



Ombudsman Commission  
**of Papua New Guinea**

**Investigation into**

**THE DEPARTMENT OF LANDS AND PHYSICAL  
PLANNING REZONING, LEASING AND  
REGISTERING OF THE LAND TITLE FOR  
SECTION 31 ALLOTMENTS 03 KIMBE ISSUED TO  
QUINQUING TRADING LIMITED**

**FINAL REPORT**

**JANUARY 2010**

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# CHRONOLOGY

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The chronology of events that led to the licensing, rezoning, leasing and registering of the State Lease issued to the Quinquing Trading Limited over Section 31 Allotment 03:

## 1993

- Early August                      The Provincial Land Officer, Ms Elizabeth Tobe, sent an undated Minute to the Deputy Secretary (Operations) of DLPP informing him that Section 31 Allotment 3 was suitable for the proposed Lands Office and another Minute to the Land Allocation Officer, Mr Vincent Sam, requesting for the CAO to be issued pending his approval.
- August 30                              Mr Vincent Sam sent a Minute to the Regional Manager (Island) DLPP Mr Leo Minjan to go through the file containing the draft CAO and advised him to sign it if all the documentation were in order and sent it to the Secretary for approval.
- October 25                              Certificate Authorizing Occupancy was approved and issued to the DLPP – Kimbe.
- October 29                              Mr Leo Minjan, the Regional Manager (Island) wrote a letter to the Provincial Land Advisor in Kimbe that the CAO Number 110 (Island) was issued to the DLPP.

## 2000

- February 2                              Mr Willie Edo, the Acting Provincial Administrator, wrote a letter to the Secretary, Mr Pepi Kimas, requesting for the transfer of the CAO Number 110 (Island) of Section 31 Allotment 03 with DLPP to KULLG.
- May 24                                      Mr Daniel Katakumb, the Director for Land Administration Division of DLPP wrote a letter to Mr Willie Edo advising him to consult the Provincial Land Advisor on the status of the land (Section 31 Allotment 03) before coming to the National Land Office.

## **2004**

- October 28 Mr Roger Lin, Director for Quinquing Trading Limited, wrote a letter to the Secretary for DLPP expressing his interest over Section 31 Allotment 03, Kimbe.
- November 2 Mr Ben Madiu, West New Britain Provincial Land Advisor, enclosed the Site Inspection Report to the Secretary for DLPP.
- November 12 Ms Jenny Kepa paid the license and application fees.
- November 12 Quinquing Trading Limited submitted the Planning Permission Application of Section 31 Allotment 03 to the DLPP.
- November 12 License Number 06 of 2004 (Island) for Section 31 Allotment 03 was issued to Quinquing Trading Limited.
- November 18 Mr Ben Madiu, the Provincial Land Advisor, wrote a letter to the Director for Land Administration Division to comment on the interest of Quinquing Trading Limited over Section 31 Allotment 3.
- November 22 Status Report of Section 31 Allotment 03 was submitted to the DLPP.
- November 26 Mr Romilly Kila Pat, Deputy Secretary for DLPP sent a Minute to the Secretary, Mr Pepi Kimas, advising that Quinquing urgently needed a land to relocate its businesses from a disputed customary land.
- November 26 Mr Pepi Kimas, the Secretary for Lands signed the Revocation of Setting Aside of Section 31 Allotment 3.
- November 26 Mr Pepi Kimas, Secretary for DLPP signed the Exemption from Advertisement Notice over Section 31 Allotment 03.

## **2005**

- February 17 Deputy Secretary for DLPP wrote a letter to the Provincial Land Advisor, Mr Ben Madiu, advising him that the CAO and License for Section 31 Allotment 03 was issued to Quinquing Trading Limited.
- February 24 Mr Pepi Kimas, Secretary for DLPP scribbled a note on Mr Ben Madiu's hand written letter dated 15 February

- 2005 instructing the Director for Land Administration Division to advertise the land in question.
- March 20 Mr Roger Lin submitted the Business Profile of Quinquing Trading Limited to the Chief Physical Planner for DLPP.
- March 22 Mr Roger Lin wrote a letter to the Chairman for NPPB regarding his rezoning proposal over Section 31 Allotment 03.
- March 31 Mr Roger Lin paid K170.00 Physical Planning Regulation Fee, Receipt Number 178993.
- April 20 Mr Darcy Tamia, the Chief Internal Auditor (CIA), sent a Minute to the Development Assessment Coordinator, Mr Peter Vavine in Rabaul East New Britain Province to give him the Physical Planning Application File of Section 31 Allotment 3.
- April 20 CIA sent a Minute to the Deputy Registrar of Land Titles requesting for the Title File for Section 31 Allotment 03.
- April 22 NPPB rejected Quinquing Trading Limited Planning Permission Application during Meeting Number 04 of 2005.
- April 28 The CAO Number 110 (Island) revoked on 26 November 2004 was gazetted, Gazettal Number G59 of 2005, when the CIA, Mr Darcy Tamia, raised the matter.
- May 2 The Land Allocation Manager sent a hand written note to Mr D. Silese to do a checklist for the file to be referred to the Land Board Meeting.
- May 2 The Rezoning of Section 31 Allotment 03 as Agenda Item for the PNGLB Meeting was not approved by all the Divisional Heads.
- May 7 Mr Alex Dira, Manager for Development Planning, sent a Minute to the CIA regarding the Planning Permission Application of Section 31 Allotment 03 Kimbe.
- May 13 Managing Director for Quinquing Trading Limited, Mr Roger Lin, submitted the second application to NPPB.
- May 14 Provincial Land Advisor, Mr Ben Madiu, wrote a letter to the Secretary for the DLPP to inform the Provincial

- Administrator that the CAO was revoked and License issued to Quinquing Trading Limited.
- May 20 NPPB rejected Quinquing Trading Limited Planning Permission Application for the second time during Meeting Number 05 of 2005.
- May 29 CIA sent an Inter - Office Memo to the Secretary regarding Mr Alex Dira's Report on 7 May, 2005.
- June 29 CIA sent a Minute to the Deputy Secretary Cooperate & Regulatory Service that the revocation of CAO and issuing of License to Quinquing Trading Limited was improper.
- July 15 Mr Ben Madiu wrote a letter to the Deputy Secretary Operations stating again the interest of Quinquing Trading Limited for Section 31 Allotment 03.
- July 18 Mr Watao Kare, the Acting Chairman for NPPB wrote a letter to the Director for Quinquing Trading Limited advising him to appeal against NPPB Decision with the PNG Physical Planning Appeals Tribunal (PNGPPAT).
- July 28 Mr Ian Kundin, Legal Manager, provided a Brief to the Secretary advising him on the legality of the rezoning of Section 31 Allotment 03 Kimbe and that proper processes and procedures have been followed to issue the State lease to Quinquing Trading Limited.
- September 7 CIA sent a Minute labelled "Confidential" to the Director for Land Administration and Chief Physical Planner advising that the land referred to as Section 31 Allotment 03 is the matter before PAC and the OC therefore all dealings on this land should stop until further notice from the Secretary.
- September 15 The Land Board Decision to grant Quinquing Trading Limited Business Lease was Gazetted, National Gazettal Number G137. Land Administration Division denied gazetting it.
- September 16 Mr Darcy Tamia sent a Minute to all Directors regarding PAC Directives.
- September 19 Mr Daniel Katakumb, Director for Land Administration Division sent a Minute to the Secretary providing his decision to follow the instruction of Acting Secretary on the rezoning of Section 31 Allotment 03.



