required of board members, including an ability to understand financial reports and contracts.

RECOMMENDATION 5

That persons interested in standing, or intending to stand, for a position on the board of the ALALC be required to attend an information meeting prior to board elections where:

a. **roles, legal duties and responsibilities of a board member are explained at the information meeting**

b. **examples of matters that can arise, and the legislation, policies and procedures board members must follow when determining a course of action, are discussed.**

RECOMMENDATION 6

That the ALALC prepares a checklist of legal duties and responsibilities which can guide board members during meetings. The checklist can be sourced from the ALR Act, the Regulation, the Mandatory Governance Training manuals, and ALALC internal policies and procedures.

Recordkeeping

In the Commission's previous investigations concerning LALCs, it has repeatedly been the case that key records were missing and/or altered.[10] Poor recordkeeping practices were again an issue in the current investigation.

It was the convention at ALALC for a board member to record the minutes by hand during the meeting. Shortly after the meeting, ALALC administrative staff would

[9] The NSWALC has advised the Commission that it has commenced rolling out training modules in the LALC network including on financial management and enhancing board members' abilities.

[10] See Operation Petrie, *Investigation into the conduct of officers of the Wagonga Aboriginal Land Council*, NSW ICAC, Sydney, September 2012, p. 10, and Operation Nestor, *Investigation into the conduct of the Casino-Boolangle Local Aboriginal Land Council CEO and administrative officer,* NSW ICAC, Sydney, February 2017, p. 10.

type the minutes. These typed minutes would then be discussed at the next meeting, where they would be signed by the chairperson if the board voted that the minutes were a true and accurate record of the previous meeting. In addition, motions passed by the board at each meeting were typed and placed in a separate, resolution book which was kept at reception.

Having only hardcopy minutes creates risks that minutes could be falsified or improperly altered. For instance, on 31 October 2014, Mr Gabey and Mr Abdullah, of IBU, gave a presentation to the ALALC board about their proposed development. The handwritten minutes of the 31 October meeting record that the board noted IBU's proposal, would consider it, and would discuss it with the members prior to any formal decision being made. The correct version of this resolution was placed in the resolution book.

As found in chapter 6, Mr Petroulias caused the handwritten minutes of the 31 October 2014 meeting to be altered, to make it appear that Gows had made a presentation and proposal for a land dealing in collaboration with IBU.

It is of great concern that handwritten minutes can be altered and false typed resolutions created, ultimately giving the impression that the board had approved a proposal that was actually never put to it. This concern is exacerbated by the fact that this resolution would violate the ALR Act requirement that such a proposal be put to a members' meeting.

RECOMMENDATION 7

That the ALALC implements an electronic document and records management system with version and permission controls, allowing it to manage and monitor the creation, alteration and deletion of records.

RECOMMENDATION 8

That the typed minutes of ALALC meetings:

- **accurately reflect the discussions held, including board members' views for or against proposals and motions**
- **are saved to the electronic document and records management system.**

Electronically recording a meeting creates an accurate record of it. Should a dispute arise about the accuracy of transcribed minutes, it can readily be resolved by listening to the recording of the relevant meeting, thus ameliorating the risk that minutes are improperly altered.

RECOMMENDATION 9

That the ALALC audio-records all board meetings and saves the recordings into its electronic document and records management system.

In its response to the corruption prevention submissions, the ALALC board said it agreed to action recommendations 8, 9 and 10, and that "the CEO has been tasked with implementing Audio/Visual in LALC office to accommodate the new practice and policy is being developed to maintain expectations and affirm in ongoing governance".

Even after Mr Petroulias and Ms Bakis were openly involved in negotiating land dealings, purporting to act for the ALALC, there was confusion about where the various heads of agreements and other relevant documents were stored.

Ms Dates and Mr Green were not able to produce the contracts they had signed to the Commission. They and Candy Towers, who was initially engaged as an administration officer and was later appointed as the project officer, claimed instead that any such contracts had been destroyed by the then acting CEO, Ms Anna, during a clean-up of the ALALC office in August 2016.

