

3. COI Inquiry File No. 28 for Special Agricultural and Business Purpose Lease over Portion 45C Volume 31 Folio 249 Milinch: Kase, Buna, and Central Province in the name of Mekeo Hinterland Holdings Limited.

3.1 In accordance with the powers given to the Commissioners pursuant to section 7 of the Act, the Commissioners have summoned numerous witnesses to produce documents and be further examined on oath or affirmation.

3.2 Witnesses were called from the six (6) government agencies involved in the issuance and operation of the Mekeo Hinterlands Holdings Ltd. SABL. These were:

3.2.1 Department of Central Province, (DCP)

3.2.2 Department of Lands and Physical Planning, (DLPP)

3.2.3 Department of Provincial Affairs and Local Level Government, (DPALLG)

3.2.4 Department of Agriculture and Livestock, (DAL)

3.2.5 Department of Environment and Conservation, (DEC)

3.2.6 PNGForest Authority (PNGFA)

3.3. Witnesses and Summonses

3.3 1. The names of the persons who have been summoned to appear and who have in fact appeared in the public hearings (in alphabetical order), including titles, are set out in the schedule below. For ease of reference, the schedule also lists the transcript pages at which the person commenced giving evidence against the name of the witness.

No
Witness
Pages
Date of Hearing
1
BENJAMIN, ANTON
(Secretary, DAL)

2
IAMO, WARI
(Director, DEC)

3
KALA, MANU
(Land officer, DLPP)

4
KATAKUMB, DANIEL
(Director, Lands Div. DLPP)

24/01/12-SABL80
5

KIPO, ROGER
(Chairman, Uda Mekeo Farmers Cooperative Society Ltd.
33-62
20/12/11-SABL65-WAIGANI
6

MANGABI, JOSEPH
(Taure Lakekamu ILG)
62-77
20/12/11-SABL65-WAIGANI
7

POIA, MATHEW
(Hon. Member for Goilala).
11-46
06/01/12-SABL69
8

POMALEU, IVAN
(Managing Director, IPA)

01/02/12-SABL
9

POURU, KANAWI
(Managing Director, PNGFA)

10
RAGA, GULU
(Senior Lands Officer, DCP)

11
TOBEA, ELIZABETH
(Special Projects Manager, DLPP)

12
YIPMARAMBA, RAPHAEL
(Provincial Administrator, Central Province)
3-8
Thursday, 27 October 2011

3.4. Parties represented by counsel

3.4.1 Section 8 of the Act relates to the appearance of counsel before the Commission on behalf of interested parties. It provides that:

“Subject to Section 2(5), a person who satisfies the Commission that he has a bona fide interest in the subject matter of an inquiry under this Act, and any other person by leave of the Commission, may attend the inquiry in person or may be represented by counsel.”

3.4.2. The following were granted leave to be represented by counsel.

Party
Counsel
Albright
Saulep Lawyers

3.5. Exhibits and documents

3.5.1. There were 10 documents tendered as evidence before the Commission at the public hearings. A list of the Exhibits is shown below.

No	Item
Interested Party	
Date Received	
Exhibit Number	
1	IPA records concerning Mekeo Hinterlands Holdings Limited

C.O.I	
Secretariat Register	
2	Lands Department file material

C.O.I	
Secretariat Register	
4	Statutory Declaration
Kathy Asiri	
29/08/11	
Register	

7	COI Submission
Manu Kala (DLPP)	
08/08/11	

C.O.I	
Secretariat	
9	COI Submission

PNGFA	
21/08/11	

C.O.I	
Secretariat	
10	COI Submission

DEC	
06/09/11	

Register

6

COI Submission

Albright Limited (Saulep Lawyers)

19/11/11

MHHL 1

3

COI Submission

Uda Mekeo Farmers? Cooperative Society (Roger Kipo, Chairman)

29/08/11

MHHL 2

4

Instrument of Lease –Lease Back Agreement

Mr Kipo

20/12/11

MHHL 2

(Kipo)

Affidavit of Roger Kipo dated 19/12/11

Uda Mekeo Farmers? Cooperative Society (Roger Kipo, Chairman)

20/12/11

MHHL 3

Set of Documents to C.O.I by R.Kipo (Letter dated 10/8/11)

Roger Kipo documents and submission

20/12/11

MHHL 4

5

COI Submission

Gongopu Clan (Joseph Managabi)

20/12/11

MHHL 5

8

COI Submission

Mathew Poia

06/01/12

MHHL 6

(Chairman, MHHL)

9

ILG Consent

Mathew Poia

06/01/12

MHHL 7

10

Bound Set of Documents Under Cover Manu & Associates dated 2

July 2008

Mathew Poiya

06/01/12

MHHL 8

11

Letter Inviting Developer CP SAWIT to MHHL

Project dated 30/11/11

Mr Ivan Pomaleu, IPA

01/02/12

MHHL 9

3.6. Mekeo Hinterlands Limited SABL

3.6.1. It was noted by the COI that in light of court proceedings matter OS (JR) 400 of 2009, that the lease title has been surrendered to DLPP by MHHL on a Lands Department lease surrender form dated 1st October 2010.

3.6.2. It was also noted by the COI that subsequently an order of the National Court dated 21st December 2010, ordered the SABL held in the name of Mekeo Hinterlands Holdings Ltd. null and void, "ab initio".

3.6.3. On 22nd November 2007 a Notice of Direct Grant was issued by the Secretary, Department of Lands and Physical Planning. under Section 102 of the Land Act and gazetted in the National Gazette No. G182. SABL title on Volume 31 Folio 249 dated 20th November 2007 and registered 11th December 2007 was issued by the Department of Lands and Physical Planning. The Lease covering a land area of 116,400 hectares was for a period of 99 years commencing on 21/11/2007 and expiring on 21/11/2106. The details of the SABL is shown below:

Legal description

45C Omeri, Central Province

Registered Survey Plan catalogue no.

42/381

SABL Holder

Mekeo Hinterlands Holdings Limited

Date of Registration of lease

11/12/2007

Period of Lease

99 years

Land area of lease

116,400 hectares

3.7 Timeline of events of note surrounding Mekeo Hinterlands Ltd. SABL Title

3.7.1 The timeline showing important events concerning the SABL is shown below in chronological order of their happening:

No

Milestone

Dated of Completion/Grant/Issue Execution

Proponent/Applicant

Respondent Entity/Respondent

1
Incorporation of
MHHL
07/08/06
Peter Al, Chris Aia, Leo Ambrose, Leo Ameua, Charles Eueki, John Kala, Mathew Poia, Andrew Rudaka, Michael Uaiz.

IPA
2
Execution of MOA between MHHL and CP Sawit Ltd.
08/08/06
MHHL and CP Sawit Ltd.
MHHL and CP Sawit Ltd.

3
Integrated Plantation Development Plan
Dec. 2006
CP Sawit Ltd.
MHHL, CPG, DAL, NEC

4
NEC Policy submission for Mekeo Hinterland Integrated
10/05/2007
Minister for Agriculture and

5
Land Investigation Report (LIR)
Unsigned and undated
MHHL/Landgroups
MHHL/DLPP

6
Signing of Lease/leaseback Agreement
16/11/2007
MHHL/DLPP
DLPP

7
Gazettal of Section 102 notice in National Gazette
30 November 2007
MHHL/DLPP
DLPP

8
Issue and registration
30/11/2007
DLPP
MHHL

of SABL title to MHHL

9
Sub-lease agreement between MHHL and Albright Ltd
5th May 2008

MHHL
Albright Limited
10
Public Review of EIS Public Hearing DAL

11
IPA certificate permitting Albright Ltd. a foreign entity to conduct business in PNG
7th October 2008
Albright Limited
Albright Limited
12
Certificate of Compliance for large scale conversion of forest to Agriculture use

14
Issue of Environment Permit to discharge waste WD-L3(201) for 25 years.
30 January 2009
Albright Limited
Albright Limited

15
Issue of Forest Clearing Authority (FCA) No. 03-01 for
15 years
21st July 2009 (lack
of evidence on the project development and schedule for implementation
Albright Limited
Albright Limited

16
National Court Order declaring SABL title held by MHHL to be null and void "ab inito"
2nd December 2010
(by consent)
ILGs of Mekeo Hinterland Holdings Limited
Albright Limited (Sub-lessee)

17
Voluntary surrender of SABL Title to be cancelled by DLPP (Mr Poiya's Sworn Statement to C.O.I)
05th October 2010
MHHL
MHHL

FINDINGS

The findings below follow the chronology of table of notable events above surrounding the SABL lease title held by Mekeo Hinterland Holdings Ltd.

3.8. IPA

3.8.1 The Investment Promotion Authority (IPA) is a statutory organization, established by an Act

of Parliament in 1992, to promote and facilitate investment in Papua New Guinea. The IPA does this through various programs including the establishment and maintenance of a company/business registry, certification of foreign enterprise and promotion of investment opportunities in PNG.

Findings

3.8.2 Mekeo Hinterlands Ltd. is a limited liability company registered in the Register of Companies of the Investment Promotion Authority of PNG under the Companies Act 1997. Incorporation of the company occurred on 7th August 2006. (IPA company incorporation Exhibit). At the time of incorporation it was found that the company had nine shareholders, nine directors and one secretary.

3.8.3 The nine shareholders holding ten shares each in their individual capacities and names were Peter Ai, Chris Aia, Leo Ambrose, Leo Ameua, Charles Eueki, John Kala, Mathew Poia, Andrew Rudaka and Michael Uaiz. These nine shareholders were also the Directors of the company. The company secretary was Chris Aia.

3.8.4. It is noted that the shares were not held in trust for any clan or ILG as would be the case with a landowners company. It is further noted that the 19 ILG representatives who signed the land for Lease/leaseback with the State cannot be conclusively taken to be absolute owners of the entire 116,400 hectare of land under the SABL because of the absence of a LIF

report determining ownership by custom by all other interested parties in the land.

3.8.5 Because the shares are not held in trust for any clan or ILG it is safe to assume that MHHL is not a landowner company within the meaning of a SABL processed title, but is a purely privately owned enterprise.

3.8.6. It is noted that a MOA for the agro-forestry project was executed between MHHL and a Malaysian company CP Sawit Ltd on 8th May 2006 which was the day after the MHHLs incorporation. From this it can be safely assumed that MHHL was simply a vehicle to facilitate the proposed agro- forestry project.

Recommendation

3.8.7 That in the absence of a LIR evidencing authorization for individuals to represent them on Mekeo Hinterlands Holdings Ltd., and by virtue of the shares being held privately by individuals in that company that the SABL title is not held on trust by agents for all customary landowners. The so named shareholders be instructed to obtain evidence of their being authorized to hold the shares in their individual capacities on behalf of the customary landowners.

3.9. DEPARTMENT OF AGRICULTURE AND LIVESTOCK

3.9.1 The National Department of Agriculture & Livestock stated role is to formulate and provide appropriate policy and technical advise, and to monitor and evaluate the implementation of the national agricultural programmes. In doing so, to achieve the national agricultural goal of

improved productivity and sustainability of food and export crops and livestock, for greater food security and income for an increased national standard of living.

3.9.2. The Department's origin can be traced back to the then Department of Agriculture, Stock and Fisheries (DASF) under the colonial administration of the External territories before 1975. The first name change of the department from DASF to the Department of Primary Industries (DPI) was after 1975, which included the Fisheries and Forestry portfolios as well. A separate Department of the Agriculture and Livestock (DAL) was created in 1989 because of the separation of the Fisheries and forestry portfolios.

3.9.3 With growth in sub sectors in the mid-1980s and the subsequent policy changes, the department introduced corporatisation and privatisation programs for those activities that were commercial viable. This saw the formation of: Coffee Industry Corporation (CIC), Cocoa and Coconut Extension Agency (CCEA), Copra Marketing Board (CMB), Oil Palm Industry Corporation (OPIC), National Agriculture Research Institute (NARI) and National Agriculture and Quarantine Inspection Authority (NAQIA). Thus, DAL now is left the primary role for policy formulation and coordination, development planning, and the Compliance Monitoring and Evaluation of policy implementation.

3.9.4 Under the new legislation in the Forestry Amendment Act 2007, the Department of Agriculture and Livestock has the role of effecting a Certificate of Compliance leading up to the approval of a Forest Clearance Authority (FCA) for large scale conversion of Forest land to Agriculture or other Land Use. The Certificate of compliance is issued

following compliance by the Developer/Operator to four main requirements furnished to DAL. These are a Sound Agriculture Project Proposal, Land Capability and Land Suitability Assessment Report, Land Use Development Plan and Project Implementation Schedule and a Public Hearing.

3.9.5 It is found in the evidence before the Inquiry that much of the early work regarding the then Uda Mekeo Resources Project before it became the Mekeo Hinterlands Agroforestry Project was prepared by Department of Agriculture and Livestock (DAL) which also in the course of time provided procedural approvals for the project.

3.9.6. It was found that a NEC submission for Mekeo Hinterland Integrated Agroforest project file no. 44-1-20(2) dated 10th May 2007 was jointly signed and submitted to NEC by The Minister for Agriculture and Livestock Hon. Sasa Zibe and Minister for Lands, Hon Puka Temu. It was noted on the evidence provided by Manu and Associates lawyers to the Inquiry that NEC approved the submission in Decision No. 190/2007 dated 27 June 2007 and directed all relevant line Departments and Agencies to help facilitate appropriate licenses and permits to CP Sawit Ltd. the developer and associated landowner groups and to immediately commence implementation of the project.

3.9.7 A Certificate of Compliance from DAL dated 7th November 2008 was issued to the Developer Albright Ltd. Following this a Forest Clearance Authority (FCA) permit was issued by PNGFA dated 26th June 2009 to Albright Ltd. The issue of a Forest Clearance Authority (FCA) lies in the PNGFA subject to the approvals sought in the DAL submissions, the

issue by DAL of a Certificate of Compliance and approval of an EIS by DEC.

Recommendation

3.9.8 That the Secretary Mr Anton Benjamin and Mr Leka Mou of DAL be further investigated to explain why Uda Mekeo Resources Project changed design and scope to be known as the Mekeo Hinterland Agro- forestry project.

3.9.9. That the Secretary Mr Anton Benjamin and Mr Leka Mou be instructed to explain the use of NADP funds of K3.4million earmarked for the Uda Mekeo Resources Project.

3.10. PNG FOREST AUTHORITY

3.10.1 The Forestry file was brought to the Inquiry as requested and presented on 24th August 2011. The file contained 13 documents, eight (8) originated from the PNGFA files submitted to C.O.I and two (2) were from DLPP and three (3) documents came from DAL.

3.10.2 The Forestry material sighted was PNGFA Southern Region report for 2011 which contained information pertaining to the performance of Forest Clearance Authority holders in the Southern region of the country. Of interest was information on a table in the report showing that Mekeo Hinterland Integrated Agriculture Project being halted due to court injunction due to land disputes.

3.10.3 There was also sighted a minute from the Manager Finance to the Revenue Accountant dated 29th July 2009 advising that a bank guarantee had been lodged by Albright Ltd. in relation to the recently issued FCA 03-01. Also sighted was a letter of support from the Goilala Member Hon. Mathew Poia dated 2nd May 2008, Certificate of Incorporation of Albright Ltd., Certificate of Registration as a Forestry Industry Participant of Albright Ltd., Deed of undertaking signed between MHHL and Albright Ltd. dated 5th May 2008, FCA permit no. FCA-03-01 issued to Albright Ltd. dated 26th June 2009 and PNGFA board meeting minutes dated 9th July 2009 granting FCA permit to Albright Ltd.

3.10.4 The DLPP material on the Forestry file was a copy of the SABL title held by MHHL and copy of the sub-lease agreement between Albright Ltd. and MHHL.

3.10.5 DAL material held on the Forestry file included a letter dated 4th July 2008 from the Secretary for DAL Mr Anton Benjamin to the Member for Goilala advising the member on the progress of the NEC submission. Also sighted was a letter dated 20th June 2008 from the Secretary to Managing Director of PNGFA Mr Kanawi Poursu advising compliance by the Agroforestry project and that Albright Ltd. should be granted FCA permit. There were also minutes of a public hearing that had been conducted at Adio village, Kubuna on 27th September 2008.

3.10.6 The COI found no irregularities in the issuance of the permit for FCA by PNGFA.

3.11 DEPARTMENT OF CENTRAL PROVINCE

3.11.1. The Department of Central Province is the bureaucratic arm of the Central Provincial Government whose primary role is to facilitate government policies and directives through the work of its divisions of which the Lands Division is an important one.

Findings

3.11.2 There was no evidence of a formal Land Investigation Report (LIR) having been conducted by

the Lands Division of the Department of Central Province (DCP) to verify the huge 116,400 hectares of land being alienated for MHHLs SABL.

3.11.3. On the CP Sawit Ltd. Integrated Plantation Development Plan of December 2008 there is a Central Provincial Government PEC attachment for meeting no. 23/04 citing “Uda Mekeo Agroforest Development Project”. This PEC document appears to be the first official recognition of the project.

3.11.4. In the evidence of Lieutenant Colonel (Retired) Roger Kipo representing Uda Mekeo Farmers Cooperative Society he presents that there was an entity provided by CPG for the project in 2004. The company was Uda Mekeo Development Corporation Pty Ltd. however in not being supported by CPG it has become `defunct?.

3.11.5. He further states that following PECs endorsement of the Uda Mekeo Agroforest Development Project funding of K3.4million kina was applied for under a Public Investment Program (PIP) and appropriated under the National Agriculture Development Plan (NADP) in 2008. He states that at this time the project changed from Uda Mekeo Agroforest

project to the Mekeo Hinterland Agro Forest Project and the funds have been used by Mekeo Hinterlands Holdings Ltd. (MHHL).

3.11.6. There is also evidence on DEC file of a CPG PEC decision no. 16/05 approving funding of K18, 600 for the purposes of conducting a feasibility study for the Uda Mekeo Project.

3.11.7 In the Lands Department file a submission by Mr Manu Kala, Manager for Projects to the COI dated 1st November 2011 discloses that four CPG officers were part of the team that set out to conduct a Land Investigation Report (LIR) for Mekeo Hinterlands Agro Forest Project. The CPG officers and their designation is provided below.

Officer
Designation
Gulu Raga
Customary Lands Officer
Moses Kila
Provincial Valuer
Kila Bai
Technical officer
Author Unage
Cartographer

3.11.8 In the evidence of Albright submitted by their lawyer, Saulep Lawyers, a copy of an incomplete LIR was attached. The incomplete LIR showed names of individuals from only one village, Ibi village, from which the MHHL chairman comes. Of interest is the number of years agreed for by the villagers for alienation of their land, which was stated at 40 years duration. This was not followed in the SABL grant which showed 99 years. This incomplete LIR did not show a certificate in relation to boundary being signed or a recommendation as to alienability.

3.11.9 The evidence of Mr Manu Kala states that “Land Investigation reports (LIR) of the Mekeo Hinterlands Project was conducted in each village visited. Eight villages were visited. These were

Velei 1, Velei 2, Mariboi

1, Mariboi 2, Mariboi 3, Imounga, Ioi and Maipa. He states that the LIRs were taken by Gulu Raga for endorsement by the Provincial Administrator before returning them to DLPP.

3.11.10. On file is a letter dated 12 November 2007 signed by the Minister for Lands and Physical Planning Hon. Puka Temu to the DCP Administrator Mr Yibmaramba requesting that in light of the Lease/leaseback signing happening four days later on 16th November 2007, that the LIR be endorsed and returned immediately to DLPP.

3.11.11 As noted earlier the LIR deals with processes leading up to the alienation of customary land after a Land Investigation Number has been issued by DLPP and the LIR has been conducted.

3.11.12 The COI finds this as a direct and flagrant violation of due process where three important steps in the land alienation process was breached. Firstly, there was no Land Investigation Report (LIR) conducted. As highlighted earlier, the LIR is critical to determining the rightful landowners of the subject land and obtaining landowners approval for the land to be utilized for the planned project and the set number of years decided on. Also the LIR would ascertain ownership as to custom by both owners of the subject land and owners of adjacent land. The LIR would also lead to the appointment of agents by the people to act on their behalf, the agents signing Lease/leaseback documents and holding shares in the SABL holding company on behalf of clan members.

3.11.13 Secondly, there was no recommendation as to alienability of the subject land for SABL purposes as would normally suffice if a LIR had been conducted. The recommendation as to alienability would have been

signed by the Provincial Administrator after perusing the LIR and ascertaining that there was absence of Land dispute over the subject land. In this case it was found that the Provincial Administrator did not execute a Recommendation as to Alienation instrument.

3.11.14 Thirdly, the recommendation as to alienability would be taken with the LIR to office of the Secretary for Provincial Affairs and Local Level Government for registration. Following registration, the Provincial Affairs Secretary as custodian of Customary Land would issue a Certificate of Alienation over the subject land which is then passed on to Department of Lands for the Lands Department to action a few more processes leading up to issuance of the SABL. It is seen from the evidence before the COI that this was not done.

Recommendation

3.11.15. That because of the failure to comply with procedures leading to the issue of the SABL the SABL should be revoked. That a fresh LIR be conducted by the Department of Central Province with the walking of the boundaries and certification as to ownership by custom. That only after the LIR has been completed, agent agreement signed, recommendation as to alienation instrument signed, certificate of alienation issued, Lease/lease back agreement signed can further actions be taken under the procedures to process a SABL.

3.11.16. That Mr Gulu Raga be charged and disciplined for failing to comply with lawful direction to provide copies of the LIR to the Inquiry, thereby prolonging inquiry into the matter. That Mr Cliff Boutau, Manase Rapilla and Raphael Yibmaramba be reminded as to their respective roles

regarding SABLs and to be re-educated and reinforced as necessary regarding proper conduct of LIRs.

3.12 DEPARTMENT OF PROVINCIAL AFFAIRS AND LOCAL LEVEL GOVERNMENT

3.12.1 It was found that the Department of Provincial Affairs and Local Level Government was omitted from processing of the Mekeo Hinterland Holdings Ltd. SABL through the failure of DCP to present LIR and Recommendation as to Alienation so that it could process the issuance of a Certificate of Alienation.

Recommendation

3.12.2 That the Department of Provincial Affairs and Local Level Government be encouraged to submit as a matter of urgency for the amendment of the relevant laws to ensure the integrity of the office of the Custodian of Customary Lands in so far as issuance of Certificate of alienability covering all customary lands in Papua New Guinea is concerned.

3.13. DEPARTMENT OF LANDS AND PHYSICAL PLANNING

3.13.1 The DLLP was found to be the lead agency out of other government agencies in producing the SABL for the Mekeo Hinterlands Agroforestry project. The COI in its inquiry found gross irregularities and breaches in DLLP complying with the set SABL procedures. At the outset the Officers of the Department of Lands and Physical Planning failed to consult the Provincial Lands Office at the Department of Central by

issuing the Land Investigation Number authorizing the Provincial Lands Office to undertake land investigation.

3.13.2 Because of this anomaly, there was incomplete or total omission of the conduct of a Land Investigation Report (LIR). There was none sighted on DLPP file. There was a Lease/leaseback Agreement on file that was executed by 19 ILG representatives and the State through Minister for Lands dated 16th November 2007. There was also a gazettal in the National Gazette of Section 102 Notice of Direct Grant to MHHL dated 22nd November 2007. The copy of the SABL were also sighted. No other documents relevant to the SABL process were sighted.

3.13.3 Critical evidence as to landowner participation and involvement in the LIR, Certification as to ownership by custom, Recommendation as to Alienability instrument executed by the Provincial Administrator and Certificate of Alienation instrument signed by the Secretary of Provincial Affairs as the Custodian of Customary Lands, was not evident on file (or on any of the other files tendered by other COI witnesses).

3.13.4 The evidence of Mr Manu Kala as mentioned earlier states that "Land Investigation Reports (LIR) of the Mekeo Hinterlands Project were conducted in eight villages these being Velei 1, Velei 2, Mariboi 1, Mariboi 2, Mariboi 3, Imounga, Ioi and Maipa. He states that the LIRs were taken by Gulu Raga for endorsement by the Provincial Administrator before returning them to DLPP.

3.13.5 On file is a letter dated 12 November 2007 signed by the Minister for Lands and Physical Planning Hon. Puka Temu to the DCP Administrator Mr Yibmaramba requesting that in light of the Lease-Leaseback signing

happening four days later on 16th November 2007, that the LIR be endorsed and returned immediately to DLPP.

3.13.6 This is found to be a direct and flagrant violation of due process where three important steps in the land alienation process we find have been breached.

(1) Firstly, there was no Land Investigation Report (LIR) conducted. As highlighted earlier, the LIR is critical to determining the rightful landowners of the subject land and obtaining landowners approval for the land to be utilized for the planned project and the set number of years decided on. Also the LIR would ascertain ownership as to custom by both owners of the subject land and owners of adjacent land. The LIR would also lead to the appointment of agents by the people to act on their behalf, the agents signing Lease/leaseback documents and holding shares in the SABL holding company on behalf of clan members.

(2) Secondly, there was no Recommendation as to Alienability of the subject land for SABL purposes as would normally suffice if a land investigation had been conducted. The Recommendation as to Alienability would have been signed by the Provincial Administrator after perusing the LIR and ascertaining that there was absence of Land dispute over the subject land. In this case it was found that the Provincial Administrator did not execute a Recommendation as to Alienation instrument; and

(3) Thirdly, the Recommendation as to Alienability would be taken with the LIR to office of the Secretary for Provincial Affairs and

Local Level Government for registration. Following registration, the Provincial Affairs Secretary as custodian of Customary Land would issue a Certificate of Alienation over the subject land which is then passed on to Department of Lands for the Lands Department to action a few more processes leading up to issuance of the SABL. It is seen from the evidence before the COI that this was not done.

3.13.7. It has been noted in the evidence of Saulep Lawyers that a voluntary surrender of the title was made effective by DLPP dated 1st October 2010 on its Surrender of State Lease Form.

Recommendation

3.13.8 The C.O.I recommends since the SABL Lease has been surrendered to the State, that Mekeo Hinterland Holdings Limited renew their application consistent with the SABL process including transparency in the mobilization of the land through formal registration of the ILG process.

3.13.9 The customary land area recognised as suitable for a large scale agro- forest development should be approved by DAL and that the Developer we recommend should have the financial resources and capabilities to develop large scale agriculture commercial crops should not be a logging company in this instance, Albright Limited.

3.14 DEPARTMENT OF ENVIRONMENT AND CONSERVATION

3.14.1 A file was submitted to COI from DEC concerning the Mekeo Hinterlands Holdings Ltd. (YRL) application for Environment permits.

3.14.2 The table below shows the correspondences entered into between DEC and MHHL leading up to issue of the permits.

No	Date	Author	Sent to	Subject of Correspondence
1	09/05/2008	Chairman MHHL	A/Dep Secretary DEC (Mr Kelly Gawi)	Inquire on approval of their EIR
2	21/05/2008	Chairman (MHHL)	Director of Env. (Mr Kelly Gawi)	Submission of EIS
3	04/06/2008	Chairman (MHHL)	Acting Secretary DEC (Mr Kelly Gawi)	Acceptance of EIS for assessment
4	17/06/2008	Secretary DEC (Dr Wari Iamo)	A/Dep Secretary DEC (Mr Kelly Gawi)	Public review of EIS
5	02/06/2008	Andrew Rudaka	Secretary DEC	Ombudsman Commission investigation into Chairman MHHL
6	20/08/2008	Secretary DEC (Dr. Wari Iamo)	Chairman MHHL	Environment permit approval pending
7	15/09/2008	A/Secretary (Kelly Gawi)	Chairman MHHL	Rejection of EIS due to non- authenticity of report
8	24/10/2008	Chairman (MHHL)	Chairman Environment Council of PNG	Inclusion of bio-data information and response on authenticity of report
9				

07/10/2008

Director of Env. (Dr. Wari Iamo)

Chairman MHHL

Acceptance of amended EIS

10

10/11/2008

Secretary DEC (Dr. Wari Iamo)

Chairman MHHL

Rejection of EIS due to non- authenticity of report

11

17/11/2008

DEC

MHHL

Issue of Environment Permit to extract water WE-L3(155) for 25 years.

12

17/11/2008

DEC

MHHL

Issue of Environment Permit to discharge waste WD- L3(201) for 25 yrs.

13

05/08/2009

Joe Katape

MHHL

baseline data submission by MHHL

4. COI Inquiry File No. 38 for Special Purpose Agricultural and Business Lease over Portion 409C Volume 32 Folio 171 Milinch: Epo, Kairuku, Central Province in the name of Abeda Agro Forests Limited.

4.1 In accordance with the powers given to the Commissioners pursuant to section 7 of the Act, the Commissioners have summoned numerous witnesses to produce documents and be further examined on oath or affirmation.

4.2 Witnesses were called from the six government agencies involved in the issuance of the SABL. These were:

4.1.1 The Department of Central Province, (DCP)

4.1.2 The Department of Lands and Physical Planning, (DLPP)

4.1.3 The Department of Provincial Affairs and Local Level Government, (DPALLG)

4.1.4 The Department of Environment and Conservation, (DEC)

4.1.4 Department of Agriculture and Livestock (DAL)

4.1.5 PNG Forestry Authority (PNGFA)

4.1.6 Investment Promotion Authority (IPA)

Witnesses and Summonses

4.3 The names of the persons who have been summoned to appear and who have in fact appeared in the public hearings (in alphabetical order), including titles, are set out in the schedule below. For

ease of reference, the schedule also lists the transcript pages at which the person commenced giving evidence against the name of the witness.

No.	Name and Position	Pages	Transcript of Proceedings
1	Mr Joseph Fanau, Landowner & Director of AAFL	58-70	21/12/12-SABL 66 MIROU
2	Mr Andrew Manau Landowner & Chairman, AAFL	71-78	21/12/12-SABL 66 MIROU
3	Mr LAU SIEKON Managing Director, Albright Limited	5-19	21/12/12-SABL 66 MIROU
4	BOUTAU, CLIFF Special Project Officer, DCP	48-57	21/12/12-SABL 66 MIROU
5	RAGA, GULU Senior Lands Officer, DCP	32-48	21/12/12-SABL 66 MIROU
6	Dr HOSEA GEDION, PROFESSOR, UPNG and former Environment Council Member	24-31	21/12/12-SABL 66 MIROU
7	YIPMARAMBA, RAPHAEL (Provincial Administrator, DCP)	3-8	Thursday, 27 October 2011

4.4. Parties represented by counsel

4.4.1 Section 8 of the Act relates to the appearance of counsel before the Commission on behalf of interested parties. It provides that: "Subject to Section 2(5), a person who satisfies the Commission that he has a bona fide interest in the subject matter of an inquiry under this Act, and any other

person by leave of the Commission, may attend the inquiry in person or may be represented by counsel.”

4.4.2 The following were granted leave to be represented by counsel.

Party
Counsel
Albright Ltd
Saulep Lawyers

4.5 Exhibits and documents

4.5.1. There were (14)fourteen documents tendered as evidence before the Commission at the public hearings. A list of the Exhibits is shown below.

No	Item
Interested Party	
Date received	
Exhibit Number	
1.	IPA records concerning Abeda Agro Forests Limited
IPA	
Not sighted	
C.O.I Secretariat Register	
2	DEC file material
DEC	
Not sighted	
C.O.I Secretariat Register	
3	COI Submission
Joseph Fanau, Deputy Chairman Abeda Agroforest Ltd.	
23/09/11	
C.O.I Secretariat Register	
4	Statutory Declaration
Peter Manene Abeda Agroforest Ltd.	
27/10/11	
C.O.I Secretariat Register	
5	COI Submission
PNGFA	
10/09/11	
C.O.I Secretariat Register	
6	

COI Submission
Albright Ltd.
13/09/11
C.O.I Secretariat Register
7

COI Submission
Saulep Lawyers
21/09/11
C.O.I Secretariat Register
8

COI Submission
Saulep Lawyers
12/12/11
C.O.I Secretariat Register
9

COI Submission
DLPP

C.O.I Secretariat Register
10

COI Submission
Daniel Katakumb
13/12/2011
C.O.I Secretariat Register
11

COI Submission
Andrew Manau
20/12/11
C.O.I Secretariat Register
12

COI Submission
Joseph Fanau
20/12/11
C.O.I Secretariat Register
13

COI Submission
Peter Manene
20/12/11
C.O.I Secretariat Register
14

COI Submission
Joe Waede
20/12/11
C.O.I Secretariat Register

Albright Documents on Part
C.O.I
21/12/11
AAFL 1

of the Sub-lease Agreement and additional information

Logging and Marketing Agreement

C.O.I

21/12/11

AAFL 2

Information on Financial Assistance to Landowner in Particular Clause 4.2, 6.1 and 6.2 of the Sub-lease Agreement.

C.O.I

21/12/11

AAFL 3

Authorization for Log Pond from PNG Forest Authority

C.O.I

21/12/11

AAFL4

Land Suitability Assessment for Integrated Development Project in AAFL (Albright Limited)

C.O.I

21/12/11

AAFL5

Submission on Waste Management Plan submitted by AAFL to DEC

C.O.I

21/12/11

AAFL6

Bundle of Documents Relating to FCA and Agriculture Development Plan 2010-2014

C.O.I

21/12/11

AAFL7

Forest Participant Certificate issued by PNGFA to Albright Limited dated 21/6/06

C.O.I

21/12/11

AAFL8

Original Document of National Forest Service FCA03-02 Abeda Integrated Agro-forest Authority

C.O.I

21/12/11

AAFL9

Land Investigation Report

C.O.I

21/12/11

AAFL10

Agreement between Albright Limited and AAFL signed on 1 May 2008

C.O.I

21/12/11

AAFL11

IPA Extract for AAFL dated 30/8/11

C.O.I

21/12/11

AAFL12

Letter by Mathew Poiya MP in support of Abeda Agro-Forest Integrated Forest Development

C.O.I

21/12/11

AAFL13

Minutes of Meeting Environment Council EC 09

dated 10

December 2009

C.O.I

21/12/11

AAFL14

IPA letter-Extract for AAFL 15/11/11

C.O.I

21/12/11

AAFL15

Response by Mr Joseph Fanau to

C.O.I Summons

C.O.I

21/12/11

AAFL16

Response by Mr Joseph Waede to

C.O.I Summons

C.O.I

21/12/11

AAFL17

Response by Mr Andrew Manau to

C.O.I Summons

C.O.I

21/12/11

AAFL18

Response by Mr Peter Manene to

C.O.I Summons

C.O.I

21/12/11

AAFL19

Letter to Central Provincial Administration from AAFL dated 7/7/08

C.O.I

21/12/11

AAFL20

Logging and Marketing Agreement between AAFL and Albright Limited 22/09/08

C.O.I

21/12/11

AAFL 21

Land Investigation Report for Portion 29C (Sama Kuma Clan)

C.O.I

22/12/11

AAFL 21

4.6. Location

4.6.1 The subject land is situated north-west of Kubuna Catholic Mission Station along the Tapini Road and east of Bereina Government Station. The land is bounded by Angabanga River on the northern end and the Kubuna Road on the Southern end. It is generally east of Bereina Government Station of Kairuku District in the Central Province. Most of the land in the Central and Northern area is covered with dense forest.

4.7. Abeda Agro Forests Limited SABL

4.7.1 On 1st September 2008 a Notice of Direct Grant was issued by the Secretary DLPP under Section 102 of the Land Act was gazetted in the National Gazette no. G152. SABL title on Volume 32 Folio 171 dated 5th September 2008 and registered 11th September 2008 was issued by the Department of Lands and Physical Planning. The Lease covering a land area of 11,700 hectares was for a period of 99 years commencing on 25/07/2008 and expiring 24/07/2107.

4.7.2. The detail of the SABL is shown below:

Legal description

Portion 409C, EPO & Kairuku, Central Province

Registered Survey Plan Catalogue No.

42/382

SABL Holder

Abeda Agro Forest Limited

Date of Registration of lease

11th September 2008

Period of Lease

99 years

Land area of lease

11,700 hectares

4.8. Timeline of events of note surrounding Abeda Agro Forests Ltd. SABL Title

4.8.1 The timeline showing important events concerning the SABL is shown below in chronological order of their happening

No

Milestone

Date of Completion/Grant Execution/Issue

Proponent/ Applicant

Responsible Entity/ Respondent

1

Incorporation of AAFL

30 April 2008

Shareholders/Directors of AAFL

IPA/Albright Limited

2

Incorporation of Albright Limited

06 April 2006

Shareholders/Directors of Albright Limited

IPA/Albright Limited

3

Land Investigation Report

25 July 2008

AAFL/DLPP

AAFL/DLPP

Certificate of Alienability (by Cliff Boutau, Deputy Provincial Administrator)

Undated

AAFL/DLPP

AAFL/DLPP

4

Gazettal Notice of SABL Portion 409C to AAFL

05 September 2008

AAFL

AAFL/DLPP

5

Land Title Copy of SABL Lease

05 September 2008

AAFL

AAFL/DLPP

6

Agriculture Sub-Lease Agreement

22 September 2008

AAFL/Albright Limited

AAFL/Albright Limited

7

Notice of Preparatory Works

29 July 2009

Albright Limited

DEC

8
Notice to Undertake Environment Impact Assessment
17 August 2009
Albright Limited
DEC

9
Environment Inception Report (EIR)
30 April 2009

Approved by DEC on 06/10/2009

10
Environment Impact Statement (EIS)
21 May 2009
Albright Limited
DEC

11
Public Review
20 October 2009
Albright
DAL/DEC/PNGFA

of EIS to various Stakeholders by DAL and acceptance of EIS

Limited/Stakeholders

12
Minutes of EIS public hearing at Kubuna, CP
10 November 2009
Albright Limited
DEC/Stakeholders

13
Minutes of Environment Council Meeting No. 15/2009 (EC09/2009)
10 November 2009
Albright Limited
DEC

14
Ministers Approval In Principle
23 December 2009
Albright Limited
DEC

15
Application for Environment Permit
18 January 2010
Albright Limited
DEC

16
Environment Permit (25 years)
22 January 2010

Albright Limited
DEC
17
Waste
10 February 2010
Albright Limited
DEC

Management

Plan

Approval
19/02/10

18
DAL
Certificate of Compliance for large scale agro-forest conversion of forest to agriculture
10 December 2009
Albright Limited
DEC

19
PNG FA Public Hearing report (overwhelming support for project)
12 April 2008
Albright Limited
DEC

20
FCA Approved
27 July 2010
Albright/AAFL
Albright/AAFL/PNGFA

FINDINGS

4.8.2 The findings below follow the chronology of table of notable events above surrounding the SABL lease title held by Abeda Agro Forests Ltd.

4.9. IPA

4.9.1 The Investment Promotion Authority (IPA) is a statutory organization, established by an Act of Parliament in 1992, to promote and facilitate investment in Papua New Guinea. The IPA does this through various programs including the establishment and maintenance of a company/business registry, certification of foreign enterprise and promotion of investment opportunities in PNG.

4.10. Abeda Agro Forest Limited

4.10.1. The IPA file contains just the current extract of Abeda Agro Forest Limited (AAFL) dated 02 August 2011. AAFL is a limited liability company registered in the Register of Companies of the Investment Promotion Authority of PNG under the Companies Act 1997. The information on the extract shows that AAFL was incorporated on 30 April 2008 having its registered office at Section 225 Allotment 10 Kunai Street Hohola National Capital District. Also on file is a copy of a Certificate of Incorporation dated the 06th of April 2000 Company Registration no. 1-63262 of AAFL.

4.10.2 The C.O.I evidently confirmed with Mr Fanau (Directors of AAFL who gave evidence) on the current status of the company, that it was de-registered on 20 April 2010, basically for failure to file annual returns as required under the Companies Act. That means that company has no legal status to enter into any agreement for an on behalf of the company. Therefore any action or decision it has made as a company since 20 April 2010 has no legal effect and is null and void. It would merely have a domino effect on all the decisions it made with Albright Limited over the SABL lease.

4.10.3 A total number of five shares have issued so far equally divided between Directors /shareholders named as follows; Joseph Fanau of Dua village, Julian Inau of Dua village, Andrew Manau of Foio village, Joe Waede of Mone village, Brendan Waide of Aumala village .

4.10.4. No annual returns have never has been filed since the companies registration.

4.10.5. On the face of the information on the current extract the Shareholders/Directors of AAFL hold such a position not in trust for and on behalf of their ILG's groups or Landowner clans but the fact that they hold such position in their personal capacities.