September 26	Mr John Ofoi, Chief Physical Planner, sent a Minute to the Director for Land Administration Division on the status of Section 31 Allotment 03 Kimbe.
October 12	Land Board approved the Business Lease Application of Quinquing Trading Limited over Section 31 Allotment 3 on the condition that it would fulfil the physical planning and zoning requirements.
November 12	Ms Jenny Kepa the wife of the Managing Director of Quinquing Trading Limited paid K100.00 Business Lease Application Fee.
November 24	The PNGLB approval of Commercial Lease Application of Quinquing Trading Limited for Section 31 Allotment 3 was gazetted; Gazettal Notice Number G171.
December 2	A Stop Work Notice was issued to Quinquing Trading Limited by DLPP Regional office in Rabaul and Kimbe.
 <b>2006</b>	
August 16	PNGPPAT made the decision to reject the NPPB decision and upheld the application of the appellant, Mr Roger Lin.
September 29	Minister for Land & Physical Planning, Dr Puka Temu, endorsed the PNGPPAT Decision and Recommendation thereby upholding the decision of the PNGLB.
October 11	Revocation of all the powers delegated to the officers in the DLPP by the Secretary Mr Pepi Kimas by Instrument of Delegation.
October 12	Revocation of all the powers delegated to the senior officers of the DLPP by the Minister for Lands by Instrument of Delegation.
October 20	Mr Zachary Gelu from Patterson Lawyers wrote to the Lands Secretary, Mr Pepi Kimas, regarding the decision of the PNGPPAT that their client is the successful applicant for the State lease over the land in issue and the DLPP should issue the lease to him without further delay.
October 25	The OC wrote a letter to then Acting Lands Secretary, Mr Pepi Kimas, to put a halt to any action that would be

taken on Section 31 Allotment 03 until the investigation was completed.

- November 14 The Secretary wrote a letter to the Registrar of Titles to issue the Registrar's Caveat over Section 31 Allotment 03 under the *Land Registration Act Part VIII*.
- December 12 Lease Acceptance Notice was issued to Quinquing Trading Limited.
- December 14 Deputy Secretary for Land Services Mr Anthony Luben endorsed the State Lease issued to the Quinquing Trading Limited.
- December 15 Deputy Registrar of Titles Mr Mark Tola endorsed the registration of State Lease issued to Quinquing Trading Limited.
- December 24 Land Title for Section 31 Allotment 3 was signed for the State Lease issued to Quinquing Trading Limited to be registered in the land Titles register.

## **2007**

- January 5 Mr Pepi Kimas sent a second Minute to the Registrar of Titles to issue the Registrar's Caveat over Section 31 Allotment 03.
- March 5 Registrar of Titles, Mr Raga Kavana, wrote a letter to the Ombudsman Commission not to take any action on the said piece of land until OC completes its investigation.
- April 24 Secretary Mr Pepi Kimas sent a Minute to the Registrar of Titles on Non Compliance of the Instruction to issue the Registrar's Caveat over Section 31 Allotments 03 Kimbe.
- May 10 The Secretary sent a Minute to the Deputy Registrar of Titles Mr Mark Tola to investigate the non compliance of his instruction to issue the Registrar's Caveat over Section 31 Allotment 03 Kimbe.
- May 25 OC wrote a letter to the Lands Secretary requesting for the instrument on the delegation or sub-delegation of powers to the senior officers in the Department.

- October 1 OC sent a second letter to the Lands Secretary for the instrument on the delegation or sub-delegation of powers to the officers in the Department.
- October 29 OC sent a third letter to the Lands Secretary requesting for the same documents requested in the first two letters.
- October 31 Secretary responded to OC letter requesting for the instrument on the delegation or sub-delegation of ministerial powers and functions to him and his two deputies by producing the Revocation Notice gazetted, Gazettal Number G234 on 28 December 2006.



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## LIST OF ABBREVIATION

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CAO	-	Certificate Authorizing Occupancy
CIA	-	Chief Internal Auditor
DLPP	-	Department of Lands and Physical Planning
KULLG	-	Kimbe Urban Local Level Government
LMDNIR	-	Lands Management Division, Northern/ Islands Region
MOMASE	-	Morobe Madang Sepik
NGI	-	New Guinea Islands
NPPB	-	National Physical Planning Board
OC	-	Ombudsman Commission
PNGLB	-	Papua New Guinea Land Board
PNGPPAT	-	Papua New Guinea Physical Planning Appeals Tribunal
QTL	-	Quinquing Trading Limited



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# EXECUTIVE SUMMARY

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## Overview

This is a Final Report of an investigation into the allocation of Section 31 Allotment 03, a Public Institutional Land to a private company called Quinquing Trading Limited in Kimbe, West New Britain Province.

It is alleged that the Department of Land and Physical Planning (DLPP) did not follow the established administrative systems, processes and procedures set out in legislation, which include the *Land Act 1996*, *Physical Planning Act 1989* and the *Land Registration Act* (Chapter 191). These legislations govern DLPP operation when licensing, rezoning, leasing and registering the State lease issued to Quinquing Trading Limited.

This report focuses on establishing whether the administrative systems, processes and procedures and the Acts governing the work of the DLPP in this area were followed in allocating Section 31 Allotment 03 to Quinquing Trading Limited.

## Report Findings

The main findings of the report are:

- In the opinion of the Ombudsman Commission it was wrong for the Secretary and the two Deputy Secretaries for Lands to exercise powers under the *Land Act 1996* without the appropriate instruments of delegation or sub-delegation of the Ministerial powers and functions.
- In the opinion of the Ombudsman Commission the Secretary for Lands Mr Pepi Kimas' exemption of Section 31 Allotment 03 from advertisement under Section 68 and 69 of the *Land Act 1996* without any documentary evidence that he was delegated the power by the Minister to exempt land was wrong.
- In the opinion of the Ombudsman Commission the Deputy Secretary for Corporate and Regulatory Services Mr Romilly Kila Pat's conduct in signing and issuing License Number 06 of 2004 (Island) to Quinquing Trading Limited to do feasibility studies for business purpose without any documentary evidence that he was delegated or sub-delegated the Ministerial power to issue license was wrong.
- In the opinion of the Ombudsman Commission the Deputy Secretary for Corporate and Regulatory Services Mr Romilly Kila Pat's conduct in supporting the Quinquing Trading Limited application to go to the Papua New Guinea Land Board (PNGLB) contrary to the administrative processes and procedures and the Secretary's instruction was wrong.

- In the opinion of the Ombudsman Commission the conduct of the Deputy Secretary for Land Services Mr Anthony Luben's conduct of endorsing the registration of the State lease issued to Quinquing Trading Limited to be registered without the delegation of ministerial power was wrong.
- In the opinion of the Ombudsman Commission the Deputy Secretary for Land Services, Mr Anthony Luben's conduct in endorsing the State lease granted to the Quinquing Trading Limited to be registered in the Land Titles Register with the full knowledge that it was improperly issued was wrong.
- In the opinion of the Ombudsman Commission the DLPP failed to comply with its administrative systems, processes and procedures in permitting Quinquing Trading Limited's lease application to go to the PNGLB for the grant of a Commercial Lease.
- In the opinion of the Ombudsman Commission the DLPP failed to comply with Section 68 and Section 69 of the *Land Act* 1996 to advertise Section 31 Allotment 03 as recommended by the PNGPPAT.
- In the opinion of the Ombudsman Commission the Lands Titles Division failed to issue the Registrar's Caveat as requested by the Ombudsman Commission and directed by the Secretary of DLPP.
- In the opinion of the Ombudsman Commission the DLPP failed to require the applicant to produce documentary evidence to substantiate the desperate situation the company encountered for the urgent acquisition of the State lease.