Ms Anna denied this, advising the Commission that she instructed the people helping with the clean-up not to destroy any documents but to place them in the board room. Further, Theresa Towers, who, at the time of the office clean-up had recently been appointed as chairperson of the ALALC, gave evidence that she did not see any documents being thrown out.

It is very unlikely that any of the documents pertaining to the proposed land dealings with Sunshine and other developers were *ever* kept at the ALALC. For instance, Ms Bakis gave evidence that she kept these documents at the KNL office to try to ensure the ALALC paid legal fees she claimed were owed to her.

It is not acceptable that important LALC documents be difficult to locate. Saving documents to an electronic records management system would improve recordkeeping and prevent records from being lost. This is particularly the case for important documents such as contracts whose loss may affect legal processes.

RECOMMENDATION 10

That the ALALC keeps a register of contracts for all transactions, including commercial, rental and employment contracts, and the engagement of consultants. This register should:

- be saved into the ALALC's electronic records management system
- have version and permission controls to enable the ALALC to determine who has accessed or made changes to it
- be updated as new contracts are executed
- be maintained at the ALALC, and made available to the ALALC's legal advisor
- be viewed and verified by the Eastern Zone office periodically during the Risk Assessment System process
- archive contracts that are no longer operational.

LALC land dealings

As noted earlier, LALCs can be vulnerable to approaches from developers. The Commission understands that developers regularly target board members, and ordinary LALC members who have influence in the community, to get these individuals to promote their proposed land dealings.

In its 2005 report on Operation Unicorn, previously referred to in this chapter, the Commission made recommendations that the land dealing provisions in the ALR Act be strengthened. Following these recommendations, the ALR Act was amended in 2009 to strengthen governance in land dealings. The amendments included:

- increased detail in the information LALCs must provide to the NSWALC when applying to make a land dealing
- greater stringency in the NSWALC's conditions of approval
- introducing a two-certificate process after approval
- making void any LALC land dealing that contravenes s 42D or s 42E of the ALR Act.

The current ALR Act provisions help stop improper land dealings and may have prevented the ALALC's land from actually being sold. However, as this investigation has shown, corrupt dealings between board members and developers can jeopardise the interests of LALC members. As set out above, it was only after KNL was "ratified" as the ALALC's legal representative in early 2016, and Mr Petroulias and Ms Bakis began attending board meetings, that the board was informed about the land dealing proposals.

Additionally, LALC officials may believe a developer's extraordinary claims because of a sincere desire to develop opportunities for their community. However, any land dealing or economic venture carries risk, and expertise and experience are required to help minimise these risks and bring projects to fruition. Together, these can lead to circumstances where LALCs decide on a proposal despite lacking the necessary information to properly assess it.

Consequently, LALCs are encouraged to conduct due diligence on any land dealing proposals under serious consideration. This may involve obtaining expert advice and liaising with the NSWALC.

RECOMMENDATION 11

That the ALALC, in conjunction with the NSWALC, develops a due diligence checklist and procedure that is followed when developers and other interested parties propose a land dealing. Among other things, the checklist may require parties with an interest in ALALC land to:

- **put a brief outline of their proposal in writing**
- **identify all relevant personnel**
- **include information such as:**
  - **a company name**
  - **an Australian Business Number or Australian Company Number**
  - **licences and qualifications held by the proponents**
  - **relevant industry experience**
- **acquaint themselves with the land dealing provisions in the ALR Act.**

RECOMMENDATION 12

That the ALALC considers conducting open-source checks on websites including the Australian Business Register, Australian Securities and Investments Commission and NSW Office of Fair Trading to verify information provided by parties involved in land dealings.[11]

The observations made above and recommendations 1 and 4–12 are directed at the ALALC. However, the recommendations may have broader application for other NSW LALCs. Consequently, the Commission makes the following recommendation.

[11] Open-source searches can also be used to identify relevant red flags.