4.10.6 The C.O.I finds that AAFL is not a Landowner umbrella Company as shares are not held in Trust for landowner clans but are instead held in company names.

AAFL Capacity to keep custody of Company documents

4.10.7 It also became evident to the C.O.I that landowner company executives and especially the Secretary was not exercising full control as the custodian of records of the Company. The evidence we elicited from Mr Lau, current MD for Albright was that all the documents relating to the Lease-Lease SABL title, the Agriculture Sub-lease Agreement, the DEC approvals were not in the possession of the Company, but with a Mr Dominc Woo, who was acting as Consultant to Albright.

4.10.8 It also became evident during the evidence of the three (3) landowner executives of AAFL that the ILG registrations were completed

and passed on to Mr Woo who organised the ILG Certificates. In addition, the Agriculture Sub-lease Agreement signed between AAFL Executives and Mr Woo at his place of work (Waigani Village Premises Unit 9) was done without any opportunity given to the landowners to consult a lawyer or their landgroups on an important agreement that will lead to Albright taking ownership of the land through the sub-lease agreement. (Refer to the evidence of Messrs Joseph Fanau and Peter Manene)

Recommendation

4.10.9 The Company is required to restructure its shareholding and directorship to reflect the number of ILGs represented in AAFL as an umbrella landowner company. Any resolutions concerning the project and decisions will require the assent of the appointed ILG Chairman of each ILG represented in the company.

4.10.10 The company must comply with Company requirements to submit annual returns and ensure that it is re-registered.

4.10.11. Albright through its agents Mr Dominic Woo must return all the ILG Certificates and SABL Title to AAFL forthwith.

4.10.12. The Company must ensure that the Secretary is fully aware of his duties and responsibilities as required under the Company Act to keep secure all relevant company documents. This was a trend that existed with all landowning umbrella company incorporated as a vehicle to forge alliance with foreign developers to develop the land with commercial agricultural projects.

4.11. ALBRIGHT LIMITED

4.11.1 Although there is no evidence of Albright document on file a perusal of the NFA file reveals a Certificate of Registration of Albright Limited dated 06 April 2006 Company no 1-56187. Also on file is the Certificate of a Foreign Enterprise to carry on business in an activity Company no. 1-56187 dated 20 October 2008.

4.11.2 Albright Limited appears to be the same developer in the SABL for Mekeo Hinterlands Holding Limited.

4.11.3 Albright Ltd. signed an Agriculture sublease agreement on portion 409C with AAFL. This Standard Sub-lease Agreement contains provisions that are grossly unfair to the landowners in terms of ownership of the infrastructure development, the tree crops and in event of objections and disputes arising the company can take out orders in the National Court to restrain them and be compensated for loss of revenue and other costs incurred. The C.O.I notes that this standard Sublease Agreement has been used in a number of SABL project currently under this C.O.I's review.

Recommendation

4.11.4 The landowners must be assisted by the Department of Commerce and Industry in terms of finding an investor that has the financial resources, reputable in delivering on high impact agricultural project and not a logging company. We recommend that the Sub-lease Agreement be revoked immediately.

4.12 Department of Central Province

4.12.1 The Department of Central Province is the bureaucratic arm of the Central Provincial Government whose primary role is to facilitate government policies and directives through the

work of its divisions of which the Lands Division is an important one.

Findings

4.12.2 Mr Raga Gulu who was the Provincial Lands Officer was involved in the Land Investigation and signed of the report. It became evident during his evidence that he conducted preliminary investigations and due to other commitments delegated the task to Mr Lazarus Malesa of DLPP to complete the rest of the investigation. When the report was completed, Mr Gulu signed it as the Investigating Officer. We find that this is unacceptable practice and we are concerned that such practice are allowed to occur at the convenience of lands officers whose task are to ensure that they have fully satisfied the requirements of the LIR process and signing it off.

4.12.3 Mr Cliff Boutau's evidence was that he was satisfied on the LIR conducted by Mr Raga, since he was a very senior lands officer and was quite capable and competent. He did not undertake any due diligence, whereas in fact there was evidence of lack of detail in relation to the evidence that only seven members of each ILG signed as landowners when the actual population was 1400. Mr Boutau admitted in evidence that he failed to carry out due diligence on the Report and signed the Recommendation of Alienability as Deputy Provincial Administrator.

4.12.4 Mr Boutau failed to recommend for reservation of full customary rights on the project area and in the process also failed to include the date he signed of the Recommendation for Alienability.

Recommendation

4.12.5 That any future land investigation conducted, any parts of the Report must be certified by the Officer who physically conducted that part of the Report, say for example, walking the boundary. That will alleviate the situation where misleading and falsity in the actual land investigation on the part of the officer who conducted the LIR. It is not a good practice to allow another officer to relieve another officer who is on the investigation unless it is of importance that relieve arrangements are organised with specific tasks.

4.12.6. All future Land Investigation Report must be scrutinised and due diligence undertaken by the Provincial Administrator before he signs the Recommendation for Alienability. This is one of the most abused process which has been found lacking not only in this SABL, but all the other SABL processed and evaluated by this C.O.I

4.13. DEPARTMENT OF PROVINCIAL AFFAIRS AND LOCAL LEVEL GOVERNMENT

4.13.1. No Certificate of Alienability was issued by the Custodian of Trust Land

Recommendation

4.13.2 That all future Recommendation for Alienability and the LIR be submitted to the Custodian of Trust Land for due diligence and certification for Alienability

4.14. DEPARTMENT OF LANDS AND PHYSICAL PLANNING

4.14.1 The C.O.I perusal of the Department of Lands and Physical Planning contained the following;

(1). A Lands Title copy of the SABL lease dated 05 September 2008 for Portion 409C Volume 32 Folio 171 Milinch: Epo and Kairuku, Fomil: Yule, Central Province.

(2). A copy of Gazettal of the Section 102 direct grant dated the 01st of September 2008, G152 under the hand of Mr Pepi Kimas

(3) A Draft notice of Section 11 Notice however there is no evidence of a gazettal of this Notice.

(4) A Land Investigation Report dated 25 May 2008.

(5) The LIR includes a Certificate in relation to boundaries dated 25 July 2008

(6) A Certificate of Recommendation as to Alienability which is undated and executed by Mr Cliff Boutai, then Deputy Provincial Administrator

4.15 DEPARTMENT OF ENVIRONMENT AND CONSERVATION

4.15.1 The Department of Environment and Conservation is an important agency in terms of regulating and permitting development activities on state and customary land in terms of the Environment Act 2000. The Department of Environment and Conservation (DEC) is an important agency in terms of regulating and permitting development activities on state and customary land in terms of the Environment Act 2000. Defined by the Act (2000), the Project and its associated activities are prescribed and involve matters of national importance, or which may result in serious environmental harm. Therefore, the regulatory process requires prescribed activities of the identified level (1-3) to be put through the environment impact assessment process which would enable thorough evaluation by DEC and recommend relevant improvements to the proposal or its environment management regime before an Environment Permit is issued.

4.15.2 A file was submitted to COI from DEC concerning the Abeda Agroforest Ltd. application for Environment permits. The table below shows the correspondences entered into between DEC and Abeda Agroforest Ltd leading up to issue of the permits.

4.15.3 This Environment Permit amended the earlier permit issued to include Kara log pond the loading of timber for export. This particular amended permit was issued without public consultation. In a minute

dated 02 August 2010 Michael Wau the Acting Executive Director Environment Protection Wing to the Secretary DEC which minute states the reasons for the no public consultation as follows:

- i. Kara log is an exciting site previously used as a jetty for loading of timber ;
- ii. As da previously disturbed site no substantial harm in re using the pond
- iii. Landowner consent was obtained. (evidence of such a consent not on file)

4.15.4. A Waste Management Plan for the Kara Log Pond Wharf project dated September 2010

4.15.5. On face of the evidence on this file the Developer may have met all legal requirements under the Environment Act 2000. However, the C.O.I is concerned that for any applications for permit to occur in the high impact agricultural project, the Developer must as a matter of procedure obtain DAL Agricultural Clearance (Form 235) which will lead to FCA approval from the PNG Forest Authority.

4.15.6 The C.O.I notes that the Notice of Preparatory Work was submitted by Albright to DEC on 29th July 2009. DAL approved compliance for agricultural project to be undertaken in forested areas of the project site on 10th December 2009. The most crucial factor is that the DEC process was commenced almost simultaneously to the DAL application under Form 235. The Ministerial Approval in Principle was issued by the then Minister on 23 December 2009. This aspect of the C.O.I concern is propounded by the lack of co-ordination between key agencies of

government to forge collaboration and realistically deal with Developers who intend of circumventing the process and in most cases taking advantage of the current situation faced by the line agencies responsible for land use, forest clearance and agriculture component.

4.15.7 The Commission was able to obtain reliable information from the former Council member of the DEC Council on this aspect. The Commission reproduce extract of Dr Hosea Gideon, currently an Academic and Professor attached to the School of Physical Science, UPNG evidence on the Council's decision making process as follows

"A: Yes, the business paper was EIS for Abeda Integrated Agriculture Project.

Q: Could you advise us what EIS stands for? A: The Environmental Impact Statement.

Q: And that is the statement that the Council looks at prior to issuing a permit?

A: That is correct.

Q: Dr Gedion, I will just take you to paragraph 5 of that Item 5, where it reads; "Dr Gedion expressed concern over the surrounding logging – logged-over-area which the company should consider to develop into agriculture logs, than to log out and clear a new forest." Can you see that paragraph?

A: Yes.

Q: Are you able to explain to us what your concern was there? A: Thank you. As expert on the eco-systems and bio-diversity, my concern was that the project area is a known high- population density, and there has been a lot of developments and a lot of forest degradation in the area. I also understand that the present – that the project is going to log out some of the areas that was originally – I think TRP project area. So the concern I raised with the Council was if the project or the developer was serious with agriculture development, there is already enough degraded land around to convert to oil palm plantations. This is a concern I made for this project but it is a concern I could make and I ask Commission for permission to make a submission in general for similar projects in relation to bio-diversity concentration in this country.

.....

A: Thank you, Commissioner. I would like to do that as soon as we come back to the hearing again. But the concern was that there is quite a lot of degraded land in the area and any serious development would obviously start with already degraded land rather than clearing forest. There is already a lot of concern about high bio-diversity areas being cleared and the government has no policy at the moment on regulating land allocation for all of these projects. We lose

a lot of bio-diversity, we lose a lot of eco-systems and as a concern as enshrined in our Constitution, we have an obligation to share the wealth that God has given us to future generations; and I think we will fail our future generations if we do not do that. Government needs to take serious steps in developing policies to address these issues.

Q: So, Dr Gideon I take it from what you have just said that it may have been unnecessary for Albright the developer to have requested for another permit when there was already land that had been cleared previously and that they could have used that land to go into oil palm planting. Is that what you are saying?

A: That was the position I had.

Q: And I see from the minutes of this meeting which I have given to you that the council proceeded anyway and accepted the environment impact statement?

A: Yes, that is correct.

Q: And subsequent to that, based on that environment impact statement a license was issued?

....

A: Approval in principle, that is right.

.....

A: By the minister, yes.

MS KOISEN: Dr Gideon, if I can just refer you to paragraph 10 as well of item 5. You obviously made a comment also again a concern over the conservation of the environment with regard to flora and fauna which you have just covered and you asked the council to take a stand in laying a bench mark for certain percentage of that particular forest area to be excluded from logging. Are you able to advise us as to whether or not council has taken this matter any further to your knowledge?

A: To my knowledge, the council has not further taken any serious steps in particular to the area or project area. There is a - if I may point out that there is a statement on - statement number 9 by Dr Kalinoe, if I could read that. Dr Kalinoe said; "To accept the - for Abeda Integrated Agro project on the condition that every 500 hectares logged should be developed into agriculture before the next 500 hectares is logged."

Q: To your knowledge, has that been – has Environment Department abided by that recommendation?

A: To my knowledge, no.”

(Refer to pages 25–26 of Transcript SABL 61–Mirou)

4.15.8 His views on the process of DEC’s involvement in evaluating and processing application for Level 3 environment impact projects

“

Q: Okay, being a member of the council and to Environment and Conservation you also look at agricultural reports that are provided because it is also relates to the soil suitability?

projects at the moment are – the agriculture processes,

And I think something needs to be done in coordinating the government processes. “

(Refer to page 28 of Transcript SABL 61–Mirou)

“If I may also just – just another point I would like to mention, but I will put it in my submission. It relates to dealing with the landowners. I presume that the Government needs to take more – provide more support to the landowners. They need to be able to provide some kind of assistance so that the landowners understand documents before they sign. And I took as a nationalist where– ever I went I tell the people that if you cannot understand the documents, get somebody else to read it and explain to you

before you sign and in particularly the two log export agreements and that kind of thing. So what the landowners hear is 6 million they are going to get, they do not know how much that company is going to get, how much the Government will get, they are only told what they are going to get. And these are some of the issues that although they may be in the document, may be, not clearly explained to them.”

(Refer to page 30 of Transcript SABL 61–Mirou)

Recommendation

4.15.9. The Director of Environment must thoroughly assess on receipt of the Notice of Preparatory Work from Project Developers to ascertain if DAL has in fact completed its assessment process. It would be useful for all that information to be availed subject also to PNG Forest Authority approval for FCA. This also is dependent on the DLPP SABL lease back process.

4.15.10 The C.O.I recommends that the ideal process is that DEC approval must be commenced

as soon as DAL completes its assessment on all the relevant documents submitted to DAL by the Developer. The DEC Council should only act if DAL, PNG Forest Authority and DLPP complete their process. The process is that there is a land approved for that purpose under the lease back system (DLPP), agriculture component is also approved by DAL and subsequent to that PNG Forest Authority approval for FCA.

4.15.11. The permit must also take into consideration the conservation of any areas within the project site that may affect biodiversity. It is important that serious considerations for the conservation of these areas are to preserve the flora and fauna that co-exist on that land for breeding, migratory and habitation.

EAST SEPIK PROVINCE
Protestors-ESP SABL Hearings

Log Pond at Nagam -logging activity, ESP

1. COI Inquiry File No. 20 for Special Purpose Agricultural and Business Lease over Portion 146C Volume 14 Folio 19 Milinch: Marienberg, East Sepik Province in the name of Brilliant Investment Limited.

1.1 In accordance with the powers given to the Commissioners pursuant to section 7 of the Act, the Commissioners have summoned numerous witnesses to produce documents and be further examined on oath or affirmation.

1.2 Witnesses were called from the six government agencies involved in the issuance and operation of the Brilliant Investment Limited SABL. These were:

1.2.1 Department of East Sepik Province, (DESP)

1.2.2 Department of Lands and Physical Planning, (DLPP)

1.2.3 Department of Provincial Affairs and Local Level Government, (DPALLG)

1.2.4 Department of Agriculture and Livestock, (DAL)

1.2.5 Department of Environment and Conservation, (DEC)

1.2.6 PNG Forest Authority (PNGFA)

1.3. Witnesses and Summonses

1.3 1 The names of the persons who have been summoned to appear and who have in fact appeared in the public hearings (in alphabetical order), including titles, are set out in the schedule below. For ease of reference, the schedule also lists the transcript pages at which the person commenced giving evidence against the name of the witness.

No

Name and Position

Pages

Day

Date

1
Mr Peter Yapog, Acting

5-18

2
09/02/12-SABL 2 WEWAK

Provincial Customary Lands

Officer, Division of Lands

3-19

4
13/02/12-SABL 4 WEWAK

&Physical Planning, DESP

2
Mr Richard Kali, Provincial

18-35

2
09/02/12-SABL 2 WEWAK

Forest Officer DESP

19-21

4
13/02/12-SABL 4 WEWAK

3
Mr Tony Hobiagu Unattached Public Servant and formerly Acting Provincial Adviser, Division of
Agriculture & Livestock, DESP

36-47

2
09/02/12-SABL 2 WEWAK

4
Mr Moses Gawi, Landowner, Chairman of Marienberg Hills Resource Development Limited

52-106

2
09/02/12-SABL 2 WEWAK

5
Mr Andrew Bracamonte, Project Manager, Brilliant Investment Limited
106-131

2
09/02/12-SABL 2 WEWAK

6
Mr Francis Warren, Unattached Lands Officer (on retrenchment), DESP
21-40

4
13/02/12-SABL 4 WEWAK

7
Mr Francis Daink
12-26

05/09/11-SABL13 (Waigani)

2-33

06/09/11-SABL (Waigani)

8
Mr Leka Mou
1-33

8
29/02/12-SABL8 WEWAK
(Waigani)

1.4 Parties represented by counsel

1.4.1 Section 8 of the Act relates to the appearance of counsel before the Commission on behalf of interested parties. It provides that:

“Subject to Section 2(5), a person who satisfies the Commission that he has a bona fide interest in the subject matter of an inquiry under this Act, and any other person by leave of the Commission, may attend the inquiry in person or may be represented by counsel.”

The following were granted leave to be represented by counsel

1.5. Exhibits and documents

1.5.1 There were Sixteen (16) documents tendered as evidence before the Commission at the public hearings. A list of the Exhibits is shown below.

No
Item
Interested Party
Date received
Exhibit Number

1

Letter by Mr Tony Hobiagu, Acting Provincial Adviser, Division of Agriculture & Livestock dated 8th August, 2008

COI

09/02/12

BIL "1"

2

Letter by Mr Tony Hobiagu dated 23rd September, 2008 to Mr Moses Gawi re: Marienberg Hill Project

COI/Marienberg Hills Development Limited

09/02/12

BIL "2"

3

Binding Agreement dated 1 November, 2006 signed between Mr Henry Ling, General Manager– Brilliant Investment Limited & Mr Moses Gawi, Marienberg Hills Limited

COI/Marienberg Hills Investment Limited/Brilliant

09/02/12

BIL "3"

4

Submission to the COI by Mr Moses Gawi on behalf of Marienberg Hills Development Limited. Received by the COI on 6 October, 2001.

COI

09/02/12

BIL "4"

5

Angoram Large Scale Integrated Agriculture Project Proposal–Cocoa Development Projects

COI

09/02/12

BIL "5"

6

Angoram Large Scale Integrated Agriculture Project Agriculture Land Use Plan and Updated Implementation Schedule

COI

09/02/12

BIL "6"

7

Progressive Monthly Report dated 23rd January,

COI

13/02/12

BIL 7

2012 on Angoram Large Scale Project by Mr Kali, Provincial Forest Officer, DESP

8

Land Investigation Report for Land Fourmil Vanim/Bogia Milinch Angoram/Marienberg–Land Reference 1419/0146C

COI

14/02/12

BIL "7"

9

Annexure of Valuer General's Report on the Valuation of the Land, Part of Document 8 and Document Number 3 of the Land Investigation Report.

COI

14/02/12

BIL "8"

10

Lease of Land Deed, (Unsigned)–Certificate By Officer executing Document (Unsigned)

COI

14/02/12

BIL "9"

11

Draft Partnership Agreement

COI

14/02/12

BIL "10"

12

Certificate of Incorporation of Land Groups

COI

14/02/12

BIL "11"

13

Form 165–Landowner Consent Forms

COI

14/02/12

BIL "12"

14

Petition dated 31 January 2012 to the Manager, Star Avenue by Clement Komba under Marienberg Hills Resources Development Limited letterhead

Brilliant/Star Avenue/COI

14/02/12

BIL "13"

15

Petition under letterhead of Marienberg Hills Resources Development Limited to Camp Manager, Star Avenue

Brilliant/Star Avenue/COI

14/02/12

BIL "14"

16

Minute dated 11 November, 2008 by Mr Leka Mou to Deputy Secretary, PAT, DAL re: Marienberg Project

DAL Secretary

29/02/12

LM"1"

1.6. Timeline of events of note surrounding Brilliant SABL Title

1.6.1. The timeline showing important events concerning the SABL is shown below in chronological order of their happening:

No
Milestone
Dated of Completion/Grant/Issue Execution
Proponent/Applicant
Respondent Entity/Respondent

1
Incorporation of Brilliant Investment Limited
06/07/2004
C.O.I
C.O.I

2
Incorporation of Marienberg Hills Investment Limited
11/10/2006
C.O.I
C.O.I

3
Binding Agreement between Marienberg Hills Limited and Brilliant
01/11/2006
C.O.I
C.O.I

4
Land Investigation Report(s)
10/01/07
C.O.I
C.O.I

1.7. FINDINGS

1.7.1. The findings follow the chronology of table of notable events above surrounding the SABL lease title held by BRILLIANT.

1.8. Brilliant Investment Limited SABL

A Notice of Direct Grant under Section 102 of the Land Act was made in the National Gazette no. G22 dated 25th February 2007 for Portion 146C Marienberg Land. The term of the lease was for ninety-nine (99) years. A Special Agricultural and Business Lease was registered and issued on 12th February 2007 by the Department of Lands and Physical Planning to the holder Brilliant Investment Limited (BRILLIANT). Mr Pepi S. Kimas

signed as delegate of the Minister for Lands. The detail of the SABL is shown below:

Legal Description
Portion 146C
Registered Survey Plan Catalogue No
3/605
SABL Holder
Brilliant Investment Limited
Date of Registration of Lease
12th February, 2007

Period of Lease
Ninety-nine (99) years
Land area of lease
25, 600.0 hectares

1.9. IPA

19.1 The Investment Promotion Authority (IPA) is a statutory organization, established by an Act of Parliament in 1992, to promote and facilitate investment in Papua New Guinea. The IPA does this through various programs including the establishment and maintenance of a company/business registry, certification of foreign enterprise and promotion of investment opportunities in PNG.

Findings

1.9.2. The proposed developer for the SABL is Brilliant Investment Limited and is registered title holder of SABL Portion 146C Brilliant Investment Limited (Brilliant) is a limited liability company registered in the Register of Companies of the Investment Promotion Authority of PNG under the Companies Act 1997. The Company was incorporated on 6th July, 2004 and the current Principal Place of Business is Section 515 Allotment 25 & 26, Waigani, Hohola, National Capital District. As at 2nd August, 2011 IPA records confirms that it is operating. The Company number is 1- 51701.

1.9.3. The latest IPA company extract provided to the Commission dated 2nd August, 2011 indicates 2 shareholders namely Chung Ching TING holding thirty-six (36) ordinary shares and Min Yong YU holding sixty-four (64) ordinary shares in Brilliant. This indicates that the majority shareholding by two foreign nationals of Malaysia makes the company a foreign company. The company has issued 100 ordinary shares in the company to the two foreigners.

1.9.4 The extract discloses both Messrs Chung Ching TING and Min Yong YU also as Directors of the company. No company Secretary was appointed by the company. The Annual return for the company was made up to 30th June 2011. The principal activity of the company is the "Export of Timbers within the Forestry Sector. It commenced operations as at 5th January, 2005.

The formation of Brilliant Investment Limited

1.9.4. Company registry searches with the IPA and in this instance the Commission examined the status of Brilliant Investment Limited pursuant to historical extract obtained from the IPA on 19 September 2011. SABL grantee, Brilliant Investment Limited was registered and incorporated by one PNG national Toripe Koava on 6 July 2004 holding 100 shares. It is currently operating. However on 25th or 26 April 2005 these 100 shares were transferred to Gohill Timber SDN BHD, a company with a Malaysian registered officer. It is unknown at the time of this report whether it was registered with IPA as a foreign company in PNG.

1.9.5. Over the course of five years Gohill Timber SDN BHD did transfer much of its 100 shares as follows; 35 shares to one Ling Neng Lii (otherwise

known as Henry Lii) a Malaysian national resident at Section 38 Allotment 29 new Hohola commercial estate Gordons NCD and the transfer was effected on 1 January 2006. Twenty (20) shares were then transferred to Ting Chung Ching (otherwise known as Douglas Ting), a Malaysian national resident at Section 38 Allotment 29 new Hohola commercial estate Gordons NCD on 1 January 2006. 45 shares were then transferred to one Yu Ming Yong a Malaysian national resident at Section 38 Allotment 29 new Hohola commercial estate Gordons NCD on 1 January 2006. On 6 July 2009 Neng Lee Ling transferred his or her shares to the other two shareholders as follows: Chung Ching Ting received 16 shares and Ming Yong Yu received 19 shares.

1.9.6. On August 27 as confirmed by examination of the historical extract obtained from the Company's register by order of the National Court, Brilliant Investment Limited was placed under receivership with James Kruse of Deloitte Touche Tohmatsu appointed as receiver of the company's property. However, this was discontinued on 29 November 2007 with the agreement of all parties. Both shareholders Chung Ching Ting and Ming Yong Yu remain as current shareholders and also as company Directors at that time.

1.9.7. There is no evidence on the IPA Extracts of any appropriate foreign enterprise certification, although the Commission acknowledges that have shareholding of the company is above 51 percent PNG nationally owned.

Marienberg Hill Resources Development Limited

1.9.8 Marienberg Hill Resources Development Limited (MHRDL) is a limited liability company registered in the Registrar of Companies of the

Investment Promotion Authority of PNG under the Companies Act 1997. The Company was incorporated on 11th October, 2006 and the current principal place of business is Section 515 Allotment 4 & 5, Waigani Drive, Gordons, National Capital District. As at 19th September, 2011 IPA records confirms that it is operating. The company number is 1-7860.

1.9.10 The latest IPA company extract provided to the Commission dated 19th September, 2011 indicate 10 shareholders of MHRDL each holding 100 ordinary share in their capacities as landowner representatives of seventy-five ILGs within the Marienberg SABL Cocoa project area. The shareholders are Messrs Joe Andi, Moses Gawi, Xavier Kasia, Simon Kasimo, Simon Kuaien, Anton Kusi, Leo Makis, Melchior Mangino, Hillary Patua and Nelson Tabi and most of them reside in their village in the Angoram District. Moses Gawi is the current Chairman of the MHRDL.

1.9.11. The extract discloses Messrs Moses Gawi, Simon Kuaien, Joe Andi, Nelson Tabi and Simon Kasimo as Directors of the Company.

1.9.12 The shareholding structure of the company does not adequately cover the majority of the 75 ILGs listed in the submission by Mr Gawi to the COI (Exhibit BIL"4"). In evidence, Mr Moses Gawi expressed overwhelming support for his chairmanship and that the majority of villagers actually supported the engagement of Brilliant as a developer for logging activity and the cocoa project. This is shown below in the listing of ILG provided to the Commission.

No
Village
ILG

No
Land Group
Chairman
No
Village
ILG
No
Land Group
Chairman
1
Mamber
4234
Oro
Moses Gawi
39

Waueh
Henry Pokai
2

6802
Orona
Peter Krebo
40

Amoyana
Bath Yatu
3

6801
Momuin
Samson Sale
41

Amai
Alber Yari
4

6804
Kuna
Clement Kombe
42

Sainea
Peter Boga
5

6805
Daruma
Leonard Mira

6

6803
Rongorua

43
Suk

Kambreto
Simon Koien

44

Momuina
Joe Salle
7
Mansep
4247
Duangua
Arnold Biari

8

4237
Momunua

45
Bian

Yuaton
Cletus Bob
9

6812

Gasina
Theo Parun
46

Hukai
Melchior Baipu
10

4231
Tae
Leo Wakamo
47

Kiando
Luke Apeso
11

4243
Boana
Joe Warui
48

Sumbrum
Kony Maiua
12

4242
Yakana
Yakana
49

Kanaputo
Michael Mara
13

4246
Roamo
Andrew Asipa
50

Kaparo
Danny Wasu
14

4241
Mogit

Valentine Singe

15

4244

Momuin

Andrew Andi

51

Mabuk

Yuaton

Terrance Massange

16

6799

Kurari

Jackary Paren

52

Ymuto

Lawrence Wakia

17

4245

Newa

Joe Andi

18

4238

Kuina

Simon Kasimo

53

Ariapa n

Olemanai 1

Linus Arimba

54

Olemanai 2
Raphael Suari
19
Gavien
4248
Yokna

55

Mukusinea
Augustine Bogobu
20

4239
Yona
Amba Natape
56

Wakapniel 1
Titus Auia
21

4225
Wakap 42
Leo Wapo
57

Wakapniel 2
David Wagiso
22

4226
Rongumi
Lawa Wanga
58

Wakapniel 3
John Gari
23

4221
Mania
Kenuth Tun
59

Atemniel
Mathew Maso
24

4222
Fremo
Tatius Andi
60

Moareniel
Juth Simai
25

4229
Gaweka
Michael Yawgin

26

Momina
Paul Kima
61
Manga n

Mangana
Xavier Gasia
27

4223
Moarem
Jack Kasemo
62

Arena
Christiengegane

63

Wena
Sonny Yatu
28
Boanam
6800
Wamana
Daniel Naga
64

Mavetwa
Smeky Babi
29

4229
Matari
Tatake Onol
65

Tukna Yono
Herman Bau
30

4238
Mreana
David Mandawa
66

Gokina
Paul Aipa
31

4230
Arro
Peter Paki
67

Tavakop
Luke Taria
32

Waimuna
Henry Patua
68

Andaren
Eddy Wino
33

4240
Homina
Joe Salle

69
Waskur in

Arigunial
Steven Pandiku
34
Mosan
6803
Sikhamat
Mathew
70

Bugi
Isaac Sapiel
35

6809
Akunea
Raymond Mapo
71

Soboatiel
Jerry Patua
36

Frame
Damban Gokiuon
72

Solonbok

Augustine Salle
37

Momina
Yakaue Hym
73

Koanek
Martin Bigso
38

Mamariang
Joe Kusi

1.9.13. The following Instances reveal a serious lack of landowner involvement including majority consent on the engagement and authorization of Brilliant to be named as the grantee of the SABL Title

and also as the Developer of the high impact cocoa project at Marienberg land, Angoram.

* The listing of ILG registration numbers are missing for villagers numbered 26, 32, 36–73 totalling 40 villagers. There was no explanation from the Chairman as to why these villagers were not registered at the time the ILG registration was conducted in 2006 by Mr Gawi and his Directors.

* A Mr Joe Salle appears as Chairman of ILG 4240 Homina village (Number 33) and at the same for Momuia village (Number 44). There was no explanation provided for that discrepancy.

* The shareholding within MHRDL does not disclose the inclusion of all the individual chairman's of each village or ILG and there is a major deviation from the majority consent and evident that there is lack of fair representation of the villagers in MDRDL.

* Joe Andi is from Gavien village and not Mansep village. (page 83– Gawi 9/2/12)

* Mr Gawi in evidence confirmed that Waskirin village comprising ILG numbered 69–73 was not originally named within the Marienberg project in 2006 and was added recently to the list. He states that “Waskirin Village was originally with the Sepik River Development Corporation and its village was outside the SABL held in the name of Brilliant. They are according to Mr Gawi not genuine landowners and would be considered as a ploy on the part of Mr Gawi to include ILGs

and villagers who are not genuine landowners. (Moses Gawi–SABL2– Wewak–9/2/2012 at pages 86–87).

* Despite Mr Gawi's contention that majority of the clan leaders within the Marienberg project area had agreed to engage Brilliant relative to logging operation as well the proposed large scale cocoa project in 2006. It was revealed by documents submitted to the COI on 11th August 2011 that about 25 clan leaders within the project area raised serious concerns about their initial support and subscribed consent in Consent Form 165 on 27th July 2006 at Mansep village. The leaders in their statements dated 8th November 2008 expressed disappointment over benefits being derived from logging, the lack of awareness conducted by the Provincial Forestry Officer, one Richard Manjo when the consent forms were signed. They also rejected the view that all the leaders agreed that SABL title to be issued to the Brilliant.

* The leaders whose statement was attached to duly filled Consent Form 156 dated 27th July 2006 at Mansep include leaders whose name appear on the ILG listings seeking withdrawal of their Timbers Authority consent which was ultimately used to legitimise the grant of SABL over Marienberg land as follows

No
Name of Leader
Village
Clan
1
Raphael Digi

Momina
2
Zachary Kasi

Kurari
3
Simon Wandio
Mansep
Yakana

4
Joe Andi
Mansep
Wena

5
Tom Tobo

Kuina
6
Harry Wabo
Mansep
Momin

7
Arnold Biari
Mansep
Boangue

8
Bernard Warui

Boana

9
Valentine Wapi
Mansep
Mogi
10
Theodore Parum Wagame Maino

Gasina
11
Herman Asipa

Roamo
12
Tadius Mori
Gavien
Preme

13
Jack Kasemo
Gavien
Merena
14
Michael Nuguanie
Gavien
Gavenna

15
Leo Wapo
Gavien No. 1
Woikap
16
Lawrence Wanga
Gavien
Longumi

17
Bameh Kaph
Gavien
Youna
18
Theo Koruma
Gavien
Yokna
19
Paul Kimh

Mominah
20
Zachary Kaisi
Mansep
Kluari
21
Martin Wandea

Gavien
Mania
22
Joe Warui
Mansep
Boana

* The consent form were not signed by the clan leaders and is deemed to be signed by persons having no authority to sign on their behalf

1.10. Binding Agreement 1 November 2006 Between Mr Henry Ling, General Manager of Brilliant Investment Limited and Mr Moses Gawi of MHRDL (Exhibit BIL “3”)

1.10.1. The C.O.I noted with interest prior to the SABL, an agreement was entered into between the Marienberg Hills Development Limited and Brilliant. This was to invite Brilliant to undertake logging within the Marienberg area under the replaced TRP concession as was understood by the C.O.I from the evidence of the Mr Gawi.

1.10.2 Mr Moses Gawi confirmed that he signed the agreement with Brilliant in Port Moresby with the MD of Brilliant on the Marienberg project. The major transaction was not agreed to by the majority of the landowners as represented by the Shareholding/Directorship of the company. This is contrary to the requirements of the Companies Act, where the Resolution of the Company is necessary over major decisions of the Company.

We reproduce relevant parts of his evidence as follows

“MS PEIPUL: Now that this Agreement has been tendered, we can just go through a few of those. Unfortunately, we only just have two copies of this document, so perhaps, I can give it to the witness; just a few issues within the – just a few points.

Firstly, in clause 3 – or, perhaps, going back to clause 1, Commissioner. It is just reference to the area in which you are intending to develop or enter into agreement about. It says 26 to 30,000 hectares, but the land is essentially the same land that is now over which – because there are annexures that we do not have on this.

about.

Q: But as you can see, it is 26,000 to 30,000 and the SABL is 26,000 – a bit over 26,000 hectares, so that is confirmed of the same area.

I think within clause 3 – we turn to clause 3, and you will note that there is only mentioning of logging. There is no mentioning of – there are particulars – a mention of Agriculture Development Agreement; however, the SABL as an entity over which a particular will be granted is not mentioned

within this particular clause.

that correct?

Q: In 2006 when you initially negotiated with Brilliant, were you only negotiating over logging or was that the genuine agriculture component within the initial negotiations?

in. So I thought my people will be happy with the

have got cocoa. Cocoa is already established in our area,

on the Forest PFMC and also National Forest Board.

Q: So you are saying there was a genuine agriculture component that you intended to develop with Brilliant Investment. Is that correct?

A: Exactly, Counsel, yes.

Q: But you are aware now these issues are ongoing with Brilliant with respect to shut down; stopping of logging and so forth? There are issues now---

A: That, Counsel, I would not elaborate too much on that because in this time of hearing, I cannot just jump the gun and come and tell you that, tomorrow, I am closing down the project; I am closing this and that; I cannot do that. If Forestry wants to do that, they should have done it long time, yes,"

(See evidence of Moses Gawi on 9/2/12 SABL 2-Wewak at pages 68-74)

1.10.3. The C.O.I notes from that evidence that while the Developer was already on the project site harvesting logs under the TRP concession, the Forestry Act was amended in 2007 introducing the FCA and the need to utilise the SABL process so that agriculture component is tied to the FCA.

1.10.4. The C.O.I finds that this very transition is a common thread that was cunningly utilised in the New Ireland Province by Tutuman over the SABLs that it benefits from under the Agriculture

Sub-lease Agreement. Basically Mr Gawi was also misguided in this venture because he was misled by the erroneous advice offered by the Provincial Lands Office on the appropriate way to deal with SABLs and the FCA requirement for large scale agriculture component. We find that this very same cunning was employed in this particular SABL and this was so entrenched because the Lands Officer Mr Simon Malu once again in his notoriety for

failing to produce a full LIR conveniently short circuited the process to enhance Brilliants continued logging presence in the area, under the SABL and FCA component.

1.11 Department of East Sepik Province

1.11.1. The C.O.I determination of the Land Investigation process is that no LIR was conducted by the Provincial Lands Officer Mr Peter Yapog. He told the Inquiry that his colleague Mr Francis Williams was responsible for the Land Investigation.

1.11.2. Mr Francis Williams appeared before the C.O.I and his evidence basically was that Mr Gawi had approached him for advise on the need to include the Marienberg land as an SABL.

1.11.3. Mr Francis Williams is a veteran public servant and an Unattached Officer at the time he gave evidence to the C.O.I at Wewak. He had served as a Provincial Lands Officer for up to 17 or 18 years and well acquainted with field investigation concerning land matters. He was sincere and honest to inform the Inquiry that Mr Gawi had inquired with his Office on the need to convert Marienberg land into SABL. Mr Williams told the inquiry of the sequence of events on his advice as follows;

1) In 2006 he advised Mr Gawi , “that he is to liaise closely with the District Lands Officer-In-Charge, the Angoram District Administration of which Marienberg falls under Angoram District Administration”, with regard to the conduct of Land Investigation and ILG registration.

2) Later on that year 2006, Mr Gawi invited Mr Williams to advise the Board Members of the Marienberg Hills Development Limited in a more informal setting at Wewak on the need to undertake Land Investigation and this time to carry out large scale cocoa project on the Land. Mr Williams advised them to see the District Lands Officer based at Angoram to assist them with their request and he also explained that the SABL process was a useful process to undertake agro-forest activity. Mr Wiliam however failed to obtain more information from DLPP as his knowledge on the SABL process and procedure was virtually minimal.

1.11.5 The C.O.I finds that this trend of Provincial Lands Officers and even those in DLPP and other key agencies need to formalise a training module in order to enhance the officer involved in the field land investigation to be better equipped to render advice and undertake the land investigation diligently and effectively without questions been raised as to the irregular practices the C.O.I notes exists which is detrimental to the indefeasibility of title.

Recommendation

1.11.6 That the SABL be revoked pending a fresh LIR to be re-conducted by the Department of East Sepik Province with the walking of the boundaries and certification as to ownership by custom.

1.11.7. He gave wrong adviseto Mr Gawi on the process. and it is this Commissions Recommendation that DLPP undertake workshops to assist the Provincial Customary Lease Officers

with the basic understanding of the law and its process. Lack of proper consultation and coordination

between DLPP and Provincial Lands Officer has resulted in serious discrepancies affecting the process.

1.12 DEPARTMENT OF PROVINCIAL AFFAIRS AND LOCAL LEVEL GOVERNMENT (DAPLLG)

1.12.1 The C.O.I notes that no Certificate of Alienability was issued by the Custodian of Trust Land

Recommendation

1.12.2 That freshly conducted LIRs be provided to the Secretary of Provincial Affairs as the Custodian of Customary Land for issue of Certificate of Alienability.

1.13 DEPARTMENT OF LANDS AND PHYSICAL PLANNING Brief on the Land File provided to COI

1.13.1 The C.O.I was not able to sight any of the essential forms that primarily set into the motion the Land Investigation process for SABL applications.

- * No tender form

- * No Land Instruction No

- * No LIR, but one produced by Mr Gawi was incomplete and not signed

- * Consent of the landowners was an issue as evidenced by the no of objections raised by other landowners

1.13.2. The relevant files produced to the Commission for examination and inquiry from the Department of Lands and Physical Planning and

especially from the Registrar of Title, which is an Office which forms part of the establishment of DLPP. The Registrar of Titles Mr Henry Wasa produced to the Commission on 15 August 2011[including amongst other SABLs] other documents within the Brilliant SABL file (that was produced) on the Title document was blank therefore the Commission was unable to ascertain whether the document was a sub-lease agreement.

1.13.3. The next document that was on file was a fax dated 15 February 2007 and it confirmed the Board of Directors at the time of Marienberg Hills Resources Development Company and that it was the chairman Moses Gawi signed that under the company seal.

1.13.4. Another document that is on the Registrar of Titles? file was a signed Section 11 Notice of the Land Act dated 12 February 2007 and that was signed off by ministerial delegate Pepi Kimas the former past Departmental Secretary of DLPP.

