

TRANSCRIPT OF PROCEEDINGS

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COMMISSION OF INQUIRY INTO THE NATIONAL PROVIDENT FUND

Mr Tos Barnett, Chairman
Mr Donald Manoa, Commissioner
Lady Wilhelmina Siaguru, Commissioner

AT WAIGANI, WEDNESDAY 31 JANUARY 2001 AT 9.55 AM.

(Continued from 30 January 2001)

[9.55 am] THE CHAIRMAN: Yes Mr Reeve.

MR REEVE: Thank you Mr Chairman. Mr Chairman, this morning I propose to call two witnesses. One of those witnesses is not here and I am having inquiries made. The other of those witnesses is Mr Fabila who I would be asking to give short evidence and Mr Fabila is here.

THE CHAIRMAN: Yes thank you. Mr Fabila, could you come into the witness box please. Mr Fabila, you were sworn before?

MR FABILA: Yes.

THE CHAIRMAN: So you are still under your former oath you understand?

MR FABILA: Yes.

THE CHAIRMAN: Thank you.

HENRY FABILA, recalled:

XN: MR REEVE

Q: Mr Fabila, do you recall that when you previously gave evidence, I will just mention for the record at transcript pages 3300 to 3302, I was asking you about whether you had ever seen a contract for the Waigani land or for the shares in the company, Waigani City Centre and you indicated at that time that you did not have recollection of that, but that if I could show you some documents that may assist your recollection. Do you recall that?

A: Yes.

Q: What I would like to show you if I may is a copy of a memorandum from Mr Leahy to yourself dated 26 February 1999 and with it is a copy of a letter from yourself to Minister Lasaro dated 26 February 1999. The letter is commission document, I am sorry is tendered document W691 and the letter to the minister is tendered documents W692 through W694. I will show you those two

documents then ask you some questions.

[9.58 am] Just go to the first document first, which is W691. Do you recall receiving that memo from Mr Leahy on or about 26 February 1999?

A: No, I do not. Usually I normally put some comments on my internal memos of any letters that are addressed to me directly or personally.

Q: That memo indicates, does it not, that Mr Leahy was submitting to you a contract and telling you that it was in order for signature?

A: That appears to be the case, yes.

Q: And he was also submitting to you a draft letter to the minister seeking approval to enter into the purchase of the Waigani land shares?

A: Yes. Well, if I recall, that is basically to comply with the conditions which amongst other listed conditions, who is going to purchase the land or submitted for the minister's approval. And I believe that was why that letter went out.

Q: The second document, the letter to the minister, that is W692 to 694. Do you remember receiving that letter and signing it?

A: Yes, I recall.

Q: Does that assist your recollection about whether you received that letter with the memo, which is document W691? Because that memo refers to that letter and asks you to sign the approval.

A: It may have - but again as I said, I normally notate - I would put notations on my memos. Normally that is when I am replying to internal memos or other letters that are going out.

Q: The letter to the minister, did you draft that letter or was it drafted by somebody else?

A: Drafted by somebody else.

Q: And who was this somebody else?

A: By Mr Leahy.

[10.02 am] Q: And did you participate in the authorship or is it solely Mr Leahy's work?

A: Solely Mr Leahy.

Q: And seeing the letter drafted by Mr Leahy and the memo that refers to it, does that assist you in knowing whether when you were asked to sign that letter, you received the memo which is W691, the memo which refers to that letter and asks for you to sign it?

A: I really cannot recall this particular memo but the letter, yes, I can recall the letter.

Q: Well, what I am going to do now. I will actually show you if I may from the Fiocco Posman file which is commission document 100 the share sale agreement. I would like you to have a look at that, take your time. You will see that it is a document of some 20 pages, 26 pages and the last page, appears to be signed by Mr Eludeme and Mr Mamando. I just want you to look at that document to see if that refreshes your recollection; whether you have seen the document before and whether it was signed on or about the date of that memo? You recall having seen the document of which that is a copy?

A: No, I have never seen this.

Q: You had never seen it?

A: No.

Q: What I am trying to get at is, I am trying to establish whether the document was signed and if

by whom. You see the memo to Mr Leahy which is dated 26 February in which is addressed to you and says, "here is the contract which is in a standard format and here is the letter for the minister, will you please sign the letter" and you did in fact sign the letter it seems to suggest that that memo was given to you with those documents? I am trying to establish whether what documents would appear to suggest is fact or is not fact?

A: Well, I cannot recall seeing this contract at all.

Q: You have not seen it at all?

A: No, first time I have seen this.

Q: And you did not sign that document?

A: The contract?

Q: Yes.

A: No, no, no.

Q: But you did sign the letter?

A: I sent it to the minister.

[10.10 am] Q: Yes?

A: Correct.

Q: And the memo, you do not recall? Are you able to say with certainty that you did not receive that memo?

A: Well, normally I would put "actioned" or whatever against the documents I am asked to deal with. But it appears to be a clean document.

Q: So as best as you can recall, your evidence would be "I have not seen that memo"?

A: Memo, not the contract.

Q: Thank you. Can you just hand those back. I just want to show you two further documents and this relates to the refund of the stamp duty cheque in relation to the Waigani land. I want to show you two documents which are W793 which is addressed to, by yourself, a letter dated 2 July 1999 to the executive chairman of Finance Pacific Limited and W794 which is a statutory declaration that is referred to in that letter.

COMMISSIONER MANOA: Mr Reeve, what was the first document?

MR REEVE: It is a letter from Mr Fabila to the executive chairman of Finance Pacific.

COMMISSIONER MANOA: That is W794?

MR REEVE: Correct.

COMMISSIONER MANOA: And the first one you mentioned.

MR REEVE: No, it is 793, sorry, and a statutory declaration of Mr Fabila is 794.

COMMISSIONER MANOA: Thank you.

MR REEVE: Do you have a recollection of those two documents, Mr Fabila?

A: Yes, I do.

Q: Were you the author of those documents or was somebody else the author?

A: Just Mr Leahy who actually authored the both documents and I checked them just to make

sure that we would get our monies back because prior to that, we did all our cheques, myself included and I used my own contact with the bank but could not find or trace the whereabouts of the cheque. So I said the best thing to do is get that money back to NPF, and hence the letters.

Q: Did you give Mr Leahy any instruction to write those letters to recover the stamp duty?

A: I did, yes.

Q: So when he drafted those two documents, he was acting in accordance with your instructions?

A: Yes.

Q: Why was the letter addressed to Mr O'Neill the executive chairman of the bank?

A: Well, at the time, I believe he was the working chairman so I saw it fit to correspond directly with him and he would direct any of his officers below him to take certain action on our request for re-investment.

Q: But would you regard it as normal, if I can put it that way, to address a letter asking for a cheque that has apparently been lost to be recredited to the account. It is addressed to the executive chairman of the Finance Pacific Group?

[10:14 am] A: Well I said I believe at that time he was the working chairman and all correspondence should be directed to whoever is in charge and then they would then distribute such correspondence down to the actioning department concerned.

Q: Well even if one accepts that is true, surely it should be addressed to the person who is in charge of PNGBC rather than the executive chairman of the group of companies of which PNGBC is part. Would you normally write to the managing director of PNGBC?

A: Yes well, I would then have to go say Mr Baliki who was the managing director or was seen as the managing director right now but I believe that because of Mr O'Neill who was the executive chairman meaning he is in charge of day to day aspects of the total group, I would write to him in his capacity as the director and he would then distribute to the appropriate department to action our request.

Q: You see, what I am concerned to explore is why the letter was not written to Mr Baliki who was the man who was in charge of PNGBC which issued the cheque but is rather written to the executive chairman of the whole group who happens to be Mr Peter O'Neill.

A: Well, again as I said, at that time when he was the executive chairman or working chairman effectively then I thought it would be best that he would know every aspect or any details affecting the whole bank itself but he should be well kept informed. That was why I wrote to him in that manner so that he knew about what was going on and he would distribute the correspondence to the appropriate officers to - - -

Q: Was that your decision or did you receive some suggestion or direction from somebody to write to Mr O'Neill?

A: I cannot recall giving specific instructions but all I knew was it had to go to Mr O'Neill. At that time he was the actual executive chairman of the banking group.

Q: When you gave the instructions to Mr Leahy, did you instruct Mr Leahy to write to the bank or to write to Peter O'Neill?

A: To write to the bank.

Q: To write to the bank?

A: Write to the bank.

Q: So it was not your specific instruction to write to Mr O'Neill or it was not?

A: No, it was not. It was just to the bank but I recall it was addressed to Mr O'Neill for the reason

that he was the executive chairman being the working chairman.

Q: What I am trying to understand is, why or what caused that letter to be written to Mr O'Neill rather than Mr Baliki. What I am seeking to explore is whether you gave Mr Leahy who was the author of the letter a direction to write to Mr O'Neill or just to the bank?

A: No, just to the bank.

Q: Just to the bank?

A: Just to the bank, yes.

Q: And did anyone give you any instruction that if you wrote to Mr O'Neill, that might facilitate the recrediting of the stamp duty bank cheque?

A: No, because at that time I felt that as the chief executive of the bank at that time, he would have more authority to direct to get the money back quickly into our accounts.

Q: What I am trying to get at is, whose decision was it to write to Mr O'Neill, whether it was yours or whether that was a decision which Mr Leahy took?

A: This was not mine. It was not mine definitely.

Q: It was definitely your decision?

A: No, it was not my decision at all.

Q: It was not?

A: It was not.

Q: And you instructed Mr Leahy to write to the bank, Mr Leahy produced the letter, addressed to the executive chairman, attention to Peter O'Neill.

A: Correct.

Q: And you thought, when the letter was produced to you, that was not improper that the chairman should correspond with the chairman?

A: That is right, yes.

[10.17am] Q: Yes, the second last matter sorry, that I want to deal with this morning, if I may. I have given you and asked you to look at pages 3951 to 3959 of the transcript, which is that part of the opening address on the Waigani land which deals with the Department of Finance, finance inspection services investigation into the National Provident Fund. And what I have said in the opening involves criticisms of you personally and the conclusion that you impeded or obstructed the finance inspector's investigation. Now, having read that I would like to invite you if you would to say anything you wish to say and if you do not wish to say anything just say that in response to the criticisms that have been made.

A: Well, my recollection of events was that as soon as the decision was made to come and inspect the books, my only action was to prevent and it is still today which I believe that as a chief executive of NPF at that time, any documents that would leave the premises I should know about. And I might also add at this juncture that I was not privy to the details of the Public Finance (Management) Act in terms of investigations into public authorities such as the NPF. It was only after when I got a copy of that and looked at it and I knew that I was in the wrong somewhat so I was put pressure on by Mr Bai and Mr Tarata towards the end. Then I said we will fully comply but it was never done intentionally, it was done on the basis that I want to know what documents especially are going to leave the premises of NPF and I would like to see them returned intact. And that was basically what I was really concerned about.

Q: Thank you. Do you understand that in seeking that type of guarded investigation and knowing what was being investigated, you were in fact in error, do you understand that?

A: That is what I said, when I got details of the Public Finance (Management) Act and looked at

matters concerning investigations into public authorities where the authority lies then I realised that I was in wrong.

Q: They have got fairly draconian powers.

A: That is correct, yes.

Q: Is there anything else that you wish to say about those criticisms in response to?

A: There are a few here but- - -

THE CHAIRMAN: Have you had a good chance to read those?

A: Only this morning when Mr Reeve came in, Chairman.

Q: Do you want more time?

A: Not really. The only one I was concerned about whether I lied about something and I do not agree with those particular comments. Yes, it says, where I lied to the finance inspectors over the obtaining of values of the Waigani land and I mean, I am not sure exactly what I lied about, Mr Chairman. That is on page 3958 at the very top.

MR REEVE: I think, what they are saying you lied about was in effect this, that you told them that you instructed Mr Leahy to obtain quotations for the valuation of the Waigani land and that the next thing that you knew, you were committed and Mr Leahy came to you with the invoices. Indeed, that was the same thing that you initially told this commission. And then when the letters were produced it was shown that you actually signed the letters authorising the valuers' fees before the invoices were received. Mr Leahy drafted the letters but the sequence of letters showed Mr Leahy asked for the quotations, the quotations were given and you had personally signed the letters accepting those quotations, then the invoices came in. So, what the finance inspectors were saying was when you told them, as you told this commission, "I only asked for the quotes and the next thing I was presented with the invoices," that was not true. That is where they are saying you lied to them.

A: Okay, I accept that. The thing where you said that myself and Mr Leahy lied to the finance inspectors about the manipulation of the date of February 1999 board meeting to the result that Messrs Nana and Paska were excluded.

Q: That is really a criticism of Mr Leahy. It is not a criticism of you. There is abundant evidence to support that assertion.

A: Apart from that, I think the reports are fairly accurate as I said.

THE CHAIRMAN: Sir, I was not sure what you just answered about the comment that you lied about obtaining the valuation.

A: Yes. Well, I think I said when the letters were produced as evidence I realised that I was starting wrong but how it took so long for the letters to see, I was rather surprised as well too.

Q: So, you are not admitting that you deliberately lied.

A: No.

Q: Or are you?

A: No.

Q: You are just saying that I did say something which turned out not to be true.

A: Correct.

Q: Okay, thank you.

MR REEVE: Just a last thing, Mr Fabila, and this relates to the National Provident Fund Tower. On 10 August 1998, after Kumagai had foreshadowed the kina fluctuation - - -

A: Devaluation, yes.

Q: Or devaluation claim, if I can put that way. There was a meeting at which there were present, people from Pacific Architects Consortium, people from the National Provident Fund and people from Kumagai Gumi and out of that meeting came a decision that Kumagai should quantify what it said its claim was and that NPF would then look at it. What we were concerned to do was to establish who was at that meeting on behalf of NPF. It seems quite clear on the evidence Mr Noel Wright was present and it would seem either you or Mr Herman Leahy was present. And I think, the Japanese evidence is the evidence of Mr Kobayashi, is it was Mr Leahy. I just want to ask you, were you present at that meeting on 10 August with PAC and Mr Wright and representatives of Kumagai?

A: No, I was never present at the meeting, no.

[10.22 am] Q: Mr Chairman, I have no further questions of Mr Fabila. I do not know whether the commission has any questions on new matters that they would like to raise.

THE CHAIRMAN: Yes, I think we might have a couple of questions on other topics we just wanted to check with him.

COMMISSIONER MANOA: Mr Fabila, some of these maybe going through old ground, but there are a couple of questions that I want to ask you. The first question is with regards to Mr Aopi. Mr Aopi was a director of Highlands Pacific, is that right, Highlands Gold and Highlands Pacific?

A: Yes, yes.

Q: And also I think it was Steamships?

A: Yes, correct.

Q: When he was serving in these boards, what did you regard him as? Did you regard him as an independent board member or was he a representative of NPF?