RECOMMENDATION 13

That the NSWALC and the registrar consider whether the corruption prevention recommendations made in this report should be applied to other LALCs and whether the NSWALC and the registrar should collaborate to develop an education program that addresses the findings and recommendations in this report.

While an over-enthusiastic LALC board might believe the extraordinary claims of a developer without sufficient justification, it is less likely that the NSWALC would believe these claims, in part because the NSWALC would be more detached from the proposal. For this reason, the Commission believes that the NSWALC needs to be made more aware of potential land dealings being considered by LALCs.

RECOMMENDATION 14

That the NSWALCextends the questions concerning "Property" in the Risk Assessment System to include "Is the LALC in discussion(s) with any third parties about potential land dealings in which any agreement(s) would be conditional on the LALC obtaining necessary approval under the ALR Act?"

RECOMMENDATION 15

That the ALR Act be amended to require LALCs to notify the NSWALC, in writing, when specific proposals of land dealings, that would require approvals under s 42G of the ALR Act, come before the board of the LALC for its consideration. The minutes of the meetings at which the land dealing proposal is discussed will record who is responsible for notifying the NSWALC of the proposal.

Caveats on ALALC land

After finalising his investigation into the allegations against Steven Slee, registrar Mr Wright wrote to the then minister for Aboriginal affairs, the Hon Leslie Williams MP, recommending that she appoint an investigator to the ALALC. This ultimately led to Mr Lawler being appointed as administrator of the ALALC in October 2016.

Mr Lawler only became aware of the proposed land dealings after he directed the ALALC's newly-appointed legal representatives to make land title searches on the ALALC's land holdings. Through these searches, he learned that the Sunshine entities, Advantage NZ and KNL had each placed one or more caveats on ALALC land.

It subsequently became known that the land dealing contracts between the ALALC (ostensibly) and the Sunshine entities and Advantage NZ, contained clauses that allowed the developers to place caveats on ALALC land. On 10 October 2016, after being dismissed as the ALALC's legal representative, KNL also lodged a caveat on ALAC land in an effort to recover fees in accordance with a client service agreement.

Apart from Ms Dates and Mr Green, the ALALC board and membership did not know that the ALALC had purportedly entered into land dealings with the Sunshine entities, and only learnt through Mr Lawler that Sunshine had placed caveats on ALALC land. While the board members knew about the proposed land dealing with Advantage NZ, they had very little knowledge of the conditions of the proposal.

It is suggested that all LALCs be mindful of the possibility that caveats could be placed on their land without their knowledge and that they regularly carry out searches on land titles records to identify potential caveats. The NSWALC could consider making this one of the checks undertaken during the RAS process.

LALCs to utilise advisors

As noted above, the ALALC was ultimately placed in administration, indicating serious shortcomings in its operations. When an administrator is appointed to a LALC, the cost is initially covered by the NSWALC. While the ALR Act allows the NSWALC to recover costs associated with placing a LALC in administration,[12] the NSWALC ultimately bears a financial loss if the LALC is unable to repay these funds.

In the Commission's view, early intervention in a LALC that is struggling with operational, financial or governance issues would mitigate the need for it to be placed under administration. Such intervention would involve providing valuable and practical assistance to the LALC, protecting its operations and saving considerable cost for the NSWALC.

One type of early intervention is the appointment of advisors to a LALC. Such appointments are made by the NSWALC under the ALR Act, and can be made after the NSWALC makes a performance improvement order, on the NSWALC's own initiative or on the recommendation of the LALC in question. The ability for the NSWALC to appoint an advisor is a relatively recent amendment to the ALR Act. While there had previously been a provision that the minister could appoint an advisor,[13] it was silent

[12] Section 222(5) of the ALR Act

[13] Section 234 of the ALR Act (repealed)

on who would bear the costs involved. The Commission understands that this lack of clarity about costs meant that this provision was rarely used.