1.13.5. Notice of grant under Section 102 was also on file and that is dated 12 February 2007 and also signed by Pepi Kimas

1.13.6. We also note on the files was a letter from the acting Surveyor General John Sireh (at the time) dated 6 December 2006 addressed to the Chairman of the Marienberg Cocoa Project, approving essentially the carrying out of a Survey under Rural Class 4 and they were advised to engage a private surveyor and further advise the GPS reading to be taken to mark out the corner points and boundaries of the land. This is one of the rare times that a letter from the Surveyor General has been sighted on the Titles file.

1.13.7. A copy of the Gazettal Notice is also on that same file.

1.13.8. Importantly and with respect to Brilliant Investment, there was no Customary Lands Division held Native Land Dealings file produced. Although, the Customary Division Deputy Secretary, Mr Romilly Kila Pat swore in an Affidavit that it had been produced the desire expression that no file from that particular Division had been produced to date and none has been produced thus far.

1.13.9 The C.O.I notes that the Land Investigation Report was certified and signed by Mr Simon Malu on 10th January 2007. He was careless, reckless and negligent due to the evidence that there was a lot of omissions, blank and high likelihood that the agency and landowner signatures we assume could have been forged. This is evidently so because Commissioner Alois Jerewai who is a member of the landowning clan of Marienberg whose name and signature was noted on the Agency Agreement is not his signature. That assumption in reality is true because of the desperate situation to obtain the lease, Mr Gawi colluded with Mr Malu to fast track the grant and issuance of the title.

1.13.10. We note that Mr Malu and Mr Kimas gave evidence to the Inquiry and their evidence on oath is reflected in the Transcript of Proceedings referred to in this Report.

1.14. DEPARTMENT OF AGRICULTURE AND LIVESTOCK

1.14.1 In the file forwarded by DAL to the C.O.I, there was one Agro-Forestry Project Proposal on file including a proposal to vary the work plan for clearing timber. There also was evidence on that file of a required public

hearing and that meeting was to have been held on 18 July 2008 at the Marienberg Catholic Mission Station, Angoram District.

1.14.2. There is a letter on file addressed to the Department of Agriculture and Livestock Secretary dated September 2008 and that Mr Daink, Deputy Secretary appears to be urging the Secretary to sign the Certificate of Compliance for the large scale conversion of forest to agriculture to which he has attached a report that he had intended to present to the PNG Forest Authority.

1.14.3 There is an Internal Office Minute dated November 2008 from Mr Leka Mou Southern Regional Director for Provincial Agriculture Technical Services Division (PATS) of which Mr Daink is actually the Deputy Secretary. Importantly within that minute, Mr Mou states that any approval for large scale agro-forest development (Form 235) DAL would have to ensure that the stipulations within the requirements of that Form must be strictly complied by the Developer, and that any apparent deficiencies in procedures of granting approval would not serve a useful purpose. The Commission was able to have Mr Mou appear on a summons to explain in detail the content of his letter to Mr Daink. Obviously, there was a real need to be vigilant in assessing and evaluating the volumes of proposal which at times was questionable and could not be trusted.

1.14.4 The C.O.I notes that there was a letter dated 3 September 2009 from the Secretary of the Department to the Managing Director of Brilliant Investments where he indicated the approval of the Implementation Schedule for 4,000 hectares of forest being felled for cocoa planting in the 3rd

and 4th quarter of this year 2011. The letter is copied to the PNG

Forest Authority and states that based on the Department of Agriculture approval, appropriate Forestry Clearance approvals can now be given by the PNG Forestry Authority.

1.14.4. In further correspondence, dated 8 November 2010, Brilliant Investments informs Department of Agriculture and Livestock that it has grown 50,000 cocoa seedlings that were ready for planting, however that it wanted to diversify its operations into oil palm and as such was seeking approval for integrated agro-industrial business on the site.

1.14.5. In a letter in response from Mr Francis Daink, he states that, firstly the planting of the cocoa seedlings needed to happen before approval for further cutting of 500 hectares of timber would be given; that the land use assessment of the oil palm growing needed to be conducted as well, and that a further public hearing to gauge public opinion on oil palm/cocoa integration needed also to be conducted. He proposed therefore to Brilliant Investment that the cocoa remain the primary crop for five years so as to continue to operate under the current FCA. This was to avoid seeking a new FCA licences, meaning the need to submit new proposals for approvals.

1.14.6. Mr Daink suggested the need for Brilliant to revise its Land Use Plans and Implementation Schedules. Mr Francis Daink suggested that Brilliant Investment remain with cocoa and their proposal that they diversify into oil palm should not be pursued.

1.14.7. Mr Tony Hobiagu, then acting Provincial Advisor, Division of DAL and W, Department of East Sepik was invited by Mr Gawi to assess the proposed Angoram Integrated Agriculture Project EIS of the

Developer and he expressed his opinion in a letter dated 8th August 2008 to the Director of Environment, copies circulated to Moses Gawi and Raphael Digi, landowners. In his evaluation, he was critical of the EIS proposal of the Developer as follows, "A sample traverse similar to sample wood volume should have been used also for flora, wildlife, fauna determination. What is given is general description, this is a rush job to blindfold ignorant,". This was conservation of biodiversity areas which undoubtedly was not considered in the proposal. Mr Hobiagu expressed concerns over the Land Identity Demarcation Survey which was required to be completed before the FMA Certificate was issued. (Also Refer to his evidence in detail referred to in this report.)

1.14.7. C.O.I Agriculturalist Mr Wohuinangu²⁴ who accompanied the C.O.I team evaluated the Agriculture component of the Project and reported that no detailed agriculture plan was rolled out by the Developer as was the case in point with DAL. He states as follows;

"Agriculture development plan is usually based on the land suitability assessment for the area and matching with the agronomic requirements of the crops and in particular cocoa. The land use plan and soil suitability assessments should also be supported by a report of the independent cocoa production and processing expert to determine the potentials and constraints for cocoa production and processing in the area. A project feasibility study should also be conducted to determine the costs and returns for cocoa production, processing and marketing. Based on the outcome of the feasibility study a development plan should evolve detailing the planting schedule for the nucleus estate and the out

²⁴ Joseph Wohuinangu, Agriculture Advisors Report COI SABL dated 15th October 2012. Mr Wohuinangu travelled with Commissioner Nicholas Mirou to East Sepik, New Ireland and Madang to evaluate all the agricultural component of the Project sites and his invaluable contribution to the Team was appreciated.

for the seedlings and management of the plantations until harvest processing and marketing plan has not been developed and costed. agriculture development plan for Brilliant Investment Limited in and submitted to PNG Forest Board for approval. Thus the Forest as a requirement for the issuance of the SAB&L.”

1.15 PNG FOREST AUTHORITY

1.15.1. Forest Clearance Authority was granted on 26 June 2009 and it has a number FCA 11-02 to Brilliant Investment Limited and that is for the large scale integrated agriculture and cocoa development project.

1.15.2. Pursuant to evidence given by Kanawi Pouru when he came to the Commission for an affidavit sworn on 24 August this year, he states that there is a certain documentation that needs to be provided in order for them to make their assessment which is:

- (i) the prescribed Regulation Application Form 235 of the Forestry Act Regulations;
- (ii) there is a provision of the duly completed project proposal; and
- (iii) there is a list of documents not all of them need to be provided but at least some of them need to be provided and briefly;
 - (1) there is a certified boundary description from the Department of Lands and Physical Planning outlining exact are of project area,
 - (2) there needs to be landowner verification and consent as evidenced by lease documentation,
 - (3) there needs to be duly completed sales and purchase agreements with the customary owners, landowners and there needs to be agreement oversee or MOU?s between landowners and developers,
 - (4) Feasibility studies of soil suitability for proposed agriculture use,
 - (5) and there needs to be DAL report on stakeholder public hearing,
 - (6) Department of Agriculture and Livestock prescribed Form 235, and
 - (7) an Environmental Permit is also to be attached for the proposal to proceed.

1.15.3. The C.O.I notes from the files provided that the documents received, C.O.I have not sighted any of these documents.

1.15.4. The C.O.I also notes on file that there is some notices and correspondences relating to the current operations by Brilliant Investment Limited. There is a stop work notice, issued by PNG Forestry Authority to Brilliant Investment on 25 August 2010 in regards to the felling of trees.

1.15.5. On 10 March correspondence Mr Kanawi Pours wrote to the Managing Director of Brilliant Investment, a Mr Yu Ming Yong, dated 23 March, that as a result of a site visit on 10 March 2011, that there was very poor performance of the Integrated Agriculture Project. Mr Pours pointed out to Mr Yong that;

(i) 100 hectares of clear fell land had no cocoa plants planted and that this land was left idle with no planned use;

(ii) Only one building had been properly constructed, all others were still – were made of bush material;

(iii) There was no Joint Venture Agreement between the landowner company, Marienberg Hills Resource Development Limited and Brilliant Investment Limited;

(iv) There was no clear direction for the management of the cocoa plantation; and

(v) that 61,397.376 cubic metres of net resource had been cleared to that date. That is of an estimated total volume of 536,000 cubic metres gross for the acreage of the SABL being 25,600. It just goes towards showing how much has been cleared

without any agricultural development, essentially agricultural work. So that figure goes towards showing that.

1.15.6. Those assessments are confirmed by this C.O.I, during its site visit to the project site. There was a nursery set up, and we observe that there was much more logging activity in excess of 50,000 hectares. At that time a pontoon arrived to load on the Kwila at the Marienberg log pond/jetty at the time of the visit.

1.15.7. The C.O.I gives credit to the PNG Forest Authority for their enforcing their regulatory and statutory authority to compel Developers to follow their implementation and crop planting schedule plans.

1.15.8 This was expressed by the Provincial Forest Officer Mr Richard Kali who was called to give evidence on their monitoring activity that this was at times limited due to logistical difficulties and because of those reasons, logging activities continued unabated.

1.16 DEPARTMENT OF ENVIRONMENT AND CONSERVATION

1.16.1. Mr Michael Wau, who is the Director Environmental Wing, gave an account of the processes that have to be undertaken in order for Environmental Permits to be issued. In this instance, an Environmental Permit was issued to commence on 6 January 2009.

1.16.2 In terms of the steps that were undertaken, C.O.I noted on file that there was indeed the Step 1 which is a notification of preparatory

work, and that was prepared and lodged by Brilliant Investment on 2 April 2008. Then secondly, that an Environmental Inception Report needs to be submitted, and that was done so on 2 May 2008. Then there was an Environmental Impact Statement which was also lodged on 24 June 2008 and this Environmental Impact Statement needed to be accepted by the Director, after that, there was a public review and stakeholder review process that happened. The notice was put out on 24 July 2008.

1.16.3. Interestingly, there was a letter from the East Sepik Provincial Administration dated 8 August 2008 but it was received on 4 September 2008 which actually highlights quite critically issues that the writer had with the proposed project and the true impact that it will have on the community.

1.16.4. Interestingly In a letter dated 15 December 2008, the Environmental Impact Statement was initially rejected for two reasons; firstly, there was insufficient information on the biological component of the Environmental Impact Statement; and secondly, there was concern on the authenticity of the information provided.

1.16.5 The suggestion was that the Environmental Impact Statement was to be reviewed and resubmitted to the Director of Environment. It appears that that must have been done, it is not quite clear on the file, the process there but we see the next step being the Counsel has made positive recommendations and that has led to the Ministerial Approval in Principle which is essentially the final step before the granting of Environment Permits. So the

Environmental Council met and a decision in favour of granting, the appropriate approvals were made.

1.16.6 So the approval in principal, was granted by the concerned Minister on 19 November 2008.

1.16.7. The actual Environmental Permit which is two permits includes one is essentially to discharge waste and the other one is to use and take water. Those were granted on 1 December 2008 and 9 December 2009. So that is the permitting process that Brilliant Investment went through.

1.17 The Commission makes the following findings

1.17.1. Land Investigation Report conducted and signed by Mr Simon Malu, Customary Lands Officer was fundamentally flawed, The LIR dated 10th January 2007 (amongst other things) failed to address the following issues consistent with majority consent

17.1.1. The Report was based on the application of Brilliant, who obviously was not a landowner company. The Shareholders and Directors of the Company were foreigners.

17.1.2. Total alienation of the land for ninety-nine years by the landgroups is misleading, because Brilliant does not have any connection to the land at Marienberg.

17.1.3. Mr Malu's recommendation and Certification is baseless because of the total lack of content in the field investigation

and the consent of the people over Brilliant's application. The statement however genuine it is does not reflect the true feelings of the people as follows;

“The Landowners have missed out on vital government services for quiet (sic) too long and they see this as a window of opportunity which they have initiated themselves to gain from and realise some potential economic benefit with their own resources can generate and which they can fully participate in the development of their area”

17.1.4. The Schedule of Owners Status and Rights to land indicate 17 pages of names of each clan but really fails to show the connection within the whole report.

17.1.5. The Declaration of custom in relation to land tenure consists of 10 pages of names with some signatures. These signatures required to/ be authenticated as it involves illiterate and unsophisticated individuals who seem to know how to sign. I have alluded to the observation that forgery may have occurred with the signatures sighted against the names. An example is that of Mr Alois Jerewai's name and signature appearing in the list is undoubtedly not his signature.

17.1.6. No land boundary walk certified over the huge land area.

17.1.7. No Recommendation as to Alienability noted and signed by the Provincial Administrator including the reservation of

customary rights over the land during the period of the SABL lease.

17.1.8. Mr Moses Gawi was the main player in this SABL grant to Brilliant and we cannot single out any individuals for that matter. It is so unrealistic in the dealings he made in 2006 with Brilliant and continued on into the agro-forest cocoa project.

17.1.9. To absolve himself from this situation, Mr Gawi in my view was ignorant of the wishes of his people, and we are mindful of the fact that development must come to Marienberg, but not in the context for logging. On 28th September 2011 he wrote to the C.O.I and enclosed the LIR which we found is highly irregular and will only lead to nullification and new process to be followed as a matter of course. This he says in his letter, “...For the record, we the landowners, gave our consents and authority through our clan representatives for BIL to be nominated entity to which the gazettal of the lease should be issued to.”

17.1.10. We have received evidence from the company Brilliant Investment Limited as to the operation and the costs that they have imposed on this project. We are of the view that despite those aspects and concerns, we are also mindful of the fact that the huge areas within the SABL have been logged hence question arise as to how much more will required to be cleared to undertake pure cocoa agricultural activity.

17.1.11 The C.O.I site inspection revealed wholesale logging activity and also less on the agriculture component. There was a nursery located in the site, but the condition of the nursery, the broken down water pump to irrigate the land and the state of the housing needs of the workers leaves much to be desired. The Office complex located at the Log pond and Jetty on the Sepik River is not permanent and consist of makeshift buildings, indicating that movements within the area is normal process for the Developer, who has no capacity to develop the cocoa project at Marienberg.

1.18. RECOMMENDATION

1.18.1. The SABL Portion 146C is recommended to be revoked forthwith.

(a) The landowners of the Marienberg community are encouraged to mobilise their ILG groups in a more coordinated and transparent manner. The SABL process requires to be revisited and proper Land Investigation conducted to ensure that majority consent is obtained from all the members of the clan/.ILG.

(b) The Landowners must also seek assistance of the Department of Commerce and Industry to vet and engage a reputable agriculture investor to under the large scale cocoa project at Marienberg. The developer must not be a logging operator who will then sub-contract to an agriculture company to undertake the activity, but a company that has the financial resources to develop the cocoa project.

COI Inquiry File No. 75 for Special Purpose Agricultural and Business Lease over Portion 55C Volume 19 Folio 14 Milinch: Masalagar, East Sepik Province in the name of Nungawa Rainforest Management Alliance Limited.

1.1 In accordance with the powers given to the Commissioners pursuant to section 7 of the Act, the Commissioners have summoned numerous witnesses to produce documents and be further examined on oath or affirmation.

1.2 Witnesses were called from the six government agencies involved in the issuance and operation of the Nungawa Rainforest Management Alliance Limited SABL. These were:

1.2.1 Department of East Sepik Province, (DESP)

1.2.2 Department of Lands and Physical Planning, (DLPP)

1.2.3 Department of Provincial Affairs and Local Level Government, (DPALLG)

1.2.4 Department of Agriculture and Livestock, (DAL)

1.2.5 Department of Environment and Conservation, (DEC)

1.2.6 PNG Forest Authority (PNGFA)

1.3 The names of the persons who have been summoned to appear and who have in fact appeared in the public hearings (in alphabetical order), including titles, are set out in the schedule below. For ease of reference, the schedule also lists the transcript pages at which the person commenced giving evidence against the name of the witness.

No

Name and Position

Pages

Day

Date

1
Mr Peter Yapog, Acting Provincial Customary Lands Officer, Division of Lands & Physical Planning,
DESP
101-147

5
14/02/12-SABL 5 WEWAK

2
Mr Richard Kali,
18-35

2
09/02/12-SABL 2 WEWAK

Provincial Forest Officer

DESP

3-19

4
13/02/12-SABL 4 WEWAK

3
Hon. Mr Gabriel Kapris MP & Minister for Commerce & Industry, Division of Agriculture & Livestock
53-68

4
13/02/12-SABL 4 WEWAK

4
Mr Steven Mera Secretary, Department of Commerce and Industry,
69-100

4
13/02/12-SABL 4 WEWAK

5
Hon. Mr Tony W. Aimo, MP, Landowner.
101-137

4
13/02/12-SABL 4 WEWAK

6
Mr Suriya Moorthy, CEO, SPZ Ltd
51-92

5
14/02/12-SABL 5 WEWAK

7
Mr Sugunaroo Subramanian, General Manager-, SPZ Ltd
92-100

5
14/02/12-SABL 5 WEWAK

8
Mr Andrew Sapuko,
Landowner
149-161

5

14/02/12-SABL 5 WEWAK

9

Mr Alex Anisi, Former Premier of ESP, Businessman & Landowner

162-171

5

14/02/12-SABL 5 WEWAK

10

Mr Don Bakat, Consultant

10-42

6

15/02/12-SABL 6 WEWAK

& Landowner

65-87

6

15/02/12-SABL 6 WEWAK

11

Mr Roy Kenba Balagawi CEO, Basse Oil Palm Ltd & Landowner, Ambunti

43-51

6

15/02/12-SABL 6 WEWAK

12

Mr Mose Joshua,

Landowner

51-62

6

15/02/12-SABL 6 WEWAK

13

Mr Augustine Kaugen,

Landowner

64-65

6

15/02/12-SABL 6 WEWAK

14

Mr Sam Akike, Landowner

88-100

6

15/02/12-SABL 6 WEWAK

15

Mr Michael Caypah,

Landowner

116-122

6

15/02/12-SABL 6 WEWAK

16

Mr Michael Koimo,

Landowner

122-123

6

15/02/12-SABL 6 WEWAK

17

Mr Michael Marmber,
Landowner
125-127

6

15/02/12-SABL 6 WEWAK

18

Mr Gabriel Dagun,
Landowner
128-132

6

15/02/12-SABL 6 WEWAK

19

Mr Michael Sau,
Landowner
138-158

6

15/02/12-SABL 6 WEWAK

20

Mr Francis Daink, Deputy Secretary (PATS), DAL
12-26
2-33

05/09/11-SABL13 (Waigani)

06/09/11-SABL (Waigani)

21

Mr Leka Mou,
Agriculturalist, DAL
1-33

8

29/02/12-SABL8 WEWAK
(Waigani)

22

Mr Pepi Kimas, Former Secretary, DLPP

January 2012 SABL WAIGANI

23

Mr Simon Malu, DLPP Director, Customary Leases, DLPP

January 2012-SABL WAIGANI

Parties represented by counsel

Section 8 of the Act relates to the appearance of counsel before the Commission on behalf of interested parties. It provides that:

“Subject to Section 2(5), a person who satisfies the Commission that he has a bona fide interest in the subject matter of an inquiry under this Act, and any other person by leave of the Commission,

may attend the inquiry in person or may be represented by counsel.”

The following were granted leave to be represented by counsel

Exhibits and documents

There were Twelve (12) documents tendered as evidence before the Commission at the public hearings. A list of the Exhibits is shown below.

NO

Item

Interested Party

Date received

Exhibit Number

1

Petition to C.O.I SABL- NRMAL

COI

13/02/12

NRMAL “1”

2

NEC Decision No. 8 of 2009 Nungwaia Bongos Integrated Large Scale Agricultural Projects (2 pages)

COI/NRMAL/SPZ

13/02/12

NRMAL”2”

3

NEC Decision No. 288 of 2008 Nungwaia Bongos Integrated Large Scale Agricultural Projects 15 December 2008

COI/NRMAL/SPZ/Commerce & Industry

13/02/12

NRMAL”3”

4

Affidavit of Hon. Tony Aimo, MP dated 8th September, 2011

COI

13/02/12

TA “1”

5

Letter to the President- Roadline Construction dated 14 October 2011

COI

13/02/12

TWA”2”

6

Affidavit of Mr Suriya Moorthy –CEO of SPZ

COI

14/02/12

Exhibit ”3”

7

Affidavit of Mr Sugunarao V. Subramanian, Plantation General Manager, SPZ

COI

14/02/12

Exhibit "4"

8

Land Investigation Report prepared by Mr Yapog, Senior Customary Lands Officer, Division of Lands, ESP Administration.

C.O.I.

14/02/12

NRMAL"5"

9

Instrument of Lease/Lease Back Agreement dated 3 March 2011

C.O.I

14/02/12

NRMAL "6"

10

Affidavit of Mr Don Bakat, Background to the

COI

15/02/12

NRMAL"8"

Project and his concerns over the acquisition of SABL

11

Submission by Moses Joshua–Secretary, Wamagian Development Corporation Limited

COI

15/02/12

NRMAL"9"

12

Letter by Sam Akike dated 8th February 2012

COI

15/02/12

NRMAL"10"

Timeline of events of note surrounding Nungwaia Rainforest Management Alliance Limited SABL
Title

The timeline showing important events concerning the SABL is shown below in chronological order of their happening:

No

Milestone

Dated of Completion/Grant/Issue Execution

Proponent/Applicant

Respondent Entity/Respondent

1

Certificate of Recognition of ILGs

22/11/2000

230 Land Group Chairman

ILG

2

FMA Agreement between State and 230 ILGs

2006

230 ILGs and PNG Forest Authority

ILG

3

Formalization of Project Agreement between State and SPZ Enterprise (PNG) Ltd

16th April 2009

State and SPZ Enterprises (PNG) Ltd

SPZ/STATE

4

Consent of 230 ILGs to terminate NB-FMA Agreement

29th June 2009

PNG Forest Authority and 230 ILGs

(Supplementary of 157 ILGs also added to the list)

SPZ

5

NEC Decision 08/2009 re Proposed Project for NB- Integrated Large Scale Agricultural Project (NBILSA Project)

2009

Hon. Gabriel Kapris MP, Hon. Tony Aimo, MP

STATE

6

Public Hearing on the Proposed NBILSA Project

30 October

2009

Drekikir Station, Hon. G. Kapris MP, Ronald Asik MP & T. Aimo MP, Mr Samson Torovi, Mr Daink, Mr Mera, Mr

STATE/STAKEHOLDERS

Hobiago, Mr George Gua, Mr Tom Peni, Mr Swong, Mr Failau, Mr Aulem, & Mr Buruka including Chairman of ILGs present.

7

Certificate of Compliance for large scale conversion of Forest to Agriculture or other land use development

3rd December

2009

PNG Forest Authority/DAL/SPZ Enterprises (PNG) Ltd.

SPZ

8

FMA Agreement terminated

18 November

2009

Hon, Belden Namah, Minister for Forest

STATE

9

Environment Impact Statement

13 May 2010

SPZ/DEC

SPZ

10

Supplementary ILGs comprising 157 Landgroups added to the 230 ILGs for NB confirmed

15–16th May

2010.

Hon Tony Aimo present/ All 157 ILG Chairman confirming and signing the ILG application for Registration.

SPZ

11

Incorporation of Nungwaia Rainforest Management Alliance Limited

08th October

2010

NRMAL

NRMAL

12

Land Investigation Report

Two weeks commencing 13/11/10 and ending on 22/11/10

Mr Yapog/Mr Tony Aimo MP/Certain ILG Chairman

DLPP

13

Survey of Portion 55C Masalaga, ESP

12/02/11

Completed and certified by Surveyor General

DLPP

14

Instrument of Lease/Lease Back Agreement between State and NRMAL

03 April 2011

T Aimo MP and Agents of ILGs (Question as to the nomination of the Agents not recorded in LIR)

DLPP/NRMAL

15

Written Protest by on Notice of Direct Grant and prior to issuance of SABL Title

04 April 2011

Protest against SABL to NRMAL for NB/DLPP not respond to protest even though they physically met with Mr Malo of DLPP.

ILG

16

SABL Title issued in the name of NRMAL

19th April 2009

NRMAL–99 year lease/lease back

NRMAL

17

Agriculture Sublease Agreement between NRMAL and SPZ

20 May 2011

Mr Herman Massimbor, Chairman signed at Ela Beach Hotel,

NRMAL/STATE

Port Moresby with Mr Peter Song, Chairman, SPZ

18

K1million Advance Rental paid by SPZ to NRMAL

10 June 2011

Received by Interim Chairman, Mr Massimbor at Ela Beach Hotel pool Side.

NRMAL

19

K1million deposited into NRMAL ANZ Operating A/C.

14 June 2011

ANZ Harbour City Branch, Konedobu

NRMAL

20

Forest Clearance Authority

Completed and registered but not issued to date

SPZ

FINDINGS

The findings follow the chronology of table of notable events above surrounding the SABL lease title held by Nungwaia Rainforest Management Alliance Limited.

Nungwaia Rainforest Management Alliance Limited SABL

A Notice of Direct Grant under Section 102 of the Land Act was made in the National Gazette No. G86 dated 4th April 2011 for Portion 55C Masalaga Land. The term of the lease was for ninety-nine (99) years. A Special Agricultural and Business Lease was registered and issued on 4th April 2011 by the Department of Lands and Physical Planning to the holder Nungwaia Rainforest Management Alliance Limited (NRMAL). Mr Pepi S. Kimas, OL signed as delegate of the Minister for Lands. The detail of the SABL is shown below:

Legal Description

Portion 55C

Registered Survey Plan Catalogue No

3/671

SABL Holder

Nungwaia Rainforest Management Alliance Limited

Date of Registration of Lease

4th April, 2011

Period of Lease

Ninety-nine (99) years

Land area of lease

109,500.0 hectares

The Nungwaia Bongos Integrated Large Scale Agro Forest Project (NBILSAF) comprises 110,415 hectares of land within the Ambunti/Drekikier Districts of the East Sepik Province. That is referred to as SABL Portion 55C which is held in the name of NRMAL.

The Commission acknowledges the efforts of the political leaders of the East Sepik Province and Sandaun Province in 1996 who promoted the concept of developing large scale agro forest projects to empower the least developed areas of the province. That concept has continued to progress with involvement of concerned landowners and ably assisted by District Administrators, Office of the Provincial Administrator, and key government agencies, Key Stakeholders and the National Government.

However, there are matters of importance that needs to be fairly well understood when it comes to the acquisition, registration and alienation of customary land for periods of up to 99 years. The NBILSAF inquiry determines that whilst there is noble and genuine effort to progress and promote development, the majority consensus and agreement of all members of the landowning group must in principle be acquired to part with their land for one (1) year to ninety-nine (99) years. That is the compulsory statutory requirement pursuant to section 11 and 102 of the Land Act.

C.O.I SABL INQUIRY INTO SABL PORTION 55C TO NUNGWAIA RAINFOREST MANAGEMENT ALLIANCE LTD

The following facts arise out of the evidence and documents submitted by all concerned persons which is essential to determine if the statutory requirements for acquisition of the land known as "Masalaga" was satisfied

1. May 2008 Daniel Katakumb on behalf of the landowners of Aplatak and Hambukan villages within the land known as Bassei advised the Hon. Tony Aimo on the establishment of the Oil Palm Development Project.
2. The initiative for the oil palm project was initiated by the landowners and included the conducting of a feasibility study and documentation for the project at their own expense. The report was submitted to then Prime Minister, Right Honourable Grand Chief Sir Michael Somare who supported the project. The Prime Minister referred the Feasibility Study Report to Hon. Patrick Pruaitch, then Minister for Forest and Hon. Peter Hickey, then Minister for Agriculture and Livestock to provide funding and technical assistance to the Bassei Landowners.
3. Hon Tony Aimo was asked by the landowners to support the initiative financially as it will encompass the Ambunti/Drekikier Electorate with the desire to develop the area into a major oil palm producer.
4. At the time Mr Aimo was informed on the landowners initiative to develop the oil palm project at Bassei, there was an existing Forest Management Authority (FMA) Agreement between the 230 Incorporated Land Groups in the land known as Nungwaia-Bongos. The 230 ILGs had agreed to allow the area known as Nungwaia/Bongos to be made "available for forest management and harvesting in accordance with „sustained yield principle"²⁵. The Agreement was executed between the 230 ILGs and the

²⁵Refer to RECITAL E to the FMA Agreement and Clause 19 of the Agreement defines sustained yield principle means "the management and control of forest management and harvesting in accordance with any applicable standards and/or code of practice to ensure that the net

harvestable forest area contained within the minimum sustainable working area will yield a perpetual, more or less even flow of industrial wood which is harvested in a manner which does not adversely affect forest productivity, and which minimises the risk of adverse impact on environmental values.

Papua New Guinea Forest Authority (PNG Forest Authority) on 16th August 2006 for a period of fifty years.

5. I also note that the Provincial Forest Management Committee certified on their inquiry pursuant to section 21 of the Forestry Act that the customary landowners were willing to enter into the FMA Agreement. The resolution was certified by the then chairman Mr John Alman on 27th March 2006

6. Mr Valentine Kambori signed as the Chairperson of the PNGFA witnessed by Mr Pouru, the MD of NFS

7. I note from the bundle of documents provided to the C.O.I on 26th September 2011 (Exhibit) that Hon. Tony Aimo, (as the then Minister for Correctional Services), received a letter dated 3rd September 2008 from then Minister for Forest, Hon. Belden Namah MP, informing him on the progress of the submission pertaining to Mr Aimo's electorate landowners wishes to convert the Nungwaia Bongos FMA to a large scale Agriculture Timber Authority was under consideration. Mr Namah further advised that, "...The Managing Director was personally directed by myself to facilitate the request which I now understand has been done accordingly, and the National Forest Service has furnished a positive recommendation to the National Forest Board.." to officially approve the conversion of FMA to FCA at the PNG Forest Board Meeting to be convened on 25th September 2008.

8. Between 28th and 30th July 2009, the original 230 ILGs who executed the FMA agreement pursuant to the Forestry Act 1991, collectively consented to revoke and cancel the FMA agreement. There is no record as to how the ILGs were advised on that decision, but the records indicates of the signing

of Consent Form pursuant to Forestry Act (as amended) to cancel FMA. The cancellation meant that any process to acquire FCA would require acquisition of land under SABL and the Agricultural component as required by the Forestry Act.

9. On 18th May 2009, Mr Namah, MP (then Minister for Forest) terminated the FMA Agreement on 18th November 2009. Despite that termination, the FCA process would require separate submission for FCA on the part of all landowners in relation to agro-forest project at Nungwaia Bongos.

10. I accept that Mr Aimo, MP, Landowner and life member of NRMAL conveniently commenced the process to convert the existing FMA to FCA as a precursor to the process of further converting the FMA surveyed area into a SABL. That process I consider started when the Bassei Landowners conducted the feasibility study report in 2008 and made known their intention to seek the support of their leaders. This is notable with regard to the intense objections that existed and was evident at the time the COI convened its hearing at Wewak. within the SABL Portion 55C by Bassei Landowning Group and Mapsera Development Limited the title holder to SABL Portion 54C which is located within the Portion 55C.

NEC Decision 288/2008-11th December 2008 (Exhibit NRMAL 2-SABL 4 Wewak 13/02/12)

NEC approved the process of preparing a project agreement for the Nungwaia Bongos Project subject to the guidelines for Development Project Proposals and Project Agreement. The Decision was made on 11 December 2008.

NEC Decision 08 of 2009 11th February 2009 (Exhibit NRMAL 3-SABL 4 Wewak 13/02/12)

11 The underlying reason for the large scale agriculture project was "...that project has been in the pipeline for ...about more than 20 years, and with the intention of the landowners using the resources to allow for tangible development whether it be in forestry, logging or into agriculture.

..Intentionally the project was going to be forestry logging but because of the importance of the resource, we would like to change that into a large scale agriculture project with the government giving approval for the Forest Clearance Authority to allow land to be used for agriculture." (Kapris at page 54 of the Transcript of Proceedings SABL 4-Wewak 13/02/12)

The involvement of Tony Aimo, Gabriel Kapris is commendable, however the aspects of acquiring customary land for agro-forest project should be allowed to be processed independently from political manipulation and pressure, which undoubtedly came in the form of NEC Decision 08 of 2009.

It is evident that the then Minister for Commerce and Industry and former Member of Maprik/Wosera sponsored the Statutory Business Paper on Nungwaia Bongos Integrated Large Scale Agriculture Project to NEC and the NEC approved for a project agreement to be executed between the State and the SPZ Enterprises PNG Pty Ltd (Developer) through a Foreign Direct Investment (FDI) the responsibility of the Department of Commerce and Industry compelling the key state agencies involved in SABL and related agro forest requirements to be directed including the application, registration and issuance of lease/lease back of customary land (DLPP), the issuance of Environment Permits (DEC), Certificate of compliance of large scale agro forest activity

(DAL), Forest Clearance Authority (PNG Forest Authority) and Import and Excise Tax Exemptions (IRC)

Under the NEC Directive, the lead agency was Department of Commerce and Industry whose sole responsibility was to facilitate the project agreement and implement the directive.

It is not known as to how SPZ Enterprises (PNG) Ltd was chosen by Commerce and Industry to be the developer of the Project. SPZ company profile and IPA foreign registration clearly indicates that it has experience in forestry and logging activities but clearly lacks capacity to undertake large scale agro forest activity in a huge area under SABL Portion 55C. The website address was only constructed in 2011 and lacks relevant details as to its operations in Australia and elsewhere.

Department of Commerce and Industry

The Department through Ministerial oversight involved in ensuring that SPZ Enterprises (PNG) Limited was nominated as the Developer of the project. The Department according to the Minister was tasked with the responsibility of assisting Papua New Guineans into business, setting up on industries into downstream processing of agricultural process.

According to Mr Mera, the Department of Commerce and Industry is responsible for industrial

projects upstream, downstream, for mining projects in the past, large agricultural projects, salt and Napa Napa Oil and in recent times, sectoral agencies have gone and taken sector projects which the Department supports and complements. Amongst these portfolio, the Department is involved when investors or the government ask Commerce and Industry in

economic corridor projects such as Nungwaia Bongos, which cuts across the southern part of East and West New Britain trying to connect and the Toriu Agro-Forestry project which cuts across the north trying to open up the northern corridor and the Drimgas Trans Papuan Highway linking Gulf, Central and NCD..

Recommendations

The involvement of the Department of Commerce and Industry is very important and necessary for landowner involvement in large scale agro forest project. The functions of the Department involves assistance to landowner companies in gaining access to foreign developer who have the technical, financial, equipment and resources to embark on large scale agricultural projects as partners in a joint venture agreement.

The Department involve itself in projects that were already processed through the NEC Decision for example, Nungwaia Bongos Large Scale Integrated Agricultural Project (ESP/Sandaun), Gre Drimgas Trans Papuan Highway project (Western Province/Gulf/Central/NCD), Illi Wawas Project as economic corridor projects (ENBP/WNBP) Changhae Tapiocca (CP) and Toriu Agro- Forest projects (WNBP)

The Departments national function is to ensure that the right Developers are engaged through a transparent tendering process. The Department must cause due diligence on the developer in respect of their financial and technical capabilities internationally. The Department must support all business ventures operated by land owner companies in respect of SABLs rather than on the basis of regional or wantok system basis. There must be dialogue with all the relevant agencies of government where the land is customary land. That the involvement

of the Department was lacking in some of the least developed provinces where SABL existed. (Kapris @ pages 55-57 and Steven Mera at pages of Transcript SABL 4-Wewak 13/02/12 respectively)

The Departments portfolio and responsibilities under SABL would include

- 1 Registrar of Cooperative Society
2. Foreign Direct Investment (FDI)

There is a need for transparency in the choice of developers.

* Awareness with Landowners as to the project and the requirement to engage a developer with the necessary capacity to develop agriculture projects.

* Call for international and domestic tendering process-with the involvement of the landowners and provincial administration.

* Inter-agency involvement with no political involvement, even where the landowner is a politician,

there is a need to refer all matters through a transparent process.

PROJECT AGREEMENT BETWEEN THE STATE AND SPZ ENTERPRISE (PNG) PTY LTD
(Document submitted to C.O.I. on 26th September 2011)

The Project Agreement was executed on 16th April, 2009 between the State and SPZ. The Project agreement was cleared by then State Solicitor Mr George Minjihau, pursuant to NEC Decision 08/009.

The Commission has not sighted any documentation to ascertain whether the Office of the Attorney General had undertaken due diligence and due regard in the preparation, consideration and advice to government on the legal implication of the agreement concerning a vast area of customary land, and to accept on face value the decision of the NEC.

Grand Chief Sir Paulias Matane, Governor General signed for the State and Mr Peter Song, Chairman, SPZ signed for the developer. There is no reference made whatsoever to the landgroups and land owners of Nungwaia Bongos in respect of what was to be economic corridor project involving the Nungwaia Bongos and the Sandaun Province

We set out some pertinent aspects of the Contract we consider in its entirety to be unfair and no doubt imposes obligations that is viewed as compelling to the State, all key government agencies directly involved in SABL process including the unsuspecting landowners whose involvement was virtually non-existent from the inception of the choice of the developer and the project agreement phase.

- a. The Agreement provides no specified period of time for parties to negotiate an option to renew agreement. The contract commenced retrospect to February 2009. (Clause 2-Commencement, Term and Project Implementation)
- b. The Agreement compels the State, the Provincial Government and the key state agencies to ensure that all necessary requirements are processed for the company to commence its operation on the project site.
- c. The major scope of activity of the project was to harvest timber resources for export timber resources, provide agricultural and infrastructure improvements to the people of Ambunti/Drekikir District, Wosera/Gawi Maprik Districts and ESP. (Clause 2.2)
- d. The State is required under the Agreement to facilitate for SPZ environmental permit (DEC), lease/lease back arrangement over project site (DLPP), IPA Certification to SPZ for logging, processing, construction and sales of products associated with the project (IPA), written approval for large scale conversion of forest to agriculture and other land use under section 90A and 90B Of the Forestry (Amendment) Act 2007 (DAL), approval for reforestation program (PNG Forest Authority), approval for wages and salaries in accordance with Labour Laws (Department of Labour and Employment) and Approval of Business Plan and Project Implementation Schedule (Department of Commerce and Industry) (Clause 3.and Schedule 1 of the Agreement).The state is required to fulfil these requirements for SPZ made subject to finalisation and execution of the Financing Agreements. The contract states "...The parties acknowledge that the condition in Clause 3.3 is for the benefit of the Company and that the company may waive such conditions."
- e. Clause 8.2 provides for the right of SPZ to export logs with specific directive that „the State in its best endeavours should ensure that the Company has the right to export log from PNG

resulting from the operation.”

f. Tax & Excise exemptions for capital equipment and other materials to SPZ in terms of the project. Most of the equipment relate mostly to logging activities. (Clause 8.6–Import Duty, Excise

Duty and Goods & Services (GST) Exemptions; Clause 9 – Authorisations and Allowances & Schedule 2–Nungwaia Bongos Integrated Large Scale Agricultural Project List of Machinery, Equipment, Consumables and Permanent Fixture and Supplies for Excise and Duty and GST Exemption)

SPZ was nominated as a developer but it has not produced its financial capability and expertise in developing the large scale agricultural project at Nungwaia/Bongos. The Agreement ensures that the State deliver on the agreement by ensuring that they have access to the forest, the land and unspecified term under the agreement to develop the Nungwaia Bongos agricultural project. No capacity or financial resources was provided by the company to the company to make a fair assessment on its capabilities.

We are concerned that SPZ was acquired by Geoff Palmer under no known circumstances, and its CEO said in evidence that 100% acquisition meant that Geoff Palm would carry on when SPZ was acquired. This requires further investigation as the Commission’s research on the website revealed that Geoff Palm was incorporated in Malaysia and its website was only constructed in 2011. The webpage contain very little information on the company’s profile in the oil palm industry internationally.

