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31 August 2006

The Honourable Patricia Forsythe MLC
Chairperson, Legislative Council General Purposes Standing Committee N° 2
Parliament House
Macquarie Street Sydney

Dear Ms Forsythe

Proceedings before your Committee on 28 August 2006

We act for Darkinjung Pty Ltd, the Trustee of the Darkinjung Local Aboriginal Land Council Trust. We have been provided with a transcript of the proceedings of your Committee on 28 August 2006, in which questions were directed to the Honourable Milton Orkopoulous, Minister for Aboriginal Affairs.

We are concerned that the transcript reveals answers given by the Minister which appear to be false and misleading and which are by implication defamatory of the persons concerned in the management of Darkinjung Pty Ltd and the Trust. We have been instructed to write to you to raise our clients concerns and to seek your action in dealing with this matter.

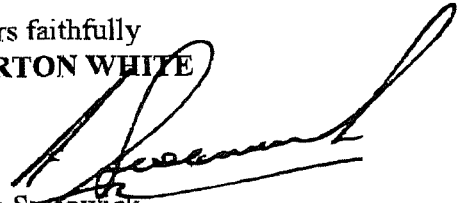
Although there are many aspects of the Minister's answers to the Committee which in our opinion are false or misleading, the problem is best exemplified by a single passage on page 5 of the transcript which epitomises the misleading nature of the Minister's answers. Attached hereto is a response prepared upon our clients instructions, and which appears to reveal that the Minister has misled the Committee in a most fundamental way upon issues where it must be inferred that he does or should have knowledge that his answers were false or misleading.

In the light of the matters set out in the attachment, we are instructed to request that you consider reconvening the Committee with a view to further examining the Minister about these matters, and so that you may deal appropriately with what at first blush appears to be a clear misleading of the Parliament by the Minister. We reserve our client's right to address you further in relation to these or associated matters, but in the meantime if any further explanation or clarification is required please do not hesitate to contact the undersigned.

Yours faithfully

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Per:


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"The payment by Mirvac was to be made in separate instalments. When the administrator was appointed on 2 May 2006 only \$21.8 million was remaining of the \$28.7 million received at that stage. The missing \$6.9 million has been spent on items such as a gift of \$1.25 million to a cattle company, \$1.3 million on unspecified project expenses and \$2 million to Mirvac itself.

In addition, \$2.9 million has been spent on lawyer's fees. At the current rate of expenditure the massive windfall that the Darkinjung Aboriginal Land Council received will be gone in a mere six years, leaving land council members back where they started at best".

- The Hon. Milton Orkopoulos, Minister for Aboriginal Affairs, General Purpose Standing Committee No. 2, 28 August 2006

The Minister's comments are so completely divorced from reality as to suggest either that they were not made in good faith, or that his misunderstanding is so complete as to cast doubt on his competence, or some combination of the two factors. Taken in total, the comments are grossly untrue and misleading.

1. On May 2 2006 a total of \$28.7 million had been received from the sale of land to Mirvac. That is the only accurate comment in the entirety of the Minister's comments.
2. It is completely untrue to say that "only \$21.8 million was remaining", and likewise to suggest that any amount was "missing", much less \$6.9 million. Such a suggestion is not only false, but implies corrupt or dishonest dealings. As the Minister well knows, an investigator whom he appointed to look at the Darkinjung affairs concluded that he could find no evidence whatever of dishonest or improper dealings.
3. The \$2 million to Mirvac was a repayment of a prepayment of that amount which had been made by Mirvac. It was a contractual term of the sale that \$2 million (in round numbers) was to be paid in advance of settlement of the sale, and that was refundable upon settlement. It was a completely conventional term of a commercial transaction, and the \$42 million ultimately to be received is net of that refund. It is not properly to be regarded as an "expenditure" of the sale proceeds at all, much less as being "missing".
4. The description of a "\$1.25 million gift to a cattle company" is both legal and financial nonsense.

Darkinjung Pty. Ltd. (the trustee for the DLALC Trust) entered into a joint venture with a cattle company, incorporating the joint venture vehicle as Darkinjung Cattle Co. Pty. Ltd. The trustee owns 75% of that company, and the remaining 25% is owned by the joint-venture partner. That partner brought to the enterprise a wealth of highly valuable experience and expertise in genetic breeding techniques and inventory, and an established access to a highly lucrative market in Japan. The trustee invested \$5 million by way of a loan to Darkinjung Cattle Co. P/L (secured by a fixed and floating equitable charge). The terms of that loan involve in effect that the loan becomes converted to capital after a period of years, at which stage the trustee will then "own" 75% of

that capital. If the company is wound up within that period, the joint-venturer receives nothing unless the net assets are sufficient to enable the loan to be repaid in full to the trustee.