The timely appointment of advisors to LALCs can be a valuable "circuit breaker" to address emerging issues in a LALC before they become serious enough to warrant an investigator or administrator. In particular, an advisor provides LALCs with an opportunity to seek assistance when they face intractable issues and/or a breakdown in communication that significantly impairs their ability to function effectively. In the Commission's experience, LALCs that are locked in dispute generally fail to hold members meetings or fulfil other important requirements under the ALR Act.

The Commission discussed this issue in its submission to the 2021 Review of the ALR Act, expressing concern that the NSWALC's ability to appoint advisors in a timely manner, or respond to a LALC's request for such an appointment, could be limited by a lack of resources. The Commission recommended that the NSW Government establishes a designated fund to pay costs involved in the appointment of advisors to LALCs.

The recommendations in this report are made pursuant to s 13(3)(b) of the ICAC Act and, as required by s 111E of the ICAC Act, will be furnished to the ALALC, the NSWALC and the Minister for Aboriginal Affairs.

As required by s 111E(2) of the ICAC Act, the ALALC and the NSWALC must inform the Commission in writing within three months (or such longer period as the Commission may agree to in writing) after receiving the recommendations, whether they propose to implement any plan of action in response to the recommendations affecting them and, if so, details of their proposed plan of action.

In the event the ALALC and/or the NSWALC prepare a plan of action, they are required to provide a written report to the Commission of their progress in implementing the plan 12 months after informing the Commission of the plan. If a plan has not been fully implemented by then, a further written report must be provided 12 months after the first report. The Commission will publish the responses to its recommendations, any plan of action and progress reports on implementation on the Commission's website at www.icac.nsw.gov.au.

Appendix 1: The role of the Commission

The Commission was created in response to community and Parliamentary concerns about corruption that had been revealed in, inter alia, various parts of the public sector, causing a consequent downturn in community confidence in the integrity of the public sector. It is recognised that corruption in the public sector not only undermines confidence in the bureaucracy but also has a detrimental effect on the confidence of the community in the processes of democratic government, at least at the level of government in which that corruption occurs. It is also recognised that corruption commonly indicates and promotes inefficiency, produces waste and could lead to loss of revenue.

The Commission's functions are set out in s 13, s 13A and s 14 of the ICAC Act. One of the Commission's principal functions is to investigate any allegation or complaint that, or any circumstances which in the Commission's opinion imply that:

i. corrupt conduct (as defined by the ICAC Act), or

ii. conduct liable to allow, encourage or cause the occurrence of corrupt conduct, or

iii. conduct connected with corrupt conduct,

may have occurred, may be occurring or may be about to occur.

The Commission may also investigate conduct that may possibly involve certain criminal offences under the *Electoral Act 2017*, the *Electoral Funding Act 2018* or the *Lobbying of Government Officials Act 2011*, where such conduct has been referred by the NSW Electoral Commission to the Commission for investigation.

The Commission may report on its investigations and, where appropriate, make recommendations as to any action it believes should be taken or considered.

The Commission may make findings of fact and form opinions based on those facts as to whether any particular person has engaged in serious corrupt conduct.

The role of the Commission is to act as an agent for changing the situation that has been revealed. Through its work, the Commission can prompt the relevant public authority to recognise the need for reform or change, and then assist that public authority (and others with similar vulnerabilities) to bring about the necessary changes or reforms in procedures and systems, and, importantly, promote an ethical culture, an ethos of probity.

The Commission may form and express an opinion as to whether consideration should or should not be given to obtaining the advice of the Director of Public Prosecutions with respect to the prosecution of a person for a specified criminal offence. It may also state whether it is of the opinion that consideration should be given to the taking of action against a person for a specified disciplinary offence or the taking of action against a public official on specified grounds with a view to dismissing, dispensing with the services of, or otherwise terminating the services of the public official.

Appendix 2: Making corrupt conduct findings

Corrupt conduct is defined in s 7 of the ICAC Act as any conduct which falls within the description of corrupt conduct in s 8 of the ICAC Act and which is not excluded by s 9 of the ICAC Act.