RECOMMENDATIONS

We recommend that the Project Agreement be rescinded forthwith largely to the fact that it imposes an obligation on all the agencies of government whose functions and responsibilities are covered by their respective enabling legislation. The provisions of the Project Agreement contradicts the statutory obligations of the Departments functions to carry out independent assessment

and verification of the SABL process, hence major flaws have occurred in the underlying basis for customary land alienation under the SABL process.

THE PRINCIPAL ARCHITECTS OF THE NUNGWAIA BONGOS PORJECT

Mr Steven Mera, Secretary Department of Commerce and Industry (DC&I)

The involvement of Mr Steven Mera as a facilitator of the project during the period 2009 to the present is relevant. Mr Mera gave evidence as the Departmental Head responsible for Commerce and Industry and confirms that he was appointed as a Departmental Head on October 2011. He denied any involvement with SPZ in any consultancy or managerial capacity.

He was engaged by the Mr Kapris to facilitate implementation of the Project Agreement for the Nungwaia/Bongos Project. He states in evidence, “...My involvement with the Company SPZ is in my capacity as a Consultant to Commerce and Industry. The Minister then Honourable Gabriel Kapris and Honourable Aimo, I was already a Consultant in the Department when the Minister asked for someone to drive and deliver this project for the people of East Sepik...the then Secretary Kulit asked that I be assigned to deliver the project for them.”(See page 71 of Transcript SABL 4 Wewak–13/02/12)

Documentary evidence relating to environmental permit from Department of Environment and Conservation to C.O.I on 26th September 2011 contradicts Mr Mera's contention that he had no direct involvement with SPZ in any capacity except through dealings as a Consultant for DC&I. This is also confirmed by Mr

Moorthy in his evidence on oath that Mr Mera was employed as a Consultant to SPZ prior to his appointment as Secretary to DC&I

* Mr Mera participated in the Public Hearing on the Nungwaia Bongos Large Scale Agriculture Development Project of Ambunti–Drekikier held at Drekikier Station on 30 October 2009. He was referred to in the draft Minutes as Project Advisor–Department of Commerce and Industry.

* Mr Mera is referred to as SPZ Partner in PNG, Team Leader and Project Development Advisor. Obtained from the SPZ Company Profile annexed to the Environment Impact Statement dated 13th May 2010. DEC confirmed receipt of EIS on 8th June 2010.

* By letter dated 28th March, 2011 Mr Mera in his capacity as the Country Manager for SPZ makes a follow up on the Environment Permit Application submitted by his company SPZ.

* Mr Mera made presentation on SPZ's Application for Level 2/3 Environmental Permit for Nungwaia Bongos Project at the Council Meeting held at Gateway Hotel from Friday 11th February to Saturday 12th February, 2011. (Minutes of Environment Council Meeting No. EC 01/2011 at pages 2–19)

* The decision on the Approval in Principle was conveyed by Secretary DEC to Mr Mera in his capacity as Country Manager–SPZ on 11th March, 2011,

Mr Mera at all material times was an active employee of SPZ in the Nungwaia Bongos project, which we deem to be constructive conflict as to his dual role as

both Advisor to the Department of Commerce and Industry and SPZ up to the time he was appointed Secretary in October 2011.

At this point, the involvement of all the landgroups and landowners are minimal or non-existence except for the public hearing meeting held at Drekikier Station in October 2009 and the signing of the application to cancel the Forest Management Authority Agreement.

Mr Gabriel Kapris

The nature of his involvement reflects the lack of negotiating through the Foreign Direct Project would require the Tendering process and assessment, which undoubtedly was not considered at Cabinet level. The Department role in business is commendable but it would have to consider amongst its oversight that acquisition of customary land process requires the DLPP involvement followed by proper assessment as to the type of project and landowner joint venture agreements with developers and not the state.

That was not even considered, but it would in my view play a very integral role by assisting landowners identify foreign companies that have impeccable capacity both financially and experience to be considered in the SABL agro forest projects.

Hon Tony W. Aimo, MP

Member representing the Electorate and a landowner by birth right did not give him the mandate to ignore the other landowning group within the Nungwaia Bongos project site. The Bassei Landgroup in my view deserved recognition from the Mr Aimo by the very fact that they had initiated a feasibility study

which obviously was used in the Nungwaia Bongos lease/lease back scheme. It would have been beneficial if all parties mediated and negotiated on the best way to develop the district through the project.

IPA

The Investment Promotion Authority (IPA) is a statutory organization, established by an Act of Parliament in 1992, to promote and facilitate investment in Papua New Guinea. The IPA does this through various programs including the establishment and maintenance of a company/business registry, certification of foreign enterprise and promotion of investment opportunities in PNG.

Findings

The formation of Nungwaia Rainforest Management Alliance Limited Nungwaia Rainforest Management Alliance Limited (NRMAL) is a limited liability company registered in the Registrar of Companies of the Investment Promotion Authority of PNG under the Companies Act 1997. The Company was incorporated on 8th October, 2010 and the current principal place of business is Section 49 Allotment 08, Kreer Heights, Wewak, East Sepik Province. As at 2nd August 2011 IPA records confirm that it is operating. The company number is 1-76013.

The latest IPA Company extract dated 2nd August 2011 indicate Wawaka Agro Commodities Cooperative Development Corporation as the major sole shareholder of NRMAL. The Commission was unable to verify the registration

and incorporation of the Corporation and summonsed Mr Aimo²⁶ to provide details on the formation of Wawaka. In his evidence on oath, Mr Aimo told the inquiry that WAMAKA Agro Commodities Cooperative Development Corporation ("Wawaka" incorrectly named in the IPA Register) was the acronym for all the ILG villages that came together to form certain cooperatives combined as WAMAKA. The table below indicates the affiliation of the four

(4) Cooperatives to WAMAKA as the umbrella ILG Cooperative a major shareholder in NRMAL.

Acronym of
"WAMAKA"
ILG Cooperative Society
Villagers
"WA"
WASO
> No villagers named

WASMAFOKO

- > Wasambu
- > Masalaga
- > Waimenokor
- > Daina
- “MA”
- MAGAMBA
- > Kubriwat 1&2
- > Tau 1&2
- “KA”
- KAMBAMINJI
- > Bongos
- > Wahaukia
- > Kwowerso
- > Mamsi
- > Sermburombo

Nungwaia Rainforest Management Alliance Limited (NRMAL) corporate structure indicates one major shareholder WAMAKA Cooperative Development Corporation (WAMAKA). WAMAKA is incorporated under the Cooperative Society (Amendment) Act 1985 and registered A Certificate to that effect was issued by the Department of Commerce and Industry. The Cooperative Society Certificate No. is 1574 and is dated 23 August 2010. (Refer to Affidavit of Tony W. Aimo and Certificate attached to the Affidavit dated 8th September 2011 tendered as Exhibit TA1)

Despite Mr Aimo's explanation to the Inquiry, there was insufficient information disclosed to the Commission as to the composition of the

26 Transcript of Proceedings SABL 4–Wewak 13 February 2012 @ pages 104–105.

Directorship of the Cooperative, its shareholding and the purpose for its establishment. The Commission was unable to obtain further information from the Registrar of the Cooperative Societies. We understand that the incorporation of Cooperative Societies will empower rural communities involvement in high impact project, similarly for those incorporated as landowner companies under the Companies Act.

We find that there was insufficient information on the formation of the Cooperative Society pursuant to Cooperative Societies (Amendment) Act 1985. There are no records produced on the composition of the Executives of the Society namely Directors and Shareholders, the Address for service.

The extract discloses that the Directors of NRMAL comprise of eleven (11) men resident in either Port Moresby NCD or East Sepik Province with one Director resident in Madang. The Directors whose residential addresses are at NCD include Tony Watarepu Aimo, Charles Kundi, Paul Asahand, Joseph Koi, Gabriel Yombonga Kwa'ato, Kepas Taloh, Herman Masimbor and Paul Asahand. The Directors resident at East Sepik include, Beno Patric (Waringeme village, Maprik), Alois Moilem (Tau One village, Drekikir), Issac Wrongkalm (Baklo village, Drekikir), and Herman Masimbor (Wewak). Mr Paul Adam resides at Madang. Mr Joseph is the Company Secretary and is also the company lawyer.

NRMAL in its formation as title holder of the SABL may not truly represent the interest of the 30,000 landowners living within SABL Portion 55C. The table below indicate that the names of the

Directors are not specifically stated in the relevant pages of the Land Investigation Report, rendering serious questions as to the shareholding and directorship of a landowner company.

Table below indicates the current Directors of NRMAL and references to names appearing under the specific village/ILGs as shown in the LIR and the Lease/Lease Back Agreement executed between the landowners and the State on 3rd March 2010.

Name
Village
LIR (page 2 Para 4-Ownership)
LIR (page 7 Declaration of Custom in relation to Land Tenure)
LIR (pages 8-9- This Form-“After Declaration of Custom in relation to Land Tenure)
Lease/Lease Back Agreement – State & LO’s (Agency)
Tony W Aimo
Waimenokor& ILGs as temporary Overseer
?
?
?
?
Beno Patric
Waringema, Maprik
?
?
?
?
Alois Moilem
Tau One, Dreikir
?
?
?
?
Issac Wrongkalm
Baklo, Dreikir
?
?
?
?
Paul Adam ito
?
?
?
?
Charles Kundi
Bongos
?
?
?

?
Paul Asahand
Aplatak, Dreikir
?
?
?
?
?
Joseph Koi

?
?
?
?
Gabriel Yombonga
Kwa'ato
Yubanakar, Dreikir WASO

?
?
?
?
Kepas Taloh
Musandal, Dreikir
?
?
?
?
Herman Masimbor

?
?

?

Key

* Denotes name appears in either LIR or Lease/Lease Back Agreement
? Denotes name missing from LIR or Lease/Lease Back Agreement

Documentary Submitted to COI by NRMAL

In documents delivered to the Commission on 26 September 2011 Nungawa Rainforest Management Alliance Limited has made some submissions as to the procedures it has pursued to

ensure the registration of the SABL.

They submit the following: –

- (i) that the SABL has effectively mobilised customary land through the title acquired by the Umbrella Landowner Company, being NUNGAWA Rainforest Management Alliance Limited.
- (ii) that the NEC recognizes Bassei Oil Palm Project in the Nukuma area is an “integral part” of the Nunwaia/Bongos Integrated Large Scale Agricultural Project
- (iii) that a 1996 Forestry Management Act (FMA) did not adequately cater for the development needs of the majority of people and that the current project initiated did
- (iv) that through landowner consultation and compliance with Agriculture certification, Environmental permits applications process having been completed and permits issued the prerequisites for and Forest Clearance Authority have been completed.
- (iv) however at this stage the Agriculture project can progress on savannah or grasslands
- (v) that the Umbrella Landover company has shown its commitment by advancing K1,000,000.00 as seed capital to the company
- (vi) that an inaugural Board of Directors meeting was held on 13 August 2011 where in 9 directors were endorsed, 7 Board of Trustee members and other agendas for approval, a reminder that the company was incorporated 8 October 2010 and had been holding itself out as representing landowner interests up till that point, all this after the granting of the SABL before this inaugural Board meeting.

SPZ Enterprises Proprietary Limited of Australia

SPZ Enterprises (PNG) Proprietary Limited is a company incorporated in Australia. On 14 December 2007, it was registered by IPA as an overseas company under the PNG Companies Act 1997. The company number is 3- 61721.

On 27 August 2008, IPA issued Certificate Permitting SPZ as a foreign enterprise to carry on business in the activities of Forestry, Logging and Related

Services (IPA ISIC Code 0200). Its place of business on the Certificate is Section 49 Allotment 39 Kreer Heights, Wewak, East Sepik Province.

The Commission notes that SPZ Enterprises (PNG) Limited was the preferred developer in a major government decision in 2008 on the Nungwaia–Bongos Integrated Agriculture Project over the SABL Portion 54C.

The Company profile annexed to EIS submitted to DEC for environmental permit, SPZ's previous work undertaken in PNG and elsewhere disclose its activities in PNG,

- * Logging operations in Korombe Timber Area in East Sepik Province, done on harvesting of timber for construction of a road where 6,000 m³ of hardwood timber was harvested and shipped to markets,
- * Ivanika Timber Area, Central Province project to begin 2010
- * Nungwaia–Bongos Integrated Large Scale Agriculture Project
- * Yassip (ESP) –Paup (Sandaun) Road Line Timber Permit for Nungwaia– Bongos Project.

The SPZ Profile indicate that company has minimal or lack the experience and capacity of a reputable international company developer in the Nungwaia– Bongos Project and the role it played in entering into a major agreement with the State is questionable. The inquiry is very critical in the

choice of the developer having the experience and funding capacity to fund the agriculture project.

The Commission search on the SPZ Enterprises on Google fail to disclose any details on the operation and activities of the company in Australia. A search on the Geoff Palm Limited website <http://www.geoffpalm.com> refers to SPZ

Enterprises Limited as a subsidiary company of Geoff Palm Limited whose address is with very little information on the operations and activities of the company.

The C.O.I notes that SPZ had undertaken the following

1. Payment of K1million advance rental to NRMAL
2. Road construction from Nahana junction to Masalaga grassland where the Nursery Oil Palm seedling is located.
3. Logging activity under Roadline TA approved by the Provincial Forest Board.

GEOFF PALM LIMITED

Mr Suriya Moorthy (SABL 5 Wewak-14/02/12 @ pages 51-...), Chief Executive Officer of SPZ Enterprises Pty Ltd told the inquiry that Geoff Palm Limited acquired 100 percent shares of SPZ Enterprises Pty Limited in May 2011 The financial provider to the Nungwaia Bongos Project will be made by SIVA Group of Companies especially through its associate Biopalm Energy Limited. The SIVA Group website <http://www.sivagroup.in/group-companies/biopalm-energy.aspx> states the BEL has been focussing on developing green-filed oil palm projects and acquiring existing palm plantations in Africa [mainly Liberia, Sierra Leone, Cote d'Ivoire, Democratic Republic of the Congo, Cameroon and Mozambique], Asia [Indonesia and Papua New Guinea] and South America." According to RSPO website details Geoff Palm Limited is involved as producer and exporter of oil palm and has acquired oil palm plantations in Sierra Leone, Democratic Republic of Congo, Cameroon, Indonesia and recently Papua New Guinea. "The geographic ambition of the company will be

facilitated by the use of economies of scale, strong local partnerships,...the local community." (see website <http://www.rspo.org/en/member/1147>).

The following detail relevant to the Commission on Geoff Palm was obtained from the website, given the fact that the Commission was unable to confirm details of Geoff Palm in PNG through the Office of the Registrar of Companies.

- * The company's registered address Tiara Labuan, Jalan Tanjung Batu, 87000 F.T. LABUAN, East Malaysia Communication ON 25, NORTH TOWER, SINGAPORE-048583 Malaysia.
- * Geoff Palm has a number of holding and subsidiary companies namely;
- * Holding Company: Broadcourt Investment Ltd
- * Subsidiaries/JVs/has stake in Sier African oil Palm Limited, SPZ Enterprise Pty Ltd, Sierra Leone Agriculture Limited, Biopalm Energy Limited, PT Citra Palm Developments Ltd; Dekel Oil and Feronia Inc.)
- * The Director is one Premalatha Chaderasekar who is the representative of the company.

Roundtable Sustainable Palm Oil

It is a member of the Roundtable Sustainable Palm Oil ("RSPO") and our search on the RSPO

webpage confirm that it applied for RSPO membership on 26th December 2012 and approval was granted on 8th February 2012 making it a full member of RSPO (Registration Number LL07798 and Membership number 1-016-12-000-00).

The RSPO requirements can be applied only where there is a JV Agreement or an Agricultural Sub-lease agreement that will provide the landowners with the

right to terminate where there is a breach of the Sub-lease provisions or the project operator is unable to undertake its obligations under the Agreement. The RSPO requirement must become a prerequisite for any engagement of oil palm developers. (See Aimo and Moorthy's evidence on this requirement)

Advance of K1Million to NRMAL by SPZ

An advance of K1 million was deposited by SPZ into the NRMAL ANZ Account as seed capital. The arrangement for the advance credit facility to NRMAL means that within 10 years, SPZ would recover that amount through annual rental and land utilised for agricultural activity. (See evidence of Moorthy)

Department of East Sepik Province

The Department of East Sepik Province is the bureaucratic arm of the East Sepik Provincial Government whose primary role it is to facilitate government policies and directives through the work of its divisions of which the Lands Division is an important one. In the issuance of the Nungwaia Rainforest Alliance Management Limited SABL a formal Land Investigation Report (LIR) conducted by the Lands & Physical Division of the Department of East Sepik Province.

Findings

Land Instruction No. 05/2010 was issued to Provincial Customary Leases Officer to conduct Land Investigation for NBILSP. Mr Lazarus P. Malesa, Manager Acquisitions issued the directive by way of letter dated 11th

November, 2010. That letter was copied to the attention of Mr Aimo MP as Minister for Correctional Services.

Mr Peter Yapog, the Senior Customary Lands Officer, DESP was directed by DLPP to confirm that no other leases existed over the subject land and was still a customary land covering an area of 110, 415 hectares; and to conduct awareness on lease/lease back process prior to conducting the Land Investigation.

Mr Yapog in evidence said that the awareness and land investigation was conducted within a period of two weeks. The LIR was signed by Mr Yapog on 22nd November 2010. At the commencement of his investigation he put out a radio message which was relayed by Radio Central Sepik Station (Maprik) informing all the villages located in the Gawange LLG Area of Ambunti/Drekikir District, North Wosera LLG Area of Wosera/Gawi District and Bumbita-Muhiang LLG Area of Maprik District to attend to verify the ILGs and the land investigation at four central locations within the project site. By this he assumed that the majority consent required was

confirmed

The Land Investigation Report contained the following information

* The villages comprising Yumbagor 1&2, Apangai, Masalagar, Kubriwat 1&2, Wahaukia, Asanokor, Asa Kapa, Bongomasi, Tau 1&2, Waimenokor, Apos, Inokor, Apeku, Kuyor, Mamsi, Sermbuombo, Ujeli Sauke, Kuartengisi, Bongos, Daina, Musendai, Wasambu, Kuanga, Nungwaia, Jipako, Jambtanget, Apambi and Wapindua did not truly reflect other villagers/landgroups within the area.

* The Schedule of Owners, Status and Rights to the Land does not contain any names of landowners and agents.

* In terms of Alienation, the landowners were willing to lease the land for a period of up to 99 years.

* The Certification as to the agreement to sell/lease the land to the State is incomplete without any names of landowners but Mr Yapog certified.

* There are 58 people who have signed under the Declaration of Custom in relation to Land Tenure. This is far less than the estimated population of 30,000 people.

* In addition to the 58 people who signed the Declaration of Custom in relation to Land Tenure, a full page of names of Chairman representing the 304 ILGs is shown at pages 8 and 9 of the LIR agreeing to transfer their rights to the State. The certification by Yapog with reference to the signatures of the Chairman is misleading. The report only contains the names of the individuals and no signatures can be verified. Mr Yapog signed that declaration on 22nd November 2011. He later corrected it in evidence by stating that it was signed in 2010.

* Mr Yapog certified that he walked the entire 110,000 hectares in company with all the chairman and agents of the 308 ILGs on 22nd November 2010. Even if Mr Yapog did process the investigation over a period of 10 days, it would be impossible to walk the entire land boundary in one (1) day.

Mr Anisi's evidence confirm that Mr Yapog failed to carry out the boundary walk, meaning he lied under oath

* The Recommendation as to Availability (sic) (should read as "Alienability") was signed at Dreikir Station on 3rd March 2011 by Mr Wandoi Sawang, District Administrator. There was no due diligence conducted hence, the LIR is incomplete and that the issue of majority consent has not been properly addressed.

* No reservation was made for customary rights to continue over the land. Mr Yapog forgot to include the provision for reservation.

* The Commission also notes that the Instrument of Lease for Customary Land under section 11 of the Land Act was also executed on 3 March 2011 by Mr Pepi Kimas as Delegate for the State and 10 purported landowners and Chairman of ILGs in the presence of Mr Peter Yapog

According to Mr Yapog, the LIR was rushed because of the project agreement and the NEC Decision on the SABL process. The following is an extract of the evidence,

it was a NEC project and I was under pressure here to fast track these land investigation,

...

there. So I got instruction direct from the Department of Lands and that I have to---“

INCORPORATED LAND GROUP

Mr Yapog was supplied with the list of ILGs who consented to the Forest Management Authority Agreement in 2006. The original ILG list comprise 230 ILGs comprising Yabankor 2, Apangai, Nungwaia, Jipako, Jambitange, Apambi, Wapindumaka, Daina, Kuanga, Masalagar, Kubriwat 2, W? haukia, Pelinanou, Yakrumbok, Bongomasi, Moireng Bonahoi, AposInokor, Emul,

Musumblem, Im?Bras Tumam, Musendai, Luwaite, Nyambole, Musingwik, Alawinge and Musenau.

When the FMA Agreement was cancelled, a supplementary list of about 157 ILGs was added to the original list of 230 ILG totalling 287 ILG. That list was used by Mr Yapog as a means of completing his task with ease. He did not undertake any due diligence or independent assessment on the expectation and wishes of the people. If Mr Yapog had diligently performed his investigation without undue pressure from Waigani and political leaders, he would have identified the Bassei Landgroup scheme, Mapsera existing SABL lease and the objecting landgroups whose intention was for a proper awareness to be made prior to the registration and issuance of the SABL title.

The FMA Agreement was cancelled and does not exist for the FMA surveyed area and the 157 ILGs that consented for the FMA in 2006. It was evident that the majority consent of the landowners obtained in 2006 adopted by Yapog to complete his report as to the majority consent for the Nungwaia Bongos Project. He did not conduct any independent verification on the individual ILGs but included the 2006 consent to facilitate statutory requirement pursuant to Section 11 of the Land Act. The evidence and records produced also indicate that that following villagers which was listed under the Nungwaia-Bongos SABL namely Apangai, Nungwaia, Jipako, Jambitanget, Masalagar, Apambi, Wapim Dumaka and Kuanga, have aligned themselves Mapsera Development Corporation, SABL Portion 54C. This means that the ILG verification exercise was misleading and did not fulfil the requirement for majority consent pursuant to section 11 of the Land Act.

The evaluation of the processes and procedures for the registration of the customary land and the issuance of the Special Agriculture and Business Lease did not follow the due process. The provincial lands officer did not consult the various clan members and securing their consent to register the customary land. Two weeks is very limited time to cover the area and complete the tasks.

The lands inspection report is financed by the open Member for Ambunti Drekikier Open Electorate and it is difficult to ascertain the integrity of the professional job against the influence of the interested party to conduct the free fair land owner consent to land registration.

There is also lack of evidences of genealogy studies as the process of establishing the various clans and the agreements between clans for the registration of the Incorporated Land Groups (ILGs) which are conducted by different professionals than the lands officials. The clan land investigation and verifications reports conducted by the provincial customary lands registration officer in the province and his counterpart in Port Moresby are incomplete and suspects. There was no field survey conducted by the Division of Lands and Physical Planning in the East Sepik Provincial Administration to establish physical boundaries and demarcation marks between the various clans and villages .The Grade 4 surveyor?s advice is based on establishing coordinates from maps in the office without physical boundaries marks on site and therefore this procedure for establishing land boundaries between clans is flawed.

Recommendation

That the SABL be revoked pending a fresh LIR to be re-conducted by the Department of East Sepik Province with the walking of the boundaries and certification as to ownership by custom.

That Mr Peter Yapog and Provincial Customary Lands Officer attend a training workshop to be run by the DLPP for the purpose, and Provincial Administrator be reminded as to their respective roles regarding SABLs and to be re-educated and reinforced as necessary regarding proper conduct of LIRs.

DEPARTMENT OF PROVINCIAL AFFAIRS AND LOCAL LEVEL GOVERNMENT (DAPLLG)

Findings

No Certificate of Alienability was issued under the hand of the Custodian of Trust Land in accordance with section of the Land Act.

Recommendation

That freshly conducted LIRs be provided to the Secretary of Provincial Affairs as the custodian of customary land for issue of certificate of Alienability.

DEPARTMENT OF LANDS AND PHYSICAL PLANNING

The Department of Lands and Physical Planning processes SABLs under two main legal criteria prescribed under the Lands Act Chapter 5 (the Land Act). The relevant provision referred to are sections 10 and 11 of the Act and section 102 of the Act.

REGISTRAR OF TITLES FILE

There was no file produced however a title document was produced upon direction by the Commission. An SABL title document was produced signed on

the 12 April 2010 by delegate of Minister Mr Romilly Kila Pat, Deputy Secretary Customary Lands Division. There are no record of subleases recorded on the reverse of the title document produced. Chronology of the NLD Volume 19 Folio 14 Files produced to C.O.I.

The NLD file is incomplete to a certain extent; the following are on file;

An Application form or Tender Form was completed and signed by one A Aimo and dated 02 March 2011. The Receipt Docket shows that the payment of the Application was made on 7 March 2011. The Commission is critical on the late receipt and endorsement of the application form by DLPP as it does not correlate to the administrative process for SABL. This is the very application that should form the basis for the SABL process. This application was submitted after the LIR was completed by Mr Yapog on November 2010, the lease/lease back agreement between the State and NRMAL and prior to the issuance of the Title to NRMAL on 19th April 2011. DLPP basically failed to insist on the Application as a means of processing and vetting the application prior to issuance of Land Instruction Number and the Land

Investigation process

Mr Lazarus Malesa, Acting Manager Customary Leases issued the Land Instruction Number by letter dated to Division of Lands and Physical Planning, Department of East Sepik Province.

Correspondence dated 18 May 2010 referring to a supplementary ILG agreement signing from Member for Ambunti–Drekikir. In the letter he states that the project area has some 380 ILG Chairmen. In this letter the MP asks that the Forest Clearance Authority be granted to SPZ Enterprises (PNG) Attached are the signatures of what appears to be relevant ILG Chairmen.

Land Investigation was conducted by Mr Peter Yapog and a report was compiled and submitted to DLPP for lease/lease back agreement, registration and issuance of SABL Title.

The Certificate of Alienability wrongly worded as the Certificate of Availability (sic) was signed by the District Administrator on 03 March 2011.

A Minute from Mr Andie Malo, Director Customary Leases to Secretary DLPP via Deputy Secretary (Customary Lands) states that the documents lodged have complied with DLPP requirements; the Minute was dated 24 March 2011. Mr Romilly Kila Pat sighted and agreed with contents on 29 March 2011 and Secretary signed on 04 April 2011. We however note the lack of due diligence and ignorance of DLPP in the preparation of the Lease/Lease Back Agreement

* Instrument of Lease/Lease Back Agreement includes a list of ILG Chairman and the appointment of Agents to sign on behalf of NRMAL/Landowners. We find that the consent of the landgroups/individuals within the clans/landowners in the normal process agree to and appoint an Agent in the Land Investigation stage. The inclusion of that list does not reflect the true consent of the people over the agents nominated to sign in their behalf. (Refer to Clause 2.0 of the Instrument of Lease/Lease Back Agreement dated 3rd March 2011

* That is also a crucial lapse in the SABL process rendering the consent obsolete.

* We are critical on the misleading information presented to the delegate by Mr Malo resulting in the execution of the Agreement (section 11) and the gazettal of the Notice of Direct Grant (section 102).

The Notice of Grant was then issued on 04 April 2011, signed by Pepi Kimas then Secretary of DLPP, with 10 men, only 2 of them being shareholders of Nungawa Rainforest Management Alliance Limited, it's not clearly indicated which ILG's these men were representing although names and clans are, and it

appeared that Mr Noah Gremernge signed as Chairman for ILG 5684 Lah Ngaivgjnoh ILG and ILG 6327 Glemin ILG of Tumam Village indicating basically representing 2 villages and his signature appears against those two ILGs. The document was signed by Secretary Pepi Kimas and witnessed by Peter Francis Yapog, Andie Malo the other witness did not sign. The document was dated 03 March 2011.

This is well before the s102 notice date, and the minute approving the issuance of the lease-leaseback instrument. It is however the same date as when the Certificate of Availability (sic) Alienability was signed by the District Administrator.

We take note of a letter of Objection dated 05 April 2011, received 06 April 2011 by DLPP from Wesley Tiama Ward 12 Member Ambunti LLG, as well as 9 other individuals from various villages in Drekikir. They objected strenuously to the issuance of the SABL for various reasons the mainly being a lack of genuine landowner consent and awareness. At that stage a lease had been issued, however DLPP has been assured by Nungwaia that the landowner issues were being dealt with DLPP failed to take note and act on the objections by the landgroups. The details on the objections to the SABL is discussed in this report.

Mr Pepi S. Kimas and Mr Simon Malu was not able to provide any further explanation of this aspect of the inquiry.

Recommendation

The procedures and processes for the issuance of the SABL to the customary landowner company are flawed because the land investigation and verification reports were carried out without due care and did not allow consultation and the

consent of all the customary landowners. There is also lack of evidence of the ILG registration and verifications processes and procedures.

DEPARTMENT OF AGRICULTURE AND LIVESTOCK

Pursuant to Clause 3.2 (e) of the Project Agreement the obligation of the State to fulfil its obligation to SPZ was to

"(e) application to the Department of Agriculture and Livestock for the written approval of Forest Clearing Authority (FCA) for large scale conversion of forest to Agriculture or other Land Use under section 90A and 90B of the Forestry Amendment Act 2007."

Several documents tendered to the C.O.I by DAL were not sufficient to determine how DAL approvals were granted.

Agriculture Sublease Agreement

The decision to enter into the sublease agreement was not endorsed by the shareholders of NRMAL in accordance with the Companies Act/Cooperative Societies Act respectively.

The terms and conditions of the Sublease Agreement tend to be most favourable to the Developer. The following condition on the lease deemed as unfavourable are,

(1) The Agreement was signed between the parties at Port Moresby on 20 May 2011. The lease is for a period of ninety-nine years commencing 3rd March 2011 (Schedule Item 6) and

(3) Advance rental of One Million Kina (PGK 1, 000,000) to be paid to the landlord within 15 days of the execution of the Agreement (Clause 2(c))

(4)

o K 1,000,000 was paid to NRMAL by ANZ Bank Cheque # 0013354773 dated 8th June 2011 on account of SPZ Enterprises

Ltd. Mr Moorthy told the inquiry that this was seed capital to assist the landowners. It is in fact advance rental for ten (10) years recoverable over the same period of time commencing first year of rent.

o Schedule Item 7 (Rent for Term) of the Agreement stipulates that US\$2.00 (United States Dollar Two Only) or the equivalent in PNG Kina per hectare per annum on Planted hectares²⁷.

(3) Clause 8 (Use of Land) – The Landlord (Landowners), its servants or agents interfere with the use and management or with any aspects of the land where the Tennant plants, grow and harvest oil palm. This is a restriction on the customary right of access to creeks, sacred burial sites, hunting grounds and so forth.

(4) Ownership of Oil Palm remains the property of the Tennant. If the lease is to be terminated by the Landowners, then compensation for tenants loss will be borne by the Landlord including amounts made of Tennant's projected profit from the harvest of oil palm for the duration of the agreement.

27 “Planted hectares means that area of the Land within the Sub-leased portion, measured in hectares, on which the Tennant plants oil palm, builds roads, drains and construct buildings, facilities and residences necessary for the development of the plantation.” Refer to Clause 21 (e) (Interpretation) of the Agreement.

Certificate of Compliance for Large Scale Conversion of Forest (Form 235 of Forestry Act)

The C.O.I sighted a Signed Certificate of Compliance for Large Scale Conversion of Forest to Agriculture in Form 235 dated 3 September 2009. This was followed by a public meeting held at Drekikier Station on 30th October 2009 with the Provincial Administrator, DAL team and others where at least 25 persons spoke concerning the project. The draft Minutes of the Meeting fail to raise awareness with regard to the need for land to utilise customary land and resources for agriculture and business project. The only fact was that the meeting only endorsed the consent to terminate the FMA for FCA which would require the use of customary land, and that was not mentioned at that meeting.

The Forest Participant has not been granted to the landowner company NBRMAL and the developer as yet.

In a letter from PNGFA dated 8 February 2010, to Chairman of SPZ Enterprises (PNG) Ltd Mr Steven Mera asks that a Certificate of Compliance for Large Scale Conversion of Forest to Agriculture in Form 235 under the Forestry Act be provided under cover of letter.

The Approval for Large Scale Conversion of Forest to Agriculture or Other Land Use Development was approved by the Secretary for the Department of Agriculture and Livestock on the 3rd of November 2009 without the detail development and a map of the proposed project area

The C.O.I. is concerned SPZ failed to provide to DAL a detailed agricultural development and business plan, implementation schedule plan and the costs

benefits analysis. The procedure referred to in the evidence of Francis Daink (---), Secretary (Anton Benjamin) and Leka Mou (SABL 29/02/12 at page 12), was not followed in the Certification for PNG Forest Authority to endorse FCA application. In fact the lease/lease back process was commenced by DLPP in November 2010 and the approval for FCA was made by DAL right after the public meeting.

The C.O.I. has also sighted correspondence written on behalf of SPZ by DAL Secretary to Secretary, DEC to give favourable consideration to their application for environmental permit. (See letter dated 9th September 2009 Anton Benjamin/Dr Wari Iamo)

Mr Joseph Wohuinangu who was the C.O.I.Agriculture Advisor visited the project site on the 12th of February 2012 directed the investor and project proponents to submit the detail agriculture development plan and the investor did not comply. The evaluation on the agricultural and business component of the Oil Palm project on site raised a number of serious aspects to the approval process by DAL.

“There is no detailed plan for the palm oil palm production, processing and export with schedules for production, processing and the costs and return analysis with road and transport infrastructure to support the establishment of palm industry .These information are contained in Form 223 and submitted for approval and certification by the Secretary for the Department of Agriculture and Livestock under the Forestry Act 1991 with other relevant particulars prescribed within the Act.

There was no application submitted to the Secretary for the Department of Agriculture and Livestock for evaluation and approval of the business plan for

the development of agriculture project. A detailed development plans showing the precise areas and proposed rate of harvesting to be carried out to coincide with the rate of planting of the cash crops and successive land use with the start- up and completion dates. In the plan there would be costs schedules for the development of the plantation with a guarantee from a bank or financial institution to ensure that the full costs of funding of the project will be available to the applicant. There will be a map with the description of the project area showing any areas of slope in excess of 30% or any areas which are unsuitable for agriculture or other land use development and any areas important for conservation. There will be a report verifying the ownership and the consent of each resource owning clans within the project area which has been signed in the presence of a village court magistrate in the prescribed form. That report was not submitted to the C.O.I and we are of the view that there no such report existed.

There is an NEC Decision approving the importation of inputs without tax for the development of oil palm which sets bad precedents for development of agriculture projects in the country. Without detail agriculture development and compliance to the statutory requirements for development of the agriculture and forestry in this country creates suspicions about the integrity of the investor to develop the oil palm industry.

No Land Use Plan for the Area

Crop farming as business is firstly based on the land use plan which determines the potentials for crops and livestock for investment in a given area/district.

There is no land use plan for the Ambunti /Drekikier District and the project area and therefore it is difficult to determine the areas that are suitable for crops and livestock production and processing.

No Soil Suitability Assessment

Soil Survey is a detail study to determine the plant nutrition requirements which would contribute towards the input costs for the agriculture investment plan .There is no soil suitability assessment report therefore it is difficult to assess the agriculture projects and plans, input requirements and the areas that would be planted with oil palm .

Feasibility Study

Feasibility study should be next step to confirm technical, economics and financial requirements

for the establishment commercial farming business. Based on the outcome of the feasibility study an investment plan would be drawn and submitted to the government and a developer/investor.

In the forestry projects this processes is undertaken through under the Development Option Study within the provisions of Section 62 subsection (2) and (3) of the Forestry Act 1991. There was no feasibility study cited in the information provided about the Nungwaia Bongos SABL to the COI.

Therefore this project is being developed without technical scrutiny from the relevant processes and procedures established within the Department of Agriculture and Livestock and the related Government Statutory Agriculture Agencies in PNG.

With the acquisition of SPZ Enterprises Limited by Geoff Palm Limited, there is a need to submit new agriculture plans for Oil Palm project.

Francis Daink

Mr Daink was instrumental in facilitating the meeting at Nungwaia/Bongos knowing full well that the land was under a FMA Agreement and hence, the people present lacked understanding that the cancellation of the FMA automatically meant that their consent for FMA also terminated. What was found wanting was that the meeting failed to address the primary aspects of FCA required acquisition of customary land under an SABL for high impact agricultural project. The presentation made during that meeting failed to inform the landowners on the advantages and disadvantages of SABL and with the important stakeholder DLPP absence that meeting failed to achieve that intended purpose. All it created was state of confusion within the landowners of the project site.

He played an integral role in the issuance of the certification for conversion of forest to high impact project to the developer SPZ without considering a detailed agriculture plan, implementation plan and the financial input from the Developer. The basis for the approval by DAL was the public hearing held at Drekikier Station in October 2009 which was co-chaired by Mr Daink.

Mr Tony Hobiago, the Agriculture advisor to the Department of East Sepik Province also expressed grave concerns on the capacity of the developer on the project. These concerns were raised with the relevant authorities with no action taken.

Recommendations

There is no detail agriculture development plan and approval of the certifications processes by the Secretary for the Department of Agriculture and Livestock. Thus the issuance of the sublease to the SPZ Enterprises (PNG) Pty Limited is flawed. Therefore the SABL sublease to SPZ Enterprise should be

revoked and the processes through which the shares of SPZ Enterprise (PNG) Pty Ltd were sold to Geoff Palm should be investigate to direct the latter to comply with the government statutory requirements for establishing oil development project.

After the completion of the above processes the agriculture investment company will hire a logging company to harvest the forest and clear the area that was proposed for large scale agriculture and other land use development projects. There are very good examples of customary land being used for the development of oil palm in West New Britain that the experience could be drawn from to facilitate the planning and development of agriculture business plan under the

SABL.

In PNG the logging companies have never developed large scale agriculture development project after the large scale forest clearance. Therefore the customary landowner companies should be negotiating the joint venture agreement with an investor that have the capital for financing and management expertise for developing large scale agriculture and other land use projects under the sublease agreement of the SABL.

PNG FOREST AUTHORITY

There was no PNG Forestry file produced, mainly due to the fact that there is no Forest Clearance Authority issued over this SABL. However there have been correspondences sighted on other interested persons documents submitted and the PNGFA will need to provide all relevant correspondence in the ongoing assessment of the FCA which is underway by them.

SPZ Enterprises (PNG) Limited is recognised by PNG Forest Authority as a Forest Industry Participant. Certificate F102183 was issued on 8 July 2008, but there is no evidence of renewal of FIP with PNG Forest Authority.

Licence to engage in forestry related activities in the East Sepik Province for a period of 12 months with effect 24th September 2008 to 23rd September 2009 was issued by PNG Forest Authority. No further evidence was produced to indicate whether any renewal was made for the period 2009 to present.

RECOMMENDATIONS

No Forest Development Plan

There is no development plan for the harvesting of logs and either processing into timber and export as logs or utilization of the timber products. There appears to be lack of compliance to Section 90B for Forest Clearance for large scale agriculture and other land use development on the Nungwaia Bongos Agro-Forestry Project. There are no evidence of the five year and annual logging plans for the area.”

No FCA to be issued pending a complete review of the LIR and the ILG process. SPZ and Geoff Palm to submit detailed plans on the oil palm Plantation.

DEPARTMENT OF ENVIRONMENT AND CONSERVATION

All documents lodged before the granting of SABL, Ministerial approval in Principle was granted 11 March 2011, 8 days after the grant of the Lease- Leaseback document 4 March 2011 and the granting of the SABL proper on 19 April 2011.

i) Initial step by the developer SPZ to issue a Notice of Preparatory Work for Level 2 and Level 3 Project document dated 19th July 2009 was lodged 9 September 2009. It was noted that Mr Mera stressed the importance of the NEC Decision and Project Agreement being the

driving force behind the need for environmental permit to be issued to enable work to commence on the project site.

ii) The proposal stated that it intended to log 10,000 hectares 5000 hectares of which would be developed for cocoa estates.

iii) The Environment Inception Report document dated January 2010 was lodged 23 March 2010 for assessment and consideration.