It is because the loan becomes capitalised after a period of time that the administrator (echoed by the Minister) has chosen to describe it as a "gift" of 25% of the loan amount. That is complete nonsense, and the administrator being an accountant must know it to be a nonsense.

Darkinjung Cattle Company P/L has traded profitably since its inception, making substantial beef sales to the Japanese market. It is anticipated that its profitability will increase, because the Japanese market is highly attracted to the notion that the beef comes from an indigenous-owned source. Indeed the company is presently limited only by its capacity to increase supply to meet the demand. Orders are exceeding capacity to supply by a factor of 3:1. The company is already, and is anticipated to continue to be, a positive contributor to the financial position of the trustee and through it to the members of DLALC.

None of the \$5 million is "missing", and none of it has been "gifted". It is invested most appropriately, as the Minister and administrator both well know, and the reference to a "gift" is being repeated as a form of political mantra in a conscious attempt to denigrate the Darkinjung management group and to justify the decision to appoint an administrator.

5. The "\$1.3 million on unspecified projects" is so completely untrue it is difficult to know where to start in rebutting it.

The members of DLALC over a lengthy period considered how they wished their funds to be employed by their trustee, and they voted unanimously to establish a number of enterprises:

- Darkinjung Funeral Fund Pty. Ltd – a company which is to provide 'insurance' for Darkinjung members who subscribe, so as to ensure that there are funds available to enable them to have a proper dignified funeral. The Fund has been fully considered and examined by the regulating body in NSW, which has described it as one of the best such funds which it has ever seen in its planned method of operation. This is hardly an 'unspecified project'.
- Darkinjung Housing Pty. Ltd. – a company which will purchase affordable housing, rent that housing to Darkinjung members, and in certain circumstances allow them to convert the rental to equity so as to own their own homes. It has been the subject of detailed analysis and consideration by a number of financiers, and the leading financier has assured the trustee that it is ready to go as soon as the status of the trust is determined.
- Darkinjung Projects Pty. Ltd – one wonders whether the name of this company is where the Minister got his "unspecified projects" comment from. This company performs all of the initial assessments of potential projects (such as Funerals, Housing, Youth etc); it obtains all of the necessary legal advice, statutory and regulatory approvals, and then "hands over" the project to the operating company. In other words, it acts as an

arm of the trustee for the initial development of the projects, so that the trustee does not have to itself employ staff to do that work.

The trustee has funded these enterprises through to their present stage, by way of loans. None of that money is "missing". It is clearly identified, and the purpose for which it is to be used has been approved by the membership, which has directed that the money be provided to the trust to be used in that specific way.

To speak of "\$1.3 million" on "unspecified projects" reflects either incompetence or dishonesty or both.

6. The suggestion that \$2.9 million has been spent on lawyers fees is simply false. To extrapolate that figure into the future and to suggest that the whole of the Mirvac money will be gone in six years is plainly dishonest.

First, nothing like \$2.9 million had been spent on lawyers fees at the time an Administrator was appointed in early May 2006, and we don't know where the Minister plucked that number from. It is true that a large amount of money has been spent on lawyers since the appointment of the administrator in direct and necessary response to the administrator's unlawful and ill-conceived attempts to dismantle the trust arrangement.

Second, the period since the Mirvac sale was in its final stages of negotiation has undoubtedly been expensive in terms of lawyers and consultants of different kinds. The Darkinjung people had the commonsense to realise that they needed professional assistance if they were to avoid the pitfalls that have befallen other aboriginal communities.

- They retained a consulting company to negotiate the sale of the land thereby increasing the sale price by \$15-\$20 million. That consultant charged professional fees for its services.
- They retained a well-respected firm of solicitors, and obtained the assistance of leading Queens Counsel, to advise in relation to establishing a proper legal framework to protect their funds – leading to the decision to establish a trust.
- They retained legal and financial consultants to advise on each of the projects which they were planning, and to establish the companies and ensure that they operated properly.
- Virtually from the inception, they have had to fight off objections and interference from NSWALC and the NSW government, both of which have resisted the establishment of the trust structure.
- They have retained a consulting company to provide a full secretariat service until they have a sufficient pool of trained indigenous people to fill that role.

The period since the last stages of negotiating the sale of the Mirvac land has been, as one would expect, a period of utterly disproportionate expense as compared with the long-term running expenses. The establishment costs are high – but the costs of not establishing the structure the correct way would be

much higher, as many other indigenous communities have learned to their sorrow.

It is notable that the administrator has submitted a budget of \$1 million for legal expenses for 2006-2007 – in addition to the roughly \$1/2 million which he has spent since his appointment. All of that money belongs to the Darkinjung people – and all of it is being spent contrary to their express wishes and in order to dismantle the structure which they so carefully and prudently erected to protect their financial future.