Section 8 defines the general nature of corrupt conduct. Subsection 8(1) provides that corrupt conduct is:

(a) any conduct of any person (whether or not a public official) that adversely affects, or that could adversely affect, either directly or indirectly, the honest or impartial exercise of official functions by any public official, any group or body of public officials or any public authority, or

(b) any conduct of a public official that constitutes or involves the dishonest or partial exercise of any of his or her official functions, or

(c) any conduct of a public official or former public official that constitutes or involves a breach of public trust, or

(d) any conduct of a public official or former public official that involves the misuse of information or material that he or she has acquired in the course of his or her official functions, whether or not for his or her benefit or for the benefit of any other person.

Subsection 8(2) specifies conduct, including the conduct of any person (whether or not a public official), that adversely affects, or that could adversely affect, either directly or indirectly, the exercise of official functions by any public official, any group or body of public officials or any public authority, and which, in addition, could involve a number of specific offences which are set out in that subsection.

Subsection 8(2A) provides that corrupt conduct is also any conduct of any person (whether or not a public official) that impairs, or that could impair, public confidence in public administration and which could involve any of the following matters:

(a) collusive tendering,

(b) fraud in relation to applications for licences, permits or other authorities under legislation designed to protect health and safety or the environment or designed to facilitate the management and commercial exploitation of resources,

(c) dishonestly obtaining or assisting in obtaining, or dishonestly benefitting from, the payment or application of public funds for private advantage or the disposition of public assets for private advantage,

(d) defrauding the public revenue,

(e) fraudulently obtaining or retaining employment or appointment as a public official.

Subsection 9(1) provides that, despite s 8, conduct does not amount to corrupt conduct unless it could constitute or involve:

(a) a criminal offence, or

(b) a disciplinary offence, or

(c) reasonable grounds for dismissing, dispensing with the services of or otherwise terminating the services of a public official, or

(d) in the case of conduct of a Minister of the Crown or a Member of a House of Parliament – a substantial breach of an applicable code of conduct.

Section 13(3A) of the ICAC Act provides that the Commission may make a finding that a person has engaged or is engaged in corrupt conduct of a kind described in paragraphs (a), (b), (c), or (d) of s 9(1) only if satisfied that a person has engaged or is engaging in conduct that constitutes or involves an offence or thing of the kind described in that paragraph.

Subsection 9(4) of the ICAC Act provides that, subject to subsection 9(5), the conduct of a Minister of the Crown or a member of a House of Parliament which falls within the description of corrupt conduct in s 8 is not excluded

by s 9 from being corrupt if it is conduct that would cause a reasonable person to believe that it would bring the integrity of the office concerned or of Parliament into serious disrepute.

Subsection 9(5) of the ICAC Act provides that the Commission is not authorised to include in a report a finding or opinion that a specified person has, by engaging in conduct of a kind referred to in subsection 9(4), engaged in corrupt conduct, unless the Commission is satisfied that the conduct constitutes a breach of a law (apart from the ICAC Act) and the Commission identifies that law in the report.

Section 74BA of the ICAC Act provides that the Commission is not authorised to include in a report under s 74 a finding or opinion that any conduct of a specified person is corrupt conduct unless the conduct is serious corrupt conduct.

The Commission adopts the following approach in determining findings of corrupt conduct.

First, the Commission makes findings of relevant facts on the balance of probabilities. The Commission then determines whether those facts come within the terms of subsections 8(1), 8(2) or 8(2A) of the ICAC Act. If they do, the Commission then considers s 9 and the jurisdictional requirement of s 13(3A) and, in the case of a Minister of the Crown or a member of a House of Parliament, the jurisdictional requirements of subsection 9(5). In the case of subsection 9(1)(a) and subsection 9(5) the Commission considers whether, if the facts as found were to be proved on admissible evidence to the criminal standard of beyond reasonable doubt and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that the person has committed a particular criminal offence. In the case of subsections 9(1)(b), 9(1)(c) and 9(1)(d) the Commission considers whether, if the facts as found were to be proved on admissible evidence to the requisite standard of on the balance of probabilities and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that the person has engaged in conduct that constitutes or involves a thing of the kind described in those sections.