- iv) The process of assessment led to the Environment Impact Statement (Level 2&3 Activity) dated 13 May 2010 being lodged 27 July 2010
- v) The Environmental Council deliberated and recommended Approval in principle on 25 February 2011

The Documents submitted to DEC indicate that the logging component will precede the agriculture component within the forested area. (Refer to Environment Inception Report January 2010 and Environment Permit dated 25th March 2011).

The C.O.I is critical that this process was actively pursued by the SPZ before the granting of the SABL title proper on 19th April 2011. We also note that inter-agency coordination of major impact projects on customary land are completely non-existent resulting in the issuance of permits and other Certification, This project documentation and approvals requires collaboration with DLPP, DAL, PNG Forest Authority and DLPP.

The environment permits were issues on the 29 April 2011 for waste discharge and water use.

RECOMMENDATION

The submission of all the application for Environmental Permit was done prior to the issuance of the SABL Title to NRMAL. It is highly unlikely that DEC

conducted environmental assessment although it was obvious that the developer provided detailed submission to DEC.

DEC should undertake a major review on the operations of SPZ in the Nungwaia Bongos SABL Project site to verify if any level 2 and 3 environmental impact concerns are present.

No application for environmental permit should be allowed unless all pre-requisite and appropriate dialogue in terms of leased/lease back, detailed agricultural plan, business plan and costing and the implementation schedule are approved consistent with relevant legislation. DEC should liaise directly with other government agencies in this regard rather than basing their assessment on the documents submitted by the Developer.

The environmental permit was granted to the developer SPZ Enterprises (PNG) Ltd, for Large Scale Forest Clearance and conversion of the land into large scale development of oil palm, cocoa and other commercial crops under section 90A of Forestry Act of 1991, on the 29th of May 2011 and will expire on the 26th of May 2061. A new oil palm development company Geoff Palm International bought out the shares of SPZ Enterprise (PNG) Pty Ltd in this project and the latter and will invest in the development of oil palm only in the same area within the vicinity of Nungawaia Bongos. There should be a separate environmental impact statement for the development of palm oil project.

OBJECTIONS RAISED BY THE LANDOWNERS AND LANDOWNER CORPORATE ENTITIES

The objections basically was for NRMAL to draw attention to the very fact that SABL Portion 55C overlapped into other existing landgroups customary land, the need for these groups to establish their own projects within their ILG groups

and need for NRMAL. These objection are valid and need for collaboration and understanding was not reached by all concerned, hence the disputes.

WESLEY TIAMA WARD 12 MEMBER AMBUNTI LLG FOR AND ON BEHALF OF VILLAGES OF HAMBUKEN, GUMANJUWI, HOLAMBOR AND AKAMAU VILLAGS OF AMBUNTI LLG

Submission received by Commission, 23 August 2011, undercover of Statutory Declaration dated the same day signed by Wesley Tiama Ward Member of Ward 12 representing the Hambuken, Gumanjuwi, Holambor and Akamau Villages, Ambunti LLG.

They made the following submissions:-

- i) There was no proper landowner consultation and consent from them regarding the Survey Plan and the Land Investigation Report(LIR)
- ii) That landowners that signed on the LIR were not representatives of their communities
- iii) That objection had been raised at a DAL Public Hearing on 30 October 2009 to the project in writing but it had been ignored
- iv) Makes claims of undue influence from sitting members of parliament and a Departmental Secretary
- v) That their land has been earmarked for the Bassei Oil Palm Project and the current survey plan encroaches onto that land
- vi) A map detailing encroachment was attached clearly marking

The submission also attached a letter from Simon Pilak Ward One Councillor of Mowi Village, Burui Kunai LLG, Wosera Gawi District also objecting to the "logging company"

These landowners state that they have interests in neighbouring Bassei Oil Palm Development Project and developer company Bassei Oil Palm Investment Ltd. Approximately 280 persons signatures have been attached to the letter.

BASEI OIL PALM INVESTMENT LIMITED

Under cover of Statutory Declaration a submission was received by Commission on 24 August 2011 from Basei Oil Palm Investment Ltd Chairman & CEO Roy Kenba Balagawi and Brian Casley Tapy Corporate and Marketing Manager.

They recount the disputes and disagreements in the following submissions:-

- i) That Forestry Management Agreement (FMA) entered into by traditional owners was still current at the time of granting of the SABL and hence was illegal as there was no valid agreement to deal otherwise from the landowners.
- ii) That there was a "hijacking" of development in that area at the National level via a NEC Policy Submission for a project known as "Nungwaia Bongos Integrated Large Scale Agriculture Project" dated 10 December 2008.
- iii) That the Basei Oil Palm Development Project proposal document was plagiarised.
- iv) That National Court proceedings are underway OS 258 of 2010 between Basei Oil Palm Investment Limited & the Company Chairman Roy Kenba Balagawi against Honourable Tony Aimo, Member of Parliament and five others including SPZ Enterprise Ltd.
- v) Basei Oil Palm Investment Limited they contend is the preferred developer by the resource owners not SPZ Enterprise (PNG) Ltd
- vi) A copy of a Petition relating to the Bassei Oil Palm project dated April 2011 was submitted to the Commission on 22 September 2011. It

petitions against the involvement of National Politicians, alleging interference in their project. Importantly attached to this petition are copies of National Court proceedings OS 258 of 2010 commenced on 27 May 2010, between Basei Oil Palm Investments and Chairman against current Members of Parliament for Ambunti-Drekkikir and Maprik and others including the developer SPZ Enterprise Limited.

Mr Roy Kenba Balagawi, CEO and Chairman of Bassei is an engineer by profession. He had been employed by CDC at Hargy Oil Palm and received all his training by CDC. He moved through the ranks from Oil Palm Processor Engineer by to Acting Chief Engineer. He left CDC and worked with Higaturu Oil Palm and left due to injury he sustained during a criminal attack. He joined Milne Bay Estates and returned to his home district at Ambunti in 2003 . In 2003 he was approached by the current resource owners of Ambunti who sought his advice on scoping out the oil palm project that could allow accessibility to good road network and generate income for the people. Mr Balagawi undertook seven months consultancy working through the entire land mass, assessing whether or not there was land available for project. According to Mr Balagawi, Ambunti is heavily populated but there was sufficient land to undertake the oil palm project.

He states that he personally scoped the Bassei oil Palm Project basically informing the resource owners on the effects of oil palm, its advantages and disadvantages. They agreed to proceed with the project. At that time 4000 hectares of land was insufficient and that meant procuring more land within the District so that the entire population could benefit,

Bassei Oil Palm Investment Limited was established as a landowner vehicle to drive the project. The company established two ILGs known as Masagna Clan and Windu Clan.

The project was well received and endorsed by Grand Chief Sir Michael Somare and funding of almost K1million was endorsed for the project through NDAP. The Bassei landowners were grateful to the Mr Aimo for his support and in December 2008, they submitted the project documents to Mr Aimo for NEC submission. It was at that time that the Bassei Group learnt from Mr Aimo that the NEC Decision was for the Nungwaia Bongos Integrated Large Scale Agricultural Project and not Bassei. Bassei was to be part and parcel of NB Project as an outgrower.

The major contention for Bassei is that the documentation on the feasibility study on oil palm was used by the political leadership in the area to create SABL 54C. They have also been awaiting K100,000 funding from the DESP Land and Physical Planning Division to conduct Land Investigation for the Bassei area which they content is SABL Portion 53C. Mr Balagawi's extract of evidence on oath;

“We found through our findings that the name has changed from Bassei Oil Palm Project to Nungwaia Bongos Integrated Large Scale Agriculture Project. Then I realized we are in trouble because politics has taken its course and we will be fighting a battle because the intended project that we have – me and the people have mobilized – has gone. So that was when we resorted to legal clarification on that and legal –so after finding certain – we realized that funds were exhausted; some funds had been picked up after the NEC decision and we have never received any funds from those funds that were taken out from the NADB and the

other components. The only funding that was given was by the East Sepik Provincial Administration of 100,000 to do the Survey Plan and the LIR which I am still waiting for the LIR report from the East Sepik Provincial Administration.”

There is evidence that Bassei oil Palm Project is outside of Portion 55C and thus would not want to be considered as being part of the Nungwaia Bongos SABL Project. The Bassei area extends all the way along to the end of Sepik River

The move to establish their own project is not in issue with SABL Portion 55C. There is a need for coordination and dialogue between the Bassei landgroups and Nungwaia Bongos in terms of the large scale agro-forest project.

WAMAGIAN DEVELOPMENT CORPORATION LTD

A letter of Submission was received by Commission on 25 August 2011 signed by the Secretary Moses Joshua of the Wamagian Development Corporation Ltd a proposed landowners company sighted as sworn before a Commissioner of Oaths.

He sets out the following issues in his submission:-

I. Lack of widespread and majority land owner consent to the Nungwaia/ Bongos Integrated Large Scale Agriculture Project

II. Confusion between the stakeholders as to the many projects, developers and landowner companies in the area:-

i. The terminated Nungwaia/Bongos Forestry Management Authority

ii. Nungwaia/Bongos Integrated Large Scale Agriculture Project

iii. Nungwaia/Sengo Project under Mapsera Development Corp. Ltd

iv. Basei Oil Palm Investment Ltd

v. Nungawa Rainforest Management Alliance Ltd

vi. Nuwedu Investment Ltd a proposed landowner company

vii. Wamagian Investment Ltd a proposed landowner company

That the Nungwaia/Sengo Agro-forestry SABL issued to Mapsera Development Corporation also be investigated as both Bongos and it criss-crossed the electorates for Wosera/Gawi and Ambunti/Drekikir

DON BAKAT of DITU LIMITED

A former consultant of the developer company SPZ Enterprises PNG Ltd Mr Bakat submitted a sworn affidavit dated 29 August 2011. He gave evidence to the C.O.I and restated in broad terms that there were significant improprieties with the acquisition of the SABL specifically:-

i) That current developer was illegally harvesting high value kwila logs along with an unwillingness to undertake genuine agricultural development which led to him resigning

ii) That there was fragmentation of projects after the cancellation of a 1996 Forest Management Authority. This resulted in 5 related projects being initiated, the Nungwaia Bongos, Nungwaia Sengo, Bassei, Nuku (Portion 26C) Integrated Agro-Forestry Project, Nuku (Portion 59C) Integrated Agro-Forestry Project with encroachment as well as social issues

iii) That the break-up of projects was highly politicised naming 3 National Members of Parliament and enabled the involvement of SPZ Enterprises PNG Ltd

iv) Other allegations are made naming particular actions by the Members of Parliament however as these allegations are the subject of

proceedings involving Basei Oil Palm Investment Limited in OS No 258 of 2010 submissions on those will be limited as the risk of being sub judice.

v) His affidavit continues by stating that legal requirements under the Forestry Act for FCA approvals have not been complied.

vi) That the Nungawa Rainforest Management Alliance Ltd is not a genuine landowner company as there are no Incorporated Land Group Chairmen involved he makes reference to the Nungawa Sengo Project landowner company Mapsera Development Corporation Ltd as a comparison where an ILG Chairman was the Chairman of the Company as decided upon a meeting of all relevant landowner ILG chairmen to decide.

For the record Late Mr Alex Anisi, former Premier and Businessman from Aimul Palandu village Drekikir presented himself to the C.O.I as a person who had an interest as a leader, businessman and landowner from the Drekikir District of East Sepik Province. The Commission was able to hear his views generally on all the SABLs in the province. He gave evidence to the Inquiry on Tuesday 14th February 2012 and as the C.O.I team departed Wewak on Saturday 18th February 2012 we heard of Mr Anisi's untimely passing on arrival in Port Moresby

Mr Anisi's petitions the C.O.I in respect of what he observes to be fundamentally disturbing with respect to the four (4) SABLs located in ESP.

In evidence he is forthright and critical of the line Department's inability to carry out their statutory functions and responsibility diligently. He states as follows;

"It was the fault of the government and the fall back to the line departments which include Commerce – if it wants to get involved – and the Lands people. These are specific departments that have got to deal with it with diligence. If that has been done, we will not face this problem. Of course, we need development. We do not have money; we need investors to come, but if the people were told that our land would be given to foreigners like the one that is happening with the Nungwaia Bongos lease arrangement now."

He was critical of the period of ten (10) days spent by Mr Yapog to conduct awareness on the SABL, verify and confirm ILGs (FMA consents) and the boundary walk to ascertain whether or not the villagers are willing to be part of the SABL. There was more time required to complete the land investigation and not under any pressure politically.

The road construction costing the Developer US\$4,000,000 (PGK12, 000,000) to construct was not a new road but an existing road he built when he was the Premier of the Province.

And by way of assisting the Commission Mr Anisi reflected on two most important aspect of this SABL, firstly

He comes from Aimul Palandu village located in very mountainous region of the Drekikir District. He recommended that the project site should concentrate on the lower region of the District where Hon. Tony

Aimo comes from down to the Sepik Plains connected to Bassei Oil Palm. The Project does not require the entire Drekikir District especially the mountainous region which makes it difficult for oil palm Plantation.

And secondly he recommends

"I will say that this lease-lease agreement must be revoked and be given back to the specific area. Whoever the landowners who particularly want to entertain this and their grandchildren, and their great great grandchildren who might turn out to defraud others, then you do it; some of us will not. It has to be revoked. The title must be cancelled and rearranged in a proper way. We are not against investors; take my point clear. I want the Member for Ambunti-Drekikir to take my point

clear. I am saying that, do it right for the people, not for you and I, for the people; for the people.”

RECOMMENDATION

There was widespread confusion and lack of dialogue between NRMAL and the ILGs within what was an FMA concession area. The lack of understanding and coordination continued due the lack of proper Land Investigation, proper boundary walk, and awareness with the majority of landowners, the Bassei land group, Nungwaia/Bongos Integrated Large Scale Agriculture Project, Nungwaia/Sengo Project under Mapsera Development Corp. Ltd, Bassei Oil Palm Investment Ltd, Nungawa Rainforest Management Alliance Ltd and Nuwedu Investment Ltd a proposed landowner company Wamagian.

Mr Peter Yapog of the Provincial Lands Office, Mr Simon Malo including Mr Romilly Kila Pat failed in their responsibility to undertake a coordinated due diligence on the SABL Portion 55C and suspend the gazettal of the SABL

because project caused so much confusion amongst all the landowners within the Dreikir/Maprik/Ambunti/Wosera District.

OVERALL RECOMMENDATION FOR SABL PORTION 55C TO NRMAL

Lack of Transparency in the Nungwaia Bongos Large Scale Integrated Agriculture Project to develop Oil Palm Plantation

The C.O.I recommends that the SABL Portion 55C to be reduced to the Oil Palm Nursery Seedling Site, Sepik Plains and Ambunti for the very reason of encroachment on an existing SABL Portion 54C in the name of Mapsera Development Incorporation Limited on the land known as Nungwaia Sengo. Mapsera was issued the title on 31 April 2010 a year earlier than Portion 55C held in the name of NRMAL. ILGs linked to Mapsera initially supported the Nungwaia Bongos FMA until it was cancelled and the manner in which the developer was brought in to develop the large scale agricultural project on the cancelled FMA surveyed land with continued illegal logging without any Forestry permit and illegal shipment of Kwila through Hawain on the North Coast of ESP. (See Don Bakat's evidence)

The Land Investigation Report to be reactivated and proper procedures be completed taking into account the consent pre-requisite including

- * Social mapping of all landgroups/clans/villages in the District– genealogy study, identify clan members for purpose of verification on the ILG register that was used in the FMA Agreement and cancellation.
- * Consultation and meeting between NRMAL/Bassei/Mapsera/Nuku landgroups over misunderstanding/confusion/ caused over cancellation of the FMA and issuance of title to NRMAL irrespective of the objection.
- * Objections was basically over the choice of the developer SPZ Enterprises and the lack of consultation over what was political muscle.
- * Survey and boundary walks to identify those willing to allow a portion of their land towards the project and those not willing to allow land for SABL.
- * Authorisation and consent on appointment of Agent for each ILGs

Other Landowning corporation and entities, landgroups who have expressed objection due to the confusion over cancellation of FMA and SABL need to meet and settle any disputes and if needed to consolidate or pursue its own project.

SPZ through its parent company Geoff Palm to reapply for new Environmental Permit consistent with the Oil Palm Plantation. Including other such as

- * IPA Act
- * Companies Act
- * Forestry Act
- * Land Act
- * DAL (s 90A & 90B of Forestry Act)
- * DEC permit (Level 2&3 Activity)

The SUB Lease to be renegotiated or JV Agreement be executed between NRMAL and SPZ over the agriculture project.

Project Agreement to be rescinded and Joint Venture Agreement encouraged. The Agreement is inconsistent with the enabling legislation of respective agencies of government.

Department of Commerce has links to investors BUT need to be proactive in bringing reputable investors with both financial, resources, equipment and skilled personnel to under high impact projects. Need to collaborate with Landowners, IPA, DEC, DAL, DLPP and respective Provincial Administration and Governments.

The National Department of Commerce and Industry must also have a national presence and not confined to selected project sites in the country. Their involvement in the following large scale agro-forest projects is indicative of isolating other disadvantaged provinces through political muscle and dealings.

Rescind Project Agreement

State Contracts & Elements—"consensus ad idem"

The arguments made before us raise a threshold fundamental procedural issue on the jurisdiction of the court to summarily enforce a Deed of Release on a pending action in circumstances where the validity of the Deed is contested on substantive grounds. A Deed of Release constitutes a settlement or compromise of a pending action. It is a contract which is enforceable on its own force. Its validity and enforceability is dependant on the existence of essential elements of ordinary contracts such as the legal capacity of the contracting parties, the intention of the parties to create legal obligations, valuable considerations

parties. This last requirement is particularly significant in relation to "public contracts" transacted on behalf of public institutions or authorities or even public corporations established by statutes. Unlike contracts involving private contracting parties, these kind of contracts are not entirely dependant on the free-wheeling actions of entrepreneurs motivated by desire to maximize profits at minimum expense. The terms of the contract are subject to rules and guidelines prescribed by statute. When a party to a public contract or a third party having public interest in the contract contests the validity or enforceability of "public contracts" on substantive grounds such as fraud or illegality, then courts must take great care to ensure that parties are facilitated with a fair and full opportunity to contest the contract, and after having heard the matter, the court then determines the merits of the case. The higher the public office involved, the greater the amount of

public money involved, the greater the public interest, and therefore the greater the onus on the courts to facilitate a full, fair and proper hearing and decision made on the merits. As part of the court's constitutional duty and mandate as the guardian of the laws of the State, the court has a public duty to protect the public interest sought to be protected by relevant statutes; by ensuring that contracts entered into involving a public body complies with the relevant statutory requirements. It is not proper for the merits of a disputed "public contract" to be summarily and pre-maturely determined, based purely on the untested affidavit evidence of witnesses and submissions of counsel."28

The C.O.I.'s reference to those principle enunciated by the Courts are open to the State to deal with the State Contracts that have executed based on erroneous assumptions and self interest.

28 NCDC v Yama Security Services Ltd SC 707 (6 June 2003) per Injia CJ at page 9[2003] PNGLR 1
Jack Livinai Patterson v National Capital District Commission (05/10/01) N2145; Minister for Lands v Frame (1980) PNGLR 433 at 476-477 (Pratt J)"

1. COI Inquiry File No for Special Purpose Agricultural and Business Lease over Portion 54C Volume 18 Folio 06 Milinch: Masalagar, Kubalia, Chambri and Yambon East Sepik Province in the name of Mapsera Development Corporation Limited.

1.1 In accordance with the powers given to the Commissioners pursuant to section 7 of the Act, the Commissioners have summoned numerous witnesses to produce documents and be further examined on oath or affirmation.

1.2 Witnesses were called from the six government agencies involved in the issuance and operation of the Mapsera Development Corporation Limited SABL. These were:

1.2.1 Department of East Sepik Province, (DESP)

1.2.2 Department of Lands and Physical Planning, (DLPP)

1.2.3 Department of Provincial Affairs and Local Level Government, (DPALLG)

1.2.4 Department of Agriculture and Livestock, (DAL)

1.2.5 Department of Environment and Conservation, (DEC)

1.2.6 PNG Forest Authority (PNGFA)

1.3 The names of the persons who have been summoned to appear and who have in fact appeared in the public hearings (in alphabetical order), including titles, are set out in the schedule below. For ease of reference, the schedule also lists the transcript pages at which the person commenced giving evidence against the name of the witness.

No

Name and Position

Pages

Day

Date

1

Mr Peter Yapog, Acting

101-147

5
14/02/12-SABL 5 WEWAK

Provincial Customary Lands

Officer, Division of Lands

&Physical Planning, DESP

2
Mr Richard Kali,
18-35
2
09/02/12-SABL 2 WEWAK

Provincial Forest Officer

DESP
3-19
4
13/02/12-SABL 4 WEWAK

3
Hon. Mr Gabriel Kapris
MP & Minister for
53-68

4
13/02/12-SABL 4 WEWAK

Commerce & Industry,

Division of Agriculture &

Livestock

4
Mr Steven Mera Secretary,
69-100
4
13/02/12-SABL 4 WEWAK

Department of Commerce

and Industry,

5
Hon. Mr Tony W. Aimo, MP, Landowner.
101-137
4
13/02/12-SABL 4 WEWAK

6
Mr Suriya Moorthy,
51-92

5
14/02/12-SABL 5 WEWAK

CEO, SPZ Ltd

7
Mr Sugunaroo Subramanian, General
92-100
5
14/02/12-SABL 5 WEWAK

Manager-, SPZ Ltd

8
Mr Andrew Sapuko,
Landowner
149-161
5
14/02/12-SABL 5 WEWAK

9
Mr Alex Anisi, Former
162-171

5
14/02/12-SABL 5 WEWAK

Premier of ESP,

Businessman & Landowner

10
Mr Don Bakat, Consultant
10-42

6
15/02/12-SABL 6 WEWAK

& Landowner
65-87

6
15/02/12-SABL 6 WEWAK
11

Mr Roy Kenba Balagawi
CEO, Basse Oil Palm Ltd &
43-51

6
15/02/12-SABL 6 WEWAK

Landowner, Ambunti

12
Mr Mose Joshua,
Landowner
51-62

6
15/02/12-SABL 6 WEWAK
13

Mr Augustine Kaugen,
Landowner
64-65

6
15/02/12-SABL 6 WEWAK
14

Mr Sam Akike, Landowner
88-100

6
15/02/12-SABL 6 WEWAK
15

Mr Michael Caypah,
Landowner
116-122
6
15/02/12-SABL 6 WEWAK

16
Mr Michael Koimo,
Landowner
122-123
6
15/02/12-SABL 6 WEWAK

17
Mr Francis Daink, Deputy Secretary (PATS), DAL
12-26
2-33

05/09/11-SABL13 (Waigani)
06/09/11-SABL (Waigani)
18

Mr Leka Mou,
Agriculturalist, DAL
1-33

8
29/02/12-SABL8 WEWAK
(Waigani)

19
Mr Pepi Kimas, Former Secretary, DLPP

20
Mr Simon Malu, DLPP

Parties represented by counsel

Section 8 of the Act relates to the appearance of counsel before the Commission on behalf of interested parties. It provides that:

“Subject to Section 2(5), a person who satisfies the Commission that he has a bona fide interest in the subject matter of an inquiry under this Act, and any other person by leave of the Commission, may attend the inquiry in person or may be represented by counsel.”

The following were granted leave to be represented by counsel

Exhibits and documents

There were Twelve (12) documents tendered as evidence before the Commission at the public

hearings. A list of the Exhibits is shown below.

No
Item
Interested Party
Date received
Exhibit Number

1
Petition to C.O.I SABL- NRMAL
COI

13/02/12
NRMAL "1"

2
NEC Decision No. 8 of 2009 Nungwaia Bongos Integrated Large Scale Agricultural Projects (2
pages)

COI/NRMAL/SPZ

13/02/12
NRMAL"2"

3
NEC Decision No. 288 of
COI/NRMAL/SPZ/Commerce

13/02/12
NRMAL"3"

2008 Nungwaia Bongos Integrated Large Scale Agricultural Projects 15
December 2008
& Industry

4
Affidavit of Hon. Tony Aimo, MP dated 8th September, 2011
COI

13/02/12
TA "1"

5
Letter to the President- Roadline Construction dated 14 October 2011

COI
13/02/12
TWA"2"

6
Affidavit of Mr Suriya Moorthy -CEO of SPZ

COI
14/02/12
Exhibit "3"

7
Affidavit of Mr Sugunarao V. Subramanian, Plantation General Manager, SPZ

COI
14/02/12
Exhibit "4"

10

Affidavit of Mr Don Bakat, Background to the Project and his concerns over the acquisition of SABL
COI
15/02/12
NRMAL"8"
11

Submission by Moses Joshua–Secretary, Wamagian Development Corporation Limited
COI
15/02/12
NRMAL"9"
12

Letter by Sam Akike
COI
15/02/12
NRMAL"10"

dated 8th February 2012

Timeline of events of note surrounding Mapsera Development Corporation Limited SABL Title

The timeline showing important events concerning the SABL is shown below in chronological order of their happening:

No	Milestone	Dated of Completion/G rant/Issue Execution	Proponent/Applicant	Respondent Entity/Respondent
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1	Incorporation of	7th June 1995	Mapsera Development	C.O.I
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Mapsera

Corporation Limited

Development

Corporation Ltd

2

Certificate of Recognition of ILGs

22/11/2000

230 Land Group Chairman

C.O.I

3

FMA Agreement between State and 230 ILGs

2006

230 ILGs and PNG Forest Authority

C.O.I

4

Formalization of Project Agreement between State and SPZ Enterprise (PNG) Ltd

16th April 2009

State and SPZ Enterprises (PNG) Ltd

C.O.I

5

Consent of 230 ILGs to terminate NB- FMA Agreement

29th June 2009

PNG Forest Authority and 230 ILGs (Supplementary of 157 ILGs also added to the list)

C.O.I

6

NEC Decision 08/2009 re Proposed Project for NB- Integrated Large Scale Agricultural Project (NBILSA Project)

2009

Hon. Gabriel Kapris MP, Hon. Tony Aimu, MP

C.O.I

7

Public Hearing on the Proposed NBILSA Project

30 October

2009

Drekikir Station, Hon. G. Kapris MP, Ronald Asik MP & T. Aimu MP, Mr Samson Torovi, Mr Daink, Mr Mera, Mr Hobiago, Mr George Gua, Mr Tom Peni, Mr Swong, Mr Failau, Mr Aulem, & Mr Buruka including Chairman of ILGs present.

C.O.I

8

Certificate of Compliance for large scale conversion of Forest to Agriculture or other land use development

3rd December

2009

PNG Forest Authority/DAL/SPZ Enterprises (PNG) Ltd.

C.O.I

9

FMA Agreement terminated

18 November

2009

Hon, Belden Namah, Minister for Forest

C.O.I

10

Environment Impact Statement

13 May 2010

SPZ/DEC

C.O.I

11

Supplementary ILGs comprising 157 Landgroups added to the 230 ILGs for NB confirmed

15-16th May

2010.

Hon Tony Aimo present/ All 157 ILG Chairman confirming and signing the ILG application for Registration.

C.O.I

12

C.O.I

13

Land Investigation Report x 43 ILGs

Two weeks commencing 21/03/10 and ending on 31/03/10

Mr Yapog/Mr Simon Malu/Jack Wani/Mr Augustine Kaugen and ILLs

C.O.I

14

Survey of Portion 54C Masalaga, ESP

15/04/10

Completed and certified by Surveyor General

C.O.I

15

Instrument of Lease/Lease Back Agreement between State and MDCL

13 April 2010

MDCL & State

C.O.I

16

Notice of Direct Grant

23 April 2010

State/MDCL

C.O.I

17

SABL Title issued in

26th April 2010

MDCLL-99 year lease/lease

C.O.I

the name of MDCL

back

18

Agriculture Sublease Agreement between MDCL and GOLD WORLD RESOURCES CO (PNG) LTD
UNDATED

MDCL/Gold World Resources Co. Limited
C.O.I

19

Forest Clearance Authority

Completed and registered but not issued to date

C.O.I

FINDINGS

The findings follow the chronology of table of notable events above surrounding the SABL lease title held by Mapsera development Limited. It is also important to state at the outset that the land is also the subject of the our inquiry into SABL Portion 55C held in the name of Nungwaia Rainforest Management Alliance Limited that is also relevant for the purpose of this report. Any materials, documents and evidence received arising out of the inquiry into SABL Portion 55C relates directly and affects the inquiry into SABL Portion 54C.

Mapsera Development Corporation Limited SABL

A Notice of Direct Grant under Section 102 of the Land Act was made in the National Gazette No. G83 dated 23rd April 2010 for Portion 54C Masalaga, Kubalia, Chambri and Yambon Land. The Land is known as "Nungwaia Sengo" The term of the lease was for ninety-nine (99) years. A Special Agricultural and Business Lease was registered and issued on 26th April 2010 by the Department of Lands and Physical Planning to the holder Mapsera Development

Corporation Limited SABL(MDCL). Mr Pepi S. Kimas, OL signed as delegate of the Minister for Lands. The detail of the SABL is shown below:

Legal Description

Portion 54C

Registered Survey Plan Catalogue No

3/657

SABL Holder

Mapsera Development Corporation Limited

Date of Registration of Lease

26th April, 2010

Period of Lease

Ninety-nine (99) years

Land area of lease

54, 384.0 hectares

Background

The initial involvement of Mapsera Development Corporation within the Nungwaia Bongos consisted of Ambunti/Drekikir and Wosera/Gawi Electorates under the 2006 FMA Agreement. When the FMA Agreement was cancelled following the majority consent of all the 230 ILGs in 2009 in favour of the Nungwaia Agro-Forest Large Scale Agriculture Project objections was raised over the appointment of SPZ as the project developer and the conversion of FMA surveyed area into Portion 55C and 54C SABLs.

According to Mr Bakat's sworn statement and evidence to the Inquiry (Exhibit) MDCL is the landowner company representing the people of Wosera/Gawi and is located in the Sepik Plains and the Sepik River, fertile land for agricultural crops such as Oil palm, teak plantation, jatropha and cocoa. The logging component would require the developer to clear fell forested areas to establish the plantation on the land.

Minutes of Meeting of MDCL held at Ugutakwa village, on Sunday 18th October 2009 comprising the Executives of MDCL (Augustine Kauken as Chairman, Raphael Lakops, Vincent Sitban, Chairman representing 43 of the 47

ILGs of Mapsera and Don Bakat (PNG Forest Authority Representative) were present. The Meeting confirmed Mr Kauken as the Chairman and Mr Lakops as Deputy Chairman.

The meeting endorsed Nungwaia-Sengo as the name of the project and the break away from Nungwaia Bongos due to the following factors

(1) That the Member of Ambunti Drekikir appointed SPZ as their developer of the project, and it was common knowledge that the company "has a record of harvesting timber illegally in a number of locations throughout East Sepik Province,."

(2) The company failed to consult and produce any development proposal for the ILGs consideration in relation to land dealings and resources therein.

(3) The company failed to comply with statutory requirements in the development of large scale agricultural projects pursuant to section 90A and 90B of the Forestry Act 2007 as amended. The company failed to secure land tenure under the Land Act, formulate agricultural proposal for approval by DAL and formulate the EIS consistent with the requirement pursuant to the Environment Act 2000 and submit for approval.

(4) Logging activity was undertaken by SPZ without any approval. Mr Kauken also in evidence said that SPZ was conducting illegal logging in the Forombe, Keneyambu, Moiyok School and Mangara. The actual logs are transported to a log pound located at Hawain, North Coast, Wewak ESP. (Page 72 of SABL 6 15/02/12)

MDCL and its 47 ILG affiliates agreed at that meeting to seek approval of a new boundary to include new areas of Mowi, Manje, Sengo, Jama and other new areas depending on the wishes of the people.

The Meeting also resolved based on the consent of all ILG Chairmen present (signatures obtained) for DJC & L Limited as the new Developer for the Nungwaia Sengo project.

We note that the meeting resolved to send three (3) people to attend the public hearing at Drekikir on 30th October 2009.

(Refer to Annexure "0" in the Affidavit of Don Bakat dated 29th August 2011– Exhibit NRMAL 8)

Mr Kaugen, the current Chairman of Mapsera also said in evidence that the Nungwaia Bongos nursery and plantation site located at KUWANGA Settlement actually lies in the Wosera/Gawi Electorate meaning that the issue of encroachment and overlapping with regard to boundaries has not been resolved. (See his evidence at page 70 of the Transcript–SABL 6 15/02/12)

IPA COMPANIES REGISTRY RECORDS

Mapsera Development Corporation Limited

Mapsera Development Corporation Limited (MDCL) is a limited liability company registered in the Registrar of Companies of the Investment Promotion Authority of PNG under the Companies Act 1997. The Company was incorporated on 87th June 1995 and the current principal place of business is Nuigo, Lease Number 9 (P.O. Box 199, Wewak, ESP), Wewak, East Sepik Province. The company number is 1–23886.

As at 2nd August 2011 IPA records confirm that it was deregistered on 21 January 2009 due to failure to file company returns as required under the Companies Act 1997. As previously stated the SABL was granted on the 26 April 2010 and as such was not legally obtained. The company was not in existence at the time of the granting this means that it cannot be a valid and legal SABL granted.

The latest IPA Company extract dated 2nd August 2011 indicate both shareholder and Directors of MDCL as Bruno Kanawi, Augustine Kaugen, and Vincent Sitban all resident at Wewak and Raphael Lakops resident at Wosera. The extract shows that 1000 ordinary shares have been issued but it does not disclose the number of shares held by each of the four Shareholders. The Secretary to the company is Vincent Sitban.

The Developer Gold World Resources Company (PNG) Ltd

The Certificate of Incorporation for Gold World Resources Co. (PNG) Ltd was issued by the Registrar of Companies on 19th January 2010. The company was initially operating in PNG under the name of D,J,C AND L Limited and incorporated on 1 July 2008 and on 18 January 2010 changed its name to GWRCL, The company number is 1–64071.

IPA records and extracts were not availed to the C.O.I hence we are unable to ascertain the corporate structure and composition and the shareholders and directors of GWRCL.

THE AGRICULTURE SUB LEASE AGREEMENT

(Refer to the Affidavit of Don Bakat dated 29th August 2011, Annexure "E"– Exhibit NRMAL 8)

The C.O.I notes that an Agricultural Sub–Lease Agreement was executed between Mapsera DCL and Gold World Resources Co. (PNG) Limited. The Agreement was for a period of fifty (50) years commencing on a date that is not specified in the Agreement.

The Agreement is undated and the signatories to the Agreement are as follows;

Messrs Augustine Kaugen, Raphael Lakops and Cherubim Thomas signed on behalf of Mapsera and Mr Tam Ho Ting, the Managing Director signed for Gold World.

The Agreement was registered with IRC Stamp Duties Office

The pertinent issue concerning this sub-lease agreement is whether or not the landowners were aware of their obligations under the agreement. It was highly likely that no proper advice was obtained prior to the execution of the agreement and the liabilities created can be detrimental to landowners and Mapsera.

An example of an unfair transaction is Clause 9 of the Sublease agreement where the landowners would have to pay compensation if they wrongly terminate the sub-lease. The compensation would be paid out of the tenants/landowners protected profit from subsequent harvest of the cash crop for the term and costs incurred by Gold World in constructing buildings, roads and drainage on the land.

(Reference to clause 9 of the sublease and also Refer to evidence of Kaugen at pages 82 to 86 of the Transcript of Proceedings SABL 6 Wewak 15/02/12)

In addition the binding effect of the sublease agreement is in doubt due to the fact that Mapsera was a deregistered company and creates serious liabilities for the landowner company.

Department of East Sepik Land Investigation Report

The land investigation and compilation of the Report was conducted jointly by Mr Jack Wani, the District Lands Officer for Wosera/Gawi District and Mr Samson Torovi, the Provincial Administrator. It was not known as to why the Provincial Administrator was involved in the land investigation into Nungwaia Sengo SABL process. The C.O.I was unable to verify from Mr Torovi at the time due to his attendance on very important issues concerning East Sepik Provincial Administration in Port Moresby. Mr Peter Francis Yapog is named but he played a very minor role in the investigation due to the fact that he was involved in the Nungwaia/Bongos SABL process.

Mr Kaugen also confirmed in evidence that Mapsera DCL procured payments from Goldworld Resources to assist the three (3) persons involved in the land investigation. The officers were paid K3, 000 each amounting to K9, 000.00, in addition to payments for accommodation (Refer to his evidence at page 80-81 SABL 6 Wewak 15/02/12)

Table below indicates the majority consent of all the 44 ILGs that agreed to allow their land for the large scale agro forest project at Nungwaia Sengo. The 44 ILGs will also appear in the ILG consent for the Nungwaia Bongos SABL Portion 55C we consider is misleading because SABL Portion 54C was issued on 26th April 2010.

N

o.

Name of Land

Hectares

Electorat e

Clan

Officer conducting LIR

Date of LIR

Period of lease (Years

)

Schedule of Owners, Status and Rights to land tenure (Number of People who consented)

No of Agents (Number of People who nominated)

1

Sapauli

20

Wosera Gawi

Mikim (Ura)

Jack Wani

31/10/10

99

19

20

2

Namuko

61

?

Gukuarwi

?

?

11

4

3

Kamabu

20

?

Sipmoiko

?

?

19

6

4

Juwinbuk

9

?

Minjiki

?

?

19

5

5

Amase

6

?

Saun

?

?

20

6

6

Warendu

18

?

Wasak

?

?

19

6

7

Dakurat

10

?

Yatnabut

?

?

46

13

8

Wapinumbu

200

?

Flying Fox

Samson Torovi

?

19

13

9

Hambul Wasakua

16

?

Akilanguli

Jack Wani

19/03/10

?

19

13

10

Walagu

11

?

Bambuk

Samson Torovi

?

19

13

11

Walmakual

96

?

Ura

Jack Wain & Samson Torovi

30/03/10

?

19

13

12

Kiyau

98

?

Black Koki

?

?

19

9

13

Niaurinji

100

?

Lakawa

?

?

9

9

14

Walose

200

?

Muikim

?

30/03/10

?

19

13

15

Urangu Mangijibi

16

?

Humun

Jack Wani

31/03/10

?

19

6
16
Namnbako
248
?
Ura
o
o
?
13
13
17
Mawi
8
?
Niauru (Sengo)
o
30/03/10
?
75
6
18
Wanko
200
?
Gianura
o
31/03/10
o
25
26
19
Nuklugu
12
?
Kwanjin
o
o
99
25
13
20
Guarik
300
?
Kokomo
o
o
?
32
13

21
Uram
160
?
Ura (Mowi Village)
o
o
?
24
13
22
Arumbu
10
?
Arumbu
Samson Torovi
30/03/10

?
49
6

23
Walir Kagui
10
?
Saiki
?
31/03/10

?
25
o
24
Ilimi Kolau
7
?
Nurgoi/Nun gwaia

?
?
?
25
o
25
Kararuai
10
?
Balembo/S engo
?

30/03/10
?
46

0
26
Haukiti
18
?
Maka/Nubg waia
?
31/03/10
?
25
0
27
Alkui
100
?
Gian/Mowi
?
?
?
31
13
28
Awal Wiwai
200
?
Ura/Kuaige
?
?
?
28
13
29
Goyambu
19
?
Kulups/Nu ngwaia
?
?
?
32
13
30
Aigil
29
?
Makapat
?
?
?
?
?

31

Kambiga

14

?

Wama Ura

?

?

?

?

?

32

Raibais

190

?

Ura/Kalge

?

?

?

?

?

33

Waliyir

9

?

Mui/Waipi ndumaka

?

27/3/10

?

?

?

34

Takusapu

8

?

Maka Wapindiki

?

?

?

?

?

35

Wambmo

145

?

Mandiko

?

26/3/10

?

?

?

36

Gilgu
9
?
Habundu
?
27/3/10
?
?
?
37
Pulmi
10
?
Yambundu
?
-/3/10
?
?
?
38
Aulawaku
24
?
Kumun
?
27/3/10
?
?
?
39
Kamara
500
?
Muruk
?
?
?
?
?
40
Araraku
7
?
Gawi Guat
?
?
?
?
?
41
Mangien

9,180
?
Kuaru
?
26/3/10
?
?
?
42
Kualiya
120
?
Ravuwaiya
?
27/3/10
?
?
?
43
Nuklugu
12
?
Kwanjin
?