A: Well, I can recall, commissioner, when he resigned from NPF and I also was aware that him and also like Mr Copland for that matter, that they were on the board by virtue of NPF's interests. And that if they were to resign from NPF, then automatically that will extend to other directorships that they were representing NPF on. So I took it to mean exactly that that they were no longer directors of Highlands Pacific. And when I put it to both the chairman and the management of that company especially, they said no he was an independent director and was receiving his fees. So we were rather shocked. And we - so we were to seek legal action but we believed that we would - it would have resolved quickly and other more important things to worry about. So when Mr Aopi then resigned from Highlands Pacific itself then that virtually closed the whole story on his continued directorship on the company.

Q: So what you are saying is that, if I understand you correctly is that while he was a trustee of NPF you regarded him as representing NPF in those two boards. Is that correct?

A: Yes. Well, he was already a director on Highlands Pacific before I actually joined NPF. So, I took that to mean that, well, it must have been a decision by the board prior to my taking up the duties with NPF. So it was only when he resigned and I was already at NPF and I thought automatically that he should then step down from Highlands Pacific, since he no longer represented NPF's interest.

Q: Mr Fabila, we heard in evidence yesterday that there was a board meeting, I think it was on the 5th - it was supposed to be on 5 February. Mr Reeve, you might correct the date.

MR REEVE: 5 February 1999, commissioner.

COMMISSIONER MANOA: 5th 1998? 1999?

MR REEVE: 1999 was the first meeting at which Mr Maladina was the chairman.

COMMISSIONER MANOA: Yes. We heard subsequently that this board meeting was postponed to the following Monday. Are you able to tell us what was the reason for deferring the meeting? It

is a particular meeting where I think the two employers' representatives had their time run out at the weekend and therefore they were not eligible any more to sit in a meeting on that Monday.

A: Yes, I can recall something to the effect it did happen. I think it was Mr Paska and Mr Nana. The first meeting that we were going to have, I think they were still trustees of NPF, but the following week they were not going to be trustees any longer because of the duration of the - or the expiration of their trusteeship. So they did not come for the second meeting, just for the previous week. Now, how it transpired I am not too sure.

Q: The question was, were there any specific reasons for deferring that meeting on a Friday? Because I think from the evidence we got from Mr Paska yesterday and Mr Tau Nana, that they were actually present to try and be at that particular board meeting and it was deferred to the following Monday. Was there any specific reason why it was deferred?

[10:27 am] A: I cannot really recall, commissioner.

THE CHAIRMAN: Can you just think about that a bit more because it is an important thing that happened on that occasion and the evidence we have heard is that Mr Paska anyway and Mr Nana believed that the meeting was postponed from the Friday deliberately so that they would not be entitled to attend when the meeting was finally convened on the Monday. What was the alleged legitimate reason if there was one for postponing the meeting?

A: Well if I can recall the notice did go out by the corporate secretary Mr Leahy at that time to all the trustees that the meeting was going to be held on that particular date.

Q: On the Friday?

A: Yes before the expiration of the two trustees, Messrs Nana and Paska and we were aware of it so we wanted a meeting quickly at that time and - - -

Q: You were aware of what?

A: Well we were aware of the meeting that was going to be held prior to expiration of the two trustees trusteeship on the NPF board.

Q: So you were aware that they were going to - - -

A: Attend the meeting - - -

Q: No. You were aware that their terms were expiring?

A: Yes well everyone knew about it already at that time which because if I can recall, Mr Herman Leahy prior to that at one of the meetings did put out a list of those trustees whose expiration of their trusteeship would be coming up.

Q: Yes. It was discussed at the November meeting.

MR REEVE: 22 December I think chairman.

THE CHAIRMAN: That is right at the December meeting.

A: Yes.

Q: The fact of the expiry dates approaching was being discussed?

A: Yes well it is the normal thing that you would remind the trustees that their terms are coming up and - - -

Q: Okay so Mr Paska came up especially to be present on the Friday for the meeting while he was still a trustee. He came up from Australia to attend that meeting. Now then the meeting got postponed til the following Monday at which time he was no longer entitled to sit so you are the managing director, why was the meeting postponed? Why was the meeting not held on the Friday? Why was it postponed till the Monday?

A: Well if I can recall the chairman at that time I think called for a postponement of the meeting

until a fixed date that he would be available, that is all I can recall.

Q: So you are saying that it was Mr Maladina who asked for the meeting to be postponed?

A: Well normally he would call for meetings but we had said to him time and time again that there is a schedule for our annual board meetings which is set for every second month of the year.

Q: So is that your evidence that it was Maladina who directed that the meeting be postponed?

A: Yes.

[10.33 am] COMMISSIONER MANOA: Mr Fabila, also during board meetings, I mean you prepare the board papers and they go out to the board members, in those papers there are agenda items and management reports?

A: Correct.

Q: One of those important reports in those management papers is of course the investment portfolio report, if I may say or schedules?

A: Yes, correct.

Q: Did the finance manager or yourself during your time there ever pick the schedule up during the board meeting and explain the - let me start again. Did you or Mr Wright as finance manager during any board meeting ever brief the board on an up-to-date situation of where the investment portfolio of the fund stands? Did you go through the board papers - I mean, the schedule with them, to update them on the situation at that time?

A: In Mr Wright's case when he was there, not really in detail but he would have the figures just to see what sort of holdings we had, the performance, the rate of returns that we had, figure wise and I used to add on my bit in terms of my own report because I sat on various boards as well too where when the previous managing director sat on, I took over from him and I also supported Mr Wright in terms of providing some written reports on the performance of our investments so trustees can read and understand and ask questions that they wish to. Whether there was satisfaction or not, I could not really say so but otherwise it was really - hardly any questions came from the board or from the trustees themselves as to the performance of the investments in those various companies where we had shares in.

Q: And what do you take that? If there is no questions coming, that you take it that they understand the situation or they understand what the management papers report is saying to them?

A: Well, I would like to think that we did - because the trustees who were there before me and I took it that they would understand exactly what was being written or what has been provided in terms of the reports. I mean, I used to give written reports on individual companies where I sat on the boards and backed up by some of the figures that Noel Wright used to provide as well too. And it was, that little discussion was no real heavy discussions on the respective investments.

Q: Mr Fabila, also yesterday during evidence it was revealed to us that during the board meeting that happened over there in Vulupindi Haus, I think it was in late 1998, November 1998, during that meeting both yourself and Mr Herman Leahy supported the paper on the Waigani land which was being produced at that time by saying that there was a rush and that is - or a great - of people, of expatriates buying out land in the Waigani area and therefore that NPF then should be able to look seriously at this particular land. Can you vouch for that?

Q: Yes, commissioner, I can recall that, yes. I still stand by that, by virtue of what I see especially in the National Capital where a lot of land is falling to foreign hands, especially Asians.

Q: And your reason for supporting that paper is so that you could - at least Papua New Guineans can own a bit of- - -

A: Own a block of land and when we have the money to develop them, we would hopefully develop sometime in the future.

Q: And that was your main reason for supporting that paper?

A: Correct.

[10.37 am] THE CHAIRMAN: Okay, thank you.

COMMISSIONER SIAGURU: Mr Fabila, you have just mentioned that you supported Noel Wright in his reporting to the board members on investments holdings, well, in investment strategy of NPF. My question is that when you had your first meeting with the ANZ Bank in September 1998, is that correct?

A: Yes, I can recall.

Q: At that time NPF was in serious trouble?

A: Correct.

Q: My question is that were you not aware of the dangers that the fund was going through in terms of investments and their adverse economic environment, as the general manager, and instead of supporting Noel Wright, would it be incumbent upon you to see if you could change the situation slightly?

A: Well, that is exactly what I did when I first came aboard and I can recall, yes, one of my first visits was to the ANZ Bank because I was unaware that we had a massive borrowing; and when I asked further then, I was told to meet with the chief executives of the ANZ Bank just to find out what the level of borrowings were there and I was rather astonished. When I found out why and that was all basically to use this process of this loan monies to invest in various companies. And when I looked, some of it was driven by the government. It is sad to say that to this very day, that was what really brought out the seriousness of the problems with NPF and you stop investing monies that you have got; you are borrowing monies to invest. So it really did not make sense to me at that time. So we were trying to find ways and means to try and reduce our debt as much as possible. That was only when I took up post. Things were not travelling too well on the international scene especially like produce prices of produces were going down, the Kina was not travelling too well at all. So it was a very expensive exercise in repaying our debt especially overseas and repaying the loan as well, too, which interest rates were going up.

Q: But is it true also that about this time, NPF was also looking at the Aussie dollar bond?

A: Possibility of?

Q: The bond issue?

A: Correct and- - -

Q: So did you not find it contradictory where you are trying to reduce debt in one institution but at the same time going out looking for the bond issue to raise money?

A: Well, commissioner, sorry, I must say this that I was the one who actually stopped that bond from going through because I found out that it was going to be part and parcel of something we were to repay well in the future. And I said to myself, well, why do we have to keep on borrowing money in one shape or form, and one of the issues was the bond which I stopped. I was not going to go after any further borrowings or receive monies through bond issues so that we could invest here and there.

Q: And also about this time, too, the issue of the question of NPF Tower came into the scene, did it not?

A: Well, again, this was done through my time again and this is a matter of just trying to see the whole thing completed without too much repercussion which obviously had ensued.

Q: When you, as a result of the Price Waterhouse Cooper Review of NPF investment portfolio, there was a sell-down strategy, the divestment strategy?

A: Correct.

Q: Was there at any point in time discussions on other options as opposed to selling those shares at a time when they were particularly low in price and, therefore, NPF was bound to make a loss?

A: To invest, I guess, I mean that is what it is all about. It is about speculating and we could not see ourselves, and we were no beggars - I mean we were not choosers but we were really beggars at the time and because of pressures put on us by the ANZ Bank especially. At one time the PNGBC was also threatening to take over NPF. So we had to look at every option available to us and the first thing was to get Price Waterhouse Coopers to come and have a quick look. We gave them three weeks - two or three weeks, whatever to come up with a report.

Q: My question is that the recommendation was to sell down of shares in order to repay the debt?

A: Correct, that was one of them.

Q: My question is that was there other alternatives looked at besides this specific strategy given the low prices of the shares?

A: Well, not only shares but even some of the properties we had as well, too, because before that, before I took office, I had to get hold of some properties. And when I came aboard, I saw the need to continue that way, because I do not know why we had to buy properties also in the first place and also why do we have to borrow in the first place to invest those monies. Why could we not just invest the monies that is coming in from the membership. So we actually invested in cash rather than having to borrow which had its own, really, drawbacks.

[10.41 am] THE CHAIRMAN: Mr Fabila, that resolution which was passed, which brought about the major sell down, do you remember what Lady Siaguru has just been talking about? That was done after the PriceWaterhouse report was received by you?

A: Correct.

Q: It was a very major decision selling down an enormous amount of the National Provident Fund's assets, was it not?

A: Correct.

Q: Why was it put to the trustees by way of circular resolution instead of giving them the chance to come together and really consider it face to face with each other and maybe with the PriceWaterhouse people where they might have come up with other options? Of all the resolutions that were put to them, that had been proposed at that stage, this was the most major resolution of all, was it not? It was basically a selling of the farm resolution. Why was it done by way of a circular resolution?

A: Well, Chairman, I believe we did give copies to all the trustees so they could assimilate themselves with that particular report and I believe that when we met on two occasions I can recall we discussed the matter in depth. And, basically the trustees did agree to follow the suggestions made by the PriceWaterhouse Coopers report.

Q: Why was the resolution circulated by way of a circular resolution? And then afterwards there may have been more discussions, I do not know. But, why were they not brought together to discuss the issues before being asked to vote?

A: I cannot recall which ones were done by resolution and those which were actually discussed.

Q: There was one resolution which was, sell off 100 per cent of Steamships, sell off 100 per cent of Vengold, sell off 100 per cent to - right down the list, all the - basically a huge portion, almost all of the equity portfolio, it was resolved to sell off. And we are talking about that one and it was done by way of a circular resolution?

A: Well, I think as I said before, Chairman, I believe that that is one way of getting a quick decision because I think generally speaking when you look at the composition of boards one would expect that you have good thinking people and who were put on for those reasons to be directors on various companies so they can think things through and the performance of the company that they represent as a director. And that when issues affecting the company does

come up, then they should be able to think these things through without having to sit down and think it through, that they should come up with their own thinking capacities as competent board directors or trustees of an institution.

Q: Was that truly your belief? Was that the reason that you went along with the idea of circular resolutions that they did not need to get together to exchange ideas that they were already expert people and they could just make a decision in isolation? Is that really what you thought?

A: Well, I believe Chairman that - what you call it, by giving the full facts or all the information that we believe that we had so that they could make a properly informed decision away from the board room and come back and ratify the decision at a later board meeting.

Q: After they had all been sold off?

A: Well, I believe that at one stage the decision has been made and they relayed the decision to us and that will be the way to act on that final decision by them by telephone or by the fax.

Q: Okay. Well, thank you, your evidence is recorded. Yes, Mr Reeve?

MR REEVE: I have nothing further, Chairman.

THE CHAIRMAN: Okay.

COMMISSIONER MANOA: No, Chairman.

THE CHAIRMAN: Thank you. Mr Fabila, you are excused now. Thank you.

THE WITNESS WITHDREW

THE CHAIRMAN: Mr Reeve?

[10.44 am] MR REEVE: Thank you, Mr Chairman, I suppose I should say that the lateness of my second witness who was not summoned was caused by my failure to deliver my part of the arrangement that I had to deliver a summons.

THE CHAIRMAN: All right.

MR REEVE: But the witness is here.

THE CHAIRMAN: All right, thank you.

MR REEVE: So I can call Mr John Ruimb.

THE CHAIRMAN: Thank you. Yes, Mr Ruimb? Yes, and then you will have to swear him, thank you.

JOHN RUIMB, sworn:

XN: MR REEVE

Q: Thank you. Mr Ruimb, when you answer, I will ask you questions if you could answer not to me, but to the commission. If you could speak into the microphone so it may record it. Mr Ruimb, for the record could you state your full name please?

A: My full name is John Colman Ruimb.

Q: Thank you. And the present position which you hold?

A: I am the managing director of the Investment Corporation of Papua New Guinea.

Q: Thank you. Now, I think the - perhaps this is the easiest way. What position did you hold at the time the new government was formed in 1997?

A: I was the managing director of the Investment Corporation of Papua New Guinea.

Q: And how long had you held that position? When did you become first the managing director of the Investment Corporation?

A: I was managing director of Investment Corporation, I was first appointed on 28 May 1997.

THE CHAIRMAN: What was the date the government changed, Mr Reeve?

MR REEVE: The election was in June 1997 and the new government came in in July or August 1997.

THE CHAIRMAN: Thank you.

MR REEVE: Do you have a recollection of a particular incident which you believe had an effect on your future at Investment Corporation?

A: Yes.

Q: Could you tell the commission about that incident?

A: It would have been late 1997 that the Honourable Dr Pok and Peter O'Neill had called into my office just on the 9th floor ANG Haus and prior to that we had some exchange of correspondence between Dr Pok and myself in relation to his interest to acquire or his interest to rent a property that belonged to the Investment Corporation. So, they had come in to inspect the property.

Q: And the property inspection took place?

A: The property inspection took place after which we went back to my office.

Q: And when you went back to your office, was there a further conversation?

A: Yes, there was.