## **Irregularities**

The main irregularities uncovered by this investigation are:

- When the National Physical Planning Board (NPPB) rejects an application the other processes stop indefinitely until the appeal application is cleared by the Papua New Guinea Physical Planning Appeals Tribunal (PNGPPAT). Despite NPPB's rejection of QTL Rezoning Application three times and PNGPPT not clearing it the DLPP allowed the application to go to the PNGLB and a commercial lease was granted with the condition that it would go back to the National Physical Planning Board (NPPB) to seek rezoning approval.
- In order for an application to go to the PNGLB it has to be approved by all the Divisional Heads in the DLPP. Without the approval of one Divisional Head these include the Chief Physical Planner, Surveyor General, Valuer General and Director Land Administration the application cannot go to the PNGLB. Quinquing Trading Limited's Commercial Lease Application was sent to PNGLB without the approval of all the Divisional Heads in the DLPP.
- According to Section 68 of the *Land Act* 1996 Public Institutional land made available for other purposes has to be advertised in the first instance. Or if it is to be exempted it has to be done by the Minister for Lands and agreed to by the State. PNGPPAT upheld the appeal application of Quinquing Trading Limited against

NPPB decision to reject its rezoning application and recommended for advertisement of the land. However, Section 31 Allotment 03 was not advertised.

- The ministerial powers in the DLPP are to be strictly exercised by the Delegate of the Minister. These include the issuing of license, exempting land from advertisement and endorsing the State lease for registration. The Secretary and the two Deputy Secretaries (Corporate and Regulatory Services and Land Services) have exercised these powers without any documentary evidence of their delegation to them. They acted outside of their powers.
- The subordinates of organizations follow the instruction of their authorities or disobey them when there is a valid reason. The Secretary for Lands issued instruction to the Director for Land Administration Division to cancel the license issued to QTL over a prime land and find another land for the company. The instruction was not followed through and the company's application was sent to the PNGLB where the commercial lease was granted.
- The Deputy Secretary for Lands Services knew that NPPB had rejected Quinquing Trading Limited Lease Application three times, that it was not approved by all the Divisional Heads and all officers advised to refrain from dealing with Section 31 Allotment 03. However, he went ahead to endorse it to be registered.

## **Findings of wrong conduct**

The conducts of the following public officials were wrong:

- Secretary for Department of Lands and Physical Planning Mr Pepi Kimas;
- Deputy Secretary for Corporate and Regulatory Services Mr Romilly Kila Pat; and
- Deputy Secretary for Land Services Mr Anthony Luben.

## **Recommendations**

The recommendations of the report are:

- The Ombudsman Commission recommends that the Secretary for Lands ensures that the DLPP reviews its system of delegation to ensure that all officers are aware of their scope of their delegations, that the delegations are in writing as required by the *Land Act* 1996, and that they are maintained in a register that is accessible to senior officers and external oversight agencies.
- The Ombudsman Commission recommends that the Minister for Lands ensures that the Secretary for DLPP Mr Pepi Kimas is disciplined for acting outside of his powers.
- The Ombudsman Commission recommends that the Minister for Lands ensures that the Deputy Secretary for Lands - Corporate and Regulatory Services Mr Romilly Kila Pat is disciplined for acting outside of his power to sign and issue License Number 06 of 2004 (Island) to Quinquing Trading Limited.

- The Ombudsman Commission recommends that the Minister for Lands ensures that the Deputy Secretary for Lands Mr Romilly Kila Pat is disciplined for deliberately supporting the Quinquing Trading Limited Commercial Lease Application to go to the Land Board contrary to the Secretary's instruction despite after it had been rejected by NPPB three times.
- The Ombudsman Commission recommends that the Minister for Lands ensures that the Deputy Secretary for Lands - Land Services Mr Anthony Luben is disciplined for acting outside his power to endorse the State lease to be registered by the Land Titles Division.
- The Ombudsman Commission recommends that the Minister for Lands ensures that the Deputy Secretary for Lands – Land Services Mr Anthony Luben is disciplined for neglecting his duty to thoroughly check and ensure that all processes were followed and to refrain from signing documents he had not authority to sign.
- The Ombudsman Commission recommends that the Secretary for Lands ensures that the DLPP strictly comply with the established administrative systems, processes and procedures when issuing licensing, rezoning and leasing State land to private individuals and organisations for commercial purposes.
- The Ombudsman Commission recommends that the Secretary for Lands ensures that all officers in the DLPP fully understand Section 68 and Section 69 of the *Land Act* 1996 that relates to advertisement of the land available for leasing and strictly comply with it.
- The Ombudsman Commission recommends that the Secretary for Lands ensures that the system for lodging caveat operates without delay to protect the Torrens titles Registration.
- The Ombudsman Commission recommends that the Secretary for Lands ensures that the DLPP thoroughly checks all relevant documents and seeks confirmation from responsible persons for applicants seeking urgent acquisition of the land prior to allocating the land to them.

## **Conclusion**

This report has discovered that there was a systematic abuse of the entire administrative system, processes and procedures and the breach of the *Land Acts* 1996 and *Physical Planning Act* 1989 by the DLPP in the allocation of Section 31 Allotment 03 to Quinquing Trading Limited. These include:

- Senior officers of DLPP exercising powers under the *Land Act* 1996 without the appropriate instruments of delegation or sub delegation of the minister's powers and functions to them. These include the signing and issuance of license, exemption of land from advertisement and endorsement of State lease for registration.
- The two Deputy Secretaries of lands failure to exercise duty of care when supporting the Quinquing Trading Limited lease application to go to the PNGLB



contrary to the administrative processes and procedures and the Secretary's instruction and endorsement of the controversial State lease granted to Quinquing Trading Limited to be registered in the land titles register.

- Failure to comply with the administrative systems processes and procedures to allow the Quinquing Trading Limited lease application to go to the PNGLB for the grant of commercial lease.
- Failure to comply with Section 68 and Section 69 of the *Land Act* 1996 to advertise Section 31 Allotment 03 as recommended by the PNGPPAT.
- Failure to respond to reasonable request by the Ombudsman Commission through the office of the Secretary to issue Registrar's Caveat.
- Failure to require the applicant to produce evidence to substantiate the claim of a desperate situation the company encountered which required an urgent acquisition of the State Lease.

The DLPP has not lived up to the obligation entrusted to it by the State. It failed to follow its own administrative systems, processes and procedures and the Acts governing its operation. It must diligently implement the recommendations of this Report to promote good governance, transparency, and accountability in the Department as intended by the State.



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# 1. JURISDICTION AND PURPOSE OF THE INVESTIGATION

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## [1.1] INTRODUCTION

This is an investigation by the Ombudsman Commission to establish whether or not there was any improper conduct by government officers involved in the rezoning of public institutional land to commercial land and issuing the land title to Quinquing Trading Limited in Kimbe West New Britain Province.

## [1.2] JURISDICTION

Section 218 (b) and (c) of the *Constitution* state two of the purposes for establishing the Ombudsman Commission:

- (b) To help in the improvement of the work of the governmental bodies and the elimination of unfairness and discrimination by them; and
- (c) To help in the elimination of unfair or otherwise defective legislation and practices affecting or administered by governmental bodies.

Section 219(1)(a)(ii) of the *Constitution* empowers the Ombudsman Commission to investigate, either on its own initiative or on a complaint by a person affected by any conduct on the part of any governmental body or any of its officers or employees in the exercise of power or function vested in it, him or her by law in cases where conduct is or may be wrong, taking into account, among other matters, the National Goals and Directive Principle, the Basic Rights and Basic Social Obligations.

Schedule 1.2(1) defines “governmental bodies” as:

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- (a) the National Government ;or
  - (b) a provincial government; or
  - (c) an arm, department, agency or instrumentality of the National Government or provincial government; or
  - (d) a body set up by statute or administrative act for government or official purpose.
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Accordingly the Department of Lands and Physical Planning is a governmental body created by the Section 188 of the *Constitution* that operates under the *Lands Act* 1996 and *Physical Planning Act* 1998 for the purpose of section 218 of the *Constitution*. The Ombudsman Commission therefore has jurisdiction to investigate the conduct of the officers of the DLPP.

### [1.3] THE PURPOSE OF THE INVESTIGATION

In accordance with section 219(1) of the *Constitution*, the purpose of this investigation was:

- to determine whether any of the conduct under investigation was wrong; and
- to determine whether there were any defects in any law or administrative practice.