?
o
o

44
Mangaul
150
?
Kaus
?
31/3/10
?
o
o

The Land Investigation Report was conducted for all the fourthly four (44) ILGs and the following highlights deficiency that arise in the conduct of the LIR as follows;

- o The involvement of Mr Samson Torovi in the land investigation process may compromise his position as the Provincial Administrator in the Recommendation of Alienability. He also would not have conducted any due diligence with respect to the land boundary and disputes that may arise.
- o Mr Jack Wani the Officer conducting the Land Investigation is a landowner and member of the LAKAWA Clan and his involvement in the land investigation may place him in a potential conflict of interest position. He did sign as a landowner in the Land Investigation Report for the NIAURINJI Land in relation to the Declaration of Custom and as to the land boundary. It is not disputed that

- he has a right as a landowner, but it is relevant on the credibility of the report on his involvement.
- o It is evident that Mr Jack Wani's name appears as Landowner/Agent to the LIR Report on the land referred to as AURUMBU
 - o It is also evident that no boundary walk was undertaken, though it was certified by Messrs Wani and Torovi respectively.
 - o The names of the villages along the boundary of Portion 55C does not appear in the report, hence those person affected were not consulted during the investigation process and captured in the Report.
 - o A recommendation as to alienability with reservation for customary rights to be preserved was signed by the Provincial Administrator but is undated.

DEPARTMENT OF LANDS AND PHYSICAL PLANNING – REGISTRAR OF TITLES

The file provided by the Registrar of Titles contains the SABL title document alone which confirms the grant of the SABL to Mapsera Development Corporation Limited.

An Agriculture sublease to Gold World Resources that we have sighted was not registered with the Office of the Registrar of Titles file as well as the NLD file.

CUSTOMARY LAND DIVISION /NATIVE LAND DEALINGS FILES –

The file reveals that the landowner company was deregistered yet the SABL was granted to Mapsera Development Corporation. The files contain Forty Four (44) Land Investigation Reports from land owners along with related Incorporated Land Group certifications.

A minute dated 21 April 2010 on file from Simon Malu Manager Leases to the Secretary via Deputy Secretary–Customary Lands recognises the ongoing issues with all the relevant portions in the Wosera/Gawi District of East Sepik Province and Nuku District of both East and Sandaun Provinces where 5 integrated projects are vying for development. He states in that Minute that Nungwaia Sengo is one project that broke away from the Nungwaia Bongos project and that due to the involvement of the developer then D.J.C & L Limited now GoldWorld Resources PNG Ltd there was support and endorsement from the Provincial Forest Management Committee for the large scale agro forest agricultural project to proceed hence approval of lease/lease back instrument. Mr Andie Malo, Director Leases endorsed the Minute and submitted documents to Secretary for his endorsement and approval.

It appears in my view that Consent was largely sought and determined in the Land Investigation Report. The inclusion of the ILG certificates seems to indicate a genuine correlation between the ILG consent and the agreement with the State. Mapsera may very well be a genuinely landowner representative company.

All relevant ILG Chairmen it appears have signed the S11 Land Act Lease– leaseback instrument dated 13 April 2010.

DLPP failed to undertake due diligence during the Land Investigation stages largely on the fact that Mapsera was deregistered, the overlapping and encroachment issues concerning other adjoining project sites namely Bassei (Proposed SABL Portion 53C), Nuku (Portion 56C), Nungwaia Bongos (Portion 55C) and Nungwaia Sengo (Portion 54C). The boundary walk and meetings was necessary to alleviate these pressing issues.

DEPARTMENT OF AGRICULTURE AND LIVESTOCK

One of only 2 documents received by the Commission of Inquiry office on 13 September 2011 was an Agro-Forestry Project Proposal over portion 54C, Wosera-Gawi District was lodged with DAL on 30 August 2010

There was a completed Forestry Act Form 235 Certificate of compliance for a Forest Clearance Authority for Large Scale Conversion of Forest to Agriculture or other Land Use Development signed off by the then acting Secretary for DAL Francis Daink on 03 January 2011.

There are no other documents to explain the approval process taking place within 5 months by DAL.

There was no detailed agriculture development plan with costs schedules and a feasibility study carried out for the issuance of Forest Clearance Authority for large scale conversion of Forest to Agriculture and other land development plan.

PNG FORESTRY AUTHORITY

No file was provided by the PNG FA. As such no forest clearance authority has been granted over the land portion or to the Developer as yet however as per the DAL document a Form 235 Certificate was signed by the DAL acting Secretary Francis Daink and would have been forwarded to PNGFA in order to trigger the Forest Clearance Authority granting process Certificate of Registration as Forest Industry Participant was granted to MDCL on 25th May 2009.

DEPARTMENT OF ENVIRONMENT AND CONSERVATION

The Environmental Permit processing is still being undertaken by the proponent/developer Goldworld Resources Ltd

- * On the 1st September 2010 a Notice of Intention to Carry out Preparatory Work was submitted to the DEC, the cover letter is only on file not the document itself
- * On the 9th September 2010 and Inception Report was then submitted however once again merely the cover letter is on file no report has been sighted
- * An Environmental Impact Statement was submitted under cover of letter dated 20 December 2010; the EIS document is on the file forwarded to the Commission. It mentions urgency for the EIS as there is a moratorium on FCA's hence their use of this as "leeway" to submit the EIS.
- * Of note and interest in the EIS is a copy of the Agricultural sublease signed off by Mapsera Development Corporation Ltd Directors and Goldworld Resources Co (PNG) Ltd. The sublease has not been sighted on the DLPP file forwarded to the Commission. Also of note is the IPA certification of Goldworld Resources CO (PNG) Ltd as a section 29 of IP Act certified company. Requirements of this were to receive DEC permit approval within 6 months of the grant of the certificates, which was obtained 24 November 2010.
- * Also of note is the change of name of the developer from DJ,C and L Ltd to GoldWorld Resources (PNG) Ltd on
- * Also of note is a record of a DAL sponsored Public Hearing on 30 December 2009 at Drekikier Station, Ambunti-Drekikier District. In attendance were relevant Government leaders both national Provincial and District as well as DAL representatives, unknown is the number of public that

attended although some 25 different community representatives did speak and appeared to be largely in agreement with the project proceeding.

The C.O.I. was not able to ascertain from the stringent process used by DEC as to how permits were granted upon land that did not appear to have secure land tenure through a registered landowner company.

RECOMMENDATION

SABL Portion 54C will be retained subject to the following issues be verified, corrected and completed as a matter of urgency.

1. We recommend that Mapsera Development Corporation Limited ensure that the company returns for the periods leading to deregistration be submitted and rectified.
2. The SABL Portion 54C should not be revoked but requires that the encroachment issues involving Portion 55C to Nungwaia/Bongos be resolved with the assistance of DLPP and the Provincial Lands Office.
3. The Agriculture Sub lease agreement to be reviewed and new agreement executed due to the fact that Mapsera was deregistered at the time it signed the agreement.
4. That the Developer/Investor prepare and submit a comprehensive business plan with financial capabilities to develop the cocoa, rubber and teak plantations along with crops such as Jatropha, Rice, Crocodiles and Fish to comply with Section 90 A and 90B of the Forestry Act
5. The investor Gold World Resources Co. (PNG) Ltd is responsible for the logging component and Mapsera need to identify an agriculture development partner. The project involves selective logging and salvage logging to clear the forest and develop cocoa, rubber and teak plantations concurrently after forest clearance.

1. COI Inquiry File No.36 for Special Purpose Agricultural and Business Lease over Portion 54C Volume 15 Folio 52 Milinch: Tring East Sepik Province in the name of Sepik Oil Palm Plantations Limited.

1.1 In accordance with the powers given to the Commissioners pursuant to section 7 of the Act, the Commissioners have summoned numerous witnesses to produce documents and be further examined on oath or affirmation.

1.2 Witnesses were called from the six government agencies involved in the issuance and operation of the Sepik Oil Palm Plantations Limited SABL. These were:

- 1.2.1 Department of East Sepik Province, (DESP)
- 1.2.2 Department of Lands and Physical Planning, (DLPP)
- 1.2.3 Department of Provincial Affairs and Local Level Government, (DPALLG)
- 1.2.4 Department of Agriculture and Livestock, (DAL)
- 1.2.5 Department of Environment and Conservation, (DEC)
- 1.2.6 PNG Forest Authority (PNGFA)

1.3 The names of the persons who have been summoned to appear and who have in fact appeared in the public hearings (in alphabetical order), including titles, are set out in the schedule below. For

ease of reference, the schedule also lists the transcript pages at which the person commenced giving evidence against the name of the witness.

No

Name and Position

Pages

Day

Date

1

Mr Peter Yapog, Acting Provincial Customary Lands Officer, Division of Lands & Physical Planning,
DESP

02-38

6

16/02/12-SABL 7 WEWAK

2

Mr Richard Kali,

18-35

2

09/02/12-SABL 2 WEWAK

Provincial Forest Officer

DESP

3-19

4

13/02/12-SABL 4 WEWAK

3

Mr Michael Caypah,

Landowner

116-122

5

15/02/12-SABL 6 WEWAK

4

Mr Michael Koimo,

Landowner

122-123

5

15/02/12-SABL 6 WEWAK

5

Michael Marmer

125-127

5

15/02/12-SABL 6 WEWAK

6

Gabriel Dagun

128-132

5

15/02/12-SABL 6 WEWAK

7

Michael Sau

138-158

5

15/02/12-SABL 6 WEWAK

8

Mr Godfried Raushem

45-79

6

16/02/12-SABL 7 WEWAK

9

Mr Martin Shukwei Deputy Chairman, Limawo Holdings Ltd

90-117

6

16/02/12-SABL 7 WEWAK

10

Augustine Mondo

118-127

6

16/02/12-SABL 7 WEWAK

11

Clement Dadama

128-137

6

16/02/12-SABL 7 WEWAK

12

Gabriel Molok, Landowner & NGO, Cape Turubu

143-155

6

16/02/12-SABL 7 WEWAK

13

Will Nelmo, Secretary, Limawo Holdings Ltd

156-170

6

16/02/12-SABL 7 WEWAK

14

David Dausik

170-174

6

16/02/12-SABL 7 WEWAK

15

Mr Francis Daink, Deputy

12-26

05/09/11-SABL13 (Waigani)

Secretary (PATS), DAL
2-33

06/09/11-SABL (Waigani)

16
Mr Leka Mou,
Agriculturalist, DAL
1-33

8
29/02/12-SABL8 WEWAK
(Waigani)

17
Mr Pepi Kimas, Former Secretary, DLPP
68-78

18/01/12-SABL 77 (Waigani)

18
Mr Simon Malu, DLPP

Parties represented by counsel

Section 8 of the Act relates to the appearance of counsel before the Commission on behalf of interested parties. It provides that:

“Subject to Section 2(5), a person who satisfies the Commission that he has a bona fide interest in the subject matter of an inquiry under this Act, and any other person by leave of the Commission, may attend the inquiry in person or may be represented by counsel.”

The following were granted leave to be represented by counsel

Peter Kuman of Kuman Lawyers
SOPPL & Limawo Holdings Limited
Hubert Wally of Jaminan Lawyers
Objecting Landowners

Exhibits and documents

There were Twelve (12) documents tendered as evidence before the Commission at the public hearings. A list of the Exhibits is shown below.

No
Item
Interested Party

Date received

Exhibit Number

1

Petition to C.O.I SABL- SOPPL

COI

13/02/12

SOPPL "1"

2

Affidavit of Mathew Koimo dated 4 December 2011

COI

15/02/12

SOPPL "2"

3

Affidavit of Michael Marmber dated 4

December 2011

COI

15/02/12

SOPPL "3"

4

Affidavit of Gabriel Dagun dated 4th December, 2011

COI

15/02/12

SOPPL "4"

5

Statutory Declaration of Michale Sau dated 25 August 2011.

COI

15/02/12

SOPPL "5"

6

Submission by Michael Sau dated 25 August 2011

COI

15/02/12

SOPPL "6"

7

Letter by Mr Yapog to Mr Joseph Tan dated 16 May 2008 re: SABL high impact project

COI

16/02/12

SOPPL "7"

8

Internal report-10 February 2012 to IBWAN HOLDINGS

COI

16/02/12

SOPPL "9"

9

Submission by Provincial Liaison Officer

COI

16/02/12

SOPPL "10"

10
Agreement signed by Mr Pepi Kimas and Mr Aron Malajiwi.

COI

16/02/12

SOPPL“11”

11

Mapi In Relation to First 10,000 hectares of Land at Samoa Near Marting Shukwei's village

COI

16/02/12

SOPPL“12”

12

Ibwan Holdings Pty Ltd Project Documents

COI

16/02/12

SOPPL“13”

13

Logging and Marketing Agreement between IBWAN Holdings and Wewak Agriculture Development

Ltd

COI

16/02/12

SOPPL“14”

14

Letter by Augustine Mondo dated 29th August 2011

COI

16/02/12

SOPPL“15”

15

Bounded Documents from IBWAN Holdings Ltd received 15 September 2011 under the hand of Mr Clement Dadama

COI

16/02/12

SOPPL“16”

16

Copy of letter by Mr Clement Dadama with attached Annexure of the letter from Surveyor General in relation to the Title for the Project.

COI

16/02/12

SOPPL“17”

17

Turubu Local Level Government, Wewak, ESP-Compensation Schedule for Damaged Trees and Plants

COI

16/02/12

SOPPL“18”

18

Turubu Oil Palm Project Valuation report Summary of Clans and ILG Areas

COI

16/02/12

SOPPL“19”

19

Compensation Schedule For damaged Trees and Plants

COI

16/02/12

SOPPL“20”
20
Undated letter for Mr
COI
16/02/12
SOPPL“21”

Gabriel Molok to the C.O.I.

21
Statement of Mr Kausik
COI
16/02/12
SOPPL“22”

Timeline of events of note surrounding Mapsera Development Corporation Limited SABL Title

The timeline showing important events concerning the SABL is shown below in chronological order of their happening:

No	Milestone	Dated of Completion/G rant/Issue Execution	Proponent/Applicant	Respondent Entity/Respondent
1	Incorporation of Limawo Holdings Ltd (LHL)	10th January 2007	Limawo Holdings Ltd	Limawo Holdings
2	Formation of Limawo Holdings Ltd and awareness of its existence.	8th March 2007 and 17th July 2007	Executive of Limawo HL/East Sepik Provincial Administration	Limawo Holdings
3	Mr Yapog refers Application by 19 ILGs of LIMAWO Clan to ILG Registrar.	13 September 2007	19 ILGs and DLPP/Registrar of ILG	Limawo Holdings
4	Incorporation of Wewak Agriculture Development Corporation (WADCL)	16th January		

2008
IPA/Investor Company
Limawo Holdings
5
Incorporation of Sepik Oil Palm Plantation Limited (SOPPL)
23rd April
2008
IPA/JV Company– WADCL holds 80% shares and LHL holds 20% share (Foreign owned Company)
Limawo Holdings
6
Land Investigation Report (LIR) in the name of LHL
20th May 2008
Mr Peter Yapog/DLPP Waigani
Limawo Holdings
7
Recommendation for Alienability
29th May 2008
Mr Samson Torovi/DLPP
Limawo Holdings
8
Lease/Lease Back Agreement
29th July 2008
DLPP/LHL/56 ILGs
Limawo Holdings
9
Notice of Direct Grant National Gazette No 145
14 April 2008
DLPP/LHL
Limawo Holdings
10
Consent/Undertaking by LHL
02 August
2008
LHL/DLPP
Limawo Holdings
11
Notice of Direct Grant National Gazette No. 154
02 August
2008
LHL/DLPP/WADL–
Additional Covenant re: Consent & Undertaking
Limawo Holdings

FINDINGS

The findings follow the chronology of table of notable events above surrounding the SABL lease title held by Sepik Oil Palm Plantation Limited (SOPPL).

Sepik Oil Palm Plantation Limited SABL

A Notice of Direct Grant under Section 102 of the Land Act was made in the National Gazette No. G145 dated 4th April 2008 for Portion 144C TRING Land. The Land is known as "Turubu" The term of the lease was for ninety- nine (99) years. A Special Agricultural and Business Lease was registered and issued on 4th April 2008 by the Department of Lands and Physical Planning to the holder Sepik Oil Palm Plantation Limited SABL(SOPPL). Mr Pepi S. Kimas, OL signed as delegate of the Minister for Lands. The detail of the SABL is shown below:

Legal Description

Portion 144C

Registered Survey Plan Catalogue No

3/624

SABL Holder

Sepik Oil Palm Plantation Limited

Date of Registration of Lease

14h April, 2008

Period of Lease

Ninety-nine (99) years

Land area of lease

116,840.0 hectares

An amended Notice of Grant was published in G154 on 2 September 2008 wherein two covenants were amended and added in addition to the four that have been typical of standard SABL's specifically that "the lease shall take into consideration the "Consent/Undertaking signed by the agents/representatives of the landowners in the event the vesting of the lease to a company is in issue"

There was in my view no apparent mistake in the initial August Gazettal Notice, though it is quite evident that the September Gazettal Notice reflects the actual Notice of Direct Grant issued under the hand of the delegate. The land description and locality in the September 2008 Gazettal Notice also reflected in the lease-leaseback instrument Schedule is Portion 144C part Milinch of Wombun NW & NE, Tring NW & NE & SW & SE, Musehu SW & SE, Fourmil of Ambunti & Wewak in the Wewak & Ambunti District in the East Sepik Province.

We however are concerned that two (2) Gazettal Notices apply to the same SABL and apparently there was no amendments made with respect to reservation for customary rights existing over the current term of the lease.

OVERVIEW

The Project Site

The "Wewak-Turubu Large Scale Integrated Agriculture Project" is the proposed Agricultural purpose for which some 116,400 hectares of land has been acquired.

The environment setting for the SABL project for "logging and subsequently oil palm consists of undulating plains that are covered with a mixture of small-

crowned lowland forest and a mosaic of grassland except for the narrow saddle formed by the

Alexander Range near the coast. The project site is relatively– developed road network that link up most of the villages in the project area. The existing Wewak– Angoram road traverses the major part of the project area while the Maprik–Timbungke Road also provides access to the villages in the northern part of the project area. The coastal villages are serviced by the Wewak–Cape Turubu Road.”²⁹

Site Visit

The C.O.I team visited the Project Site on Wednesday 8th February 2012 between the hours of 2.30 pm and 0935 pm. The team comprised Commissioner Nicholas Mirou, Counsel Assisting Mr Simon Ketan, Counsel Miss Mayambo Peipul, Mr Joseph Wohuinangu Agriculture Advisor to C.O.I, Administrative and Security Personnel Messrs Adolfo Horus, Ben Kaiah, Patrick Debesa. The route taken by the COI team to conduct site inspection was about 60 kilometre.

Mr Kuman of Kuman Lawyers representing the Developer and Landowner company representative and supporters was present at the Nursery Site located at Malabo grassland, Turubu Inland

Mr Hubert Wally of Jaminan Lawyers representing objecting landowners from Saussa LLG (Nagam through to Japaraka vilages and Tring including nearby villages towards Angoram) to the SABL travelled with the C.O.I team.

The C.O.I team followed the route from Nagam (turn off along Maprik Highway) through the old cattle Ranch at Urimo villages within the Japaraka
29 Extract from Executive Summary of the Environment Impact Statement on Turubu Integrated Agriculture Project , prepared and submitted by Wewak Agriculture Development Limited to Department of Environment & Conservation.

Ward, Inland Turubu and the Logging Wharf at Nightingale Bay. We observed the following along the route taken from Nagam through the Urimo grass plains towards Turubu Coastal.

- * There were signs of logging activity a few kilometres from the Nagam. A makeshift campsite with local hands was noted and confirmation that the company was logging the forested area within the whole SABL project site extending from Sausso to Turubu inland and Turubu Costal.
- * An SDA High School was also noted a few kilometres from Nagam.
- * Urimo cattle ranch took up much of the travel inland towards Japaraka which is a vast area of grassland extending towards Angoram and Turubu LLG.
- * Japaraka village (Sausso) is also located along the road towards the Nursery.
- * An Airstrip and Army training area was also noted.
- * C.O.I noted a log pound with Kwila timbers ready for transportation to Cape Turubu harbour. Clearly there was evidence of clearance of forest and logging of merchantable timber. We also met the employed Forester for the company, a Papua New Guinean national who confirmed that they were undertaking selective logging within the SABL project site. This also indicated a lack of monitoring activity by the Provincial Forest Office.

The Oil Palm Nursery and Estate at Malabo Grassland (Turubu Inland) that is still part of the Urimo Cattle Ranch and located within the Kinare, Sereng, Iari and Nungawa villages. These villages constitute the Limawo clan and the

landowner company under the chairmanship of Mr Malajiwi. We observe the following,

- * The Oil Palm planting program is developing at a very slow rate without management expertise and accommodation for housing the staff.. We observed

- o The oil palm planted on plots surrounding the nursery was done recent indicative of an attempt by the project investor that the oil palm project is been developed.
- o There was no proper office or housing facility except for few makeshift houses.
- o There was no sign of a water sprinkler system and no water pump at the nursery.
- o There was no green house to indicate that seedlings in poly bag and signs of oil palm trees ready for planting we assume was procured from other source.
- * The logging wharf at Forok (Cape Turubu) was also a makeshift wharf built on logs and soil, There was ominous signs of environmental damage to the sago and mangrove palms along the seashore, part of the mountain cut to extract stones and soil was subject to erosion and created very serious environmental concerns. There was no strict adherence and policing done by DEC on the environmental damage to the coastline where the logging wharf was erected.

The Incident and related Petition against the Commissioner

It is well publicised that the Commissioner and his team was harassed by Mr Malajiwi, the Chairman of Limawo Holdings and his supporters at the nursery in the presence of their counsel Mr Kuman and the Developers including Mr

Wally and objecting landowners. Mr Malajiwi and Mr Francis Yabarisa, the Public relations Officer for Limawo was charged with contempt of the Commission. Messrs Malajiwi and Yabarisa publicly apologised and the Commission discontinued proceedings. This led to the attempt by the landowners to petition the Commission to disqualify itself from proceedings with the hearings on SOPPL. The Commission continued with its inquiry on the premise that there was no superior court order in place to restrain the Commissioner and lack of evidence on the allegation of conflict of interest either for personal or professional grounds. (Refer to Transcript of Proceedings....)

INQUIRIES INTO RESPECTIVE INSTITUTIONS OVER SABL PORTION 144C TO SEPIK OIL PALM PLANTATIONS LIMITED

COMPANIES/IPA FILES

SEPIK OIL PALM PLANTATION LIMITED

According to a Companies Registry current extract produced 05 August 2011 Sepik Oil Palm Plantation Limited was incorporated and registered on 23 April 2008. The Company number is 1-633177 and it is operating.

There are 2 shareholder companies;- a Limawo Holdings Ltd incorporated and registered on the 10 January 2007 and Wewak Agriculture Development Ltd incorporated and registered on 16 January 2008. Wewak Agriculture Development Company

There are three directors of Sepik Oil Palm Plantation Ltd, Hui Teck Lau a Malaysian national resident in Port Moresby, Nyi Then also a Malaysian

national, resident in Port Moresby and PNG citizen Aron Malijiwi resident in the East Sepik province. The shareholding structure is as follows; Hui Tech LAU and NYI TEN both hold 8,000 shares and Aron Malijiwi holds only a minority share of 2,000 ordinary shares. SOPPL is a foreign owned company.

In a 20% and 80% split of landowner company and developer have ownership of the SABL grantee company as a possible result there is no sublease of the SABL to a “developer” company.

LIMAWO HOLDINGS LIMITED

Limawo Holdings Ltd, IPA registered 10 January 2007, holds some 2000 ordinary shares in Sepik Oil Palm issued on 23 April 2008. Company number is 1-58546.

The Shareholders are Samson Kuarumb, Aron Malijiwi, Malcolm Nambon, Greg Shukwei, Martin Shukwei and Willy Yaparui all of Samowia village. They all hold 1000 shares in the company. Limawo Holdings Ltd appears to have six shareholders all male citizens residing in the Samowia Village in the Turubu LLG and Turubu District. With 2000 shares of a total 10,000 issued in Sepik Oil Palm Plantation Ltd it owns 20% of the company.

The Directors of the Company from the IPA Extract confirm fourteen male persons. They are as follows

No	
Name of Director	
Village	
1	Aron Malijiwi
	Chairman,
2	Francis Yabarisa
	Munjun
3	Michael Sino
	Wewak
4	James Dawa
	Kinare, Turubu LLG
5	Henry Areg
	Kinare, Turubu LLG
6	David Simok
	Parua,
7	Andrew Winkune
	Putandau
8	Ronald Tekis
	Kapore Block, NBPOL, WNBP
9	Martin Nagua
	Kubalia, Saussa LLG

10

Ambrose Walindu

Yari, Turubu LLG

11

Ronald Kausie

Nungawa, Turubu LLG

12

Charles Warakau

Nungawa, Turubu LLG

13

Robert Numbi

Samowia

14

Willie Nilmo

Secretary, Kapore Block, NBPOL, WNBP

The Directorship does not include those 56 ILG Chairman so that this company can hold itself out as a umbrella landowner company for the project site.

Wewak Agriculture Development Ltd

Wewak Agriculture Development Ltd IPA registered 16 January 2008 holds some 8000 ordinary shares in Sepik Oil Palm Ltd issues on 23 April 2008 upon the incorporation of the company.

Wewak Agriculture Development Ltd had one initial shareholder of 10,000 ordinary shares, Hui Teck Lau, a Malaysian resident in Port Moresby. He then transferred 9000 shares in the company, to one Ching Ming Ting, a Malaysian and 800 shares to Nyi Then also a Malaysian, 200 shares appear to have been retained by Hui Teck Lau himself.

IPA CERTIFICATION OF FOREIGN OWNED COMPANIES

No IPA Certification under Investment Promotion 1992 Act Part IV – Certification to Carry on Business in an Activity as well as Part IVA Certification to Participate in a National Enterprise appear to have complied with by either Sepik Oil Palm Plantations Limited and Wewak Agriculture Development Ltd. The IPA and companies will have to confirm this as the result is under s 41A of the Investment Promotion Act 1992any resulting

contracts between the foreign enterprises and the other enterprise may be declared unlawful and void.

Department of East Sepik Province

The Department of East Sepik Province is the bureaucratic arm of the East Sepik Provincial Government whose primary role it is to facilitate government policies and directives through the work of its divisions of which the Lands Division is an important one. In the issuance of the Sepik Oil Palm Plantation Limited SABL a formal Land Investigation Report (LIR) conducted by the Lands & Physical Division of the Department of East Sepik Province.

Land Investigation Report

Land Investigation was conducted by Mr Peter Yapog of the Lands and Physical Planning Office, DESP on instructions of late Mr of DLPP and Mr Simon Malu. He conducted the land Investigation and compiled a report for Limawo Holdings Limited on 20th May 2008.

There was no Application or Tender form sighted on file to indicate that Limawo or SOPPL did apply for SABL. It also meant that no due diligence was carried out by DLPP to determine any existing State Leases within the SABL project area. C.O.I. on its site visit confirm the existence of a cattle ranch, a military training area, an airstrip, district offices, high school and other leases.

There was no survey carried out of the area and it does affect the existence of other State Lease within the SABL area. There was no survey map even produced at the time the land investigation was conducted. This was confirmed by Mr Yapog in evidence.

Mr Yapog relied entirely on the ILG information provided to him by the Mr Aron Malajiwi, Chairman of Limawo Holdings and his executives. The 56 ILG are provided below does not in fact cover the majority of landowners within the SABL Portion 144C as was evident by the objections and petitions by the affected ILGs/Villagers/Landgroup corporations from Turubu inland and coastal and villages within Kubalia District.

No.
ILG Name
ILG Clan
Chairman
1
Mujin 1
Munjin
Freddy Durin
2
Mujin 2
Bali
Jefry Wulubut
3
Suanum
Suanim
Campbell Woruba
4
Seri
Sisida
Samson Mari
5
Taul
Yangahanna
Aron Saniwa
6
Sinamblai 1
Moror

Bernard Kawan

7

Bungain

Mukaiya

Martin Takoin

8

Mandi

Taku

Leo Balthazar

9

Maur

Tangana

Mamia Mathew

10

Kaupari

Meggi

Albet Tamange

11

Mundangai

Tekera

Alex Kwarire

12

Harikwen

Harigen

Raymond Nombe

13

Yaugibe

Wining-Awa

Steven Mambahar

14

Muari

Sieri

Jimmy Kalebe

15

Namarep 1

Muidrawa

Carl Reha

16

Samap 1

Wayar

Anton Wambu

17

Namaper 2

Haramutha

John Yakuma

18

Kamasau

Kamasau

Raphael Barewoi

19

Waibap

Waibap
Gabriel K. Gemes
20
Turubu Ples
Koron
Herman Maragum
21
Mambe
Mambe
Sixtus Suau
22
Parpur
Mamutika
Paul Bina
23
Yari
Yari
Ambrose Walndu
24
Kambarika
Kualmu
Daniel Matu
25
Putanda
Muru Bonga
Peter Yunora
26
Kinare
Bormange
Robin Iru
27
Nugawa
Marngupli
Daniel Spone
28
Yambin
Tukauri
Lusian Uropo
29
Manuara
Kumbungre
Bonny Laio
30
Wamangu
Wandibu
Alphonse Mali
31
Kowiru
Ulimurakwa
Joachim Yombi
32

Parua
Tangu
Deniel Jumour
33
Samowia
Tinomb
Nickson S Greig
34
Serenge
Bako
Thomas Binson
35
Wawat 1
Kuilem
Peter Kumerin
36
Wawat 2
Wawat
Cleofas Rawina
37
Tumeri 1
Irwoma
Ambros Jomb
38
Sinemblali
Sinemblai
Joseph Dayamba
39
Forok 1
Wasusasu
Philip Dagon
40
Forok 2
Doum Dubawa
Redish Yuon
41
Kandai
Kandai
Steven Matakem

42
Musagun
Wulumaiya
Bonnfas Kamaru
43
Tring
Tring
Teddy Atbo
44
Timaru 2
Nauri

Andrew Ikwane
45
Japaraka 1
Huiwani
Chris Mereng
46
Japaraka 2
Huiwani
Florian Sapma
47
Japaraka 3
Japaraka 3
Isaac Micah
48
Kusaun
Kusain
Thomas Polly
49
Porombe
Huonju
Aron Wara
50
Weigembi
Sausenien
Ryan Rakhua
51
Haniak
Haniak
Joe Wundongu
52
Suandogum
Kisihre
Piusk Suanga
53
Wiamungu
Nuumberi
Francis Wiho
54
Mandowe
Mandowe
Tony Sumboe
55
Rabiawia
Sayawia
Moses Wurifau
56
Tuonumbu
Kisihri
Alois Ningi

The highlighted names of the clan indicated above reflect that these ILGs originate from one

source and grouped within the LIMAWO Clan. The source of this reference is founded in the letter dated 13 September 2007 where Mr Peter Yapog submitted a list of 19 ILGs under the letterhead of LHL to the Registrar of ILG. From the original 19 ILG, Mr David Sponse was then Chairman of Marngupli (No 27), Mr Terence Mundako was then Charman of Wandibu (No 30) and Peter Mungori was then Chariman of Ulimurakwa (No. 31).

Genealogy inquiries

Mr Yapog states in the LIR, "Not relevant as members of these four landowning groups have agreed to give their land for the oil palm project development." (Paragraph 4 (g)–Ownership at page 2). That basically implies that Mr Yapog fail to conduct the social mapping to ascertain the clan ownership of land within the SABL.

Certificate of Agreement to Sell/Lease Land

Mr Yapog certified without any reference to Schedule of Owners as "NOT APPLICABLE". (page 4 of LIR)

No survey was conducted at the time of the land investigation. (page 8 of LIR)

Declaration of Custom in relation to Land Tenure

Mr Yapog basically relies on the 56 ILGs as noted above and obtained signatures of the ILG Chairman. He also made a false declaration as he did not conduct social mapping within the villages/clans in the area known as Turubu/Sausso (pages 6–7).

Certificate in relation to Boundaries

Mr Yapog admitted that he did not walk the boundary. The Certification at page 9 of the LIR where he indicated walking the boundary with fifty six ILG Chairman over 123, 200 hectares on 4 February 2008 is false.

Recommendation for Availability (sic) meaning Alienability was signed by Mr Samson Torovi, Provincial Administrator on 29th May 2008. This was for the land known as Turubu/Sausso for 123,000 hectares. C.O.I also notes from the LIR that a further Recommendation for Alienability for land known as Jamawia/Parua/Kiniari situated at Turubu Inland for 123,000 hectares was also signed by Mr Martin Maingu, Acting District Administrator for Wewak District on 30th May 2008. Mr Yapog confirmed in evidence that it was mistake and that the Certificate signed by Mr Torovi was relevant to the SABL issued to SOPPL. This is reckless and can be inferred to mean that the LIR process was procured with constructive fraud on the part of Mr Yapog and does affect the certification for alienability at the Provincial Level.

No reservation was made for customary rights over the land as the very paragraph providing that option was omitted.

We also note from the Report, that a letter written under the hand of Mr Dau S. Waskiay, Acting

Advisor–Lands (ESPA–Division of Lands) to the Surveyor General indicated the existence of State Leases Portions 140 and 141 at Urimo (Catalogue Plan No, 3/435) in relation to Cattle Farming Project (5,409 hectares) and Military Training Area (589 hectares). The letter informed the Surveyor General to excise those land areas thus reducing the size of the SABL to 122,116 hectares from the original 123, 200 hectares. The letter is dated 18th June 2008. However that information does not indicate any changes when the Title was issued to SOPPL.

Mr Peter Yapog

Conducted Land Investigation based on

- * 56 ILGs excluding areas where the major objections are been noted, because the SABL covers the land over which the objections are been raised.
- * Conducted investigation within a week because he had all available information including information that awareness meetings were organised with no input from Lands Office.
- * Acted under instruction of late Mr Jacob Wafinduo from DLPP, Waigani
- * He was incompetent simply because he wanted to “Like I have already said, this is a blanket ILG for the purpose of securing this SABL. We would go into detailed LIR and survey as soon as we progress–this work progresses within this project area.”(page 16 @ SABL Wewak 7 16/02/12)

Page 12–“This is only a blanket LIR. We will go into detailed LIRs and surveys when the project progresses. The local landowner company has that

in place. We would progress. We will conduct a detailed survey of clan boundaries and LIRs as work progress into each particular area, but this only a blanket–

He disregarded

- * Land boundary walks
- * No survey conducted including map for the area
- * Relied on the information provided by Limawo on the 56 ILGs.
- * Lacked information on the population growth within the SABL project site
- * Page 5 of LIR (Comments and Recommendations), “Since this project has taken almost 11 years to come to fruition, it is hereby recommended that the application for lease–lease back be fast trekked (sic) fastracked to enable the investor–developer to commence development.” This entails that all the relevant consideration for LIR process be ignored and work on what has been the basis for the application for SABL.
- * The Recommendation for Alienability was signed by the PA Samson Torovi on 29th May 2008. This was 9 days after Mr Yapog completed the report and signed on 20th May 2008. No due diligence was conducted.
- * Reservation for customary rights was considered as it was omitted from the LIR. It does raise very serious problems for landowners accessibility to land in terms of villagers, waterways, cemeteries, hunting, burial sites, water, gardening and use thereof of various other activities associated with the land.
- * No proper survey plan and map
- * Wrote a letter to Wewak Agriculture Development Limited giving assurance that the LIR has been completed. This indicates collusion and goes to the credibility of Mr Yapog going an extra mile to provide an assurance to the developer. He writes the letter whilst he was conducting the LIR.(SOPPL

7)

* Threatened the investment would be lost if the process was not fast tracked according to Mr Dau Waskia the Acting Adviser.

* Relying on information provided by the landowner company showed no need to go each of the villagers to conduct the LIR

Richard Kali and Aron Malajiwi (Summons) failed to appear as anticipated and their evidence was not received. It indicates the extent by which Mr Malajiwi had played an integral role in the acquisition and alienation of land in the name of the Lanco. His absence does reflect poorly on his actions from the very first day that the Commission visited the project site at Turubu and the continuing contempt to appear and give evidence. Mr Kali, a Provincial Forest Officer likewise failed to turn up to assist the Commission with information on why the logging continued to operate whilst the nursery was actually located on grassland before the saddle of ridges and forested areas near Cape Turubu and Turubu villages.

Mr Peter Yapog to be reprimanded for basically acting on the advice of the LANCO and Investor and compiled a sloppy and unreliable LIR. PA who was also not available for hearing failed to undertake a comprehensive due diligence blinded by the projected development of the Sepik Basin and failed to acquire majority consent of the villagers/landgroups/ located within the SABL Project site.

DEPARTMENT OF PROVINCIAL AFFAIRS AND LOCAL LEVEL GOVERNMENT (DAPLLG)

Findings

No Certificate of Alienability was issued under the hand of the Custodian of Trust Land in accordance with section of the Land Act.

Recommendation

That freshly conducted LIRs be provided to the Secretary of Provincial Affairs as the custodian of customary land for issue of certificate of Alienability.

DEPARTMENT OF LANDS AND PHYSICAL PLANNING FILES

THE REGISTRAR OF TITLES

A title has been produced by the Registrar of Titles and there are no dealings recorded on the title document, although no file has been produced to date. The title enumerates that following improvement covenants:-

The lease shall be under bona fide for the purposes specified in the Schedule

The Lease shall be for a term specified in the Schedule commencing from the date when the land was leased from the customary landowners to the State under Section 11 of the Land Act 1996.

The lease shall be „rent-free? for the duration of the lease

The lessee shall be responsible for the provision of any necessary easements for electricity, water, power, drainable and sewage reticulations

The lease shall take into consideration the "Consent/Undertaking" signed by the agents/representatives of the landowners in the event that vesting of the lease to a company is in issue.

Covenant five brings into issue the implications of landowner ownership and hence landowner consent on the lease.

CUSTOMARY LANDS DIVISION HELD NATIVE LAND DEALINGS FILE

There was no survey plan on file and the one provided from the Surveyor General's office remains unexamined.

There is no land investigation report on the file provided and hence no recommendations as to alienability are found on file

A lease-leaseback instrument dated 29 July 2008 was signed by some 56 land owner representatives who all appear to be the Chairmen of ILG's along with State representatives.

A search of the ILG Registry will need to be conducted but there is no Land Investigation Report on file to confirm ownership and consent by the customary landowners.

It appears that Limawo Holdings Ltd has been spearheading the SABL application. On file in chronological order are the following documents:-

* Letter dated 8 March 2007 from Turubu Local Level Government where in then President and Project officer of the Turubu ILG sign off on a letter informing of the formation of Limawo Holdings

* A similar letter of support from the Sausso Local Level Government is on file dated 17 July 2007

* A letter pertaining to the registration of some 52 ILG's from the Turubu Inland, Wewak District originates from the East Sepik Provincial Administration Lands Division to the Registrar of Incorporated Lands and copies attached to it appear to be landowner consents on Limawo letterhead.

* In a handwritten memo dated 5 June 2008 from Ms. Vahine Gure the ILG Registry Manageress indicated that not all the necessary requirements have been provided for the registration of the ILG's. Including a family list, property list and covering letter to support the application.

* Limawo Holdings Ltd has provided a list of some 56 ILG names however no confirmation of their registration with the ILG Registrar, although numbers are listed next to names of ILG's on the lease-leaseback instrument. This will need to be confirmed with the ILG Registrar.

* Documents provided by Limawo Holding Ltd to the DLPP outline the reasons behind a 20% - 80% shareholder split ownership of the SABL grantee company and a resulting Consent/Undertaking document by Limawo Holdings Limited the one referred to in improvement covenant five of the lease.

* In a letter dated 10 July 2008 on Limawo Holdings letterhead recounted a Resolution of a Limawo Board of Director meeting held on 20 April 2008. In it they resolved to have SABL granted to Sepik

Holdings Plantation Limited as a joint venture company with investor Wewak Agriculture Development Ltd. In the resolution the 5 of the 6 directors irrevocably agreed to do so on behalf of the 56 ILG's, of which ILG Certificates and consents have yet to be sighted.

As noted in the IPA files Sepik Oil Palm Plantation Limited was actually incorporated just 3 days after the Board Meeting, on 23 April 2008. A company that is 80% owned by non-citizens.