Q: Just tell the commission about that further conversation?

A: Further conversations were a follow up on various other projects that Peter O'Neill had made to me suggesting that all the Investment Corporation properties be given to Port Moresby First, sorry, it was Hunter Real Estate at that time to manage the properties. And in that meeting, in the presence of Dr Pok he talked about the need for them to make more money enough to sustain the members they had in Parliament to remain in government. And that if I did not cooperate they would determine my future.

THE CHAIRMAN: Dr Pok said that?

A: No, Peter O'Neill said that.

Q: Thank you.

MR REEVE: And Mr O'Neill said that in Dr Pok's presence?

A: Yes.

[10.48 am] Q: Now, you tell the commission what your response was and the reasons for your response?

A: My response was that we had current property management contracts and if we had to terminate, we might be liable down the line in terms of breach of contract by the companies that were already contracted to manage. So, I said that some of the contract terms were coming up and they should wait until the contracts, respective contracts expire and that we go to tender and they can submit the tender for it.

Q: What was the response to your response?

A: The response to my response was rather blunt that we are in government and you should listen to what we say, what we are telling you. That was the response.

Q: Was there any direct threat made to you that if you did not co-operate that would affect your future or was that implicit?

A: It was implicit.

Q: What then occurred?

A: Subsequent to that meeting, Peter O'Neill had told the Hunter Real Estate general manager who was Maurice Sullivan at that time, that he had held discussions with me and I was to give them all the properties and that he should get in touch with me immediately. So, Maurice Sullivan wrote a letter to me on that basis and I responded denying the commitments and said that - all I said was that we would go to tender and that they should tender when the contracts expired.

Q: Would you be able to let the commission have copies of those letters, have you obtained copies of them?

A: If they are still in the records of Investment Corporation, I can- - -

Q: No, I mean, in your official capacity as the- - -

A: Yes, I can.

Q: After you wrote that letter to Mr Sullivan saying, well, no papers, you tender like everybody else, what then occurred?

A: Nothing occurred until February which is a few months later. That was subsequent in February '98 I got a letter from the Treasury Minister saying that I was terminated without any reasons, excuses given.

Q: Who was the treasury minister at that time?

A: At that time it was Iairo Lasaro.

Q: The letter without reason just terminated your appointment as the- - -

A: As the managing director of Investment Corporation.

Q: Managing director of the Investment Corporation. Now, were you on contract at that time or was it a term appointment?

A: At that time I was on a three year contract.

Q: How much of that contract was left to run?

A: I had only served the seven months of that contract and the balance of the contract was- - -

Q: Was there any compensation paid to you for the loss of that office or not?

A: Yes. I got - the balance of the contract was paid out as provided for in the contract but after some court proceedings and all that, yes.

Q: It was actually litigated and then settled.

A: Not actually litigated but proceedings were sort of - I do not know - I am not fully aware of the legal - - -

Q: You started proceedings and then part of the way along- - -

A: Yes. The lawyers communicated and- - -

Q: There was a resolution between lawyers.

THE CHAIRMAN: So, a writ was issued from the court.

A: Sorry?

Q: Was there a writ issued from the court?

A: Yes.

[10.53 am] MR REEVE: And who was appointed in your place as the managing director of the Investment Corporation?

A: Wandi Yamuna.

THE CHAIRMAN: Wendy?

A: Wandi Yamuna.

COMMISSIONER MANOA: That is also known as Oscar, the same guy?

A: Oscar, yes. Oscar Wandi Yamuna, I think he has got three names.

MR REEVE: Now, having been terminated at the Investment Corporation, did you seek further employment?

A: Yes, I did.

Q: And what employment did you find?

A: Not immediately but after a while I was offered a position of executive manager investments with the Defence Force Retirement Benefit Fund.

Q: And you took up that posting?

A: I took up that position in January 1999.

Q: January 1999?

A: Yes.

Q: Mr Philip Eludeme has told the commission that in about October 1998 he wrote to various statutory authorities including the Defence Force Retirement Benefit Fund seeking to excite their interest, if I can put it that way in becoming participants in what is known as the Waigani land which is allotment 2 section 429 and which I know you are familiar with. In your time at the Defence Force Retirement Benefit Fund, did you ever see a letter from Mr Eludeme dated about October 1998 or was it much later that the correspondence that you have seen is dated?

A: The correspondence that I have seen, I have no recollection of Philip Eludeme's letter back to that date.

Q: At about the time that you joined the Defence Force Retirement Benefit Fund as executive manager investments, were there substantial changes to the board of the Defence Force Retirement Benefit Fund?

A: At the same time I joined the Defence Force Retirement Benefit Fund, there were some changes made to the board including the chairmanship of the board.

Q: And who became the chairman of the board at that point?

A: The new chairman of the board was Kelly Naru.

Q: Is Mr Naru known to you?

A: Mr Naru is known to me in previous dealings.

Q: Just tell the commission who Mr Naru is, what his occupation is, where he works, what you know of him?

A: I knew him as a partner of Carter Newell law firm.

Q: And as a lawyer?

A: And as a lawyer, yes.

Q: Colonel Playah, was he a new member of the board at that time?

A: I am not sure, but I assumed he was continuing.

THE CHAIRMAN: What is the first name?

A: Philip.

Q: Colonel?

A: Colonel.

Q: Military colonel.

MR REEVE: Are you able to recall what position Colonel Playah held in that PNGDF?

A: I think he was the chief of staff.

Q: Chief of staff?

A: Chief of personnel or whatever they called it, chief of staff.

Q: And Colonel Renagi was also appointed a member at that time, was he, Colonel Renagi newly appointed or reappointed?

A: I came in about the same time so my understanding was Colonel Renagi was also a continuing member.

Q: And I think that Mr Lupari was also appointed a member there at that time?

A: I would think so, yes.

Q: And at that time was Mr Lupari the secretary of Defence or secretary of Finance at that point, can you remember?

[10.58 am] A: The Secretary for Defence at that time was, I just cannot recall his name, but the guy after Isaac Lupari.

Q: But it was not Mr Lupari?

A: It was not Mr Lupari.

THE CHAIRMAN: Are we saying Lupari or Lupani?

COMMISSIONER MANOA: Lupari.

MR REEVE: Lupari.

THE CHAIRMAN: Lupari.

MR REEVE: L-u-p-a-r-i.

THE CHAIRMAN: Thank you.

MR REEVE: Okay. Now, when you joined DFRBF who were the other members of the management team at DFRBF.

A: Mr Darby Kila was the general manager, I was the executive manager, investments and the executive manager finance and administration was George Yuari and the board secretary was Richard Sinamoi.

Q: Was?

A: Richard Sinamoi.

Q: Richard Sinamoi. At that time, did DFRBF have any management arrangement with any outside people?

A: They had a funds management arrangement a contract with Kina Securities.

Q: And as the executive manager investment, did you have any contact with Kina Securities in relation to investment decision making?

A: From time to time on a case by case basis, yes.

Q: And with Kina Securities, did you deal with any one person in particular on investment matters?

A: I always spoke with Sid Yates, he was the general manager.

Q: Now, having got that general background I would now like to move if I can to the Waigani Land specifically. And to assist in doing that I would like to if I may give you back your personal file which is commission document 727 so that you can refer to that as I ask questions.

THE CHAIRMAN: What was the number?

MR REEVE: 727. We have actually summoned the file from the Defence Force Retirement Benefit Fund which is commission document 348 and then we summoned Mr Ruimb's personal file because as you will see from the opening on the Waigani Land there are documents in Mr Ruimb's file which are not in the DFRBF file.

THE CHAIRMAN: I see, thank you.

MR REEVE: If I could just indicate to the commission that I now propose to move to the opening on the Waigani Land and I will start at page 3865.

[11.03 am] And I will be asking Mr Ruimb questions about the dealing of the Waigani land act DFRBF. It may be easier for the commission if I do punctuate the page references in the transcript.

THE CHAIRMAN: Yes, thank you.

MR REEVE: So that it will make it easier to relate. Mr Ruimb, if you could just have a look at your own file as a bound document in the back of the file. And the first document which appears of that bound document is a copy of a letter from Herman Leahy of NPF to Mr Kelly Naru dated 11 February 1999. That encloses an earlier letter of Mr Fabila and a copy of a letter from Mr Adrian Warupi of MVIT. Are you able to indicate to the commission when you first saw that letter?

A: The Defence Force Retirement Benefits Fund had a board meeting in Vanimo on 1 March and this document was tabled there and then subsequently passed on to the management. So that is when I - - -

Q: So you first saw that letter subsequently to - - -

A: Subsequent to the board meeting.

Q: The board meeting on 1 March in Vanimo?

A: Yes.

Q: Now, that document also contains an investment memorandum from Pacific Capital Limited,

which is dated February 1999. When did you first see that document?

A: This document came together as a bound document that was tabled at the Vanimo board meeting and then subsequently passed on to management. So, I saw all of this together.

Q: I see, okay. So the document - this is rather important. The document that we see in your file, the bound document which contains not only the Pacific Capital proposal but also the correspondence with the National Provident Fund came to you as it appears there, it was already assembled, everything was put inside the one binder?

A: It was given to me bound as is.

Q: As is. And, who was that given to you by?

A: It was given to me by the general manager.

Q: Mr Kila?

A: Mr Kila.

Q: Do you know whether the binding of those documents together - and say if you do not - whether the binding of those documents together was effected by someone at PNGDF or whether that was the way the document was presented by Mr Leahy to PNGDF?

A: Mr?

Q: Leahy? His letter appears on the front. If you do not know just say I do not know.

A: I do not know.

[11.07 am] Q: Now, the board meeting, and this is at transcript page 3875, were you in attendance at the board meeting which took place in Vanimo on 1 March 1999?

A: Yes, I was.

Q: Did you actually attend the board meeting itself?

A: I attended the board meeting at selected times the board required me.

Q: Were you present at the board meeting when the question of the Waigani city center was discussed by the board?

A: No. That was after I had been excused from the board room.

Q: Did you as the executive manager investments have any part in the discussion or the briefing of the board?

A: No.

Q: In relation to that subject.

A: Not at that meeting.

Q: Were you present in that board meeting when the question of the Vanimo Hotel was discussed? I think it is Sandaun Hotel.

A: I do not recall whether that was discussed at the meeting but if it was I would have been present.

THE CHAIRMAN: I am sorry, if it was discussed- - -

A: If it was discussed I would have been present.

MR REEVE: I cannot go too much into that, that is obviously outside the scope of the terms of reference of this inquiry. For the purpose of travelling to Vanimo for that meeting, do you have

any knowledge of airfares or some of the airfares being paid by Carter Newell?

A: I have no knowledge of that. All I had was my ticket and that was it.

Q: Do you know who paid for your ticket?

A: I did not read the details on the ticket but I had assumed that my employer paid for it.

Q: So, as far as you were aware, was there any input by the management prior to the decisions being made by the DFRBF board on the Waigani Centre Limited subject before the board made its decision at the meeting on 1 March 1999?

A: I had no knowledge of the Waigani land deal case prior to the meeting on 1 March and I had discussed with Mr Kila and was of the understanding that he was also not aware of it. The first time the management had actually become aware of the Waigani land deal was at that meeting in Vanimo and subsequent to that meeting.

Q: If I could just without seeking to lead you, it would appear from what you are saying that the board deliberated upon and made decisions at the meeting on 1 March 1999 without the benefit of advice from management as far as you were aware and certainly without advice from you as the executive manager Investment?

A: That is right.

[11.12 am] Q: When did you become aware of the decision that the board had made on 1 March?

A: When I was given the bound copy of this proposal with instructions from the general manager to evaluate the proposal in accordance with some resolutions of the meeting in Vanimo.

Q: So for the purposes of that evaluation, you knew that a decision had been taken and you were unaware of that?

A: I was briefed by Mr Kila as to what resolution was taken by the board in relation to this proposal and that he said it was subject to our evaluation so that was it.

Q: Were you aware that following the meeting in Vanimo, Mr Kila wrote to Mr Herman Leahy at the National Provident Fund on 3 March 1999?

A: Yes.

Q: Was there a notation on the bottom of the copy of that letter which was addressed to you?

A: Hand notation was the notation that came with the bound copy of this parcel yes for the first time.

Q: Just for the commission's guidance, this relates to transcript page 3877, and the document we are speaking of is W709.

COMMISSIONER MANOA: Sorry, Mr Reeve, page number again.

MR REEVE: Transcript page 3877.

COMMISSIONER MANOA: Yes.

MR REEVE: And the document, the letter with the notation of which Mr Ruimb has just given evidence is tendered document W709. So with that instruction from Mr Kila and the documents contained in the binder, did you then embark on an evaluation of the proposal that was being put?

A: Yes, I did.

Q: Were you aware that whilst you were working on that evaluation, a letter dated 10 March 1999, came to the DFRBF by Mr Philip Eludeme or did you learn about that letter later?

A: I am aware of that.

Q: Were you aware at about the time the letter was received?

A: That is related to the share of the issues, I guess I am- - -

Q: Now, just have a look at your file, if that can help you. See, what I am trying to get at and let me make it clear to you; your investment analysis does not refer to Mr Eludeme's letter, that is why I am asking you whether you were aware of that letter before you did the analysis or whether it came to your notice subsequently to your analysis? I could perhaps indicate to the commission whilst Mr Ruimb is looking at that. These matters arise at transcript pages 3877 to 8 and Mr Eludeme's letter is tendered document W710. If you cannot recall whether you received that before you finished your investment memo, just say so.

A: Can you repeat the question again.

Q: Yes, the question I was asking you was whether you saw the letter from Mr Eludeme before you completed your memo to Mr Kila which contained your investment analysis or whether you only learned of it after you had completed your memo to Mr Kila? If you cannot remember, just say I cannot remember.

A: I cannot remember.

[11.19 am] Q: Once you received the copy of the letter endorsed by Mr Kila, you then responded with a memo dated 19 March 1999 from yourself to Mr Kila. Is that correct?

A: Yes.

Q: And that for the commission's information is tendered documents W731 to 734. The commission can obviously read the memo that you wrote in your own time, but can you just generally and shortly describe what the advice was that you gave in that memo?

A: The advice I gave was based on our search on Waim No. 92 Limited as a company and also the reasonableness of the value of the land that was up for sale based on correspondence between NPF and ourselves as well as the proposal from Pacific Capital. There were some inconsistencies in relation to what was actually offered to the FRB. The correspondence from NPF indicated that the FRB was to take up certain level of equity in the Waigani City Centre company whilst Pacific Capital proposal proposed total acquisition of the holding company, which is Waim No. 92. My advice to the general manager at that time was based on all these considerations. Given the land price, we had to assess whether it was economical to acquire and development funds, that it would be required to put in a development and all that. So on that basis, I provided two options. One was not to participate and the next one to allow NPF to acquire the land and then do their feasibility studies and come to us with a marketable investment proposition for us to consider.

Q: So your memo was in fact a reasoned analysis of the proposal from NPF and a conflicting proposal from Pacific Capital?

A: Yes.