### [1.4] METHOD OF INVESTIGATION

The Ombudsman Commission issued a notice on 13 February 2006 to the Secretary for the DLPP Mr Pepi Kimas, advising of its intention to inquire into the allegation.

Section 17(1) of the *Organic Law on the Ombudsman Commission* states that:

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**Before investigating any matter within its jurisdiction, the Commission shall inform the responsible person of its intention to make the investigation.**

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Pursuant to Section 18(1) of the *Organic Law on the Ombudsman Commission*, the Ombudsman Commission obtained documents and other evidence from a number of sources.

Section 18(1) states that:

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**Subject to the provisions of this Section and of Section 19, the Commission may from time to time require any person who in its opinion is able to give any information relating to any matter that is being investigated by the Commission to furnish to it that information and to produce any documents, papers or things that, in the opinion of the Commission, relate to any matter being investigated by it and that may be in the possession or control of that person.**

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### [1.5] INTERVIEWS CONDUCTED DURING THE INVESTIGATION

The following table lists the people who were called and gave evidence before the Ombudsman Commission:

NAME	DESIGNATION	ORGANISATION
Ben Madiu	WNB Provincial Land Advisor	Department of Lands & Physical Planning
Willie Edo	Acting Provincial Administrator	West New Britain Provincial Administration
Daniel Katakumb	Director, Land Administration	Department of Lands & Physical Planning
Samuel Kodawara	Surveyor General	Department of Lands & Physical Planning
John Ofoi	Chief Physical Planner	Department of Lands & Physical Planning
Philip Kepas	Internal Auditor	Department of Lands & Physical Planning
Romilly Kila Pat	Deputy Secretary (Corporate and Regulatory Services)	Department of Lands & Physical Planning
Pepi Kimas	Secretary	Department of Lands & Physical Planning
Francis Tanga	Chairman, Land Board	Department for Lands & Physical Planning
Roger Lin	Managing Director	Quinquing Trading Limited
Mark Tola	Deputy Registrar of Titles – MOMASE & NGI	Department of Lands & Physical Planning
Raga Kavana	Registrar of Titles	Department of Lands & Physical Planning
Anthony Luben	Deputy Secretary (Land Services)	Department of Lands & Physical Planning

### [1.6] OMBUDSMAN COMMISSION NOT CONFINED TO REPORTING ON LEGALITY OF ADMINISTRATIVE CONDUCT

When the Ombudsman Commission conducts an investigation, it is not confined to reporting on whether or not there have been breaches of the law. The Commission’s constitutional mandate is broader than this. It is authorised to report on what, in its opinion, is “wrong conduct”, irrespective of whether that conduct has been in accordance with the law.

[1.7]           DEFINING “WRONG CONDUCT”

The *Constitution* gives some guidance to the Commission when it is deciding whether conduct is “wrong”.

Section 219(2) of the *Constitution* states:

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**Subject to Subsections (3), (4) and (5), and without otherwise limiting the generality of the expression, for the purposes of Subsection (1)(a) conduct is wrong if it is—**

- (a)       contrary to law; or**
  - (b)       unreasonable, unjust, oppressive or improperly discriminatory, whether or not it is in accordance with law or practice; or**
  - (c)       based wholly or partly on improper motives, irrelevant grounds or irrelevant considerations; or**
  - (d)       based wholly or partly on a mistake of law or of fact; or**
  - (e)       conduct for which reasons should be given but were not,**  
**whether or not the act was supposed to be done in the exercise of deliberate judgement within the meaning of Section 62 (decisions in "deliberate judgement").**
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The above list is not exhaustive. The phrase “and without otherwise limiting the generality of the expression” indicates that conduct which does not fit into any of the descriptions in paragraphs (a) to (e) may still be regarded as wrong. The Ombudsman Commission is entitled to regard conduct as wrong, even if the conduct does not appear in the list of descriptions given in Section 219(2) of the *Constitution*.

[1.8]           THE PRELIMINARY REPORT

Whenever the Ombudsman Commission prepares a report of this nature, it has a duty to observe procedural fairness.

This duty is imposed by Section 17(4) of the *Organic Law on the Ombudsman Commission* Section 17(4) (b) states:

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**Nothing in this Law compels the Commission to hold any hearing and no person is entitled as of right to be heard by the Commission except that...**

- (a)       the Commission shall not make any comment in its report that is adverse to or derogatory of any person without -**
    - (i)       providing him with reasonable opportunity of being heard; and**
    - (ii)      fairly setting out his defence in its report.**
- 

In order to discharge this duty of procedural fairness, the Ombudsman Commission distributed a preliminary report of this investigation on 11 November 2008.

A preliminary report allows persons who may be affected by the Commission's final report to respond to any adverse findings and correct any factual errors the Commission may have made.

The purpose of a preliminary report is to state the Ombudsman Commission's preliminary findings of fact and preliminary views on the matter under consideration and to seek comments and submissions from those affected.

All of the findings in the preliminary report are qualified. That is, they are made subject to submissions received in response to the preliminary report.

Accompanying the preliminary report was a direction, pursuant to Section 21(1) of the *Organic Law on the Ombudsman Commission*, that all evidence, documents, papers and things referred to herein, including all findings and opinions, shall not be published without the consent in writing of the Commission. Breach of this direction is a criminal offence.

The copies of the Preliminary Report were hand delivered to the following officers of the DLPP:

- Secretary for Lands -Mr Pepi Kimas
- Duty Secretary for Corporate and Regulatory Service Mr Romilly Kila Pat
- Deputy Secretary for Land Services Mr Anthony Luben
- Registrar of Titles Mr Raga Kavana

The copies of the report were delivered to them on 11 November 2008 at their office. They were invited to respond, orally and/or in writing, to the Ombudsman Commission within 21 day period. The letter stated that if they did not respond, the Commission would consider that they have accepted the report's findings.

#### [1.9] GENERAL OBSERVATIONS AND CRITICISMS

The officers of the DLPP who were delivered the preliminary reports did not respond within the 21 days period. Extension of time was not also sought. It is assumed that they have accepted the findings of the Ombudsman Commission.



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## 2. EVENTS PRIOR TO NATIONAL PHYSICAL PLANNING BOARD DECISION

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### [2.1] GENERAL

The World Bank proposed to fund the establishment of the West New Britain Provincial Lands Office. Hence the Certificate Authorizing Occupancy over Section 31 Allotment 03 was issued to the DLPP. However, the World Bank did not fund the project as proposed and the land remained undeveloped.

In 2004 the land was licensed to Quinquing Trading Limited to establish its business in particular a mini supermarket. The manner in which the land was allocated to the company was improper and was in breach of the *Land Act* 1996 and the *Physical Planning Act* 1989.

The events that occurred before the National Physical Planning Board's first decision on 22 April 2005 include:

### [2.2] CERTIFICATE AUTHORISING OCCUPANCY (CAO)

CAO is defined as a right given to a government department only for the usage of land. The CAO is not issued to Statutory Bodies, Companies and individuals. The usage of land under CAO is for an unlimited term which can be revoked or cancelled when the user department no longer requires the land.

Upon the revocation of a CAO, the land reverts back to the State with all improvements on the land if there is anything erected thereon. A CAO can be revoked if land is not developed or where the improvements on the land are not substantial enough for the user department. The CAO is a non-transferable interest and therefore it cannot be bought or sold.

Note that CAO is only an administrative arrangement of the DLPP; it is not a legal requirement. The CAO information stated above was obtained from a document by Mr Lucius Diritala, a private land consultant on a similar land case in Madang. During the interview with the Divisional Heads and the Secretary for the DLPP none of them disputed the information the Ombudsman Commission shared on CAO.

### [2.3] CAO FOR SECTION 31 ALLOTMENT 03 – KIMBE WEST NEW BRITIAN PROVINCE (WNB) WAS ISSUED TO DLPP

In early August 1993 the Provincial Land Officer, Ms Elizabeth Tobe, sent an undated Minute to the Deputy Secretary (Operations) of DLPP informing him that Section 31 Allotment 3 was suitable for the proposed Lands Office and another Minute to the Land Allocation Officer, Mr Vincent Sam, requesting for the CAO to be issued pending his approval. The Minute was received and stamped by the Secretary's Office on 30 August 1993 and the Islands Region Registry Office on 7 September 1993.