Consent/Undertaking Document as a Joint Venture Agreement

A Consent/Undertaking document was also provided by Limawo Holdings Limited. In it they signed away their rights of objection to the granting of the SABL to the 20%–80% owned Sepik Oil Palm Plantation Limited. To that effect a Joint venture agreement is referred to.

Mr Pepi Kimas the then Secretary for Department of Lands and Physical Planning signed off on the Agreement.

Mr Kimas in brief explained that it was efficiency on the part of DLPP to deal with the Undertaking/Consent which he said was a protection for the landowners in a joint venture agreement. In addition he did not see anything wrong with executing the Consent/Undertaking and the Notice of Direct Grant on the same day i.e., 2nd September 2008. (Refer to his evidence at Transcript of Proceedings SABL 77 Waigani at pages 68–80)

We are critical of the manner by which Mr Kimas on the advice of his officers proceeded to accept the instrument of consent/undertaking when it was officially gazetted on 14 April 2008. It was highly irregular and even though we have had no evidence to the effect as to who prepared the document, it was highly likely that DLPP may have drafted the document. The signatories to the Consent agreement are the late Jacob Waffinduo according to Mr Yapog was instrumental in the issuance of title to SOPPL. The Mr Ian Kundin, Legal Officer for DLPP also witnessed the signing of the Consent and Undertaking. That practice is a contrary to the adopted administration of the SABL process where the LIR is the only process by which consent is regularly obtained.

In addition, the Notice of Direct Grant signed on 2nd September 2008 gave very little opportunity for other affected landowners to present their views on the changes that were been made to the previous Gazettal.

The Joint Venture agreement between Limawo Holdings Limited and Wewak Agriculture Development Limited was signed on the 18th April 2008. In the Joint Venture agreement there was also a Limawo Holdings Limited Directors Resolution dated 18th February 2008 agreeing to the shareholding arrangement between Limawo Holdings Ltd and Wewak Agricultural Development Ltd.

An undated 69 page proposal document titled “Wewak Oil Palm Plantation Development Proposal” is also on DLPP file. It was prepared by Wewak Agriculture Development Ltd.

DEPARTMENT OF AGRICULTURE & LIVESTOCK FILE

From the documents produced by DAL relate to the three requirements of pursuant to the affidavit of Francis Daink Deputy Secretary of the PATS dated 30th August 2011. In it he swore that the

processes to approve an agricultural project for the purpose of issuing of a Forest Clearance Authority were a three step process.

These are specifically assessment or evidence of: – (i) land capability and suitability (ii) the land use (or estate) development plan and (iii) public hearing(s) conducted for the stakeholders affected by project development.

Land Capability and Suitability: – An incomplete proposal document was produced by DAL, merely the attachment to a main proposal was provided. It appears to be part 2 of the proposal produced on the DLPP files. From this we were unable to determine how the DAL could assess land or soil suitability and capability in terms of topography.

There appears to be some assessment in a site visit by Mr Daink and the Land Use Advisor –P&ISSS, Mr Mai Baiga dated 27 June 2008. In it there are references to historic assessments from 1987 and 1992. In their conclusion as to general suitability in this report they conclude that it is “moderately suitable” for oil palm growing. It stated that soil depth and drainage are the major limiting factors.

Land Use Development Plan: – As stated earlier we have received incomplete documents from DAL and are unable to establish whether there has been one provided for assessment. What has been forwarded to this office is the “2010– 2011 Forest Clearing and Agriculture Development Plan (Coupe 1 Carried-Over Areas) for Wewak – Turubu Large Scale Integrated Agriculture Project (FCA No 11-01)” prepared by Wewak Agriculture Development Limited. The developer has asked for an extension to its clearing plans. It is eager to clear

some 8472 hectares of forested area however only willing to plant in grassland areas 4044 hectares. There is no mention of the 500 hectare clear & plant legislative requirement in the revised plan. This plan though has met with the approval of DAL and the PNGFA with unreserved endorsement in a memo dated 05 July 2010

Richard Kali, the Wewak–Turubu Project Supervisor for the PNGFA in East Sepik Provincial office was summonsed (Summons 292) to give evidence. On the afternoon of Thursday 16th February 2012, the Commission was unofficially advised through Counsel Assisting that he had left suddenly for Port Moresby on official business. The logging activity on the SABL site required some answers especially whether the Provincial Forestry Office was monitoring logging activity of the SABL Grantee especially if the forest clearance was related to the planting of oil palm. The C.O.I made specific direction for his attendance at the hearings of the COI on either 27th or 28th February 2012. The Commission was also fully aware that at the relevant time, there was issues relating to the impasse in government and Wewak was embroiled in some political controversy hence disruption to the normal flights into Wewak from Port Moresby. The same applied equally to Mr Malajiw, Chairman of LHL and Messrs Hui Tech Lau and Joseph Tan of WADCL (Investor/Developer) regarding the export of logs. (See Transcript SABL 7 Wewak dated Thursday 16th February, 2012 at pages 39, 80, 83 and 126)

In addition the report does say that the oil palm seedlings will be ready for planting in the grasslands in October 2011. Our assessment was that it was only recently planted and that there was no existing infrastructure to satisfy the C.O.I that work was progressing since the SABL was issued on April 2008.

Public hearing(s) conducted for the stakeholders affected by project development:– With the third requirement there is evidence of a public hearing being conducted on 25 July 2008 Tumurau

Primary School, Turubu. In attendance was Provincial Deputy Administrator, Deputy Secretary for DAL, Transport Dept and PNGFA representative. Most attendants appear to be in agreement with the project however only 18 different people spoke representing 9 different ILG's.

Under cover of letter dated 30 October 2008 DAL Deputy Secretary Francis Daink informs Secretary Benjamin of DAL to sign the Form 235 Certificate of Compliance for Large Scale Conversion of Forest to Agriculture. He says that attached to the letter is a Submission Report the PNG FA, Minute of the Public Hearing and a Copy of the land use report was granted on 26 November 2008. The Submission Report which appears to have been revised several times must be produced by DAL as it is not on file. This same submission was not produced on the PNGFA file provided to COI.

The PNGFA was informed by DAL in a letter dated 12 November 2008 a revised submission is included for the next Board meeting for approval of granting of FCA to Wewak Agriculture Development Limited.

On 26 November 2008 the Form 235 Certificate of Compliance for Large Scale Conversion of Forest to Agriculture was signed by Secretary Benjamin.

On 26 November 2008 a letter of congratulations informing Wewak Agriculture Development Limited of it being granted the Certificate of Compliance was sent.

On 27 November 2008 a letter to PNGFA was sent conveying DAL's satisfaction that the requirements of compliance have been met for the issuance of the Certificate of Compliance and that PNG Forest Board would issue the Forest Clearance Authority.

The latest document on file is an unsigned NEC Submission dated January 2010 regarding the project seeking approval of a 5-year funding plan for landowner company Limawo Holdings Ltd. No other documents was submitted and filed with the COI.

PNG FORESTRY AUTHORITY FILE

The file was produced by the PNGFA 28 August 2011. It contains the joint venture agreement between Limawo Holdings Ltd and Wewak Agriculture Development Limited.

A minute dated 16 December 2010 and a letter dated 06 December 2010 to Wewak Agriculture Plantations Limited confirms PNGFA approval of the Revision plan per paragraph 24 above. There is no mention of the 500 hectare fell and plant requirement

This is despite numerous letters on file of selective logging with no work done to clear land for oil palm planting.

An inspection was carried out 12 March 2011 which showed that 120 km of road have been constructed. 98,000 seedlings were awaiting planting although survey and demarcation work for sub-dividing the plots was yet to commence. The first lot of seedlings should have been or about to be planted.

East Sepik Provincial Forestry Management Committee (PFMC) submission was prepared 4 March

2009 but attachment documents are in draft form.

In a letter from the East Sepik Provincial Administration Wewak District Administration to Customary Lands Division of Land Administration signed by District Lands officer, an undertaking that the 56 villages or landowning groupings or ILG's in the Turubu LLG area are committed to the project. This letter is copied to the "Chairman of Turubu Incorporated Land Groups care of Division of Lands PO Box 475 Wewak. This will need to be clarified as this is the first reference in any of the files of a Chairman for the ILG's of the Turubu LLG area.

On the PNGFA file are letters of support from Provincial Administration, from Local Level Government and the DAL. One letter dated 14 May 2008 from the East Sepik Provincial Administration supporting the Turubu project assuring Wewak Agriculture Development that the project has been integrated into Provincial Development plans and policies. There is a Notice to Undertake Environmental Impact Assessment on the PNGFA file dated 2 July 2008.

A draft submission to the Provincial Forestry Management Committee dated for sometime in March 2009 is on file. However it is simply a draft with attachments missing. A completed submission along with the Notice of Decision will need to be sighted. The Provincial Forest Management Committee will need to provide this.

DEPARTMENT OF ENVIRONMENT AND CONSERVATION

An environment permit was issued under Section 65 of the Environment Act 2000 issued on 5 December 2008 to commence 2 January 2009.

This was as a result of what appears to be the rigorous permitting process all Integrated Agriculture projects go through as sworn to by the affidavit of Michael Wau Director Delegate of the DEC.

Steps 1, the Notification of Preparatory Work has been done by Wewak Agriculture

Step 2 sees a Submission of an Environmental Inception Report which is also in the DEC file forwarded.

Step 3 sees a Submission of Environmental Impact Statement completed, also on file.

Step 4 is an assessment of the EIS by the Director DEC, however this assessment for this project EIS appears not to be on file.

Step 5 is the Public Review and Submissions on the EIS. This was conducted with key agencies consulted via mail and public hearings were conducted on the 24 & 23 September 2008 at Yamungun and Balik Villages – Turubu respectively. There were 26 attendees from the local community. Many expressed environmental damage concerns but were positive about the opportunity this development gave to them.

Step 6 would entail DEC acceptance of the EIS through a letter to the proponent. There is no record of this on file.

Step 7 is the Referral of the EIS to the Environmental Council appears to be an Agenda Paper to the Council dated 4 November 2008.

Steps 8 & 9 sees the Council making positive recommendations leading to the granting of the Ministerial "Approval in Principle". This document is on file signed by then Environment Minister Benny Allen on 19 November 2008.

The final step is the developer/proponent applying formally for an Environmental permit which appears to have happened as no letter has been sighted on the DEC file.² Environmental Permits were issued on 5 December 2008 to commence on 2 January 2009. Term of both permits being 25 years to expire on 1 January 2034. One for general work of the Project & waste discharge and the other for water extraction.

There are broad terms governing the work under the Permits, as a guide to the COI, the permit requirements should be observed when conducting the site visit to get a first-hand account of compliance and further understanding of the intention of the SABL's; customary landowner economic benefits via agriculture and business on their traditional land and how this intersects with environmental impacts on a previously subsistence life on that same land.

Objections and Petitions of the Landgroups associated with SABL 144C

Objecting Landowners

The following landowning groups objected to the blanket SABL issued to SOPPL. The objecting parties comprise landowning groups, ILGs, Landowning companies, NGOs and interested parties.

Landgroups from Saussia, Kubalia Station consisting of Rokumdokum village, Swandukum village, Haniak village, Wirkambi village, Korumbu village and Chabaraka village, Passam Angoram within Turubu inland and LLG and Tring LLG were represented by Mr Hubert Wally, lawyer with Jaminan Lawyers and provided both Affidavit and oral evidence to the COI at Wewak.

The objections related to

- * Some of the villagers gave their consent based on a purported ILG Letter that substantially promoted development for their land and its vast resources.
- * They also did not consent to convert their land to SABL.
- * Lack of awareness by Division of Lands and Physical Planning within the ESP over the land investigation process
- * No awareness on the environmental impact statement which is crucial to the preservation of the flora and fauna within the project area.
- * The meeting or awareness that was held was only confined to two specific places and the majority of landowners from Saussia and Turubu was unable to attend and provide their views on the agriculture project
- * The actual land investigation focussed on the 52 ILG which only related to a small portion of the entire land.
- * Wewak Agriculture Development Limited and landowner company Limawo Holdings Limited obtained consent by fraud without consideration on the customary ownership that clan and families own land.

- * Certain ILG Chairman did not represent the interest of the majority of landowners.
- * They heard of the SABL grantee during the SABL Inquiry hearing at Wewak.
- * Existing State Lease, High School, District Services, High School, Airstrip.

The evidence was confirmed by

- * Mr Michael Caypah from Bungain village, Turubu and current Chairman of Bungain Bagloise ILG, the overall landgroup of Bungain village. He gave evidence as an elder on behalf of 600 people from his village. The ILG is YAMBUNGAIN. Their general objection was the construction of a road through their land.
 - o Not shareholders of Limawo Holdings Ltd
 - o No knowledge of Mr Yapog and the land investigation
- * Mr Mathew Koimo from Nungawa village, Saussia LLG in the Kubalia District
- * Mr Michael Marmber from Pangkor village, Turubu inland and represents about 200 people from his village. Need proper negotiations and awareness for SABL.
- * Mr Gabriel Dagun from Forok, Tutturbu coats in Wewak District

Mr Michael Sau Chairman of Katnimber ILG, Kamaraka village, URIMO station.

- * ILG was registered prior to the SABL
- * No proper LIR
- * Oil Palm Project was a rushed project with no proper assessment
- * ILGs forms were not done properly and a villager distributed the forms and noninput from Lands Office.
- * His ILG is KATNIMBER INVESTMENT (ILG 9551) covering Yari, Nungawa and Kamaraka in the vicinity of the Saussia LLG covering 4,500 hectares. Can't progress with their project because of the SABL.
- * They do not want oil palm development but would opt for another project.
- * Public Meeting held at Tumura Primary School on 16 October 2008, the presenters and organizers never mentioned SABL. Mr Daink was present, ESP Officials and National Government officers. The ILG forms were also conducted (see page 30 of the Transcript SABL Wewak 7)
- * Limawo Holdings hijacked the process and he stated his reasons at the meeting of February 2008
- * Not signed the Lease Lease Back Agreement—been a vital part of the SABL did not consent to the SABL.

AUGUSTINE MONDU FOR AND ON BEHALF OF SENGI LAND OWNERS

Representing villagers in Tring, Yulao Kamasau and Murai, the letter is signed off by 17 people. He provided a comprehensive submission letter to the Commission dated 29 August 2011, although unsworn it makes allegations and

relays grievances that the Commission should note for further investigation and possible examination. These are:-

- * that there was limited awareness and notification of the project and its impacts to the majority of affected landowners of the project;
- * that there were ongoing landowners disputed prior to the project development and now during however developer has failed to take note and instead exacerbates landowner tensions with the allure of hard cash
- * Land Group known as Limawo Incorporated Land Group ILG Reg No 13993 has held itself out as

the sole representative of 56 villages, he says this is incorrect and it has led to a single family group from one village to incorporate Limawo Holdings Limited. A search of the ILG Registry will need to be conducted

- * ILG Certificates for many landowner groupings applied for have yet to be released
- * Major concern in manner of logging timber which they believe is indiscriminate and wasteful and venturing onto land not covered by the SABL and then not compensating the landowners for that mistake
- * The logging and road construction has destroyed sacred sites reportedly the logging road through Urimo land. That the shipping berthing area is also causing marine environmental damage to land and fish stocks.
- * Questions why logging continues when the road to the oil palm planting area has been constructed and the COI continues (he believes moratorium stops ongoing SABL based logging projects)
- * Limawo Holdings Directors have committed fraud by “selling” shares in Limawo for K500 each; that there appears to be no returns for the investors.
- * Continued landowners grievances have been ignored by the developer.

SPENCER POLOMA CURRENT “ACTING” CHAIRMAN OF LIMAWO HOLDINGS LIMITED

In a sworn statement dated 18 August 2011 Mr Poloma claiming to represent the current interests of the Company, states the following:-

- * That the previous founder of the company one Aron Malijiwi has been sidelined and he claims in court for corrupt practices, that Malijiwi was more aligned with the Developer than looking out for the interests of the landowners that he reportedly “represented”. Mr Poloma says that he therefore speaks for Limawo, this must be further investigated.
- * Described SABL grantee Sepik Oil Palm Plantation Limited as a “ghost company”
- * That the developer Wewak Agriculture Development Limited has breached the Joint Venture agreement and Log Marketing Agreement as of 13 July 2009 when machines first landed at Turubu Bay.
- * Makes bribery and collusion claims against the local Police, Provincial administration staff and provincial PNG Forestry Authority officers as well as the Turubu LLG President with the Developer.
- * Bribery allegation are made against the Chair of the Environment Council, that he received K10,000.00 from the developer on 3 November 2008
- * A disregard of the sacred sites by the developer is an ongoing concern
- * Multiple claims of fraud have been levelled against Aron Malijiwi and that he as well as the developer used the SABL title as security to secure a Maybank (PNG) Bank loan in April/May 2011

* Much social upheaval due to the presence of the project

MICHEAL SAU, CHAIRMAN OF KATNIMBER ILG No#9551 OF KAMBARAKA VILLAGE URIMO YANGORU SAUSSO DISTRICT

Under cover of a Statutory Declaration dated 25 August 2011 Mr Sau makes initial reference to the lack of proper site inspection when conducting the survey mapping of the land area. He also spoke at the DAL Public Hearing, a copy of his speech was on the DAL file on 25 July 2008. On 28 July 2008 the Lease- Lease back was signed without Mr Sau's signature with no reference to his ILG.

* Says that the process of landowner consultation was flawed

* Claims that he discussed the matter with then Chairman Aron Malijiwi, who clearly stated he did not have landowner consent and once he secured investors he would sort out the landowners.

* Claims that his own ILG was not consulted. From cross checking with ILG Chairs that signed the Lease-Leaseback instrument ILG numbers do not correlate and Mr Saus own village as it appears to have 2 ILG's the other one of which signed on the Lease.

* Another claim that K500 membership was collected from 2000 to 3000 landowners each by Limawo Holdings Ltd with the promise that blocks of land would be offered to the person paying the K500

* Indicated at the end of his submission his availability to give evidence to the Commission.

CENTRE FOR ENVIRONMENTAL LAW AND COMMUNITY RIGHTS INC (CELCOR) SUBMISSION

Submissions received by the Commission on 6 September 2011, via affidavit sworn by Joseph Lai employed lawyer of CELCOR representing clients within the Tring/Turubu District of East Sepik Province. Specifically highlighting the Department of Environment and Conservation permitting concerns

They claim that much of the statements made in the Environment Impact Statement which they have appended to the affidavit, the same EIS contained in the DEC file referred to earlier in this address, are false and misleading namely:

Requirements under the Lands Department processes for SABL registration were not carried out as no Land Use survey per paragraph 2.9 of the Environmental Impact Survey Report were conducted. The Landowners claim they were never visited by the Lands Department or PNGFA representatives.

Therefore no confirmation of ownership and consent per relevant sections of the Forestry Act

Pursuant to paragraph 5.1 of the EIS there is reference to the company being a newly registered company. As such it has no way to confirm its economic viability for the development of the project, the permits appear to be granted virtue of its parent companies although no profiles of this are included in the EIS

The Executive Summary of the EIS claiming benefits will be maximized for landowners is misleading and false as only a few selected landowners benefit.

One of CELCOR's recommendation is that provincial level government stakeholders be looked at

closely, specifically the Provincial DAL, Lands and Provincial Forest Management Committees. There is some doubt as to the Provincial Forest Management Committee approval. This is in line with the mere draft document sighted on the PNG Forestry Authority file that had yet to be submitted to the PFMC.

IBAWAN HOLDINGS LIMITED

A letter of complaint dated 17 August 2011 briefly detailing the lack of landowner consent of the people of Trin, Wau, Kamasau, Ibab and Wandimin. Also that trees had been harvested on their land but were not compensated for.

Previous letter of complaint to the Surveyor General was attached dated 10 December 2010 detailing the lack of consensus for determining the land boundaries. They expressed concerns for their own project and land boundaries.

A full submission was received on 15 September 2011 detailing the Jetropha Bio Fuel project in the Ibwawan Wandimi area of East Sepik Province and the encroachment issues. It provides details of the encroachment in detailed maps, these will need to be explained and more carefully mapped by technical person.

There appear to be approvals of the project itself from the Department of Agriculture & Livestock. As the required DAL stakeholder meetings which is a necessary part of the assessment process there would be much debate on the encroachment issue and should have influenced approvals.

The Evidence of Godfried Raushen

Mr Godfried Raushen, Caretaker Manager of IHL and Provincial Liaison Officer (PLO). Current Public Servant and seconded to the Company. From Yumungu village within the project site. District Administrator for Yangoru Saussia from 2003, 2004 and 2005.

Consent Forms signed after issuance of SABL Title in 2008. It was signed on 2009. Blanket Consent Forms used by the company to obtain agreement for villagers within the SABL to plant oil palm in their land.

Q. What about the consent process before the SABL title was granted?

A. These ones are blanket ones. I have got a copy here with the copy of ILG Certificate. Those are the blanket consent forms signed by the ILGs. These are blanket consent forms. And also after the blanket consent forms that actually the company went in there and asked clan by clan, if you agree for the company to come and plant oil palm on your parcel of land, they also design and issue the consent form.”

(Transcript SABL Wewak 7-16/02/12 p50)

The Executives of the Developer sought through Mr Kuman of counsel to give evidence in Port Moresby.

MARTIN SHUKWEI of IBWAN HOLDINGS.

Formed ILGs and landowner company and to acquire first 10,000 hectares within the SMOIA AND BARUA Village where the current estate is.

Internal differences when Malajiwi failed to conduct meetings and sided with INVESTOR. R Joseph Tang.(Page 97 @ SABL Wewak 7) IBWAN Is name of the clan where all the Directors come from namely ARON MALIJIWI, MALCOLM NUMBON,GREG SHUKWEI, MARTIN SHUKWEI and WILLIE YAPARUI.–name originated from their clan name.

A: So, counsel, without knowing that this whole land–the entire land of Turubu and Saussia had gone to SABL. We all did not know, even myself.

A. To the best of my knowledge, the Deputy Chairman is the one to start the project. Peter Yapog did not go out to hold meeting at a particular place at any one time, nothing.(page 98)

IBWAN was the major driver of the ILG application and registration. There is evidence that the lands officer did not go from village to village from Kubalia down the Sepik Plains and conducting public hearings to gauge views of the people. (99–100)

RECOMMENDATION

1. The Land Investigation Report was flawed because it failed to ascertain the majority consent of the whole landgroups within Turubu inland, Turubu coastal, Sausso, and Tring.
2. The Consent/Undertaking signed on 2nd September 2008 subsequently Notice of Grant issued by the Delegate was highly irregular and must be nullified, as there is in existence a Gazettal of 14 April 2008.
 - 2.1. The Gazettal of 14 April 2008 is not supported by a Notice of Grant issued by either the Minister or his delegate.
3. Limawo Holdings Limited and the 52 ILGs does not reflect the true landgroups from within the SABL Portion 144C. The land area must only be confined to the Nursery at Malapo Grassland and must include those villages aligned to Limawo HL.
4. There is justification in the revocation of this SABL and for new Land Investigation process to be convened. A proper awareness including the need to walk the boundary and undertake social mapping must be coordinated.
 - 4.1. SOPPL is a foreign owned company and the Joint Venture Agreement has not been adopted between the parties except for the Consent/Undertaking between LHL and the State.
 - 4.2. SOPPL is not IPA compliant in terms of the activities it conducts within PNG.
 - 4.3. SOPPL does not have the managerial, nor the capacity to undertake large scale agriculture activity and is a logging company.
 - 4.4. The lack of infrastructure at the Nursery and Oil Palm Estate indicates that SOPPL lacks capacity both financially and experience in the agriculture sector.

4.5. The soil is not suitable for oil palm estate

5. The Objections raised by the majority of landowners indicate that the line agencies linked to SABL process have not coordinated well enough to educate the villagers on SABL and its impact on their customary land and development prospects for the landowners.

6. Revoke the SABL title to SOPPL.

MADANG PROVINCE

COI Inquiry File No.74 for Special Purpose Agricultural and Business Lease over Portion 16C Volume 18 Folio 22 Milinch: Savai & Annaberg (Ne & SE)Madang Province in the name of Urasir Resources Limited.

1.1 In accordance with the powers given to the Commissioners pursuant to section 7 of the Act, the Commissioners have summoned numerous witnesses to produce documents and be further examined on oath or affirmation.

1.2 Witnesses were called from the six government agencies involved in the issuance and operation of the Urasir Resources Limited SABL. These were:

1.2.1 Department of Madang Province, (DMP)

1.2.2 Department of Lands and Physical Planning, (DLPP)

1.2.3 Department of Provincial Affairs and Local Level Government, (DPALLG)

1.2.4 Department of Agriculture and Livestock, (DAL)

1.2.5 Department of Environment and Conservation, (DEC)

1.2.6 PNG Forest Authority (PNGForest Authority)

Witnesses and Summonses

1.3 The names of the persons who have been summoned to appear and who have in fact appeared in the public hearings are set out in the schedule below.

No

Name and Position

Pages

Day

Date

1

Rodney Robin Bakou, Acting Manager, Continental Joint Venture (CVL), Developer/Investor
44-47

58-81

1-35

2

2

3

23/02/12-SABL 2 Madang

23/02/12 SABL 2 Madang

24/02/12 SABL 3 Madang

2

Mr Bernard Lange, Provincial Administrator, Madang Provincial Administration, MP

47-58

2

23/02/12-SABL 3 Madang

3

Mr Emeterio Lujero, Consultant (Agriculture) to CVL, DD Lumber Ltd NCD

35-52

3

24/02/12 SABL 3 Madang

4

Mr Micar Mer, (Summons 316 dated 15/02/12) A/Provincial Customary Lands Officer, Provincial Lands and Physical Planning Branch, DMP

53-72

3

24/02/12 SABL 3 Madang

5

Ms Christabel Maino Remi, Lands Officer, Customary lands Section, Provincial Lands and Physical Planning Branch, DMP

72-81

3

24/02/12 SABL 3 Madang

6

Mr Zerenius Sokrim, (Summons) Landowner, & Fmr Chairman of Urasir Resources Limited, Ulis Village, Josephstal, Middle Ramu District

82-115

3

24/02/12 SABL 3 Madang

7

Mr Stanley Harringgu, Former Director, UDL, Landowner, Ulis Village, Josephstal, Middle Ramu District

115-134

3

24/02/12 SABL 3 Madang

8

Mr Mathew Ware, Landowner but outside SABL project site

134-140

3

24/02/12 SABL 3 Madang

9

Mr Michael Hardibua, Landowner, Current Director and Treasurer of UDL

140-143

3

24/02/12 SABL 3 Madang

10

Mr Alfeus Sakiku, Chairman of Shareholders, Kaniku ILG

143-147

3

24/02/12 SABL 3 Madang

11

Mr Simon Malu, Director, Customary Lands Division, DLPP

15-41

09/01/12-SABL 71 Waigani

12

Mr Francis Daink

Deputy Secretary (PATTs),

12-26

05/09/11-SABL 13 Waigani

DAL

2-33

06/09/11-SABL 14 Waigani

11/01/12-SAB: Waigani

Parties represented by counsel

Section 8 of the Act relates to the appearance of counsel before the Commission on behalf of interested parties. It provides that:

“Subject to Section 2(5), a person who satisfies the Commission that he has a bona fide interest in the subject matter of an inquiry under this Act, and any other person by leave of the Commission, may attend the inquiry in person or may be represented by counsel.”

The following were granted leave to be represented by counsel

Exhibits and documents

There were sixteen (16) documents tendered as evidence before the Commission at the public hearings. A list of the Exhibits is shown below.

No
Item
Interested Party
Date received
Exhibit Number

1
Copy of Land Investigation Report, URL
C.O.I
09/01/12
URL "1"
Simon Malu

2
Instrument of Lease/Lease Back Agreement Between the State and Customary Land Owners of the
land known as Urasir
C.O.I
09/01/12
URL "2"
Simon Malu

3
Agency Agreement Plus Other Declaration in Relation to land Tenure
C.O.I
09/01/12
URL "4"
Simon Malu

and all other documents that are usually appended to the LIR

4
a) Letter to the C.O.I dated 22/02/12 By Mr Bernard Lange, PA. (b) Letter by Mr B. Lange, PA to
DLPP Secretary dated 8 March 2011; and
(c) Copy of Daily Appointment Register from Mr B, Lange, PA from Z. Sokrim and Mr Sakauvi
together with two letters dated 3 Feb_12 and 2 Feb_12 which Mr Lange claim he did not sign
C.O.I
23/02/12
URL "1"
Bernard Lange

5
Recommendation as to Alienability signed by Mr Lange, PA for Madang on 10 March 2012
C.O.I
23/02/12
URL "2"
Bernard Lange

5
Urasir Rural Development Project Pertinent Documents with regard to COI submitted by Landowner
company URL and Developer CDL.
C.O.I
23/02/12
URL "4"

Micah Mer

6

Land Investigation Report–A brief Report of the Lands Investigation for Urasir Resources Ltd to C.O.I for SABL from Acting Provincial Customary Lands Officer, Mr Micah Mer dated 22 Feb_12
COI

23/02/12

URL “5”

Micah Mer

7

Written Statement of Mrs Christable Remi, Lands Officer, Customary Lands Section on the Trip to Ulis Village between 12– 14 December 2010 by herself and officers from DLPP, Port Moresby

COI

23/02/12

URL “6”

8

Minutes of First AGM of URL 5/2/11

COI

23/02/12

URL “7”

9

Statutory Declaration of Mr Z. Sokrim with Attachments to letters and correspondence and other Company Documents

C.O.I

URL “8”

10

Letter to the Chairman,
C.O.I dated 23 August 2011 by Mr Sokrim

COI

23/02/12

URL “9”

11

Letter under URL dated 22 Sept_11 addressed to Minister for Lands

COI

23/02/12

URL “10”

12

Letter dated 26 Sept_11 to Chairman, C.O.I by Mr Sokrim expressing his complaints about the Developer

COI

23/02/12

URL “11”

13

Documents to Chief Commissioner of the
C.O.I dated 29 September 2011 by Mr Sokrim.

COI

23/02/12

URL “12”

14

Statement made to Police Fraud Squad and Anti- Corruption Unit by way of a letter dated 3

September 2011 by Mr Sokrim with other relevant documents bound together including leases, SABL title and copies of ILG Certificates.

COI

23/02/12

URL "13"

15

Minutes of the Shareholders Meeting of 8 December 2011 with Attachment of Other Miscellaneous Documents

COI

23/02/12

URL "14"

16

Complaint Statement dated 10 October 2011 by Michael Handibua, Director and Traesurer, Urasir Resources Limited.

COI

23/02/12

URL "15"

Timeline of events of note surrounding Urasir Resources Limited SABL Title

The timeline showing important events concerning the SABL is shown below in chronological order of their happening:

No

Milestone

Dated of Completion/G rant/Issue Execution

Proponent/Applicant

Respondent Entity/Respondent

1

Incorporation of Continental Venture Limited

13 August

2010

CVL

CVL

2

Incorporation of Urasir Resources Limited

24th September

2011

URL/CVL

URL/CVL

3

Land Investigation Report (Undated and Blank signatures and No Recommendation for Alienability signed)

Undated but according to evidence of Cristobel Maino 12-14 December 2010

C.O.I

C.O.I

4

Lease-Lease Back Agreement (undated)

13 December

2010

C.O.I
C.O.I

Gazettal Notice of Direct Grant issued to URL–Gazettal No 967

14 March

2011

C.O.I

C.O.I

5

Agriculture Sublease Agreement Between CVL and URL

14 March

2011

C.O.I

C.O.I

6

SABL Lease Title

16 March

2011

C.O.I

C.O.I

FINDINGS

The findings follow the chronology of table of notable events above surrounding the SABL lease title held by Urasir Resources Limited.

Urasir Resources Limited SABL

A Notice of Direct Grant under Section 102 of the Land Act was made in the National Gazette No. G967 dated 14th March 2011 for Portion 16C Urasir Land. The term of the lease was for ninety-nine (99) years. A Special Agricultural and Business Lease was registered and issued on 16th March 2011 by the Department of Lands and Physical Planning to the holder Urasir Resources Limited SABL (URL). Mr Romilly Kila Pat, signed as delegate of the Minister for Lands. The detail of the SABL is shown below:

Legal Description

Portion 16C

Registered Survey Plan Catalogue No

7/230

SABL Holder

Urasir Resources Limited

Date of Registration of Lease

14 March 2011

Period of Lease

Ninety-nine (99) years

Land area of lease

112,400.00 hectares

Location

According to the Land Investigation Report, the proposed project area is located north west of Madang near Aiome and Josephstal Government Station in the Middle Ramu District of Madang Province. That SABL is approximately fifty (50) kilometres from Josephstal Government Station and means of access is very difficult and the only means is by foot using local bush tracks otherwise using helicopter from Madang Airport.

Site Inspection

Due to difficulties encountered due to logistical, terrain and time allocated to the C.O.I. Inquiry team, the C.O.I was not able to travel to Urasir Project Site and undertake inspection and talk to the landowners over the inquiry into SABL Portion 16C to Urasir Resources Limited. The only accessibility was by way of helicopter and the limited funding availed to the C.O.I was insufficient to undertake the visit a requirement under the TOR.

IPA COMPANIES REGISTRY RECORDS URASIR RESOURCES LIMITED

Urasir Resources Limited was incorporated on 24 September 2011, company registration number 1-75759. According to the Certificate of Incorporation and its registered office is at section 215 allotment 2, Unit 1, Mage-Mage Street,

Gordons, National Capital District, and its postal address is PO Box 567, Waigani, National Capital District. This information is from current company's extract as at 30 June 2011.

URL has issued 10 ordinary shares which are issued to the following people: Michael Ambidua of Pamin village; Mathew Auri of Ulis village; Dominic Aguhai of Ulis village; Stanley Kari Herringgu of Maumiku village; Leslie Kasuran of Katiati village; Pias Kubuguli of Kamambu village; Lukas Sakam of Niksapai village; Kivens Sakua of Sereven village; Joe Sikum of Sereven village; and Serenus Sokrim of Ulis village. That is a total of 10 shareholders.

All of the shareholders are from Middle Ramu District. Their postal address is PO Box 1336 Madang. These shareholders are also Directors of the company and Mr Serenus Sokrim appears to be the Chairman. The company's returns are made up to 15 September 2010.

Landowner Disputes

The project in itself created divisions between the landgroups of Urasir. One faction was led by Sokrim, the Chairman of URL, and other group under the leadership of Mr Stanley Harriggu These group are the new Executives of URL was installed after CVL initiated and funded the meeting to appoint Chairman and new Directors to the company. It was suggested at the hearing that Sokrim spent more time at Port Moresby and that there was a need to appoint a new Chairman. Whilst it was clear that misunderstanding was evident over the custody of the ILG certificates, SABL Title, The Project Agreement and The Agriculture Sub-lease was in the custody of CVL, Mr Harriggu who was the vocal agitator of the group realised that Mr Sokrim was not keeping any of the

documents the subject of their suspicion and eventually the illegal meeting procured by CVL to remove Mr Sokrim.

We find that the Development Partner in this case CVLK failed completely to ensure transparency and good governance in its dealing with the landowners of the SABL project area. The C.O.I says this for the reason that it is evident that CVL procured signatures of individual landowners for instance during 13th December 2010 at Ulis village at night which we extract from Mr Sokrim's evidence on oath as follows;

“Q: The Land Investigation, if I can take you to that, to the land investigation. You heard the Land Officers, you also heard the questions we asked of the developer. We need to hear from you as to how you guys conducted the land investigations. How you achieved to obtain the consent of the people.

The Officers from Port Moresby, Mr Simon Malu and Lands Officer, Mrs Maino as she then was, Mr Robin Buck and

A: And another officer, Mr Sumali. Q: Who?

A: Yes.

Q: Yes, for the ILG awareness? A: Land investigation.

Q: And land investigation. And in the evening what happened?

A: At about 9.50 pm he was given a piece of paper to sign under the torch light.

Q: Do you know the date for that? When was this? A: The same date they did the land investigation.

Q: Would it be the 12th or 13th December 2010?

A: It was around the same time when the land investigation was being conducted.

Q: You heard that the Customary Lands Officer, she said they were there between the 12th–14th December 2010.

A: Commissioner, it was 13th of the month 2010. Q: But tell us about how your sign the paper?

A: He was given couple of cigarettes, then he was told to go upstairs. At the top of the house they had discussions and he was told to sign a piece of paper. Before the signing the paper, his Vice approached him and told him to see the developer quickly, in a hurry so he went along –

Q: Year, and what happened? ---

You got to speak quickly.

A: When he arrived at the scene, the Secretary, already read the contents of the letter or the paper so he was briefed about the contents of the paper and then he said he already sign it so he advised him to sign also.

While with the developer in the house, he was really forced to sign that document quickly. He asked the developer if he could give him time so that he will really read the contents of the paper

and he will sign. He was forced and told to sign that time at that instance. So onto of that he was told that whatever they had gathered, like pigs and other funds or money to prepare for that day, he will be given the money to sort the outstanding amount of money for the food and the pigs they prepared for the day.

Q: Well, did you not refuse to sign in the night?

A: He refused. Even though he refused, He was forced to sign also by his secretary and he did sign the paper.

Q: What paper was this?

A: He did not see the cover of that letter.

Q: Was it a Land Investigation Paper or was it the Agriculture sublease?

A: He says he does not know what sort of paper he signed.

Q: Anyway whatever it was, when you say you had signed by force, what happened, did he hold the gun against your head or did he threatened you with some issues of threats. What do you mean you were forced to sign?

A: He was told that the day had already lapsed and by tomorrow they have to return so he had to sign.

Q: Yes. And he signed? A: Yes.

Q: Did they offer you any inducement?

A: He gave them K900.00 in the meaning that that was to pay for the pigs and food and the ladies who prepared the meals for that day.

THE COMMISSIONER: Was Mr Simon Malu present when discussion took place?

A: During the signing Mr Malu was not there. “

(Refer to pages 96–97 of Transcript SABL3–MADANG 23/02/12)

In relation to submissions and evidence from persons of interest, the Chairman of Urasir Resources Limited Mr Serenus Sokrim has made submissions by way of letters and has also put on a statutory declaration saying basically;

* that URL is a landowner company incorporating the landowner based 52 ILGs.

* that URL no longer has any relationship with any other entities, agents or otherwise, let alone

foreign investors.

(iii) That URL has not received the SABL title over Portion 16C.

(iv) That it wants the Commission of Inquiry to instruct the Department of Lands and Physical Planning to release the title to it as the legitimate grantee of it.

* The Department of Lands and Physical Planning had wrongly given the SABL title to the developer CVL and Singaporean Investor without URL's consent and authority.

* That the 52 ILG certificates are also being illegally kept by CVL.

There is no cooperation or transparency in the dealings and activities between the parties.

From the other information supplied by URL, copies of the various ILG certificates are noted and letters to the Provincial Forest Management Committee and PNG Forest Authority requesting for a FCA but the status is

sketchy and given the lack of production of a PNG Forest Authority file, we are basically in the dark as to the status of that.

Given the lack of relevant state agency cooperation and production of information pertaining to this project we are unable to ascertain the current state of affairs other than to note and rely on information provided by Department of Environment and Conservation.

Apart from the Chairman for JRL's complaint, no one else has made any submissions; and therefore we cannot confirm those allegations. They remain mere allegations and I say this, given that Mr Sokrim is a signatory to all of these agreements that I referred to in my statement including the project development agreement.

What does appear to be the case is that CVL or Continental Venture Limited has collected the SABL title and ILG certificate from the Department of Lands and Physical Planning and is actively pursuing the necessary approvals from the DAL, DEC and PNGFA. This is consistent with public review advertisement by DEC the time period in respect of which expires today as I have mentioned earlier.