Q: And you came to the conclusion of saying - if I will just ask you to agree with me - that DFRBF should be advised to rescind its earlier expression of interest that NPF should be allowed to develop the proposal with a development and concept design and a bankable investment proposition, come back to the DFRBF and the board should then consider the matter at that point? Does that, put in a nutshell, what your conclusion was?

[11.23 am] A: It was basically what we thought was the most appropriate approach.

Q: And do you still say today that that was the correct advice to give in your view?

A: Yes.

Q: Did that memo that you wrote to Mr Kila then form the basis for a business paper which was to be presented to the next board meeting?

A: Yes, he had accepted my views and recommendations and the assessment of the proposal and asked that it be converted to a board paper.

Q: When you say he, that is Mr Kila?

A: Yes.

Q: During the time between the preparation of the business paper and the time you had given your memo to Mr Kila, did you then become aware of yet a further version of an offer to DFRBF. That being the offer of Mr Eludeme?

A: I had become aware of that offer but I do not know at which stage.

Q: And that offer was also incorporated in your business paper; reference to that offer?

A: I do not recall.

Q: Just have a look. Just find your business paper.

THE CHAIRMAN: We might just take a short break, five minutes.

SHORT ADJOURNMENT

[11.39 am] THE CHAIRMAN: Yes, thank you.

MR REEVE: Thank you. Mr Ruimb, I think we were at the point where I was asking you to check in the business paper which is commission documents W735 to 740 whether at that time the business paper was constructed the letter from Mr Philip Eludeme with the yet third version of an offer to DFRBF, was incorporated in that business paper?

A: Yes.

Q: So the situation then was I think that you had three conflicting offers, one bond Pacific Capital saying DFRBF can buy 100 per cent of the property for K8 million. One from Mr Eludeme saying you can buy 25 per cent for K4.4 million and one from the National Provident Fund inviting you to take up an unspecified share equity. Is that correct?

A: Correct.

Q: And in that business paper you analysed those proposals and the confusion that they created. Is that correct?

A: Correct.

Q: And what recommendation was made in that business paper?

A: The recommendation was basically the second part of my - the recommendation contained in my memo to the general manager which was to allow NPF to acquire the land and come up with a bankable proposition.

Q: And that business paper was presented to the board meeting on 25 March 1999?

A: I would think so.

Q: Were you present at the board meeting on 25 March 1999?

A: I was never invited. I was not invited so I stayed out.

Q: Did you learn what happened in that board meeting?

A: What happened was the chairman had- - -

Q: Sorry, just tell us how you learned firstly if you could? Sorry, I will just ask you one at a time.

Did you find out what happened in that board meeting?

A: Yes, I did. I was briefed by the general manager.

Q: So Mr Kila briefed you on what occurred at the board meeting?

A: Yes.

Q: And what did Mr Kila indicate to you in that briefing?

A: Mr Kila said that the business paper, the recommendation contained was not consistent with the Vanimo resolution so that management was to change the recommendation.

Q: And did he tell you who if any one other than the board generally had said that that was what had to happen?

A: According to Mr Kila it was the chairman.

Q: Have you seen the minutes of that meeting? Have you seen the minutes of the meeting of 25 March?

A: 25 March?

Q: 25 March?

A: I do not recollect.

[11:42 am] Q: Now I will just take you on another little diversion and it will not be much of a diversion, did Mr Kila tell you anything about the paper in relation to Sandaun Hotel?

A: He may have.

Q: Let me just put it quite quickly to you so we can move back to the Waigani Land. The minutes indicate that exactly what you said in the relation to the Waigani Land. They also indicate that the submission that was done, the investment submission in relation to Sandaun Hotel was similarly rejected by the board and it was said go back and rewrite it so that it conforms with the resolution that was made at the meeting on 1 March. Do you have personal knowledge of that or not?

A: I might need to consult my records to recollect.

Q: You do not have a recollection without looking at your file. Well I will leave it there. Now did Mr Kila, I withdraw that. Once Mr Kila told you that was what needed to be done, the chairman and the board had said this paper has to be revised so that it accords with the resolution reached on 1 March which was made without any investment advice, what happened then?

A: What happened then was from what I understand and what I was told by Mr Kila that he changed the recommendation to be consistent with the instructions from the chairman.

Q: Did you participate in the preparation of the amended business paper?

A: I do not think so.

Q: Now, was any advice obtained from Kina Securities over the Waigani Land proposal?

A: I recall having sent a copy of my assessment to Mr Sid Yates.

Q: And did you personally receive any input back from Mr Yates?

A: I had verbal discussions with Mr Yates after he had read my assessment and expressed his concern about the approval in principle at the Vanimo meeting.

Q: Now, did Mr Yates express his concern to you or to other people?

A: To me over the phone during our phone conversation.

Q: Did you report the fact that Mr Yates was concerned to Mr Kila?

A: Sorry?

Q: Did you report to Mr Kila the fact that Mr Yates had said that he was concerned?

A: I reported to Mr Kila the memorandum that I copied to Sid on his request.

Q: And did you report to him what Mr Yates had said about it?

A: I may have during our discussions on the issue. We had talked.

Q: Now, did Mr Kila speak to you about his attitude to amending the business paper?

[11.45 am] A: I can recall I said I was not going to be a party to these amendments of the board of the business paper to the board. So he said he was - the impression he gave me was that he was under pressure to change or he expected there was- - -

Q: So, if I can put in words for you and ask you whether you agree with me, he indicated he was under pressure to produce the business paper that the board wanted?

A: Yes.

Q: And your personal view was that you would not have any part of that?

A: Yes.

Q: Was there any pressure brought to bear on you at all or not?

A: Not directly from the board.

Q: What indirect pressure was brought to bear on you?

A: There was no indirect pressure directly on me but I sort of felt for Darby, I mean Mr Kila.

Q: What pressure did Mr Kila indicate to you was on him?

A: Mr Kila indicated to me sometime later that Chairman had advised him to terminate me.

MR CHAIRMAN: Sorry, say that again?

A: Chairman had advised him to terminate me from employment.

Q: Terminate you?

A: Yes.

MR REEVE: You know what the reason was for the advice that you be terminated?

A: I was called into Mr Kila's office and he advised me that he had received a letter that was drafted from Carter Newell's office and that was my termination letter and he said he was not prepared to sign it and he was prepared to face the consequences as he saw no reason to do that.

Q: Did he indicate to you why he thought that he was being asked to terminate you or not?

A: He did not indicate at that time but given the circumstances, it was quite obvious to both of us as to why it was wanted that way.

Q: When you say it was obvious to us, can you tell us what was obvious to you about why you were being asked to be terminated?

A: Mr Kila indicated that the chairman was - at that time he was instructed to change the recommendation that - the chairman was very upset with us because our recommendation was not consistent with the Vanimo resolution which was to approve the investment in principle and I

think their expectation was that our assessment to be recommending in line with that resolution, which was not the case.

Q: In effect you were being asked to compromise your own professional and what you viewed as correctly held opinion in favour of a preconceived conclusion. That is sort of accurate?

A: That is right.

Q: And you refused to have any part of that?

A: I refused to be part of that change.

Q: And would it be accurate to say your belief is that your refusal is the reason that you believe that your termination was being sought?

A: That was what I believed at that time.

Q: You still believe that to be the position?

A: I still believe that.

Q: So it went to the point where Mr Kila has been given a draft, was he given a draft of a letter of termination?

A: He was given a draft letter of termination. I did not see the actual letter but in our meeting in his office when he called me in to discuss this matter, he told me that he has a draft letter of termination and that he is not prepared to sign it.

Q: And how did that letter come to be resolved?

A: After some time, I do not know how long but Mr Kila was suspended by the board for failing to comply with certain board directions as they said.

[11.48 am] Q: Was there an actual board meeting to suspend him or was that just the act of one person or what?

A: I cannot recollect.

Q: And what was your attitude after Mr Kila was suspended?

A: I felt for Mr Kila because he saw no reason to terminate me and as a result he was paying the price so I put in my resignation. In short I think that is what I did.

Q: So you resigned in effect to remove the problem for Mr Kila?

A: I resigned to protect Mr Kila.

Q: When did you actually resign? Can you remember the date of your resignation?

A: I do not remember the exact date but could have been May.

Q: Around May?

A: Around May/June.

Q: And you were aware, were you, that there was - Mr Kila did in fact prepare a revised business paper to reach the conclusion that was required of him or do you not have knowledge of that?

A: I am aware of it.

Q: That document I might indicate to the commission is tendered document W743 to W749.

And are you aware of the subsequent board meeting on 29 March 1999?

A: Yes.

Q: And that was the board meeting at which the amended business paper was presented?

A: I think so.

Q: Were you present at that board meeting?

A: I was not.

Q: Did you become aware what occurred at that board meeting?

A: I was advised at the time but I cannot- - -

Q: All right, so we really need to ask Mr Kila those things, what occurred then.

A: Yes.

Q: Were you aware of any subsequent correspondence between Mr Kila and Mr Philip Eludeme over the Waigani land?

A: Yes.

Q: Were you aware that on 30 March 1999 which is tendered document W753, Mr Kila wrote to Mr Eludeme?

A: Yes.

Q: Conveying with some differences what the board has resolved? Were you aware that that letter conveyed with some departures what the DFRBF board had resolved on 30 March 1999?

A: I cannot recall.

[11.51 am] Q: Do you have any knowledge of Mr Kila being asked to amend the letter that he wrote; if you do not, just say so?

A: I may have been aware at that time but I do not recollect.

Q: After these board meetings took place, did you become aware that this Waigani land matter was reported in the daily newspapers?

A: Yes.

Q: And after that reporting, are you aware of what occurred at DFRBF in terms of their attitude to the Waigani land?

A: Sorry, can you ask- - -

Q: Do you know what happened with the Waigani land after this came out in the paper in April; are you aware of what happened subsequently to April with the Waigani land so far as the DFRBF was concerned?

A: I do not know. In so far as the Waigani land deal was concerned and deliberations at the board meeting on that issue alone, I was not present on those meetings, so I would not know what their attitude was but there were some reluctance at that time.

Q: In May 1999, you left the DFRBF, having resigned?

A: Yes.

Q: What did you do after that?

A: For three months, I was unemployed.

Q: That was up until?

A: Up until late August 1999.

Q: And in late August, I think there was a change in government, is that correct?

A: The government change was in July but in late August, there were some problems at the Investment Corporation and I was recalled.

Q: So in August 1999 you were back in your old chair as the managing director of Investment Corporation, is that correct?

A: Acting for a start, yes.

Q: Having returned to your old position, were there some things that concerned you about what had occurred at the Investment Corporation during your absence?

A: There were a lot of obvious differences between the state of affairs from where I left and about 15 months later.

Q: And was one of those differences related to property management?

A: Property management, I found that all the Investment Corporation properties were managed by the Port Moresby First National Real Estate.

[11.54 am] Q: And did you find that some properties had been disposed of?

A: Three - four of our major commercial properties were disposed of within that time.

Q: Just if you can, just tell us what those four properties are?

A: The ANG Haus which is opposite the Port Moresby Parkroyal; Investment Haus, opposite Parkroyal again; Cascade apartments, which is a 6 level apartment building just above the fire station on Port Road in Port Moresby; and Manamatana apartments just at Koki Point.

Q: What was your reaction to the disposal of those properties?

A: My reaction to the disposal of those properties were grave concern and my interest was to see where the proceeds of the investments - I mean those disposals went, whether to good replacement investments or not.

Q: Were you concerned that the properties had been disposed of?

A: I was concerned because wholly owned properties provided cash flow to the corporation as opposed to investment in shares in companies.

Q: And did you cause some investigations to be made and some valuations to be obtained of those properties?

A: The Minister of Privatisation who was then responsible for - who is responsible for Investment Corporation instituted an investigation.

Q: I see. There was a departmental investigation or an internal one in the Investment Corp?

A: He instituted an investigation into the affairs of the Investment Corporation.

Q: And was that investigation conducted by you and your staff or by the departmental staff?

A: No, by a private investigator. And a law firm.

Q: I see. I will just ask you one more general question. Who was the agent for the sale of those properties if there was an agent?

A: Port Moresby First National was the agent for Manamatana apartments. I can check the records, but I believe they were also agents for the sale of ANG Haus and Investment Haus.

[11.57 am] Q: I just wanted to concentrate on Manamatana at this stage. What I would like to do,

if I may, I will give you back the file that you produced in relation to Manumatana, which is Commission document 967. I would just like to ask you some questions about the sale of Manumatana.

THE CHAIRMAN: How much longer will you be with Mr Ruimb?

MR REEVE: Probably not more than another 10 minutes. Just have a look at your file. Is the situation, if you look at the contract document, is the position that on 23 June 1999, Investment Corporation contracted to sell the Manumatana property to a company, Blue Haven No 42 Limited for a price of K2 million with a deposit of K200,000.

A: Yes.

Q: And if you look at that contract and the file, the agents on that sale were Port Moresby First National Real Estate; if you look at the Hillhoitz deposit.

A: Yes.

Q: Was a valuation obtained of the Manumatana flats?

THE CHAIRMAN: Prior to the sale or after that?

MR REEVE: After the sale.

A: I do not recall.

Q: Just have a look in your file, I think you will find there is a valuation in the file. Was a valuation obtained on those Manumatana flats?

A: Yes.

Q: And what was the amount of that valuation?

A: 2.245 million.

Q: Which was substantially in excess of the sale price of 2 million?

A: Yes.

Q: Did you take steps to try to cancel that sale?

[12.00 pm] A: When I became aware of the sale, we put the sale on hold and tried to review the sale.

Q: I think for that purpose, you presented a paper to your board of directors?

A: Yes.

Q: And the thrust of that paper was in effect that if we tried to terminate the contract, we will probably get sued. There is a lot of legal fees. The difference is K245,000. We have taken legal advice and the best course seems to be to just go through with it?

A: That is what we believe was the best option.

Q: And that was in fact what happened?

A: Yes.

Q: So the board in effect decided, based on management advice, well, we have got a signed contract, we are in difficulties; the best course is to bite our tongue and go through with it as it were.

A: Yes, I think the alternative was the cost of legal fees and management time and effort into all that, as opposed to agreement.

Q: And there was a good chance you would not win any how?

COMMISSIONER MANOA: Mr Reeve, who was the valuer?

MR REEVE: Graeme Dunnage, I think. Who was the valuer, Mr Ruimb?

A: Graeme Dunnage.

Q: Can you just turn to where the settlement takes place because there are copies of cheques. I think I marked them. It is important to me in tracing money to just show where the cheques came from? If you look at those documents related to the settlement, it seems that on settlement, Investment Corporation received two bank cheques. Just look at the document before the one you are looking at I think; it shows the two bank cheques. Is that correct?

A: Yes.

Q: And one of those cheques was a bank cheque for K610,076.97, is that correct?

A: Yes.

Q: And that bank cheque came from PNGBC?

A: Yes.

Q: And the other bank cheque was a bank cheque for K1.2 million which came from the Bank of Hawaii, correct?

A: Yes.

Q: I might just indicate to the commission by way of interposing that that cheque for K610,000 I will be able to show in a supplemental opening, derived from Port Moresby First National Real Estate and consists of money that emanated, I believe I can show from the sale of the Waigani land and money which came from the National Provident Fund Tower? The K1.2 million obviously is a loan and I will also be producing evidence as to that loan.