On 30 August 1993 the Lands Allocation Officer, Mr Vincent Sam, sent an unsigned note to the Regional Manager (Islands), Mr Leo Minjan, enclosing the draft CAO and advised him to sign the covering Minute if all the documentation were in order and send it to the Secretary for approval.

On 11 October 1993 the Regional Manager (Island) sent a Minute to the Secretary with the Lands File SN/031/033 and the draft CAO issued to the DLPP for him to sign and return them if all documents were in order.

On 25 October 1993 the transfer of Section 31 Allotment 03 and the CAO Number 110 (Island) was approved and issued to the DLPP to establish its office with the funding from the World Bank.

On 29 October 1993 a letter appeared to be from the Regional Manager (Islands) without signature was written to the Provincial Land Advisor, Mr Ben Madiu, that the application for the transfer of Section 31 Allotment 03 Kimbe to DLPP was approved.

[2.4]           REQUEST FOR THE TRANSFER OF CAO NUMBER 110 (ISLAND) WITH  
DLPP TO KIMBE URBAN LOCAL LEVEL GOVERNMENT (KULLG)

On 2 February 2000 the Acting Provincial Administrator, Mr Willie Edo, applied for the approval and the transfer of the CAO with the DLPP to KULLG to establish its K300, 000.00 office complex when the land remained undeveloped.

On 24 May 2000 the Director for Land Administration, Mr Daniel Katakumb, advised Mr Edo that the CAO for the land was granted to the DLPP and it was only proper for him to consult the Provincial Land Adviser, Mr Ben Madiu, for his advice. If Mr Madiu consented to the revocation of CAO then his office would proceed with further action.

There is no documentary evidence that further discussions were held or correspondences exchanged between Mr Edo and the DLPP on the transfer of CAO to KULLG. The land remained undeveloped till 2004.

[2.5]           QUINQUING TRADING LIMITED LETTER OF EXPRESSION OF INTEREST

On 28 October 2004 the Managing Director for Quinquing Trading Limited, Mr Roger Lin, wrote a letter to the Deputy Secretary for the DLPP, Mr Romilly Kila Pat, expressing his interest to acquire Section 31 Allotment 03 Kimbe to establish his business. Mr Lin stated that he had operated his business on a customary land for five years and the landowners had given him 21 days to abandon the premises without further delay. He wanted the Department to prepare an official temporary move in letter and the other procedures could be completed later when the company moved in and established its business.

The Ombudsman Commission did not find any documentary evidence that the landowners had actually given Quinquing Trading Limited a 21 days ultimatum to move out of their land. The officers from the DLPP only relied on the information Mr Lin provided in his letter of expression of interest to give away the prime land to the company.

Note that two names are used to refer to the same company. The Ombudsman Commission discovered that Mr Roger Lin is the Managing Director of the company with both these names. These names were used interchangeably for the same company. In this Final Report only Quinquing Trading Limited will be used. The other name was XML Trading PNG.

[2.6]           SITE INSPECTION REPORT

On 2 November 2004 the Provincial Land Advisor in Kimbe, Mr Ben Madiu, wrote a letter to the Secretary for the DLPP and a copy to the Managing Director for Quinquing Trading Limited. He

enclosed to the Secretary the Site Inspection Report of Section 31 Allotment 3 Kimbe and recommendation for the approval of the Quinquing Trading Limited application for the erection of a two storey shopping complex. He claimed that the site was in a central place and would bring much desired economic benefits to the province.

It is noted that Mr Madiu does not state in his letter the reason Mr Roger Lin stated for the immediate acquisition of the land in issue.

[2.7] STATUS REPORT

On 22 November 2004 a Status Report of Section 31 Allotment 3 was submitted to the DLPP. A part of the report reads:

**“Land cannot be allocated due to zoning implications. In addition there are other commercial sites within the vicinity yet to be developed”**

[2.8] QUINQUING TRADING LIMITED PLANNING PERMISSION APPLICATION

On 12 November 2004 the Quinquing Trading Limited submitted the Planning Permission Application to the DLPP for Section 31 Allotment 3 to be rezoned from public institutional land to commercial land for the establishment of its business. The application was enclosed with the required fees these included K100.00 application fee (Receipt Number 172559) and K360.00 license fee (Receipt Number 172558). The fees were paid on 12 November 2004 by Ms Jenny Kepa, the wife of Mr Roger Lin, the Managing Director of the company.

[2.9] ISSUANCE OF LICENSE TO QUINQUING TRADING LIMITED

On 12 November 2004 Deputy Secretary (Corporate & Regulatory Services) for the DLPP, Mr Romilly Kila Pat, signed and issued License Number 06 of 2004 (Island) for Section 31 Allotment 3 to Quinquing Trading Limited. The license was issued for a period of twelve (12) months for the company to do feasibility studies for business purposes.

The issuing of license does not confer upon the licensee any right of ownership and the license can be issued anytime to an applicant for the purpose for which it was issued. The standard conditions of the Annual License state,

- **“Subject to any special conditions imposed the licensee is empowered to make improvements and do such things on the land subject of the license as are necessary or convenient for the purpose of the license to remove such improvements as are severable on or before the expiration of the license doing as little damage as may reasonably be to the land.**
- **A license may be revoked by the Minister for failure to comply with or a contravention of the conditions of the license.**
- **No permanent structural improvements to be erected on the said piece of land.**
- **This Annual License allows for temporary occupancy only and to carry out feasibility studies and subject to physical planning.**
- **This Annual License is subject to renewal.”**

There is no documentary evidence that the Deputy Secretary Mr Romilly Kila Pat was sub-delegated the ministerial power to sign and issue the license.



[2.10] LETTER FROM PROVINCIAL LAND ADVISOR TO LAND MANAGEMENT DIVISION, NORTHERN ISLAND REGION (LMDNIR)

On 18 November 2004 the Provincial Land Advisor, Mr Ben Madiu, wrote another letter to the Director for LMDNIR and a copy to the Acting Provincial Administrator, Mr Willie Edo. He stated that Quinquing Trading Limited was interested in developing Section 31 Allotment 3 which is in the redevelopment zone and the Physical Planning Office would have a lot to say on this.

He further stated that the CAO was issued to the DLPP and wanted him to comment on the proposed interest from a company and not from a government department.

There is no documentary evidence that the Director for LMDNIR had replied Mr Madiu's letter.

[2.11] MINUTE FROM DEPUTY SECRETARY TO SECRETARY FOR DLPP

On 26 November 2004 Deputy Secretary for Corporate & Regulatory Services, Mr Romilly Kila Pat, sent a Minute to the Secretary advising him that Quinquing Trading Limited had a mini supermarket and other business activities on customary land at the value of K100, 000.00 and that they had a dispute with the landowners who wanted the company to move its business out of their land within 21 days.

The company urgently needed land to relocate its business to prevent losses. The Department had identified Section 31 Allotment 3 for the DLPP (Certificate Number 110 (Islands)) on 25 October 1993. But as it had not been developed to date, it decided to allocate it to the company.

Mr Kila-Pat did not enclose any documentary evidence provided by the company to prove to the Secretary that Mr Roger Lin urgently needed the land to relocate his business. He only relied on the reason provided by Mr Lin in his letter to the Secretary on 28 October 2004.

The Deputy Secretary enclosed the Revocation of CAO and Exemption from Advertisement Notice for the Secretary to endorse. The Secretary signed and dated all three forms at the same time on 26 November 2004 and scribbled a note on the Minute dated 26 November 2004 that stated "proceed recs" [recommendations].