The Commission then considers whether, for the purpose of s 74BA of the ICAC Act, the conduct is sufficiently serious to warrant a finding of corrupt conduct.

A finding of corrupt conduct against an individual is a serious matter. It may affect the individual personally, professionally or in employment, as well as in family and social relationships. In addition, there are limited instances where judicial review will be available. These are generally limited to grounds for prerogative relief based upon jurisdictional error, denial of procedural fairness, failing to take into account a relevant consideration or taking into account an irrelevant consideration and acting in breach of the ordinary principles governing the exercise of discretion. This situation highlights the need to exercise care in making findings of corrupt conduct.

In Australia there are only two standards of proof: one relating to criminal matters, the other to civil matters. Commission investigations, including hearings, are not criminal in their nature. Hearings are neither trials nor committals. Rather, the Commission is similar in standing to a Royal Commission and its investigations and hearings have most of the characteristics associated with a Royal Commission. The standard of proof in Royal Commissions is the civil standard, that is, on the balance of probabilities. This requires only reasonable satisfaction as opposed to satisfaction beyond reasonable doubt, as is required in criminal matters. The civil standard is the standard which has been applied consistently in the Commission when making factual findings. However, because of the seriousness of the findings which may be made, it is important to bear in mind what was said by Dixon J in *Briginshaw v Briginshaw* (1938) 60 CLR 336 at 362:

> *…reasonable satisfaction is not a state of mind that is attained or established independently of the nature and consequence of the fact or fact to be proved. The seriousness of an allegation made, the inherent unlikelihood of an occurrence of a given description, or the gravity of the consequences flowing from a particular finding are considerations which must affect the answer to the question whether the issue has been proved to the reasonable satisfaction of the tribunal. In such matters 'reasonable satisfaction' should not be produced by inexact proofs, indefinite testimony, or indirect inferences.*

This formulation is, as the High Court pointed out in *Neat Holdings Pty Ltd v Karajan Holdings Pty Ltd* (1992) 67 ALJR 170 at 171, to be understood:

> *...as merely reflecting a conventional perception that members of our society do not ordinarily engage in fraudulent or criminal conduct and a judicial approach that a court should not lightly make a finding that, on the balance of probabilities, a party to civil litigation has been guilty of such conduct.*

See also *Rejfek v McElroy* (1965) 112 CLR 517, the *Report of the Royal Commission of inquiry into matters in relation to electoral redistribution, Queensland, 1977* (McGregor J) and *the Report of the Royal Commission into An Attempt to Bribe a Member of the House of Assembly, and Other Matters* (Hon W Carter QC, Tasmania, 1991).

Findings of fact and corrupt conduct set out in this report have been made applying the principles detailed in this Appendix.

Appendix 3: Summary of responses to adverse findings

Section 79(A)(1) of the ICAC Act provides that the Commission is not authorised to include an adverse finding against a person in a report under s 74 of the ICAC Act unless the Commission:

- has first given the person a reasonable opportunity to respond to the proposed adverse finding
- includes in the report a summary of the substance of the person's response that disputes the adverse finding, if the person requests the Commission to do so within the time specified by the Commission.

Counsel Assisting the Commission made written submissions setting out, inter alia, what adverse findings it was contended were open to the Commission to make against Mr Green, Ms Dates, Mr Petroulias and Ms Bakis. These were provided to the relevant parties on 14 May 2021. Submissions in reply were made by or on behalf of Mr Green, Ms Dates, Mr Petroulias and Ms Bakis.

The Commission considers that, in all the circumstances, all affected parties had a reasonable opportunity to respond to proposed adverse findings.

Where the Commission has accepted any adverse findings contended for by Counsel Assisting in their submissions of 14 May 2021, it has summarised in the body of the report the substance of any response disputing such findings.

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