[12.03 pm] MR REEVE: Just to complete the matter if I may, did Investment Corporation subsequently receive, if look right in front of the file, a cheque for K123,000 for the balance deposit.

A: Yes.

Q: And was that cheque a Port Moresby First National Real Estate cheque number 067157?

A: Yes.

Q: I might indicate to the commission that I will be able to show the source of the funds for the cheque. And the commission that was paid to the Port Moresby First National Real Estate on the sale was K70,000, is that correct?

A: Yes.

Q: Plus the VAT of K7,000?

A: Yes.

Q: Is the investigation instigated by the minister for privatisation into the sale of these properties completed or is it on going?

A: The report has been completed and was presented to the minister a copy of which was made available to the police commissioner for further action.

Q: So that matter is already being taken care of, if I can put it that way?

A: Yes.

Q: Thank you Mr Ruimb, I have no further questions.

THE CHAIRMAN: Any questions?

COMMISSIONER MANOA: Just one question. Were the properties tendered or auctioned; those properties that were shown to you. Can you recall whether they were tendered or auctioned?

A: There were some tender notices placed in the papers.

Q: So they were tendered.

A: Whether it was tender or sale by publication, I - - -

THE CHAIRMAN: Yes Mr Reeve.

MR REEVE: Thank you chairman.

THE CHAIRMAN: Thank you. And thank you very much for your time and you are excused.

THE WITNESS WITHDREW

THE CHAIRMAN: We will resume at 1.30 pm.

LUNCHEON ADJOURNMENT

[1.40 pm] THE CHAIRMAN: Yes, Mr Reeve?

MR REEVE: Thank you, Mr Chairman. I have a number of witnesses' this afternoon. Firstly, Mr Brown Bai who will give very short evidence about the Waigani Land. He will be followed by Mr Paul Marshall from Price Waterhouse Coopers. He will give evidence of a cash flow calculation which they did which reflects the value of the National Provident Fund Tower as at the middle of last year. And finally I will be calling two valuers from the Valuer General's Department who respectively valued The Tower and the Waigani Land at the commission's request.

THE CHAIRMAN: All right, thank you.

MR REEVE: I think if I may call Mr Bai first because he will be very short. Mr Bai has been previously sworn in June.

THE CHAIRMAN: Yes, welcome back Mr Bai you are on your former oath. Do you understand? Please be seated.

BROWN BAI, recalled:

XN: MR REEVE

Q: Mr Bai, I would like to take you if I can to what I opened at pages 3761 and 3762 of the transcript which relates to the Waigani Land and your recollection as to that subject matter coming before the National Provident Fund Board where I came to think a meeting on 6 November initially when a second valuation was requested. Then on 22 December 1999 when the matter was discussed. Can you just in your own words just tell the commission your recollection?

A: Mr Chairman, thank you very much. During my term as Secretary for Treasury viza-viz chairman of the National Provident Fund Board a proposal for the fund to purchase the Waigani Land was put to the board meeting by the corporate secretary Mr Herman Leahy. As best as I can recall that meeting was held towards the end of 1998. It was then that I first came to know about the land deal, the subject of this inquiry. I recalled at that time the proposal was put to the board meeting most if not all, those trustees present expressed reservations and strong dissent

against it. As presiding chairman I recalled speaking against the fund's involvement in land deals like that being purchased unless there is viable and productive use for such investment. My concern was that the board must avoid tying up funds that cannot generate income for fund and the contributors. I also commented at that meeting that if the fund considers it absolutely necessary to acquire the land then the option is first to confirm from the Department of Lands or the Lands Department the current status of the land particularly whether the title holder had complied with the terms and conditions of the lease.

[1.43 pm] A: And second, the event that the lease holder had defaulted, the board could bid for the land when the ministry for land forfeits the title and calls for open bid through the normal land tender process. To the best of my recollection, the board then did not resolve to buy the land. On the other hand, I cannot recall if the board rejected a proposal by resolution of the meeting. Following that board meeting, I met with several members of the board at the treasury department building at the Vulupindi Haus where we resolved to oppose the proposed purchase of the Waigani land by the fund. I cannot recall if that was a formal board meeting. It was most probably an informal gathering of those board members who were opposed to the proposed Waigani land purchase.

Q: That is the evidence that was given in an earlier statement by Mr Bai and that is the material which I opened so I have no further questions.

THE CHAIRMAN: Do you have any questions.

COMMISSIONER MANOA: Just one question. The gathering at the Vulupindi Haus was in your office, I take it?

A: That is correct.

Q: Was there any other person there besides trustees of the management?

A: There were members of the board of trustees who were there. There was no other persons outside of the trustees.

Q: This board meeting you referred to at the end of 1998, was that a meeting held in the NPF office or board room or was it at the Vulupindi Haus, can you recall?

A: I think the meeting was at the NPF board room.

Q: At the NPF board room?

A: I think so. I cannot clearly recall but I know we never agreed for the purchase.

THE CHAIRMAN: Mr Bai, I have got a couple of questions on other matters altogether just to make use of your experience. I notice looking back through the minutes of the board meetings that after your appointment, you were a very conscientious attender of the meetings. Just as chairman, I think you attended every meeting. Can you just tell us what sort of briefing you had before going to the meetings? Did you rely on the board papers that had been handed to yourself or did your department give you a brief on it, how did it work?

[1.46 pm] A: The papers were normally given out by the secretary of the NPF. Now, in terms of the departmental briefings, there were very few times when the departmental heads came to give me a briefing, and in fact very early on after my appointment, because of the weight of the work load that I had, I was trying to see, you know, first of all, I maintained the position that as the secretary for treasury, I really should take the chairmanship of the NPF. So, along that line I was sort of wondering if, you know, I was appointed as ex officio and somebody else in the department could be delegated that responsibility so that I could be relieved to do other things, but I was told that that could not be done. So, really I was the one who - as chairman, I mean, I was basically, you know, reading the papers myself and attending the board meetings. I did not have the real benefit of the department giving, you know, advice in many of these areas. But my position all the time was that, you see, because I had gone in there taking the chairman without prior briefing from the out-going chairman, then I was sort of wondering, you know, where to start, and hence, I relied on the management of the NPF to try and give me the brief. And the one that I was very interested in which I thought was extremely important was the investment portfolio which they did not give to me until I began to kick up a bit of noise about it. But in terms of the briefing, there was very little briefing from the department.

Q: Okay. I notice one of the meetings you attended was the meeting where the Australian dollar bond came up for discussion and you spoke. Right from the start, you were very critical of the whole concept and I am wondering where you got your briefing from, do you remember? Do you remember what you were basing your comments on? Had you read through any departmental papers?

A: Sorry, which was that- - -

Q: The Australian dollar bond issue where NPF was trying to issue a bond and you actually killed it sort of- - -

A: I actually cancelled it.

Q: Yes. So I was just wondering what were you - what had you been briefed? Where did you get your information from?

A: What happened was, this matter came to - I learnt of this matter through the board - at the board meeting itself, I mean the board, and I started asking questions, what is this bond for and how is it going to be used? I mean, normally when you - my understanding of the bond funding is that you raise money for specific investment proposals, and not simply to finance recurrent costs. So, I started asking those critical questions. I mean, I did not get the benefit of briefing from anybody but I was just- - -

Q: Did you read a brief by Tim Curtin?

A: I cannot clearly recall.

[1.50 pm] Q: Anyway, it was a good thing you did. You described to us once before, perhaps before getting on this one, you described how you came, I think you actually had a discussion with the then Prime Minister, Mr Bill Skate and you were told to stand down as chairman. Looking back over the transcript about that, you did not actually say what would have happened if you had said no, I am not standing down because it was an improper pressure that was being put on you. I mean, it was not right that you were being told to stand down. What do you think would have happened had you stood your ground and because you were keenly reluctant to stand down. What would have happened had you stayed on and not resigned?

A: I could only guess I would have been sacked.

Q: Yes, and do you have good reason to believe that?

A: I have good reasons to believe because he is the prime minister and I obviously, I mean, he gave me the instructions in writing so I suppose I had no other way. I mean, the only alternate is for me to step down.

Q: Yes. Did you come prior to actually having to resign, were you under any other pressures from government sources with regard to NPF? Not that you can recall.

A: No.

Q: All right, well, thank you very much.

A: Thank you, sir.

COMMISSIONER SIAGURU: Just a general question here Mr Bai, you earlier mentioned that one of the things that you were interested in or keen or kind of jumped out from the board papers was the investments. Did you feel that the board of trustees were aware of what was actually happening in terms of investments?

A: I must say, I cannot speak for those other members before me. Obviously they were there and they must have their own knowledge about what was happening but I cannot speak for them but for myself. I always believed that before I start, I have to understand what the situation is so that I know exactly how to run this organisation. As I said in my statement earlier that I had specifically requested for the investment brief, for the brief on the entire investment portfolio. That was not forthcoming. And then I began to put my feet down and actually demand this to

come; to be brought to us. So, it was then that I began to realise that things were not the way it was reported and I think in my statement last year, I actually made statement to that effect.

Q: I am referring more in terms of level of discussions during board meetings. I mean, was it a robust discussion or what was put in front of them was accepted or was it explained to them? I say this in respect to talking to other board members in terms of their knowledge of issues at hand together with their understanding of what is their responsibilities as trustees.

MR REEVE: I think that during the time that Mr Bai was chairman, there were not any investments discussed other than the Waigani land because that was the time after Mr Bai became chairman, he as he said, started demanding to know about the investment portfolio, then expressed his concern that even management were not in control of the investments. And what ensued from that in late December and early January 1999 was the Price WaterHouse Coopers report on the state of the investment portfolio which came out of Mr Bai's questions, but there were not actually investment decisions made during his term as chairman other than the Waigani land.

[1.54 pm] COMMISSIONER SIAGURU: I think there was a schedule or something at the back that was just tucked in in one of the board papers that were given not necessarily for discussions but for information only. But, if people were alert to what was happening there, they would have picked it up. You know, that is the kind of reaction I am trying to ascertain.

A: As I said I cannot speak for the other board members. I always want to be careful about some of these decisions they make.

THE CHAIRMAN: That schedule of investments, do you remember they were ever being looked at in detail and discussed at the meeting?

A: It would not have been, because otherwise it will create some excitement amongst the board members.

Q: Yes. So, it was a sleeping paper?

A: I think so.

Q: Thank you very much Mr Bai.

A: Thank you, Chairman. Thank you very much.

Q: You are excused now. Thank you.

THE WITNESS WITHDREW

THE CHAIRMAN: Yes, Mr Reeve?

MR REEVE: Mr Chairman, I call Mr Paul Marshall.

THE CHAIRMAN: Thank you, would you swear him please.

PAUL JOSEPH MARSHALL, sworn:

XN: MR REEVE

Q: Mr Marshall, for the record would you state your full name please?

A: Yes, my name is Paul Joseph Marshall.

Q: And you are a senior manager with PriceWaterhouse Coopers?

A: I am a director with PriceWaterhouse Coopers in PNG.

Q: Changed the names?

A: Sorry?

Q: They have changed the names?

A: I had a promotion since - oh I see re the files.

Q: I see. Do you recall in mid 1999 being asked by Mr Rod Mitchell from the National Provident Fund to carry out a calculation of the net present value of the National Provident Fund Tower?

A: I do, yes.

Q: Now if I may, I will just give you a file which is commission document 413 so you can refer to that if you wish to. Can you just bear in mind we are all laymen, we are not accountants and we are not experts. Can you just explain to us what the task is that you carried out? On what premises you carried it out and what the result is intended to show. If you could just explain the process and then we will go to the details.

A: Right, okay. To place it in some sort of context Rod did ask us if we would prepare a valuation of the property. We told him we were not property valuers, however if it was any use we would prepare a net present value calculation because the value of any asset is essentially the present value is cash flow. We felt that to undertake a net present value calculation would give maybe a rational investor's view as to what the value was, which may differ slightly from the approach taken by a property valuer. So that was the basis on which we would perform the work.

[1.58 pm] On 17 June 1999, we furnished Rod with a small report covering the net present value calculation. Maybe I will just explain the methodology.

Q: If you would walk us through that report of which the commissioners have a copy available.

A: Okay.

Q: And just explain to us what the methodology is, what the methodology shows and then if you could just walk us through the figures to get to the conclusion.

A: Sure, okay. The net present value methodology is based around the principle that an asset is worth the present value of its cash flows, discounted to reflect the riskiness of achieving those cash flows. The traditional approach is to prepare a cash flow forecast over a finite period, maybe 5 to 10 years and then attribute a residual value to cover the period extending beyond the finite cash flow period. To best illustrate that, if I can go to appendix A of that report. Appendix A shows estimated free cash flow for the tower. Appendix A shows that. On the page after appendix A, there is then the detailed net present value calculation. Would you like me to go through the cash flow line by line to - - -

Q: If you could and just indicate to us how it functions and how your calculation works.

A: Sure. The cash flow forecast essentially identifies all cash income, all forecast cash out flow to arrive at a free cash flow position and then discounts that cash flow back to present value. The main cash in flow for Deloitte tower was of course rental income. To determine the timing of the cash in flow, we had to make a few assumptions. We assumed that at best the tower would only ever be 95 per cent occupied giving a five per cent average vacant period and we assumed the full tenanting of the tower would take approximately three years. That was based on problems that were being experienced in June 1999 in actually identifying and securing tenants with lease agreements. In arriving at those yearly rental amounts, we worked off a schedule provided by the National Provident Fund which identified expected maximum rental of approximately K 8 million - K8,056,000 in fact. That included K75,000 naming rights which we were aware had already been issued. We deducted that to arrive at maximum annual rentals of approximately K7.98 million.

[2.04 pm] Deducted a 5 per cent vacancy allowance from that to arrive at K7.58 million as the maximum annual rental that could be achieved in any one year. And then he made a decision that at least it would take three years to actually achieve that maximum figure which interprets to in year one having one third of the space occupied, at the end of the year two thirds, end of year these having all the space occupied.

[2.05 pm] So of the K7.58 million which was potentially available for rentals, one third of that was

being achieved in the first year is K2.527 million which the maximum achievable rent was K7.58 million, take a third of that being achieved in year one gives you K2.5 to K7 million which is estimated rental income for the year ended June 201. Something else to realise is that we are also aware that the long lease that had been issued at the time of preparing this to Deloitte's was for a five year period. It was a fixed term for the first year, the first 12 months rent free. So, we assumed that the balance of the leases may be on a similar basis. Yes.

So, if you relate that to appendix A, you take rental income year long tenants the assumption is there would have been a third of the building rented at that time, but no income coming in because of the 12 year rent free period and those third of the tenants they would be paying 2.5 to K7 million for the next four years. Okay, and a similar process applies in the second year where another third of the building is leased for the first 12 months which will be for June 2001 there is nothing coming in and then for the second year of those tenants there is 2.5 to K7 million. So, it was to achieve a gradual build up in the flow of rental income. We have not given problems that would be incurred if fully tenanting of the building.