[2.12] REVOCATION OF CAO UNDER DLPP

Furthermore on 26 November 2004 the Secretary for Lands, Mr Pepi Kimas, signed the Revocation, to set aside the CAO Number 110 (Island) issued to the DLPP on 25 October 1993 freeing up the land to be rezoned from Public Institutional Land to Commercial Land. The approval for the rezoning was to be given by the National Physical Planning Board (NPPB). Without the NPPB's approval the land cannot be rezoned and the CAO will remain with the DLPP.

Note that the CAO was revoked after the issuance of the license. Procedurally it should be revoked before the issuance of the license.

[2.13] EXEMPTION FROM ADVERTISEMENT NOTICE

Similarly, on 26 November 2004 the Secretary for Lands, Mr Pepi S. Kimas, signed the Notice under Section 69 (2) (d) of the *Land Act* 1996 exempting from advertisement Section 31 Allotment 3 from public tender. The reason for exemption from advertisement was that the land was urgently required by Quinquing Trading Limited to relocate its business currently located on customary land whose landowners had given it 21 days to vacate without further delay.

[2.14] REVOCATION OF CAO NUMBER 110 (ISLAND) NOT GAZETTED TILL  
LATER

The CAO Number 110 (Island) which was revoked on 26 November 2004 was not gazetted until later on 28 April 2005 (Gazettal Number G59 of 2005), when the CIA, Mr Darcy Tamia, raised the matter.

The Legal Manager, Mr Ian Kundin, in his brief to the Secretary on 28 July 2005 stated that there was no specific law that required the Revocation of CAO to be gazetted or prescribed by the said instruments to come into effect upon gazettal. The revocation of the CAO takes effect immediately on the date the instrument is signed and there is no basis to argue that it should have been gazetted in the first instance to legalize the action taken.

[2.15] PROVINCIAL LAND ADVISOR'S ADVISE NOT FOLLOWED

On 14 February 2005, Mr Ben Madiu, wrote a letter to the Secretary for Lands to officially notify the Provincial Administrator and the Provincial Government of West New Britain that the DLPP had granted the Business (Commercial) Lease for Section 31 Allotment 3 to Quinquing Trading Limited to establish its business. He further stated that all Divisional Heads should give their views before the company's business can be established.

There is no documentary evidence to show that all the Divisional Heads commented on the land in question as advised by Mr. Madiu.

[2.16] LETTER FROM DEPUTY SECRETARY TO PROVINCIAL LAND ADVISOR

On 17 February 2005 the Deputy Secretary, Mr Romilly Kila Pat, wrote a letter to the Provincial Land Advisor, Mr Ben Madiu, giving him the reason for the issuance of the license to Quinquing Trading Limited over Section 31 Allotment 3. That is to prevent the company from losing its business currently located on a customary land. While the company settles there they would work on the paper to get the title for the company so that its intention for the site will be fulfilled.

[2.17] SECRETARY'S DIRECTIVE WAS NOT IMPLEMENTED

On 24 February 2005 the Secretary Mr Pepi Kimas in Mr Ben Madiu's Minute of 14 February 2005 scribbled a hand written note for the Director for Land Administration to consider and implement after realizing that the land in issue was a prime public institutional land. The note reads:

*(a) It seemed the land was a piece of prime land,*

*(b) If so (above), the license was to be refused and the land was to be advertised.*

There is no documentary evidence that the Secretary's Directive was implemented. The application was instead processed for the Land Board to consider.

[2.18] MINUTE FROM THE CHIEF INTERNAL AUDITOR TO THE ACTING  
SECRETARY

The Chief Internal Auditor, Mr Darcy Tamia, sent an undated Minute to the Acting Secretary, Mr Romilly Kila Pat, advising that the issuance of License, Revocation of CAO and Exemption from Advertisement Notice were improperly done and the application to the NPPB for rezoning should

be withdrawn until he finalizes his investigation report and makes recommendation for them to proceed with their deliberation on the application.

[2.19] MINUTE FROM CHIEF INTERNAL AUDITOR TO DEPUTY REGISTRAR OF TITLES

On 20 April 2005 the Chief Internal Auditor sent a Minute titled *Request for Title for Section 31, Allotment 03 Kimbe* to the Deputy Registrar of Titles, Mr Mark Tola that the rezoning of Public Institutional Land was contrary to the zoning plan and that he wanted the Title File to investigate further. Mr Tola scribbled on the same Minute that he believed the property under CAO does not have a title until it is revoked and the Land Board makes recommendation for the Title to be issued. He was asked to check with the Land Administration Division.

[2.20] NPPB REJECTION OF QUINQUING TRADING LIMITED PLANNING PERMISSION APPLICATION

The NPPB rejected the Physical Planning Application of Quinquing Trading Limited in three separate meetings. They include:

(a) FIRST MEETING

On 22 April 2005 during Meeting 04 of 2005 the NPPB rejected the application of Quinquing Trading Limited stating reasons that,

*The site is [was] for Public Institution and must be retained as such for future public institution development for the province, and the office of the Islands Regional Development Assessment Coordinator should find an alternative commercial site to accommodate this proposal*

(b) SECOND MEETING

On 13 May 2005 Mr Roger Lin submitted the second Planning Permission Application to the NPPB incorporating the Physical Planning Report by Mr Alex Dira, Manager of Development Planning on 7 May, 2005.

However, on 20 May 2005 during Meeting Number 05 of 2005 the NPPB rejected the application the second time. The NPPB letter on its decision to Quinquing Trading Limited reads:

*The Board still stands by its decision which is to reject the rezoning.*

(c) THIRD MEETING

On 28 June 2005 during Meeting Number 6 of 2005 the NPPB stood by its previous decisions and rejected the proposed rezoning outright for the third time.

[2.21] MINUTE FROM THE MANAGER FOR DEVELOPMENT PLANNING TO CHIEF INTERNAL AUDITOR

On 7 May 2005 the Manager for Development Planning, Mr Alex Dira, sent a Minute to the Chief Internal Auditor, Mr Darcy Tamia, that there was an imbalance in the allocation of land in Kimbe Town, West New Britain Province. That is, there are more public institutional land than

commercial land, due to the fact that some of the commercial land such as Section 36 Allotments 1-26 where the market is located was lost to public institutional. Hence rezoning Section 31 Allotment 3 from public institutions to commercial would balance it.

[2.22] LETTER FROM THE ACTING CHAIRMAN OF NPPB TO THE MANAGING DIRECTOR OF QTL

On 18 July 2005 the Acting Chairman for NPPB wrote a letter to the Managing Director of Quinquing Trading Limited, Mr Roger Lin, advising him to pursue the matter with the PNGPPAT. Mr Lin did not appeal against the decision of the NPPB with the PNGPPAT.

Note that when the NPPB rejected Quinquing Trading Limited application the Minister for Lands and the administrative system of the Department were in the process of establishing the PNGPPAT to consider the appeal applications.

[2.23] BRIEF FROM THE LEGAL MANAGER TO THE SECRETARY

On 28 July 2005 the Legal Manager, Mr Ian Kundin, sent a Brief to the Secretary clarifying the legality of the application lodged by Quinquing Trading Limited to rezone the land in question from public institutional land to commercial land. He stated that everything was done legally and there is nothing wrong as claimed by the Chief Internal Auditor, Mr Darcy Tamia. The NPPB should consider his advice and that of the Development Planning Manager, Mr Alex Dira, and approve the Planning Permission Application of Quinquing Trading Limited.



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### **3. EVENTS AFTER NATIONAL PHYSICAL PLANNING BOARD DECISION**

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These events occurred after the NPPB made the decision to reject the Quinquing Trading Limited Business Lease Application on 22 April 2005, 13 May 2005 and 28 June 2005:

[3.1] CHECKLIST WAS NOT CIRCULATED TO THE DIVISIONAL HEADS

A checklist is a circular circulated to all Divisional Heads in the DLPP which include the Chief Physical Planner, Surveyor General, Valuer General and Director Land Administration to comment and approve the agenda item as having fulfilled the necessary requirements of each Division before it goes to the Land Board for deliberation. The Land Administration Division prepares the checklist and circulates it to all Divisional Heads in the Department to make comments.

