

## General Information for Both Parties

Bob Green, 65, lives in Piddington, a fictional suburb in the Southern shire of Albany.

Bob, a committed environmentalist, moved to Piddington nearly 40 years ago, when the area was largely undeveloped. He always enjoyed bushwalking in nearby hills and spending time at the beach. A special treat was seeing native wildlife. His favourite was the rare Gilbert's potoroo. Fewer than 100 of the quokka-like mammals are known to exist. They have been found at only two places - Two Peoples Bay Nature Reserve and Bald Island, both near Piddington.

Nikea Pty Ltd is multinational, exporting agri-business, whose Australian operation is focused on the Great Southern region of Western Australia. Nikea manages harvesting and processing of Blue Gum plantations to supply high quality woodchips for the Asian paper pulp market. Nikea also processes timber for other local tree plantation companies.

Bob has always loved the potoroos, and has been committed to saving them from what he perceives to be certain extinction in the name of economic progress. About 25 years ago, Bob constructed a potoroo friendly nature sanctuary in the 15 hectare bush block to the rear of his home. He hoped to preserve the local population. Bob fenced off the land with a small grade wire mesh. It is big enough to let potoroos in and out, but too small for the feral cats which plague the potoroos population.

In the intervening years, the population of the potoroos has dwindled at an alarming rate. While environmental scientists differ on the cause of the decline, the local community considers that the blame is largely attributable to deforestation and noise and chemical emissions from Nikea's processing plant. Nikea has commissioned environmental reports which refute these claims.

Piddington is now the hub of Albany's industrial area. Bob's one-storey red brick building - a scruffy leftover of the original Albany dwellings - is now dwarfed by large commercial buildings on all sides, including Nikea's chipping plant to the west.

Bob's sanctuary has become a popular venue for school excursions, eco-education forums, community meetings and functions. Bob has been heralded by the local press as "the heart of the community". Generations of Albany residents visited Bob's home and enjoying the tranquil surrounds of his sanctuary. Bob now works full time maintaining the sanctuary and taking tour groups around.

Recently, Nikea has unveiled plans to renovate its timber chipping facility, located nearby. Nikea has been struggling to keep its local operation in business. It has determined that the only option is capital investment to increase the overall efficiency of its plant. Nikea has publicly stated that, without the expansion, its facility would need to close. Given the nature of the processing infrastructure, it would not be viable to relocate the facility. In a recent press release, Nikea's said its only option is to acquire portions of Bob's land. It conceded that, following the proposed expansion, the noise created during the day would render the surrounding area eminently unattractive to potoroos.

The Albany community is divided. Many in the community rely on Nikea's plant for

employment, which provides work for around 800 people.

The local potoroos loving community is outraged by the proposal which will destroy Bob's habitat. A petition against the project has been signed by 12,000 residents. Hundreds crowded into planning meetings to make their voices heard and the local press is having a field day. Some of the supporters have threatened civil disobedience against Nikea.

Nikea has instructed lawyers to negotiate an agreement with Bob Green. Bob Green has received pro bono assistance to negotiate on his behalf.

## Confidential Instructions for Nikea's lawyers

Nikea is undertaking an enormous risk with this project. Investors increasingly see all timber projects as high risk. Nikea had great difficulties convincing investors to finance the project, and prolonged delays coupled with the adverse publicity are making the investors nervous. Bob represents a significant blight in the implementation of this ambitious project for Nikea.

Nikea has engaged an independent valuer to value the property. Valuations Pty Ltd valued the property at \$6.2 million. Nikea has instructed you that it would prefer not to pay more than the land is worth and obviously would prefer to pay less.

However, Nikea does understand that the issue of the potoroos has emotive significance for Bob, the local community and environmentalists, a fact which the local press is fully exploiting. They are, therefore, prepared to spend up to \$8 million to secure the land and to accommodate the potoroos and Bob.

Nikea is looking to secure a deal where the land is acquired and a satisfactory solution for the potoroos is obtained. Nikea is willing to work with Bob to find a way to either relocate the potoroos or to build a more eco-friendly plant.

While Nikea have stated publicly that they must acquire all the land, confidentially, it is just a more profitable approach. Even if they cannot secure the land, they can profitably operate with the existing infrastructure for the foreseeable future. Still, they'd prefer to maximise profits and reach an agreement that can gain support in the community.

One option Nikea is willing to propose is that they acquire only a small portion of land for around \$1 million (or more if required) and with Bob's input construct an expansion on the portion of land with minimal disruption to the potoroos. Nikea have undertaken environmental studies and construction studies. Three of the studies said this may be possible, with minimal disruption to the potoroos population. The fourth advised that this course would definitely scare off the potoroos, with no prospect of them ever returning.

If this is unacceptable to Bob, then Nikea are able to propose another option. Nikea own 50 hectares of bushland in the foothills of the city, an ideal habitat for potoroos. This land has been valued at \$2 million and has been earmarked for another significant development project. While they are reticent to compromise on this project, they are prepared to apportion up to 50% of this land for potoroos relocation, with a significant reduction in the purchase price of Bob's site, in order to secure a commercial settlement.

It is also essential for Nikea to engage Bob to publicise their lumber development. They are hoping Bob will market the final solution to the media and the public to repair the adverse publicity that this project has aroused. If Bob will endorse whatever solution is proposed for the safety and preservation of the potoroos Nikea are hopeful that the project will progress swiftly with no further protest.

Nikea has tied up most of its reserves in the proposed capital works, and would much prefer to pay Bob on an installment basis. Nikea have authorised you to make a settlement on a lump sum

basis, but that course should only be offered as a last resort.

Nikea has given you full authority to negotiate this deal.

**This question was provided by Nicholas van Hatten for the 2013 Perth ALSA Conference.**

## A Competitor's Guide to Good Negotiation

### Great Negotiators:

- Are patient and tireless. They know that being more persevering than their opponents can earn them concessions
- They neither seek conflict nor shy away from it, they don't make concessions out of a desire to be liked, nor do they take pleasure in injuring the other side
- Ask questions, listen, research and learn. They know the power of information
- They are steadfast in achieving their goals and fulfilling their client's interests, but are flexible about means
- They begin searching for integrative solutions (i.e. solutions that will meet the needs of both sides) the moment they begin preparing for a Negotiation
- They stay open to new integrative solutions throughout the Negotiation
- They don't give information away easily. They recognize that even insignificant concessions on their part may have value to their opponents
- They are confident in their demeanours without being arrogant or supercilious to know the value of salesmanship and they use persuasive visuals, language and framing
- They are zealous in guarding their personal credibility

### A Good Negotiation Outcome is One That:

- Is better than the best alternative to a negotiated agreement (with this party),
- Satisfies the interests of:
  - (a) the client – very well
  - (b) the other side – acceptably (enough for them to agree and follow through)
  - (c) third parties – tolerably (so they won't disrupt the agreement),
- Adopts a solution that is the best of all available options,
- Is legitimate – so that no one feels exploited,
- Involves commitments that are clear, realistic, and operational,
- Involves communication that is efficient and well-understood, and
- Results in an enhanced working relationship, so the parties and/or their lawyers can deal with future differences more easily