Q: Now, the reason you say, just to clarify this to the commission. The reason you say there is no income in the first year of occupation is that the standard format was that there was a 12 month rental holiday. Is that correct?

A: Yes, the one contract that had been signed had a 12 month rental holiday and it was the NPF were of the view that they probably had to repeat that to other tenants going forward, certainly the larger tenants. So, looking at appendix A, the cash flow forecast if you follow the total rental income we were forecasting nothing for the year ended June 2000, K2.5 million for the year ended June 2001, K5.05 million year ended June 2002 and then the K7.58 million for the year ended June 2003 which was then getting - that was at a stage of achieving full tenanting or 95 per cent tenanting anyway.

From 2005 onwards which would have been the expiry of the first batch of contracts, of leases we factored a 5 per cent increase in rental which broadly might reflect an inflationary increase.

[2.07 pm] So that was rental income. We then deduct and try to identify the on-going operating costs for the property. At the time of preparing the cashflow, the Provident Fund did not have their own forecast of operating costs which was reliable. I think the information upon which they had done their whole investment appraisal process for the tower was not that sound and so it did not have a reliable operating cost estimate. Given that this was the only a net present value calculation and not a full blown valuation which would indicate far more assurance being provided by Price Waterhouse Coopers, we called some property managers around town who we were aware - who were knew managed properties of a similar, not so much, partly size but a similar quality, to get some feedback on average costs per square meter of rents. The feedback was approximately K125 per square meter. And we used that and applied K125 per square meter to the estimated area that was tenanted over the cashflow period to arrive at the estimated operating costs.

The figures we worked off was a total area around 15,700 square meters which I think may have been a little bit high, but that was information provided by the Fund. I think later numbers suggested that it was closer to 15,000. Only makes minor differences to the forecast, but working on that 15,000 square meters, for rent first year it is only a third, so approximately 5,000 square meters, second year, two thirds 10,000 square meters being rented and the third year, the full 15,000 square meters being rented. Each year K125 per square meter. So, there is a gradual build up in the operating costs which reflects the increased tenancy of the building.

Also we asked the National Provident Fund if there are any re-charging arrangements in the lease contracts. They said that there was and they were not sure of the precise amount that would be re-charged but suggested it would be close to 90. We did some research again with the property managers around town and sort of the mean number that came back was a re-charge of probably a large per cent of the tower's costs. So all of those costs, the operating costs that the tower will incur under our assumption 90 per cent of those will be re-charged back to the tenants, only 10 per cent borne by the tower. I am not sure whether those clauses actually materialised into these contracts, but that was the assumption from which the cashflow was based. Clearly if the eventual re-charge element was lower than the 90 per cent, it would mean less cashflow for the tower and a lower net present value amount.

Q: And if you look at appendix A, what you show underneath your total gross rental income to show if you get tenancy and operating costs, that is the attributed share which you then add to

the rental income.

A: That is right, yes.

Q: To give you total income and then you put your total operating costs underneath that in your table.

[2.10 pm] A: Yes. So we also estimated a depreciation charge of 3 per cent of, I think, around K60 million. That was just for tax purposes because we wanted after-tax cash flows. The depreciation is a non-cash item though and is added back to arrive at free cash flow. So we were on a net profit for tax by deducting depreciation worked out a tax expense based on that profit before tax and then to arrive at an estimate free cash flow added depreciation back onto the post tax profit.

Q: That was a percentage of K60 million because that was the cost of the building, is that right?

A: That was the estimated cost of the building at the time, yes.

Q: Not the value but the cost?

A: Yes, the prime cost; 3 per cent on the prime cost of the building. You will see there is no tax expense in the first two years. That is because of losses, carried forward losses which we calculated. So adding back depreciation to arrive at the cash flow rather than the accounting profit, we had negative cash flow in the year to June 2000; cash flow of K2.39 million for the year to 2001 and then increasing steadily as occupancy increased and towards the end of that cash flow period as rents may have increased through the inflation increment. So the finite cash flow period extended to the year ended 30 June 2009. The valuation methodology assumes that once you get to the end of 2009, there will be cash flows to be received to infinity from there onwards. So rather than extending the yearly cash flow for ever and ever, that element of the valuation is summarised by taking the estimated cash flow in the year following the cash flow period. The general practice is to capitalise that at certain interest rates. In the first draft of the model, we capitalised the year 10 cash flow at the same discount rate used to discount the other years. We modified that slightly at the end of the revised cash flow but without a great impact on value. So that is the forecast cash flow. The next page goes through the detailed net present value working. Would you like to go through that, too?

MR REEVE: Yes, if you could, that is the page following. The way it is structured is there is the report at the beginning, appendix A is your detailed calculation?

A: That is the cash flow, appendix A.

Q: Appendix B is the assumptions upon - that sets out the assumptions which you have explained to us on which the cash flow is based and then the following page goes to the summary of the present value calculation.

A: Okay, maybe this working maybe did not go with the report then. This might have just been our own working for the net present value calculation.

Q: No, it is there.

A: Do you have this sheet?

Q: It is in appendix A.

A: I will just show you this.

Q: No, not the detailed calculation. There is a summary of the calculation which follows appendix B.

A: Okay. Does it look like that?

Q: Yes.

A: Okay, so I will go through this instead then. So they are the cash flows. To arrive at the present value, you have to discount those back to its current day terms and we discount them back based on a discount rate which reflects the risk in achieving those cash flows. The more

risky the cash flow, the higher the discount rate. The lower the risk, the lower the discount rate with the extreme being a risk for investment which is usually at, say, a government treasury bill rate.

[2.13 pm] We used a range of discount - in the first draft we used a range of discount rates of 13 and a half per cent and 12 and a half per cent for the Tower and used those same rates to divide the residual cash flow to arrive at the residual value of the property at the end of the cash flow period. Applying the discount rates to the cash flow we ended up with a range of the net present value of the cash flows of 25 and a half million to K24.76 million. The residual cash flow of K7.473 million was divided by .135 and .125 which is the capitalisation process to arrive at the residual value at year 10. The residual values on that basis were K55.35 million and K59.78 million. We then bring them back to the present value terms by discounting at the 13 and a half per cent and 12 and a half per cent and add that to the present value of the cash flows and you get a total present value for the property of K37.26 million to K41.12 million. So, in essence it is the present value of the cash flows for the first 10 years plus the present value of the residual value of the cash flows from year 10 onwards.

Q: And it would fair in your experience to say that that is very much the way that an investor would look at an investment property?

A: Rationally an investor should take that approach.

Q: What is my money return on the capital that I outlaid?

A: Yes. Having said that, that is the framework. There is a large element of judgement involved in deciding what an appropriate discount rate is and also judgements in putting together cash flow forecast. But that is part of - sort of skills of - they are the skills of a good investor.

Q: And if he is not that skilled at those investments then he employs a good accountant to do them for him?

A: Absolutely.

Q: Did you subsequently on 23 June slightly modify the calculations that you had done?

A: Yes, I did, yes.

Q: Can you just go through that with us if you would and just explain what the differences were?

A: Yes. In the first draft I used the same discount rate for a 10 year cash flow period as the residual value which implies that the risk of a project, the risk of the property right the way through its lifetime was the same. I think I felt that maybe the 13 and a half - that the initial range was a little bit low for the finite cash flow period and wanted to increase that slightly and maybe felt that the residual capitalisation rate was rather too high. That once the property is 10 years old it is firmly established and its risk profile was better. And so I kept the cash flow itself the same, but just applied those different discount rates, a range of 14 to 15 per cent for the 10 year cash flow and a reduced rate of 9 to 10 per cent for the residual capitalisation rate. That worked out to a revised total net present value of K42.57 million to K37.86 million. So not a noticeable difference in the overall present value, but the components of that value were, we were more comfortable with the components in the revised calculation.

Q: If I could put it in a nutshell if I may. Having gone through that process would it be your view that a prudent investor who was looking at purchasing the National Provident Fund Tower on the factual premises that you were given will look at paying between about K42 million and K38 million for that building at the time that you did your study?

A: Providing he was happy with the assumptions that were made. I think a rational investor would then take that as a framework and then maybe undertake due diligence on the key areas of the cash flow forecast and maybe put more work into estimating appropriate discount rate. So that is the framework, a due diligence exercise to gain comfort on the assumption used and if those numbers still held water following that due diligence exercise, that is the value range.

[2.18 pm] Q: Are you aware that one of the methods which is used by qualified valuers in cross checking calculations that are made on a capitalisation basis is to actually check that against the cash flow; that present value cash flow of the nature that you performed.

A: I am not familiar with the detail of the way property valuers would go about it but that would be a sound methodology. When we perform business valuations we generally use more than one methodology. We have a prime methodology but there is several supporting methodologies which uses cross checks.

Q: This is the total exercise that you were asked to carry out.

A: This, yes.

Q: Thank you. I think I will just mention that Mr Purcell, did give evidence that was one of the cross methods that was being used. And it is very interesting that the figures come very, very close to each other. Now, the last thing I would ask you if I may, Mr Marshall, is you just have a look at your file, could you tell the commission, what fees Price Waterhouse Coopers charged for that net present value calculation?

A: We charged a fee of K3750, recover expenses of K25, sales service tax of K151. So, for the time spent it was K3750.

Q: Is that how it was calculated?

A: On the time basis.

Q: On the basis of hours?

A: Yes.

Q: A copy of that memo is in the file which is the commission document that I have handed to you?

A: It is just here, yes.

Q: Mr Chairman, I have no further questions. It occurs to me that the commission may have some questions, indeed some general ones bearing in mind that Mr Marshall was the man who was engaged in early 1999 before Mr Mitchell arrived to assess the situation at the National Provident Fund and he gave certain advice as to available strategies.

THE CHAIRMAN: Yes, we have read that report. Just before asking you questions about that, you chose to charge on the time/work basis. Would it have been possible to look at a scale of fees and make your charge on that?

A: The nature of our work, it is not a normal practice. Occasionally, in the corporate finance area that I work in, we do charge a success fee which maybe related to an event. That is usually where we retained to sell a business in which case, we will get the maximum price of that business and a part of our fee maybe linked to that value. Where we are asked to act in a more independent capacity, we would charge on a fee basis, time basis.

Q: So, the fact that valuers in this particular instance, did charge on a scale, what is your comment on that?

A: I am aware that valuers do have a certain scale. From the work we do, if we were to value a business and our opinion was required as an independent expert, any fee which was on a basis other than time and other than probably agreeing in advance, there is a risk of impacting the impartiality of that valuation.

[2.23 pm] Q: Sure I understand that. On the report which you did back there in 1999 and which we have looked at quite carefully in fact. I do not know whether you are familiar with the fact that the trustees were presented with a circular resolution to vote on that and they voted in absentia and the sell down just occurred on the basis of the circular resolution so that in fact what you came up with in your report was treated as gospel.

A: I was not aware and I do not know.

Q: And one of the things that we were asking a previous witness today was; why did you do this by way of circular resolution because it would not take much longer to get a meeting together

and let the trustees come face to face, even face to face with you. We are not critical of your report. We have looked at what possible alternatives there may have been forgoing down that part of the big sell off. It seems to us that there would have been other things worth discussing if you were a trustee who had the responsibility to sell the farm off which was what they were doing. What is your view on that. Would there have been worth while discussion as to other possible ways of approaching it had the trustees got together to be able to ask you questions to assure themselves that this was the right way to go?

A: I think, probably something to bear in mind, probably the most pressing issue at that time was the ANZ margin lending facility and there were few options in resolving that. There was Australian dollar debt of probably in excess of \$60 million I believe secured by various equity interests that the fund owned and under the terms of that agreement, there had to be a certain amount of equity. So if you take the value of those securities and relate that to the indebtedness, there had to be a buffer and if that buffer reduced below the contractual minimum as in most margin lending situations, the lender can instigate a sell off of those securities.

[2.27 pm] In the absence of new capital it is - and a change in heart of ANZ I mean it would have been hard to find another solution for that.

THE CHAIRMAN: Well, that was the point we are wondering about because we have just witnessed over the last few weeks that when the big right down had to happen everything came out publicly and there was then a big outcry. The government in fact did come to the party and in effect extra capital was provided and not quite in that form, but - and so it would have appeared to us that your accountancy approach was no doubt correct. There was this wild card factor that if the trustees were together, if the danger that the fund was in was sufficiently publicised, that either the ANZ may have blinked or the government might have come to the party to some extent or a combination of both those things. And we were just wondering if you have any comments about that?

A: Sorry, no. Calling ANZ's bluff.

Q: Well, calling the trustees together to see what happened.

A: Yes. I am not, I cannot say whether it would have made a difference having the trustees altogether. If you use historic track performance as a guide as to their combined decision making abilities I do not know that having them gather together would have made a difference. But going back to the ANZ issue about you said, see if ANZ would blink. The flip side of that was that if they did not and they sell security rather than the NPF the public impact that we have seen recently may have happened there and then. That ANZ effectively selling or taking back securities and selling down securities to the fund may have had a more detrimental impact than NPF selling them down themselves. So, that was a counter risk if you like.

Q: Would there have been - the meeting could have been brought together within a few days? Would that period of time been too risky to undertake?

A: I do not think so. The period stretching from lodging our report in I think February '99 and to the first securities actually being sold, it was certainly longer than a 2 day period.

[2.32 pm] But are going back to the effectiveness of that decision making body I find it difficult to say to you that they would have identified other options in the absence of cash flow or capital to relieve the liquidation, the liquidity problem.

THE CHAIRMAN: All right, thank you. Mr Reeve, anything else?

MR REEVE: I have nothing further unless Mr Batari has.

THE CHAIRMAN: Thank you very much Mr Marshall.

A: My pleasure.

Q: Thank you for your very clear explanation of these titles.

THE WITNESS WITHDREW

MR REEVE: Mr Chairman, I would just ask if I may, can I have a short adjournment. I have two witnesses here to whom I have not spoken. I think it would probably a save time- - -

THE CHAIRMAN: Yes, well, if they could- - -

MR REEVE: In the long run if I just spend a few minutes with them about what are the - - -

THE CHAIRMAN: How long do you need, Mr Reeve?

MR REEVE: Could I have 10 minutes?

SHORT ADJOURNMENT

[2.51 pm] THE CHAIRMAN: Mr Reeve, are you ready to continue?

MR REEVE: The first witness that I seek to call is Mr Kaira Dobi.

THE CHAIRMAN: What is the first name?

MR REEVE: Kaira Dobi.

THE CHAIRMAN: Yes.

MR REEVE: Mr Dobi is a valuer with the Valuer General's office.

THE CHAIRMAN: Thank you. Have a seat, oh no, just swear him first.

KAIRA DOBI, sworn:

XN: MR REEVE

Q: Mr Dobi, when you give your evidence if you could speak up and speak into the microphone and when you answer questions if you can answer to the commission and not to me. Just for the record, Mr Dobi, would you tell us your full name please?

A: Okay. My name is Kaira Dobi.

Q: Yes. And are you a valuer employed by the Valuer General's office?

A: Yes, I am.

Q: Would you state what your valuation qualifications are?

A: I have a diploma from the University of Technology. I am a registered valuer. My registration number is 92 that is with the PNG Valuers Registration Board.