There is no documentary evidence that the Land Administration Division had circulated any checklist for the Divisional Heads to approve or disapprove the Commercial Lease Application of Quinquing Trading Limited to go before the Land Board. The application somehow went to the Land Board for consideration and decision without the approval of all the Divisional Heads.

[3.2] PNG LAND BOARD AGENDA ITEM

A Land Board Agenda Item Notice Form was sent to all Divisional Heads to give their views before it goes to the Land Board. The Chief Physical Planner commented and signed on 30 May 2005 that:

*This [is] site must be [was] allocated as a Public Institution site because it is zoned as such.*

On 22 July 2005 the Secretary, Mr Pepi Kimas, commented that:

*Due to planning requirement this site cannot be made available. Assistance was to be provided to the applicant to secure similar site to do business ASAP.*

The other Divisional Heads had not sighted the agenda item nor approved it to go before the Land Board. The agenda item somehow went to the Land Board for decision with only two senior officers of the Department giving their views.

[3.3] PAC DIRECTIVES WERE NOT FOLLOWED

On 7 September 2005 Chief Internal Auditor, Mr Darcy Tamia, sent a Minute labelled "Confidential" to the Directors, Land Administration and Physical Planning, that the case on Section 31 Allotment 3 Kimbe was a matter with the Public Accounts Committee and the Ombudsman Commission and all land dealings over Section 31 Allotment 3 should cease until further notice by the Secretary. Mr Tamia referred to PAC Directives Numbers 55, 56, 57 and 58 that referred to the land in question. The Ombudsman Commission's attempt to get these Directives from the DLPP was unsuccessful.

[3.4] GAZETTAL NOTICE ON QUINQUING TRADING LIMITED COMMERCIAL LEASE APPLICATION TO PNGLB

On 15 September 2005 the Quinquing Trading Limited application to the Land Board for Business Lease was Gazetted, Gazettal Number G137. However, the Land Administration Division who is responsible for gazetting the agenda items and Land Board Decisions denied preparing this particular item notice for publication in the National Gazette.

[3.5] PNGLB APPROVAL OF QUINQUING TRADING LIMITED COMMERCIAL LEASE APPLICATION

On 12 October 2005 during Meeting Number 09 of 2005 the Land Board approved the Commercial Lease Application of Quinquing Trading Limited on the condition that it would fulfil the Physical Planning and Zoning requirements. The lease conditions include:

- *Survey;*
- *The lease shall be used bona fide for a Business (Commercial) purposes;*
- *The lease shall be for a term of Ninety – Nine (99) years;*
- *The rent shall be paid at the rate of five (5%) percent per annum of the unimproved value of the land for the first ten (10) years of the term. The unimproved value of the land shall be reassessed every ten (10) years calculated from the date of registration of the lease and the rent shall be determined at five percent (5%) per annum of the unimproved value so assessed;*
- *The improvements being building for Business purposes to a minimum value of One Hundred Thousands Kina (K100,00.00) shall be erected on the land within five (5) years from the date of grant and these or similar improvements to the same minimum value shall be maintained thereon in good repair for the duration of the lease;*
- *The successful lessee shall not enter into any agreement or transaction to sell, lease or sublease wholly or any part of the said land the subject of this title prior to complying with the improvements conditions as stipulated therein; and*
- *Easements for electricity, water, power, drainage and sewage reticulation.*

[3.6] GAZETTAL OF THE BUSINESS LEASE ISSUED TO QUINQUING TRADING LIMITED

On 24 November 2005 the Business Lease granted to Quinquing Trading Limited was gazetted, Gazettal Number G171 of 2005. The actual Business Lease was issued to Quinquing Trading Limited by the Deputy Registrar of Titles for MOMASE & NGI region on 15 December 2006 and was accepted by the Managing Director of the company after paying the required fees.

Note that the PNGLB Meeting Minute did not go to the Land Administration Division and the Secretary to the Lands Minister for endorsement for gazettal. Some unknown persons in the Department brought the Lease approved on the condition that the applicant would go back to the NPPB to seek the rezoning approval to the Minister who endorsed it for gazettal.

[3.7] NO EVIDENCE OF THE MINISTER (DLPP) ENDORSING PNGLB DECISION

The Minister endorses the Land Board decisions before they are gazetted. There is no documentary evidence that the Minister for Lands had endorsed the decision of the Land Board to Lease Section 31 Allotment 03 for Business (Commercial) purposes to Quinquing Trading Limited. When the Land Board Chairman, Mr Francis Tanga, was questioned during interview on 9 May 2006, he was not sure whether the Minister had endorsed it.

[3.8] STOP WORK NOTICE

On 2 December 2005 a Stop Work Notice was issued to Quinquing Trading Limited according to Section 69 of the *Physical Planning Act* 1989 when the machines cleared Section 31 Allotment 03. The Ombudsman Commission visit to Kimbe on 7 April 2006 confirmed that the work done on the land in issue had ceased after the issuance of Stop Work Notice.

[3.9] NATIONAL NEWSPAPER ARTICLE ON UNLAWFUL LAND DEALS

On 14 March 2006 an article from The National Newspaper entitled *Kimas: 46 files to be referred* reported that there were 46 files to be referred to the National Fraud Squad and Ombudsman Commission for investigation following an inquiry by Public Accounts Committee into the DLPP. The Secretary for DLPP, Mr Pepi Kimas, pointed out a case involving a piece of prime land in Kimbe given to private individuals or company under questionable circumstances. The land referred to is Section 31 Allotment 3.



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## **4. INTERVIEW WITH OFFICERS OF DLPP AND WEST NEW BRITIAN PROVINCIAL ADMINISTRATION**

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This is a summary of the interview conducted by the Ombudsman Commission with the officers of the DLPP based in Port Moresby and Kimbe.

### **[4.1] INTERVIEW WITH THE PROVINCIAL LAND ADVISOR**

On 3 April 2006, the Provincial Land Advisor, Mr Ben Madiu, was interviewed in his office in Kimbe. He stated:

- That, it is improper to lease land in the redevelopment zone to companies and individuals without the planning permission from the NPPB.
- That, he had no knowledge that the company was given a 21 days ultimatum by the land owners to move the business elsewhere and that it urgently needed a land to relocate its business as Mr Roger Lin and Mr Romilly Kila Pat have stated. He only knew that the company needed this land to do business.
- That there were commercial lands available to be allocated to the company. He showed the Ombudsman Commission the town plan and identified Section 33 and 35 as commercial land zoned for commercial purposes.
- That he was not aware of how this land deal was done until he was informed by the DLPP from Port Moresby that the land was leased to Quinquing Trading Limited. He wrote to them to inform the Acting Provincial Administrator that the land was leased to the company. He never received any response from them until he saw the company engaging machines to clear the area and he asked the Regional Lands Manager to issue a Stop Work Notice on 2 February 2006.

### **[4.2] INTERVIEW WITH THE ACTING PROVINCIAL ADMINISTRATOR**

On 4 April 2006, the Acting Provincial Administrator, Mr Willie Edo, was interviewed in his office in Kimbe. He informed the Ombudsman Commission that he was not aware of the company's interest to establish a shopping centre on Section 31 Allotment 03 until the company cleared the area and was stopped. He expressed concern that his office had been bypassed.

He further stated that a lot of illegal land deals are done without his knowledge and Section 31 Allotment 3 is one of them.