It appears that the project is a genuine project and the SABL grantee is a genuine landowner company but the twist appears to have occurred when the sub lease was issued or granted whereby CVL was given absolute power and rights to the exclusion of the landowner company except for the benefits from the business opportunities in dividends, royalties and levies or what have you. Control of operations was vested in CVL by virtue of both the project development agreement and the sublease agreement of the SABL. As to the

nature of the conflict or the extent of it, we do not know. The C.O.I has received submissions from Mr Sokrim, the Chairman of the Urasir Resource Limited

CONTINENTAL VENTURE LIMITED–THE DEVELOPER OF THE PROJECT

“Continental Venture Limited (CVL) is a registered company under the IPA Act 1992 and owned solely by Malaysian nationals. It was duly incorporated on 13th August 2010 and holder of

Certificate to Carry Out Business as a Foreign Enterprises under the provisions of the Companies Act. (Certificate No. 00012807158). It had recently registered and established itself in the country, the company's shareholders are former Executives of Malaysian companies doing logging and subsequent oil palm estate and rubber tree plantation development in Malaysia and Indonesia and with its ample experience of doing business in these countries".(Extracted from CVL Detailed Agriculture Development Plan-Exhibit)

The area covered by the SABL of 112,400 hectares proposed for agro-forestry oil palm development is leased to URL, a landowner company and is located within Josephstal Rural Local Level Government area of Middle Ramu District in the Madang Province. The developer is Continental Venture Limited, Company registration number 1-75153 (CVL), and will undertake salvage logging and agricultural development of oil palm on 75,520 hectares of the area covered by the SABL. That is the 112,400 hectares in development of rubber trees on 18,880 hectares of the land and other agricultural development. The area is mainly described as lowland rainforest of which 36 per cent is secondary forest and grassland. Forest clearance will be required for oil palm planting.

CVL is owned by Mr Hien Ming Wong, who was not available at the time the hearing was conducted at Madang. His most trusted aide Mr Robin Bakon was available and was examined by the Commission. Mr Wong also had the assistance of Mr Kuman, a private practitioner who represented the interest of the CVL, He was granted leave by the C.O.I to appear as counsel. Mr Bakon appeared as Acting Manager of CVL in the absence of Mr Wong, he gave evidence which we summarise below as follows;

(1) The shareholding and Corporate structure of CVL

There are two shareholders, Giant Kingdom International Limited who has 10,000 ordinary shares issued on the 13th of August 2010. Continental Venture Limited is owned by Corporate shareholders and the Principal Stakeholder is Mr Hieng Ming Wong. Akara Building, Castra Street, Wecam Sky 1, Raul Town, Totola Bridges, Virgin Islands United Kingdom. and their address is in Hong Kong.the director is Mr Hieng Ming Wong address is Section 215, Allotment 2, Magement Street, Gordons, National Capital District.

(2) Signing of the Project Development Agreement at Ulis Village on 28th August 2010.

The Agreement was signed between CVL and ten Land Owner group representatives at Madang in the presence of Mr Darren Kaman acting as lawyer for CVL. Mr Bakon signed as the Managing Director of CVL (12 September 2010 and witnessed by Mr Kaman. In another instance he signed the Agriculture Sub Lease Agreement as the Secretary to CVL. He was not an official of CVL but an employee of the Company. The actual signing took place before a practising lawyer, who could have advised Mr Bako that he was not authorised to commit the company without the company official's signature. This action is

very devious and Mr Bako should be investigated if he has breached any laws with respect to employment and residency permit.

(3) The landowner dispute over CVL involvement in the Project.

The C.O.I has noted that there was two factions created since CVL was allowed to negotiate with

the landowner on large scale agro-forest project in one of the most remote and least developed areas of Madang Province. The dispute was basically over the custody of all the ILG Certificates and the State Lease Title which was held by CVL for safe keeping. Mr Bakon response was for security or mortgage over the project.

The C.O.I find it hard to be convinced with CVL's Bakon evidence in totality as the manner of speed to sign the two most important document was essentially to fast track the process so that CVL will have access to the blanked SABL land area of 112,000 hectares to conduct the supposed project. He was the main driver behind the split between the Landgroups basically for keeping custody of the SABL Title and ILG Certificates.

Department of Madang Province Land Investigation Report

The project area covered by the SABL portion 16C is said to be owned by 11 landowning groups consisting of about 500 members and those clans are namely; Wamer clan, Ambos clan, Karait Igir clan, Mou clan, KUPIAKIR clan, Karait-Maipot clan, Muan clan, Seiwaki clan, Berwet clan, Waen clan and Lou clan. These clans own the said 112,400 hectares of customary land on which an agro-forest project is proposed and according to the LIR, the land is generally

undulating in nature with some level lands at random locations. But most of the land is covered with tropical rainforest containing rich brown soil that is suitable for agriculture.

The LIR stated that the landowners were willing to lease the land for 99 years to the State so that it can then be leased back to them under a SABL in the name of their landowner company being URL or Urasir Resources Limited who can then sublease to potential developers as partners of the landowners.

The LIR is unsigned but contains a Schedule of Owners which has not been signed either. The only documents that have been signed, although not by everyone, are the Agency Agreement and the Declaration as to Custom in relation to Land Tenure that was signed by about 52 ILG members and/or executives. There are said to be about 52 incorporated land groups representing the clans in the project area.

The other documents that have been signed are the Declaration of Recognition of Custom and Certificate in Relation to Boundaries for each of the 52 clans in the proposed project area.

A Schedule of Owners, Agency Agreement, Declaration of Custom in relation to land tenure, Declaration of Recognition of Custom and the Certificate in Relation to Boundaries were done for each of the clans in the proposed project area. That information was sighted on a letter dated 8 March 2011 written by Micah Yer, acting Provincial Customary Lands Officer (Provincial Land Office- Madang Provincial Administration) to the Assistant Director Customary Land Acquisition, National Department of Lands.

Evidence at the conduct of the Land group Incorporation registration and the Land Investigation

From documents sighted on file, the LIR was undertaken by Simon Malu, acting Manager Customary Land Acquisition; Mr Simon Holis, acting Manager Customary Land Acquisition; and Ms Christabel Maino, Lands Officer. The investigation was carried out in the name of Urasirk Resources Development Limited which is the grantee company or URD.

The evidence of Mr Micah Mer Divisional head for the Provincial Lands and Planning Branch was that he instructed Ms Cristobel Maino Remie to attend to the Land Investigation process. He was

on official duty at Karkar and on return reviewed the LIR. He found that the LIR was not conducted for each of the 52 ILGs listed and he raised concern as to why there was only one LIR in the name of Urasir Resources Limited. Mr Malo advised that

“The request to mobilize land was made after a successful lodgment of 52 Incorporated Land Groups applications by the landowner company Chairman. Continental Ventures Limited funded the trip for me as Acting Director Acquisition with Acting Manager, Leases to assist in mobilizing the land for the purpose stipulated in the request letter. We were accompanied by your officer, Cristobel Maino to the project area of which Manager, Leases, with the assistance of your officers spent time with the landowners to conduct land investigations. All data collected was brought back by the two officers and a Land Investigation Report was compiled for all clan owning groups. The two officers adopted a technique used in West and East Sepik Provinces as well as East and landowning groups and it has proven to have no discrepancies.”

The Land Investigation Report based advice offered by Mr Simon Malo, Acting Manager, Customary Leases, DLPP was in my view reckless, negligent, that behaviour unbecoming of a senior officer entrusted with the responsibility to ensure that the process is adequately completed. We consider this to be in breach of the Code of Conduct of public servants evidently compromising the integrity of the SABL process.

We make adverse findings against Mr Simon Malo for been so reckless in his handling of the Land Investigation Report. He should be disciplined for the role played in preparing a blank LIR bearing no signature and including the Recommendation for Alienability with no reservation made for the customary rights over the land to continue. This finding is consistent with his evidence to the C.O.I on 9th January 2012. He was not able to provide sufficient explanation for the blank LIR basically which ultimately nullifies the SABL lease issued in the name of Urasir Limited.

Mrs Maino (as she was) confirmed that she accompanied Mr Simon Malo, Mr Simon Holis (DLPP) as directed by her superior on the chopper hired by CVL. Mr Robin Buck also travelled with the team, evidently fully funded and paid by CVL. We find that Mrs Maino was on the job for the very first time and her inexperience is excused. She diligently registered the ILG and commendable on her part to discharge that duty.

The Recommendation as to Alienability

On 10 March 2011, the Provincial Administrator of Madang, Mr Bernard Lange endorsed the LIR by signing the Recommendation as to Alienability recommending a 99 year lease to be granted to URL. The SABL Title is dated

16 March 2011. Mr Lange (Summons 217) gave evidence that he signed the Recommendation as to Alienability dated 10 March 2011 because he was assured by Mr Mer that the documents required by the landowners was in order. He did not conduct any due diligence on the report as he was only provided the page with the Recommendation to sign on and return to DLPP for their action. The C.O.I does not intend to make any adverse findings against Mr Lange in this regard.

On 13 December 2010, a Lease–Lease Back Agreement under section 11 of the Land Act was signed and witnessed by Simon Holis, Manager Leases, Simon Malu, the Director Acquisition and Micah Yer, Provincial Lands Officer in which URL was nominated in this schedule to the Agreement as the Lessee or the preferred Lessee of the landowners, and the purpose of the lease was stated in the Schedule as „agricultural business purpose with the potential of commercially cultivating oil palm development and other agricultural crops and their products for export purposes?. The agreement was executed by the fifty– two (52) ILG Chairman and Romilly Kila Pat [as a delegate of the Minister for Lands].

DEPARTMENT OF PROVINCIAL GOVERNMENT AND LOCAL LEVEL GOVERNMENT

The Land Investigation Report and the Recommendation for Alienability was not referred to the Custodian of trust Land for due diligence. There was also no Certificate of Alienability issued by the Custodian of Trust Land to allow for the registration and issuance of SABL Title to Urasir Development Limited.

DEPARTMENT OF AGRICULTURE AND LIVESTOCK

The Department of Agriculture Livestock (DAL) submitted to the Commission of Inquiry a bound volume of documents titled “Detailed Agricultural Development for Urasirk Rural Development Project” with Continental Venture Limited’s name and address on it, apparently submitted to DAL by Continental Venture Limited. Continental Venture Limited, we note and understand is the developer or development partner of Urasirk Resources Company.

The only other information we have received from DAL is a copy letter dated 25 September 2010 to a Mr Wong Heing Ming. He is the General Manager of CVL of PO Box 1226, Boroko, National Capital District. That letter was addressed to Mr Wong by Mr Francis Daink, then Acting Secretary of the DAL and also copied to Mr Kanawi Poursu of the Papua New Guinea Forest Authority (PNGFA).

In that letter Mr Daink acknowledged receipt of the detailed Agricultural Development Plan for the project submitted by CVL under cover of a letter dated 20 September 2010 and advised CVL of the following:

1. As requested by CVL, DAL will engage staff to assist URL conduct assessment which process Mr Daink estimated would take more than four weeks to complete.
2. CVL needed to do a detailed project development plan supported by the maps.
3. CVL needed to submit an implementation schedule for six years.
4. CVL was to be prepared for landowners consent and public hearing to be formally conducted by DAL, PNGFA, DEC and other key government agencies.

We deduce from the DAL letter that the detailed Agricultural Development Plan for Urasirk Rural Development Project submitted to DAL on 28 September 2010 was insufficient for DAL purposes given that the project was for oil palm plantation and rubber development and also involved forest clearing.

According to the documents submitted by CVL to DAL, CVL was incorporated on 13 August 2010; Certificate of Incorporation number 75153 was noted and the company was also certified as foreign enterprise by IPA, Certificate number 00012807158. The company is fully owned by Malaysian nationals and is a foreign company.

The Company was currently undertaking preliminary ground work for three major activities being:

1. Road and basic community infrastructure to harvesting of commercial trees to pave the way for the development; and
2. Oil palm and rubber tree plantation (nucleus estate);
3. On the initial scoping by Continental Venture Limited – such project was feasible but needed confirmation from DAL for which purpose the detailed agricultural development plan being oil palm and rubber tree plantation was submitted to DAL for its assessment and evaluation with a request for site suitability assessment as to the oil palm and rubber tree agronomic requirements.
4. The Agriculture Development Plan for Urasirk Development Project involves:
 - (i) application for Forest Clearing Authority or FCA;
 - (ii) conversion of logged-over and cleared areas to agriculture plantation development;
 - (iii) establishing nucleus type oil palm and rubber plantations mixed with other suitable agro-industrial crops that are economically viable planted as buffer and livelihood of the local communities;
 - (iv) Continental Ventures Limited as project proponent development;
 - (v) Customary landowners through landowner company Urasir Resources Limited;
 - (vi) Gross area of 112,400 hectares over which the SABL was granted of which 20,570 as unproductive, 91,830 hectares as productive forested area with 94,400 hectares available for planting.
 - (vii) 20 years duration of project;
 - (viii) Project site located in the Josephstal LLG, Middle Ramu District, Madang Province
 - (ix) Mr Hieng Ming Wong, General Manager, for Project Proponent; and Mr Serenus Sokrim as Chairman and Resource Director of Urasir Resources Limited; and
 - (x) Of the 94,400 hectares net plantation area, 75,520 hectares will be for oil palm and 18,580 will be rubber tree growing.

PNG FORESTRY AUTHORITY

There are no agricultural considerations so PNG Forest Authority has no involvement in this SABL.

DEPARTMENT OF ENVIRONMENT AND CONSERVATION

The Commission received from the Department of Environment and Conservation (DEC) and Conservation an arch-lever file labelled Urasirk Rural Development Project, Middle Ramu District, Madang Province, File No. 34.

The following documents, amongst others were sighted;

Limited pursuant to section 48 of the Environment Act 2008 dated 26 October 2010;

(ii) notice to undertake Environmental Impact Assessment (EIA) issued by DEC under section 50 of the Environment Act 2008 dated 26 October 2010;

(iii) Environment Inception Report (EIR) dated 4 March 2011 submitted by CVL under section 52 of the Act;

(iv) letter from DEC to CVL dated 8 April 2011 approving the EIR;

(v) Environmental Impact Statement submitted on 24 June 2011 by CVL under section 53 of the Environment Act 2008;

(vi) copy of public notice for public review and submissions on an Environmental Impact Statement as published in the Port Courier issue of 20 September 2011 which notice gives 20 days which period lapses on 7 October 2011.

Findings

The application for Level three (3) and four (4) Environment Permit was submitted on 26th October 2010. This is well before the SABL title was issued to Urasir Development Limited and we find this practice to be highly irregular and inconsistent with the process under Section 90B of the Forest Act 2000, the requirement for an application for Forest Clearance Authority should first be approved by the Department of Agriculture and Livestock. The SABL was issued to URL on 14 March 2011.

The C.O.I is also critical on the role of the Director of Environment in not conducting any due diligence on whether the SABL title has been issued and also if there was DAL approval to the Board of PNG Forest Authority to approve FCA for the project.

Other Matters Relating to CVL and DEC

In the DEC file are other copies of other documents and some of which we note

-

The first one is a letter of invitation as development partner from URL Chairman Mr Serenus

Sokrim, to a Robin Buck, General Manager of CVL.

The Project Agreement between Resource Owners? Company being URL and Developer CVL dated 12 September 2011 covering amongst others, the following:

- > logging and log marketing;
- > road construction and commercial agriculture provided for, amongst others,
- > oil palm project or any other commercial development will be the final development project after the salvaging of the timber;
- > all monies advanced to URL shall be reimbursed gradually out of the eventual proceeds from the sales of timber harvested from the land or area;
- > upon successful completion of the initial feasibility study of the Urasirk Rural Development Project which includes logging operations, road construction and commercial agriculture project, URL shall grant to CVL exclusive rights for logging and marketing of timber and development of agriculture plantation in the land;
- > URL to allow entering onto the land by CVL officers and employees;
- > URL to assist CVL in the LIR process or Land Investigation Process;
- > URL agrees that the lease title be granted to the joint venture company which will be formed later;
- > CVL to pay royalty fee in the manner prescribed by section 120 of the Forestry Act 1991;
- > to pay levies;
- > road and agriculture project development;
- > URL to assist CVL to obtain the necessary permits, approvals and licences;
- > CVL to provide one Lucas Sawmill;
- > the agreement also provides for variation of the Terms of the Agreement;
- > dispute resolution; termination; Governing Law; and also provides that any variation of the terms shall be by mutual consent and any dispute is to be resolved by mediation.

The Project Development Agreement was signed on behalf of URL by Serenus Sokrim, the Chairman, and Lukas Sakam, the Vice Chairman, and Director Stanley Hiringgu and representatives of the various villages or ILGs.

The DEC file also has a current required forestry project payment, or project monetary benefits of royalty project development benefits on log export, cash premium, project area development fund and domestic processing benefit, log expert development levies, mandatory levies based on production, non-

monetary levies based on log exports; project bio-diversity assessment report, check-list of birds, mammals, aquatic flora and reptiles.

Agriculture Sub Lease Agreement

We found amongst the DEC files a duly executed copy of a standard Agriculture Sublease between Urasir Resources Limited and Continental Venture Limited. On the Sub-lease we took what we consider to be worthy of note the following stipulations and clauses within the agreement;

(a). In the sublease, rent and royalties are to be paid. It also provides a holding over clause, the use of land, land rights, statutory approval, default and termination. An interesting clause is clause 20 which provides for assignments and mortgages and for subleases to be given by the lessee being Continental Venture Limited without prior written consent of the landlord being Urasir Resources Limited.

(b). Clause 24 of the Sub lease relates to Special Conditions which states, amongst others, that within 60 days of the execution of the sublease, plantation activities shall commence and the tenants are allowed exclusive rights to harvest, transport, market and sell all forest produce, inclusive of industrial timber currently on the land and shall collect, own and use all revenues for the sales of this forest produce under its own discretion under the sublease.

(c) The DEC folder also disclosed a photocopy of the Owner's sublease which was endorsed by IRC following compliance with Stamp Duty by IRC and DLPP. It is dated 14 March 2011 and was signed by Serenus Sokrim and Stanley Herringu, Chairman and Secretary respectively of

URL and CVL under respective company common seal. It appears that directors Mathew Auvri, Michael Ambindya and Lesley Kasuran also signed the deed.

(d) The sublease is for a period of 66 years commencing 17 March 2011 at a rent of K2 per hectare per annum, payable annually with the first payment due on 1 January 2012. The lease provides for payment of royalty and is subject to the tenants obtaining environmental approvals.

(e) Approval letter from Department of Agriculture and Livestock under the hand of Francis Daink, Deputy Secretary to Mr Hieng Ming Wong, General Manager, Continental Ventures Limited dated 31 March 2011 in which he made reference to his previous letter of 28 September 2011 which I refer to earlier in this statement and which states that,

"The Department is grateful that you have responded promptly to this request. We have undertaken a thorough assessment of the agriculture project proposal and are quite satisfied with the details of the project proposal. Therefore, I am pleased to advise that Urasirk Agriculture Development Plan is approved. I guess the matter still outstanding is the public hearing to be conducted at or near the project site. This should complete the entire process prior to issuing of the certificate of compliance for a forest clearance for large scale conversion of forest to agriculture. Please contact this office to prepare arrangement for public hearing."

This letter was copied to Kanawi Poursu, the Managing Director of the PNG Forest Authority.

(f) The detailed Agriculture Development Plan was not produced by either DAL or by DEC. But the DEC file has one of its attachment (Refer to

Attachment 8), an Agriculture Development Plan and map which we note it to be the detailed Agriculture Development Plan that is referred to by Mr Daink in his letter referred (e) above.

(g) Attachment 9 is the Agricultural Sublease of the project area to the developer Continental Venture Limited. The DEC file has a photocopy of the owner's copy of the SABL to URL for 99 years dated 14 March 2007 signed off by Romilly Kila Pat as the delegate of the Minister.

(h) There is a photocopy of project development agreement dated 27 September 2010 but that appears to be a replica of the one that is dated 12 September 2010.

(i) There is also a copy of the letter of invitation dated 28 August 2010, URL to CVL. The DEC file appears to be quite comprehensive, almost complete. Unfortunately, DLPP and Department of Agriculture and Livestock do not have those records but somehow the Department of Environment and Conservation provided copies of some of the very vital documents that actually should be in the possession of the Department of Agriculture and Livestock and the Department of Lands and Physical Planning.

THE AGRICULTURE DEVELOPMENT PLAN

The "Detailed Agriculture Development Plan for Urasirk Rural Development Project was prepared by Mr Emeterio Lujero, Consultant and employee of DD Lumber Limited. According to Mr Lujero, DD Lumber is a Malaysian Company, a company that is linked to project sites in the Central Province. Mr Lujero was summonsed and gave evidence at Madang. He is a Business

Management Graduate from a University in the Philippines and has very little experience in high impact agriculture development projects. In his 2 ? year employment in PNG, he was engaged by Mr Wong, CEO of CVL to prepare the Agriculture Plan as well as all the Environmental Submissions to DEC.

It took Mr Lujero three (3) months to prepare the Development Plan. He said in evidence that he never visited the site, but obtained all the information from Mr Wong, including conducting other research. The C.O.I is very critical of CVLs behaviour in preparation of the Plans, undoubtedly APPROVED as Mr Daink said in his own evidence. This Plan in itself was not prepared in consultation with relevant authorities and lacks quality in terms of its overall implementation schedules and if Lujero conducted this plan, the difficult terrain and lack of road infrastructure was a major feat for CVL to conquer.

I find that Mr Daink should be held accountable for approving a plan that is not feasible to implement in so far as 112,000 hectares are concerned. There should be a reasonable size of the area that is considered arable for commercial crops and not in the way this Desktop document was designed to fool state agencies responsible for proper vetting, and in this case DAL failed in its duties to carefully evaluate the project document.

RECOMMENDATION

The C.O.I recommends revocation of SABL Portion 16C issued in the name of URASIR RESOURCES

LIMITED because the fundamental requirement of the Land Investigation Process, the grant under Section 11 of the Land Act and subsequently the registration and the Issuance of Title under Section 102 of the Land Act was fundamentally flawed and is null and void.

Since the grant of SABL Title on 4 March 2011, no agro-forest activity has commenced on the project site. We however recommend that the Landgroup through Urasir Resources Limited should proceed with development on their land but under a revised land dealing process. We recommend that the Landgroup engage a reputable and transparent Developer/Investor that has the agricultural capability and the financial resources to develop commercial crops within a reasonable and sizeable hectare of land conducive to yield better crop which will bring tangible economic development to the most neglected and undeveloped community.

MOROBE PROVINCE

COI Inquiry File No.9 for Special Purpose Agricultural and Business Lease over Portion 79C Volume 13 Folio 232 Milinch: OngaMorobe Province in the name of Zifasing Cattle Ranch Limited.

1.1 In accordance with the powers given to the Commissioners pursuant to section 7 of the Act, the Commissioners have summoned numerous witnesses to produce documents and be further examined on oath or affirmation.

1.2 Witnesses were called from the six government agencies involved in the issuance and operation of the Zifasing Cattle Ranch Limited SABL. These were:

1.2.1 Department of Morobe Province, (DMP)

1.2.2 Department of Lands and Physical Planning, (DLPP)

1.2.3 Department of Provincial Affairs and Local Level Government, (DPALLG)

1.2.4 Department of Agriculture and Livestock, (DAL)

1.2.5 Department of Environment and Conservation, (DEC)

1.2.6 PNG Forest Authority (PNGForest Authority)

Witnesses and Summonses

1.3 The names of the persons who have been summoned to appear and who have in fact appeared in the public hearings are set out in the schedule below.

No

Name and Position

Pages

Day

Date

1

Mr Simon Dhase, Chairman, Zifasing Cattle Ranch Ltd (ZCRL) & Landowner,

2-24

2
23/02/12-SABL 2 Madang
2
Mr Abel David, Director, ZCRL & Land Owner
24-36

2
23/02/12-SABL 2 Madang
3
Simon Etong, Ologwaning Clan, Agu Family Group
36-

2
23/02/12 SABL 2 Madang
4
Mr Paul Boi, Director, ZCRL
42-45

2
23/02/12-SABL 3 Madang

Parties represented by counsel

Section 8 of the Act relates to the appearance of counsel before the Commission on behalf of interested parties. It provides that:

“Subject to Section 2(5), a person who satisfies the Commission that he has a bona fide interest in the subject matter of an inquiry under this Act, and any other person by leave of the Commission, may attend the inquiry in person or may be represented by counsel.”

The following were granted leave to be represented by counsel

Exhibits and documents

There were no documents tendered as evidence before the Commission at the public hearings.

Item
Interested Party
Date received
Exhibit Number

None
None
None
None

Timeline of events of note surrounding Zifasing Cattle Ranch Limited SABL Title

The timeline showing important events concerning the SABL is shown below in chronological order of their happening:

No	Milestone	Dated of Completion/Grant/Issue Execution	Proponent/Applicant	Respondent Entity/Respondent
1	Incorporation of Zifasing Cattle Ranch Limited	9th June 1979	C.O.I	C.O.I
3	Land Investigation Report (Conducted by Mr Lawrence Billy)	10 August 2005	C.O.I	C.O.I
4	Gazettal Notice of Direct Grant issued to ZCRL–Gazettal No 183	21 September 2005	C.O.I	C.O.I
5	SABL Lease Title	26 September 2005	C.O.I	C.O.I

FINDINGS

The findings follow the chronology of table of notable events above surrounding the SABL lease title held by Zifasing Cattle Ranch Limited.

Zifasing Cattle Ranch Limited SABL

By notice published in National Gazette No G183 dated 21 September 2006, P S Kimas, the former Secretary for Lands as delegate of the Minister for Lands, granted a SABL for 50 years to Zifasing Cattle Ranch (ZCR) over the abovementioned land pursuant to section 102 of the Land Act, which land is

located 17 kilometres from Erap Agriculture Station in the Markham Valley in the Morobe Province and it is about 68 kilometres west of Lae city.

The Notice of Direct Grant is dated 21 September 2006 as well and the title is dated 26 September 2011, five days prior to the notice of grant in the National Gazette. The Notice of Grant published in the National Gazette name the grantee as ZCR or Zifasing Cattle Ranch whilst the title from the Titles Office named is as Zifasing Cattle Ranch Limited, ZCRL for short. We are unable to ascertain as to how this anomaly occurred and as to who signed off on it. The detail of the SABL is shown

below:

Legal Description

Portion 79

Registered Survey Plan Catalogue No

1/61

SABL Holder

Zifasing Cattle Ranch Limited

Date of Registration of Lease

26th September 2005

Period of Lease

Fifty (50) years

Land area of lease

8374.23 hectares

Location

The SABL covers all that piece of land known as Sirimoaze, Ngarogawan, Unarium, Ngarongafan Orots, Ngaronifun, Abunizen, Agu Zif, Kararak, Ududumpur, Ngarosala, Reanzon, Azaz, Furif, Ziafimururan and Waifaupes as being Portion 79, Milinch of Onga, Fourmil of Markham, Morobe Province, covering an area of 8,374.23 hectares as registered on Survey Plan Catalogue Number 1/61.

Site Inspection

The C.O.I had very limited time to conduct the site visit of Zifasing Cattle Ranch located in the Morobe Province. We however satisfied that cattle breeding program is the main activity on this SABL Portion and it has always remained that way and the C.O.I would like to see more input from both the

National Government and the Provincial Administration in assisting the landowners in this worthwhile project.

IPA COMPANIES REGISTRY RECORDS ZIFASING CATTLE RANCH LIMITED

The Commission received documents from the Investment Promotion Authority (IPA) in relation to Zifasing Cattle Ranch Limited formerly Zifasing Cattle Ranch Propriety Limited, comprising of Company Extracts (Current and Historical) and Returns. The company is operating.

Zifasing Cattle Ranch Limited is an old company having been incorporated on 9 June 1979. From the current extract as at 1 August 2011, the company's registered office is at the Office of KPMG, Peat Marwick, first floor IPI Building, Lae, Morobe Province, and its postal address is P O Box 1226, Lae, Morobe Province.

Shareholding Structure of ZCRL

Zifasing Cattle Ranch Limited has 137,606 issued ordinary shares, the current shareholding being;

- (1) Peter Dari, with a share of 9,829;
- (2) Steven Efron who holds in trust for the Poareng family, similar amount of issued share;
- (3) Apollo Engkang who holds that in trust for Jeagoran family, similar amount of shares;
- (4) Jeagoran Engkam, trust for the Jeagoran family, similar amount of

shares;

- (5) Tabin Gat, the fifth shareholder, who holds in trust for his family, same amount of shares;
- (6) Yatap Gong who holds in trust for the Joseph family same amount of shares;
- (7) Enchen Gong who holds the shares in trust for the Rupen family;
- (8) Agu Joseph who holds in trust for the Joseph family;
- (9) Yatol Kipitas who holds the shares in trust for the Mofos family;
- (10) John Mini who holds in trust for the Mini family;
- (11) Waro Mofos who holds in trust for the Mofos family;

- (12) Jessy Morris who holds the shares again similar amount of shares, again that should be in trust for his family;
- (13) Nongot Steven who holds in trust for the Nups family;
- (14) Yasang Topias who holds the shares in trust for Kepia family;
- (15) Tom Waeng who holds in trust for the Mgebengeb family; and
- (16) Yadsab Business Group Incorporated who holds the shares again, for the family business group, the family by that name.

The Directors are;

- 1) Steve Efron,
- 2) Apollo Engkang,
- 3) Abel Engkang,
- 4) Darryl Edward Byronsey,
- 5) Gagar Borowang,
- 6) Noel Kolo,
- 7) Noah Waraf,
- 8) Gagar Tabin,

- 9) Yatap Gong,
- 10) Oabung John
- 11) Luke Kifas
- 12) Jessie Morris,
- 13) Darius Ken,
- 14) Joseph Yetang,
- 15) Andrew Kuvia; and
- 16) Moru Yafol

All of the Shareholders and Directors are said to be from Zifasing village.

The Secretary is a Tony Mark Leff, a New Zealander, who is also said to be from Zifasing village of P O Box 1252, Morobe Province.

On 2 September 1998, a Certificate of Incorporation was issued to Zifasing Cattle Ranch, originally Zifasing Cattle Ranch Propriety Limited and obviously, this is after the current Companies Act came into operation.

The 1998 returns were lodged by Agriculture Bank employees. The current returns are made up to 14 July 2007.

There exists floating charges and a deed of equitable mortgage including floating and stock mortgage in favour of Westpac Bank (PNG) Limited and a floating and a equitable mortgage in favor of Papua New Guinea Development Bank by way of a fixed and floating charge and is stated to be worth about K180,000.

The land covered by this SABL is a developed cattle ranch with permanent buildings, other fixed assets and stock and cattle. It is in the vicinity of other similarly developed land, Portions 60, Portion 12 and Portion 13.

Portion 13 is the one on which the Erap Agriculture station is located.

By way of history, the SABL was granted after the previous Special Agriculture Lease known as portion 68 and 69 expired on 26 April 1999. The land is owned by six clans from Zifasing village who back in 1978 agreed to lease the land to the administration to develop a cattle ranch under a project initiated by the Department of Primary Industry and financially backed by the Papua New Guinea Development Bank. In June 1978, an application on tender form was made by Zifasing Cattle Ranch Propriety Limited for a Special Agriculture Lease but pending the approval of that application an application for license was made on 28 May 1979 by PNG Development Bank to allow for the commencement of the development program prior to the lease being finally approved. The license was to be cancelled automatically on the day the lease was granted by the Land Board.

It appears that the company was being incorporated simultaneously, consisting of the PNG Development Bank and the landowners of the Zifasing village people and actively supported by the Department of Primary Industry.

On 25 October 1979, a six months licence, licence number 2323 pending Land Board consideration of a formal lease was granted to Zifasing Cattle Ranch to commence from 29 October 1979.

To facilitate for the lease of the land on 25 April 1979, a lease - leaseback agreement was signed between representatives of Zifasing village and Tarakau

village as lessors on the one part and the Independent State of Papua New Guinea on the other part as lessee.

The landowners were identified and listed in the schedule to the list comprising of four clans, namely, Owangompen, Orogwangin, Onogazog, Zeaganzon, Zuwaif and Ferep and was evidenced by a Declaration of Custom and other related similar Deeds.

The landowners agreed to lease the land to the State for 20 years from 25 April 1972 at a rental of K137,600 payable in advance which was paid as appears on record.

The Land Investigation was carried out and certified by a Jesiri Sasa Inkung, an officer of the administration of Papua New Guinea at Zifasing on 13 January 1979. He appears to be the Patrol officer of the area.

A Certificate of non-requirement of land by the customary owners was signed by a Helel Dickson on 10 April 1979. He appears to be an Administration Officer based in Lae.

The Recommendation as to Alienability was issued by an Edward Middleton Guise on 21 February 1979. The Certificate of Alienability was signed by a John Desmond Fitzer, First Assistant Secretary of the Department of Decentralization Division of Provincial Affairs, dated 5 March 1979 stating that the customary owners were willing to lease the land for 20 years pursuant to section 85 of the Land Ordinance of 1962; that legislation being one of the predecessor legislation to the current Land Act.

The lease was pursued by the company and the PNG Development Bank but was not issued or granted until 24 August 1984, under section 70 of the Land Act for a period of 18 years 25 days commencing from 13 April 1981. Notice of grant of Special Purpose Lease was accepted by Zifasing Cattle Ranch on 26 November 1981.

An annual rent was set at K7, 420 and was paid for the years. The lease was granted by the Land Board on 28 November 1980. The lease was granted well after the licence expired on 29 March 1980.

Notice under section 37A of the Land Act 1962 to Zifasing Cattle Ranch Proprietary Limited naming it as successful applicant was published in National Gazette dated 30 April 1981 which lease was to expire on 24 April 1999.

The lease in fact expired on that date on 24 April 1999, but the company continued to operate without any disruptions after that and maybe due to the fact that the landowner themselves are owners of the company.

THE EVIDENCE OF LANDOWNERS

The evidence for the landowning group of Zifasing village was provided by Mr Simon Dahse, Chairman of ZCRL and Mr Abel David, Director. The evidence basically confirms the major aspects of documentary evidence that was evaluated by the C.O.I team. The evidence confirms that there is no actual dispute between the landgroups and that they have all agreed to continue the operation of the Cattle Ranch under the SABL process. Mr David confirms that the Land Investigation and awareness was conducted by Mr Lawrence Billy, Provincial Lands Officer.

They stated that the company earned its revenue from selling cattle. The impetus for the Company was to become a Model Breeder Cattle Farm, of which cows, bulls and heifers will be sold to other projects in the Momase and Highlands Region. Whilst that was the case, the evidence suggests a dire need for expert and technical management to oversee the continued success of the project. The project did not have a fulltime Cattle ranch Manager and other technical and financial support.

In contrast, Messrs Simon Etong and Paul Goi, were more concerned about matters concerning their customary land issues with Markham Farming, who currently hold leasehold title over the land. The C.O.I clearly informed them that the C.O.I had no jurisdiction because it was not listed amongst the 75 listed SABLs subject of the inquiry. The C.O.I is concerned that Mr Etong falsely

misrepresented the C.O.I in its proceedings at Madang to Markham Farming. A letter was addressed to the presiding Commissioner by Waner Shand Lawyer, acting for Markham Farming insinuating that C.O.I had made certain comments about the lapse of leasehold title to the Company, which was erroneous.

The C.O.I referred the author of that letter to the transcript of proceedings which clearly indicated that the C.O.I made no such remarks nor did it make any damaging comment about the land leased to Markham Farming. At the time of this report, the lawyer in the employ of Waner Shand Lawyers has not apologised to the Commission of this allegation and we deem that to be contemptuous and without basis.

DEPARTMENT OF MOROBE PROVINCE

THE STATUS QUO OF THE SABL

Between 2005 and 2006, discussions were held between the 14 landowner clans. The then local Member Hon. Mr Zasa Zibe who was the then Minister for Agriculture in 2006, the Department of Agriculture and Livestock, the Morobe Provincial Administration, the Rural Development Bank and the Lands Department with a view to revitalizing the cattle ranch or company. These discussions resulted in a government supported project for establishing a model breeder farm at Zifasing to raise cattle in conjunction with the Livestock Development Corporation or LDC for distribution to cattle farmers in Momase and the Highlands.

The 14 landowner clans were happy to enter into similar arrangement for 20 years and on 22 February 2006, Zifasing Cattle Ranch Limited lodged an application or tender form for a SABL for portion 79 which is formally portion 68. This change may be due to a re-survey of the land.

A Land Investigation was carried out and certified by a Lawrence Billy, Provincial Program Adviser Lands, on August 10, 2006 on the application of Zifasing Cattle Ranch Limited and on 30 November 2005, the landowning clans unanimously agreed or resolved to renew the lease over the land. A Schedule of Owners was attached to the Land Investigation Report.

The Recommendation for Alienability was signed by Mr Manasupe Zurenuoc, the then Provincial Administrator for Morobe, on 15 August 2006.

DEPARTMENT OF LANDS AND PHYSICAL PLANNING

There was no documentary evidence provided by DLPP to assist in this inquiry

DEPARTMENT OF PROVINCIAL GOVERNMENT AND LOCAL LEVEL GOVERNMENT

The Land Investigation Report and the Recommendation for Alienability was not referred to the Custodian of Trust Land for due diligence and approval. There was also no Certificate of Alienability issued by the Custodian of Trust Land to allow for the registration and issuance of SABL Title to Zifasing Cattle Ranch Limited.

DEPARTMENT OF AGRICULTURE AND LIVESTOCK

Zifasing was established under the concept of larger Cattle Ranch in the 1980's. The Cattle Ranch was a successful venture and it was able to pay of Agriculture Bank of PNG (ABPNG) shares and dividends to shareholders in the 1990s. In the evidence of the Chairman, Zifasing is now facing serious Management problems, since the landowners have now taken over management of the Ranch without fully understanding the ethics of Business management and animal husbandry (breeding program). Despite this aspect, there is no involvement from DAL in terms of providing sound advice and expertise to the landowners. The C.O.I has not received any documents nor information on this SABL, which is Cattle Breeding Business.

PNG FORESTRY AUTHORITY

There is no files or documents since there is no application for FCA.

DEPARTMENT OF ENVIRONMENT AND CONSERVATION

No documents sighted.

COMMISSIONS FINDINGS

1. The matter for the SABL that we are concerned with here appears to be a genuine initiative of the landowners with the support of Department of Primary Industry and the Papua New Guinea Development Bank or the Rural Development Bank, as it is now called, to promote land development of their customary land commercially especially in view of the fact that we have not had any competing interest claims.
2. It however appears that in the haste to get the SABL issued, some procedural requirements may have been overlooked resulting in;
 - i. The lack of a Certificate of Alienability by the Custodian of Trust Land.
 - ii. The lack of a Lease-Lease Bank Agreement.
3. The discrepancy in the name of the grantee in the Notice of Direct Grant to Zifasing Cattle Ranch dated 21 September 2006 had the title document or SABL title dated 26 September 2006 issued, this time, to Zifasing Cattle Ranch Limited.
4. The land appears to be customarily owned by Zifasing villagers.
5. Zifasing villagers are happy for the land to be leased to Shareholders and Directors of Zifasing Cattle Ranch Limited who are members of the Zifasing village clans and hold the shares in trust for the clans.
6. Apart from the above, it seems that this SABL was genuinely applied for and granted to a landowner company which seems to be operating.

RECOMMENDATION

The C.O.I. RECOMMENDS AS FOLLOWS

1. SABL Portion 76 in the name of Zifasing is not revoked. However there is a need to ensure from DLPP, the need to regularise the Lease/Lease Back Agreement based on convincing reasons as follows;

1.1. There are no ongoing disputes and all the landgroups of Zifasing village have given the majority support for the project.

1.2. There are no on-going disputes between other landowners outside of the SABL boundary.

2. The Zifasing Large Scale Ranch must be supported by the National Government and the Morobe Provincial Government in terms of technical, management and financial resources. This is based on the premise that in PNG Beef Cattle is an exotic animal species and Papua New Guineans have limited experience in cattle raising as Africans and therefore requires a number of key variables to measure the effectiveness of a cattle ranch namely ; (1) Biological Efficiency in terms of the cross-breeding Drought Master and Brahman; (2) Animal Husbandry and Animal Feed-Markham Valley experiences extended dry season, supplementary feeding coupled by improved pastures would improve productivity of the herd and so forth. That basically provides an insight on

the demand for such assistance to be accorded to the landowners of Zifasing Cattle Ranch Limited.

Appendix 2

The following documents referred to under Appendix 2 comprise relevant instruments published in the National Gazette regarding C.O.I. SABL. These documents (copies) are reproduced at pages 196-204

1. Terms of Reference National Gazette No. G198 published on Friday 22nd July 2011

2. Statement of the Case National Gazette No. G198 published on Friday 22nd July 2011

3. Instrument(s) of Appointment National Gazette No G198 published on Friday 22nd July 2011.

National Gazette No G 203 published on Thursday 28th July 2011.

National Gazette No G 213 published on Monday 8th August 2011.

National Gazette No G 203 published on Tuesday 18th October 2011.