Q: Just tell us your work history in valuation work?

A: I have been doing valuation for the last about 18 years.

THE CHAIRMAN: 18?

A: 18 years, yes with the office of the Valuer General and based in the regions and since 1995 I have been in Moresby up to now.

MR REEVE: Thank you. Now, did you on instructions from the acting valuer general carry out a valuation at the request of this commission of the building known as the National Provident Fund Tower?

A: Yes, I did.

Q: And have you produced a copy of that valuation previously to this commission of inquiry?

A: Yes, I did.

Q: Now, when was that valuation conducted, Mr Dobi?

A: We received the request on 26 May last year 2000 and I did the inspection of the property on 13 June last year, sorry, yes last year, yes.

Q: Yes. And as at what date were you asked to value the property?

A: I was asked to value the property as at January 1999.

[2.54 pm] Q: And did you complete a valuation of the property as at that date?

A: Yes, I did.

Q: And what was the value that you assessed of the National Provident Fund tower as at that date?

A: As at 31 January 1999, I assessed the value of the NPF tower at K40 million.

THE CHAIRMAN: How much?

A: K40 million.

THE CHAIRMAN: 40?

A: 40.

MR REEVE: For the purpose of valuing a building such as the National Provident Fund tower, what do you regard as the appropriate valuation methodology?

A: In valuation, the best method would be direct comparison. That is comparing the property with property but the tower as we all know is the first of its kind in PNG and there is no comparables but I did have a look at a couple of sales of high rise buildings in down town and used those as a guide just to give me a fair idea of the figures I would be looking at for the NPF tower.

Q: When there was no direct comparable, did you do any other form of calculation or not?

A: Yes, as a check method, I used the capitalisation method.

Q: Just if you would in your own words, just describe what you did and what the results were of the direct comparison method and when you have done that, could you just indicate that you are now telling the other one, just indicate what you calculated in relation to the capitalisation method if you would as to each of the components and how you arrived at them.

A: On the comparison valuations, the sales that I looked at, if I could just make a mention of them. There were five sales that I looked at. The first one was Monian Haus at Boroko, that is lot 3 section 16 and that was sold for K1.5 million in October 1994. It is a three storey office complex which I regarded as inferior to the subject. The second sale was allotment 8 section 15 Boroko which is the Hugos Arcade. It was sold for K1.85 million in August 1996. It is also a three storey office/shop complex. I regarded that as inferior to the subject. The third sale was lot 2 section 405 Hohola. This is Heduru Haus which was the former BSP Waigani. That was sold for K1.1 million in September 1997.

[2.58 pm] I also regard that as inferior to the subject. The fourth sale, it was lot 4 section 3, Granville, and this is very close to the subject, that is the Investment Haus. It was sold for K6.55 million in July 1998. It is a 13 storey office/shop complex and it has got an extension - it could be regarded probably 14 storey. I also regard that as inferior to the subject building. And the fifth sale was lot 8 section 8, Granville, also in town. It was sold for K3.3 million in January 1999, and that is the old ANG Haus. It is the oldest building, so it is also inferior property to the subject.

Just on the comparison to the sales that I used as a guide, sale number 4, the

Investment Haus was probably the most - the best guide that I could find at the moment. That was sold for K6.55 million. And just on a long shot valuation, from the street, I used 6. - that was sold for K6.55 million in July 1998. The subject as a 18 storey building would in my opinion go for around, about six times as much as this sale here. So, on that basis I came up with the valuation - this is a rough valuation of about K36 million for the subject building. Then on just a street valuation again I divided these sales on their floor value levels. The first sale was showing about K500,000 per level, this is a 3 storey. The Investment Haus was showing about K545,000 per level. The subject had a sale number for the Investment Haus sale was K6.55 million - sorry, the subject had 18 levels and I just roughly got, say if it had 18 levels its value would be about twice as much as the Investment Haus. And based on the twice valuation I came up with a valuation of about K36 million for the subject building. That is on a comparison using these sales as a guide. Now, if I could go into the capitalisation- - -

[3.02 pm] Q: If you would, just describe the capitalisation and the figures you used to get the gross and the net rental per year and then the multiplier factor if you would.

A: Okay. There is a couple of valuations that I used under the capitalisation method. This is because the areas that I got were different from - there were two groups of areas that we had at the time that we were asked to do the valuation. A group of areas were coming from the pamphlet that was used by Century 21 and then Century 21 had the subject on the internet too and they had another set of areas which were not on the same. So based on the pamphlet areas, if I could go through the levels. Level 14 had 969 square metres down to level 10, level 9 and 8 also. Level 7 to level 3 had 958 square metres. Level 1 and 2 had 889 square metres. The ground floor had 1275 square metres. There were 206 car parks, about 320 square metres storage area and the old library had an area of 161.98 square metres. In the first valuation that I did, I adopted the rates that NPF were using to market the property at that time. They were using the lowest - it is about K460 per square metres for levels 1 and 2, K470 per square metre for levels 3 and 4, K490 per square metre for levels 5 and 6, K500 per square metre for levels 7 and 8, K520 per square metre for levels 9 to 11, K530 per square metre for level 12 and K550 per square metre for levels 13 and 14. The ground floor was going at K500 per square metre. The car parks at K2000 per annum each. The storage at K250 per square metre and the library at K500 per square metre. This gave a gross rental of about K7,922,340.

[3.05 pm] A: If I could go through the rentals first and then come to the outgoings. The second valuation, these are the Internet areas that I got from the Internet site for the subject building. It had areas as follows; level 14 at 940.29 square metres, level 13 had an area same as level 14, levels 11 to 12 had areas of 960.60 square metres, levels 8 to 10 had 957.50 square metres, level 7 had 950.80 square metres, levels 5 and 6 had 941.22 square metres, level 3 and 4, 940.50 square metres, level 2 881.50 square metres, level 1 at 1169.82 square metres, ground floor had an area of 1273.21 square metres, 205 car parks, storage area of 401.76 square metres, the library had the same area, 161.98 square metres. Then I used the same rental rates on these areas so the rates are basically the same for these two valuations. But the total annual rental income for the second valuation was K7,971,070.00. The expenses, out from the gross I deducted expenses. I had information from the NPF management that the management fee was about K184,900.00 and then I had the outgoings also from NPF, annual outgoings about K1,540,660.00. I brought in a vacancy factor of just a nominal figure of about 10 per cent which gave me 10 per cent of the gross income, gave me outgoings of K792,234.00. Total expenses or outgoings came up to K2,517,794.00. For the first valuation, this is on the pamphlet areas and I got a net income of K5,404,546.00. To capitalise the net income, I adopted a net year's purchase of 8 which is about 12 and a half per cent and then I came up to a capital value of K43,236,368.00 for the floor areas based on the NPF Tower.

[3.08 pm] For the Internet floor areas, had the same group of expenses, the total out-goings and came up with a figure of K2,522,661 which gave a net income of K5,448,346. I then capitalised this at the same net year's purchase which was 8 and came up with the valuation of K43,586,766. These valuations are based on the floor areas that I got from NPF and the rental rates that they gave me. I then also looked at the rentals in the Port Moresby central business district, and the rates that were going at the time ranging from about 3 to 5 hundred kina per square meter for the best office spaces and I think the best property at that time was the Pacific Place. And that was showing rentals ranging from about 3 to 450 kina around 1999. Based on the rentals that we collected, I recommended a fair market rentals for the subject. It would be about 420 to 500 kina per square meter. This is in respect of the rentals that were given by NPF and Century 21. I then adopted the same floor areas from the pamphlet and the Internet site and

came up with gross rentals at K7,189,212 for the first group of areas, these are the pamphlet areas, less the expenses which basically was the same as the previous valuations and came up to a net income of K4,744,731. I then capitalised that same net year's purchase of 8 and came up to a valuation of K37,957,848. That is based on the areas from the pamphlet.

[3.11 pm] From the internet floor areas, I got a gross income of K7,370,586, less out-goings of K2,462,619.00. Then the net income of K4,907,967.00. I then capitalised that net year's purchase of 8 which gave me a capital value of K39,263,733.00. To check my capitalisation valuation especially my outgoings, I looked at a couple of sales and from experience in Moresby the annual outgoings normally were about 30 per cent of gross income for high rise buildings. So, I did a check just to check my capitalisation valuations. I adopted a 30 per cent outgoings for the four valuations. And based on the 30 per cent outgoings using the same net base I came to valuations that ranged from 44 million for the internet area, about 40 million for rentals that I used based on the evidence I had and about 41 million for rentals using the internet area.

From the valuations I adopted my rentals, the market rental as the best valuation that I could get and came up with a valuation of K40 million.

Q: So, each of the methodologies direct comparison and the four calculations that you did are in relation to capitalisation but the scatter seems to have been between 36 and 43 million taking the extremes?

A: Yes.

Q: And your valuation came back at 40 million?

A: Yes.

Q: Now, I suppose I should ask you this. Are you able to tell and I say publicly we are very appreciative that the valuer general did not charge the commission for carrying out that valuation which obviously involved a lot of work. Are you able to indicate to the commission how the valuer general charges, whether it is by hours or by a scale for valuations?

A: The valuer general has a scale of fees which unfortunately we valuers do not seem to have. The scale of fees is kept by our clerks in the office. If we were to charge fees we would have to give the valuation to them to go through to calculate the fees.

Q: Right, so the way your office is structured is that the valuer does the valuation work and then at the clerical section calculates the fees?

A: Does the calculations, yes.

[3.15 pm] Q: Would you have any approximate idea of what the scale fee would be for a valuation of K40 million using the valuer general's scale?

A: Just roughly, we have never done valuations up to K40 million. This is probably our first time to do a valuation on a single property I am talking about, but just from the head, I do not think we would have charged a fee of about over K20 million. It could have been about between K10 to K20,000 but not million.

Q: K10 to K20,000 would be the scale?

A: Yes.

Q: Now, what I would like to do if I may, I would like to show you two documents. They are marked up. The first document is a document which is numbered W430 through W444 which is a valuation of Veraga Valuation Centre and the second document I would like to show you is a valuation which is tendered documents W458 through W467. That is a valuation of Mariano Lakae and I would just like to ask you some questions about those two valuations one at a time in comparison with your figures. If you would Mr Dobi, would you have a look first quickly at the Veraga valuation and what I am going to draw your attention to appears on pages 8, 9 and 11 of that valuation. I think the floor areas are shown on page 8 of the valuation, is that correct that Mr Veraga used?

A: Yes.

Q: Do they approximate closely to yours or are there differences?

[3.19 pm] A: The ground floors, he has got about 2000 square metres. I have got 1275 square metres which is quite a large difference, yes. That goes for level 1. We have 889 square metres. He has got 1600 square metres. Level 2, he has got a much bigger area than what I have on my report. Levels 3 to 7, he has got areas that are much bigger than mine. Levels 8 to 12 is also bigger. In fact the areas that he has got are all much bigger than the areas that I used in my valuation.

Q: Does that suggest something to you when you see that there is a consistently larger floor area given than that which you have?

A: Sorry, I did not get it?

Q: Does that suggest anything to you about - perhaps I could give you a tip at what I am asking. Does it suggest to you that perhaps he may be using gross floor areas whereas you are using net?

A: He must have been, yes.

Q: Otherwise the differences cannot be that great?

A: No.

Q: Would you look at the, I think it is on page 9, the rental comparisons which Mr Veraga uses. Is that where the comparables are set out?

A: Yes.

Q: Do you consider that the properties that are shown there are comparable?

A: Well, they are basically - the first and the second are the same buildings that I looked at.

Q: Same as you used?

A: Yes.

Q: If would have a look at, I think it is page 11, does that set out the comparable sales that Mr Veraga uses or is that a rentals comparison?

A: Sorry, which page was this?

Q: 11 I think it is.

A: Are you referring to the sales that he used, did you say?

Q: Yes, I was asking about the rental. First I asked you about the rentals he used and secondly about the sales comparisons, but we will deal with the rentals first.

A: Okay.

Q: Do you see what rental figures Mr Veraga says he used?

A: Yes.

Q: Are they between K500 and K550 per square metre?

A: Yes, he used those figures.

[3.22 pm] Q: Do you think that those figures are - I will withdraw that. How those figures compare with figures that you used in your calculations?

A: Basically, I used the same figures just to check my valuation. These are the figures from, I think, he probably got this from NPF or Century 21 but then I also used the rentals that I collected and I used figures that were a little bit lower than what he has used for his valuation.

Q: In the comparable sales, the section dealing with the comparable sales, I think, there are two that are mentioned, to obtain the multiplication factor. You see those two sales that are used there. I think one was 17 and one was 21 per cent?

A: Yes.

Q: Do you regard them as comparable for the purpose of working out your multiplier in the capitalisation method?

A: Basically, the first sale that is referred to is also one of them that I looked at. This is probably the Investment House sale.

Q: What was the rated return on the Investment House sale, was that the 17 or the 21?

A: He has got 21 per cent on it. The second one is probably the one - is the one he is referring to at Waigani. I do not know which building this one is.

Q: Those comparables would indicate a multiplier of about between 5 and 6, would they not? You are looking at 17 to 21 per cent.

A: He has got 17 to 21 per cent.

Q: Now, do you see in that valuation that Mr Veraga seems to have calculated gross earning but does it seem from your examination of the valuation that there is any deductions to that?

A: Yes. Well, in the capitalisation method of valuation, normally, we would have to capitalise the net income although gross would just have to give us a rough figure what we would be coming at. The net figure would be probably more accurate than the gross valuation, yes.

Q: If he used a gross figure then presumably you would have to use a lower multiplier which - - -

A: A lower multiplier factor, yes.

Q: Does he, to your regular valuation, is there any deductions for expenses or outgoings, is there any mention of that?

A: Just- - -

Q: Just take your time.

A: Looking through this. I do not think he has allowed any deductions because the valuation of the 8, 7 million that he came up with is based on the gross rentals.

[3.25 pm] Q: And you say that normally one should either deduct to get to net or alternatively use a lower multiplier?

A: That would normal, yes.

Q: Would you have a look at the - I think it is the last page of that valuation. Do you see that although Mr Veraga uses gross, what multiplier does he use?

A: Which would- - -

Q: I think it is the last page of his- - -

A: Just give me the page number.

Q: So using the gross rate what multiplier does Mr Veraga use?

A: He has used 10 per cent.

Q: So what would you say the result is, that using a multiplier of 10 which is compared to yours of 8 and applying that to the gross rent instead of the adjusted net rate as you have?

A: Firstly it cannot be mentioned as a percentage. It has to be just a single factor, could be 10, not 10 per cent. So if we were to use 10 per cent it would give us a figure of about 20. That is the multiplying factor. So I think he has probably made a mistake of 10 per cent. It is probably a gross year's purchase of 10. Just 10, not per cent. Compared to ours, we have adopted 8 which is net year's purchase, which is not gross year's purchase. So, we have used a lower figure than what is used for his valuation based on gross rentals.

Q: So would you say, and I do not want to put words in your mouth, but would you say that the resultant is that that valuation figure which Mr Veraga comes to is higher than it should be?

A: Sorry, can you- - -

Q: Would you say that it is higher than it should correctly be, the total?

A: I think so, yes.

Q: Would you agree with me if I said that that valuation which comes up at K86 or K87 million is vastly excessive in your professional opinion?

[3.29 pm] A: I would say that was what I looked at and from my own experience, I would regard this valuation as, firstly, it would be unrealistic. Secondly, it is probably just too excessive.

Q: Would you turn now if you would to the next valuation which is that of Mr Lakae which is a very short valuation. Does he set out floor areas or not in the valuation itself?

A: I cannot see anything.

Q: Does he set out in the valuation itself the annual rental?

A: No, I cannot see any.

Q: If you look at the last page, does he indicate what the rental rate is that he has used, it is towards the end.

A: Yes, he used about K500 to 550 per square metres.

Q: So that is the same figure Mr Veraga used as to buying by NPF?

A: Yes.

Q: And does he set out his comparables for the purpose of ascertaining what the multiplier should be?

A: I do not see anything in the report.

Q: Would you expect normally to see those details in the valuation?

A: Yes, it should be.

Q: And what is the total value that Mr Lakae comes to?

A: He has got K86 million.

Q: And what would you say about that figure, your professional opinion as a qualified valuer?

A: As I mentioned with Mr Veraga's valuation, this is my personal opinion, not the valuer general's opinion. I think the valuation here would be very excessive too.

Q: I will just ask you this and if you do not feel qualified to answer it, please do say so. If I told you that for all those valuations that you have just been looking at, Mr Veraga originally quoted a valuation fee of K250,000 and Mr Lakae originally quoted a fee of K280,000. What would you say to the level of those fees?

A: I do not wish to comment on the fees.

Q: And if I told you they were each paid K175,000, that was the fee that was actually paid to each of them, would you have any comment as to the propriety of that fee?

A: I think the value and the fees were probably were just too excessive too.

Q: Maybe, I think from what your evidence is, something in the order of eight to nine times what the valuer general's fee would be at least.

A: Yes, on our figures of about K10 to K20,000.

Q: Is there anything else you wish to say Mr Kaira? I do not really have any further questions but if you have anything that you wish to add to your evidence or?

A: No sir.

Q: Chairman, I have no further questions.

[3.33 pm] THE CHAIRMAN: Thank you very much. We have got no questions for you. Thank you for your painstaking explanation on how you did it.

A: Thank you.

Q: We have got it all on the transcript and we will study it carefully. Thank you. You can be excused.

THE WITNESS WITHDREW

THE CHAIRMAN: Mr Reeve?

MR REEVE: We will just wait for Mr Dobi to get his file.

Commissioners, the next witness is a further officer from the Valuer General's Office, Mr Mero Boro. I call Mr Boro.

THE CHAIRMAN: Thank you, Mr Reeve.

MERO BORO, Sworn:

XN: MR REEVE

Q: Mr Boro, for the record, please, would you state your full name?

A: My name is Mero Boro.

Q: And you are a registered valuer engaged in the Valuer General's Office?

A: That is right.

Q: Would you just for the record, please, state what your valuation qualifications are?

A: I am a registered valuer, registration number 54. My qualification is diploma in valuation from Unitech and post-graduate diploma in land studies from Unitech. I worked for the Lands Department as a valuer for 30 years, 27 of those based in Port Moresby.

Q: And were you the valuer that the valuer general delegated to value the property, allotment 2, section 429 Waigani for this Commission of Inquiry?

A: That is correct.

Q: Would you indicate, if you would please, what the date of that valuation was, Mr Boro?

A: The date when we were requested by this Commission of Inquiry was May 26 2000. We inspected that property on 1 June 2000.

Q: And as at what date were you asked to assess the value of the property?

A: The valuation was done as at 20 October 1998.

[3.36 pm] Q: Now, all the valuation of the Waigani Land as we will call it now allotment 2, section 49 is undeveloped vacant land?

A: That is right.

Q: What method of valuation does one adopt as the preferred method in valuing a tract of vacant land of that type?

A: In this - when I valued this property I engaged two methods of valuation. The first one is direct comparison, that is using comparable land sales that occurred before or around that date of valuation. The second method I engaged was residual valuation method or hypothetical valuation method that is based on the highest and best use of the land potential for any future development.

Q: And you compared the results of those two methods to come to a value or do you use one to cross check the other?

A: I used those two to check each other and then from that I came up with a final figure of 8 million for the property.

Q: Now, could you just in your own words as Mr Dobi did, explain what you did in relation to each of those two methods and the figures that you used and the results that you came up with. Just in your own words and your own time?

A: With direct comparison I used sales that are more than one hectare of land because the subject property is 9.8 hectares which is - we do not know sales of that nature in Port Moresby. First I looked at comparable sales.

[3.39 pm] The sales I used which formed the basis of my valuation are lot 3 section 468, Hohola. That is North Waigani Stop and Shop site. Sale price K400,000, land area 1.129 hectares, date of sale 26 October 1998. This is a residential lease with a shop on it. This sale I used as a guide which is some distance away from the subject. The second sale lot 5 section 429, Hohola. It is where this new development is. Sold for K880,000 with a land area of 1.97 hectares, date 2 January 1997. That sale, also I used it as a guide. Another sale lot 29 section 35, Hohola, where the Motor Vehicle Insurance registry office is. That one was sold for K2.7 million, land area 5.38 hectares, date 9/11/94. This is an industrial land sale. At the back, further away from the main road, this sale is some distance away from the main subject property. The subject property is located at the corner of Waigani and Sir John Guise Drive, which I consider is a prime commercial land potential for intensive development. This lot 29 section 35, Hohola sale as comparing with the subject location-wise, the subject is far better in a good location.

[3.43pm] Therefore, in mine, I did two calculations in direct comparison. In the first calculation I adopted K80 per square metre. That gives around about the value of K7,840,000.00. I apply K80 per square metre like what I said same next to subject one as class over the sale because parties involved were related but I did not know of that sale because I consider that as one of the large structures because it is close to two hectars. The other one, north Waigani supermarket is further away. The other sale 2.7 million is further away but that forms the basis. I made allowance for location because this one is in far better location in a prime area where other sale went for 2.7 are at the back because a lot of land along Waigani land, they are more valuable. Therefore, I used K80 more than because the sale at Hohola 29 of 35 shows K50.19 per square metre.

[3.46 pm] There is one next to the subject, it is K44.67. Waigani supermarket, Stop and Shop is K35.43 per square metre. Also in this approach, since that Hohola where Motor Vehicle Insurance registry office is, that is an industrial property sale so I decided for this exercise value this slightly over and above industrial land value rate. In this second exercise, I applied K65 per square metre. I arrived at a value of K6,370,000. In my second method, I applied a residual value or I call that development valuation method. Since this land as I said earlier is a large tract

of land, we have no comparable sales, we do not have sales of 7, 8, 9 or 10 hectares, so in this exercise, the first one I use if that land was put to its highest and best use, investigations reveals that this land is suitable for mixed commercial development.

[3.50pm] It can be sub-divided into three allotments, two for shops and office complex, the other one is international hotel development site. So, on this basis and the town planning requirements forecasts were made based on the town planning requirements for these three allotments. It gives land for a office, shop complex with site coverage of 70 per cent. 70 per cent of the size of allotment will be covered by building the other 30 per cent car park and other facilities. With those projections it is open space applying town planning requirements given for both buildings applying rentals and capitalising them, at appropriate years purchase gave me K379,473,150.00 and then taking off development costs other expenses, considerations, interest rates which totalled up to K371,078,628.00.

[3.53 pm] That gives you a value of K8,400,000. And also in doing this calculation, the same method allowing for expenses like vacancy, management, legal fees, profit and risk, development costs and interest on developing costs, tax and allowing for contingencies gave me the value of K7,446,000. These are valuations based on current market sale at Port Moresby based on rental values, land development costs, interest rates.

Q: So utilising both of the methods, you came to a figure very closely approximating K8 million by all methods that were utilised, and that was the value that you adopted as the correct value? And in your professional opinion, that is the correct value of the land as at January 1999?

A: Yes.

Q: Okay. What I would like to do now, Mr Boro, if I may, I want to show you two valuations. They are not all that clear in how they arrive at their conclusions, particularly one of them. The first is a valuation of Veraga Valuation Centre which is document W329 to W340, and the second is a valuation by Lakae and Associates which is much shorter and runs - it is document W342 through W348. I will just let you have a look at those. I wonder, chairman, whether it might be worth just taking 5 minutes because these documents have not yet been seen by the witness, to quickly have a look at them.

THE CHAIRMAN: Yes, how many more witnesses have you got?

MR REEVE: This is the last.

THE CHAIRMAN: Thank you.

[3.56 pm] MR REEVE: This is the last and I will be quite short after Mr Boro has had a fair chance to look at these.

THE CHAIRMAN: Okay, we will adjourn for five minutes.

SHORT ADJOURNMENT

[4.05 p.m] MR REEVE: Mr Boro, have you had a chance to look at those two valuations? You see that Mr Veraga's valuation adopts a square meter rate by the fair comparison method, the 150 per square meter to arrive at a value of K14.7 million. Is that what the valuation tells you?

A: Yes.

Q: What do you say the adoption of a rate, in your professional opinion, the adoption of a rate of K150 per square meter.

A: The sales he used, one of the sales he used is from the commercial sales which is, Lot 29, Section 35, Hohola which is a motor vehicle registration office area. K2.7 million is another sale he used, North Waigani Supermarket site. The Granville land sales, he generalised that from K500 to K800 per square meter. Not quoting exact property details. North Boroko, he made a general rate from 200 to 500. The subject land is 9.8 hectares. In my opinion he has adopted the rate as shown by the sale number he used. The sale number we quoted as K50 per square meter which I believe was he tripled it. That is why he applied K150 per square meter for subject.

Q: Do you consider that to be an excessive rate per square meter in your professional opinion?

A: In my opinion for such large size property, K150 per square meter is quite excessive.

Q: Do you agree with me that it is vastly excessive?

A: I would say excessive.

[4.07pm] Q: If you look to the second valuation, Mr Lakae's valuation, I think Mr Lakae does not actually specify a rate per square metre but he appears to use the direct comparison method. To get to his value of 17.6 million, one would have to take a per square metre rate of K180.00. What is your professional opinion as to the adoption of a rate of K180.00 per square metre for this 9.8 property using direct comparison?

A: The basis he used in his valuation he reported that Granville sales are in fact K500 to K1000 per square metre, Boroko areas, K300 to K700 per square metre, Hohola, K100 to K700 per square metre. He further went onto list three sales, one property sold twice, sale 1 allotment 4, section 211, it is near Gordons market, sold for 400. It is a trade store site, it is a small area, he did not specify the area but I believe it is a small area giving K738 per square metre. That same property sold again for the same price showing K806 per square metre. Another trade store sale at Gordons too, allotment 28, section 93, K130,000, that is also a small size block sale. The rate he derived from that sale is K189. With this subject land, we cannot use small size property sales as comparison.

Q: They are not comparable.

[4.10 pm] A: They are not comparable.

Q: And in the result do you consider that the per square metre rate of K180 is vastly excessive?

A: Yes.

Q: Now, I just want to ask you about fees, and again if you cannot answer or do not wish to answer please say so. I know, and as I said previously, we are grateful the valuer-general carried out this valuation for the commission free of charge. If the valuer general had charged a fee for the valuation which you carried out, do you know what that fee would have been using the valuer-general's scale?

A: Normally when we valuers we do valuations and give them to our clerks to calculate this as based on our scales.

Q: Do you have any idea approximately what your scale fee would be for a valuation of K8 million? If you do not just say no I do not know.

A: For K8 million it would probably be less than K10,000.

Q: Less than K10,000?

A: Yes.

Q: Now, if I told you - and again tell me if you do not wish to comment. If I told you that for the valuations that you have looked at, Mr Veraga asked and was paid a fee of K60,300 and Mr Lakae asked and was paid a fee of K60,000, what would you say about those fees as to the reasonableness or excessiveness or otherwise?

A: I probably do not know.

Q: You do not wish to comment?

A: No.

Q: Mr Chairman, I have no further questions of Mr Boro.

THE CHAIRMAN: Thank you. Any questions Mr Manoa?

COMMISSIONER MANOA: No.

THE CHAIRMAN: Mr Boro, thank you very much. We have appreciated the very thorough nature and the way you have gone about your work and your very clear evidence. So, thank you very much and you are excused from further attendance now.

THE WITNESS WITHDREW

THE CHAIRMAN: Yes, Mr Reeve, is that all we have?

MR REEVE: Thank you, Chairman. I have a minor problem about time. I had two alternatives available. One was to deal with some officers from the Lands Department, of whom there were four. My learned friend Mr Batari tells me that only one who is the shortest witness who would give very short evidence is still with the lands ministry. The other three have left the department. So I will need to locate them and summons them with Mr Batari's assistance. The other witness that I thought I would have available tomorrow, who I did not certainly tell that I wanted him tomorrow until I had a letter delivered about lunchtime, is not in his office and is in Goroka. So I will not be able to call him and I apologise that I am left short for tomorrow.

THE CHAIRMAN: Yes. So, do you still want to call the one or do you want to- - -

MR REEVE: I think it would be an unnecessary waste of the commission's time and it would be - all the witness would be doing is saying that she has made a search for a file and the file cannot be located.

THE CHAIRMAN: Okay, well, unless she came to the- - -

MR REEVE: I think perhaps if we can adjourn.

THE CHAIRMAN: Put her on the day when we are sitting.

MR REEVE: It would be better I think if we adjourn until Friday morning and I will - bearing in mind I know there are travel arrangements. I will see if I can organise something for part of the morning and if there is less than one commissioner here it would be less than - less than two commissioners here it will not be contentious matters anyway.

THE CHAIRMAN: Yes, it will be Lady Siaguru. Thank you very much. So, we will adjourn now, thank you, until Friday morning at 9.30.

AT 4.15 PM THE COMMISSION OF INQUIRY WAS ADJOURNED UNTIL FRIDAY, 2 FEBRUARY 2001 AT 9.30 AM.

INDEX OF PROCEEDINGS

WITNESSES.....PAGE

HENRY FABILA, recalled.....5106

XN: MR REEVE.....5106

THE WITNESS WITHDREW.....5127

JOHN COLMAN RUIMB, sworn.....5127

XN: MR REEVE.....5128

THE WITNESS WITHDREW.....5158

BROWN BAI, recalled.....5159

XN: MR REEVE.....5159

THE WITNESS WITHDREW.....5164

PAUL JOSEPH MARSHALL, sworn.....5164

XN: MR REEVE.....5165

THE WITNESS WITHDREW.....5177

KAIRA DOBI, sworn.....5178

XN: MR REEVE.....5178

THE WITNESS WITHDREW.....5191

MERO BORO, sworn.....5192

XN: MR REEVE.....5192

THE WITNESS WITHDREW.....5199

[Home](#) | [Media Release](#) | [Speeches](#) | [Ministries](#) | [Commission of Inquiry](#) | [Photo Gallery](#) | [PNG Info](#) | [FeedBack](#)

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