#### [4.3] INTERVIEW WITH THE DIRECTOR LAND ADMINISTRATION

On 1 May 2006 the Director for Land Administration, Mr Daniel Katakumb, was interviewed at the Office of the Ombudsman Commission, National Capital District. He informed the Commission that the lease of Section 31 Allotment 3 to Quinquing Trading Limited was improper. That is:

- The application for planning permission was rejected three times by the NPPB.
- The checklist was not circulated to his Division and completed by all the Divisional Heads.
- The PNGLB agenda item never came to his Division for endorsement and gazettal. During the PNGLB Meeting he protested that this particular item cannot be considered because it was rejected by the NPPB.
- Despite his protest the PNGLB went ahead to consider the application and granted the company commercial lease and got it gazetted without the knowledge and involvement of the Land Administration Division.

#### [4.4] INTERVIEW WITH THE SURVEYOR GENERAL

On 2 May 2006 the Surveyor General, Mr Samuel Kodawara, was interviewed at the Office of the Ombudsman Commission at Deloitte Tower, National Capital District. Mr Kodawara stated very clearly to the Ombudsman Commission that:

- His Division had no knowledge of the checklist. Procedurally it had to come through him and other Divisional Heads to be approved before going to the Land Board, but in this case, it had not come to him.
- According to their record in the LAGIS (*Land and Geographic system*) the CAO was still under the DLPP.
- Hence the business lease granted to the company would be null and void.

#### [4.5] INTERVIEW WITH THE CHIEF PHYSICAL PLANNER

On 3 May 2006 the Chief Physical Planner, Mr John Ofoi, was interviewed at the Office of the Ombudsman Commission in Port Moresby, National Capital District. He stated that:

- The Managing Director for Quinquing Trading Limited, Mr Roger Lin, came to his office and asked whether Section 31 Allotment 3 could be rezoned from public institutional land to commercial land. He advised Mr Lin that it was not possible but Mr Lin insisted and submitted the application. When it came the officers of the Physical Planning Division recommended to the NPPB to be rejected and it was rejected three times.
- The application for zoning or rezoning permission from the NPPB precedes everything else. When it rejects an application the land cannot be zoned or rezoned and every other process comes to a stop indefinitely until the PNGPPAT decides otherwise through an appeal process. A company granted the State Lease without the approval of the NPPB is wrong.

- To rezone a public institutional land to commercial; the CAO has to be revoked at the first instance. It is wrong to issue a license to an applicant without first revoking the CAO.

#### [4.6] INTERVIEW WITH THE INTERNAL AUDITOR

On 4 May 2006, the Internal Auditor, Mr Philip Kepas was interviewed. He stated that the Secretary for the DLPP gave the approval for the CAO to be revoked and exempted from public tender. The application went through the proper processes and procedures of the Department to be granted the Commercial Lease to the applicant except the checklist.

#### [4.7] INTERVIEW WITH THE DLPP SECRETARY

On 8 May 2006, the Secretary for the DLPP, Mr Pepi Kimas, was interviewed. He made the following points:

- Section 31 Allotment 3 was a public institutional land and the NPPB rejected the application of Quinquing Trading Limited to rezone the land from public institutional land to commercial land three times. If the Physical Planning Board rejects an application nothing happens thereafter.
- A license or lease granted with condition contrary to the *Land Act 1996* and *Physical Planning Act 1989* is null and void and the people who granted them are breaking the law.
- All land files remain under the control of the Secretary. They remain with him until they become an item of the Land Board and are moved to the Chairman and the Board Members. When the Land Board makes its decision the files are then returned to him for the Land Administration Division to advertise and gazette them. The Chairman of the LB cannot advertise nor gazette them.
- He was surprised when he was informed that the land in question was leased to the company and gazetted without his knowledge and involvement.
- When he asked where the file for the particular land was, he was told that a temporary file was created and floated around. It then went to the Land Board and got approved.
- Despite the continuous reminder that the land was a public institutional land and cannot be rezoned, the administrative system of the Department had leased it to the company without it being approved by the NPPB for rezoning.
- A license cannot be issued prior to the revocation of CAO. It had to be revoked before issuing the license.
- He further mentioned that he signed the documents for the revocation of CAO Number 110 (Island) based on incorrect information he received but when properly informed that it was a prime public institutional land located right in the heart of Kimbe Town, he said “no.” This land is public institutional and should remain public institutional land.
- When the NPPB rejected the Quinquing Trading Limited Planning Permission Application three times there was nothing to go to the Land Board. The applicant had to appeal with the PNGPPAT against NPPB Decision before going to the Land Board. It cannot bypass the PNGPPAT and go to the Land Board.

[4.8] INTERVIEW WITH THE PNGLB CHAIRMAN

On 9 May 2006 at 10:00 am Mr Francis Tanga; the PNGLB chairman was interviewed at the Office of the Ombudsman Commission in Port Moresby, National Capital District. He told the Commission that:

- He was a member of the National Physical Planning Board that rejected the Quinquing Trading Limited Rezoning Application.
- However, when a Managing Director for Quinquing Trading Limited expressed his frustration that it was expensive for him to fly back and forth from Port Moresby and wanted the PNGLB to meet and decide on the fate of his application, Mr Tanga convened a special Board Meeting and approved the application for commercial lease to be granted to the company.
- When asked why he did not reject the application when it was rejected by NPPB and not approved by the Divisional Head, he said the application was already gazetted and made available to the Board for deliberation. Therefore the Land Board had no choice but to go ahead to deliberate and approve the application on the condition that it would go back to the NPPB for rezoning approval.



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## 5. EVENTS AFTER THE PNGPPAT DECISION

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### [5.1] DECISION OF PNGPPAT

At Meeting Number 02 of 2006 the PNGPPAT upheld the Appeal Application of Quinquing Trading Limited dated 16 August 2006 and recommended that the land in issue be advertised for interested applicants to bid for it.

On 29 September 2006 the Minister for Lands & Physical Planning, Dr Puka Temu, endorsed the PNGPPAT decision.

There is no documentary evidence that the land was advertised as recommended by the PNGPPAT.

### [5.2] INTERVIEW WITH THE OFFICERS FROM DLPP

On 15 September 2006 several officers from the DLPP informed the Ombudsman Commission that:

- The Secretary for the DLPP is the Delegate of the Minister that signs the Licenses and Exemption from Advertisement Notice. In the absence of the Secretary the Deputy Secretary can sign them when acting in the position.

### [5.3] REVOCATION OF ALL THE POWERS PAST AND PRESENT

On 11 and 12 October 2006 the Secretary, Mr Pepi Kimas, and Minister for Lands, Honourable Dr P.L. Temu, CMG, revoked all the powers past and present delegated to all the officers in the Department except the powers relating to Section 128 and 129 of *Land Act* 1996 and the Office of the Secretary. They will make specific delegations as and when circumstances allow. The Revocation of powers was gazetted on 28 December 2006, Gazettal Number G234.

Note that the signing and issuing of the land title to the Quinquing Trading Limited was done after the revocation of all the powers delegated to the senior officers in the DLPP.

### [5.4] LETTER FROM PATTERSON LAWYERS TO LANDS SECRETARY

On 20 October 2006 Mr Zachary G. Gelu from Patterson Lawyers wrote a letter to the Secretary for Lands, Mr Pepi Kimas, entitled *Section 31 Allotment 03, Kimbe, West New Britain Province*. Mr Gelu stated:

- That their client had complied with the *Land Act* 1996 and the National Gazette Number G171 of 24 November 2005 is the evidence that their client is the successful applicant for the State Lease over the land in issue.
- That on 16 August 2006 their client lodged an appeal application with the PNGPPAT against the decision of the NPPB in rejecting their client's application for rezoning of Section 31 Allotment 03 from public institutional land to Commercial land.

- That the PNGPPAT had upheld their client's application at its Meeting Number 2 of 2006. The legal effect of the PNGPPAT decision is that their client's application for rezoning had been approved.
- That their client had complied with all the due processes under the *Land Act* 1996 and the Department. Hence without further delay the DLPP should issue the State Lease to Quinquing Trading Limited.
- That the public tendering of the said piece of land legally cannot stand as their client had legal and equitable interest over Section 31 Allotment 03, Kimbe, West New Britain Province.

Note that there is no documentary evidence that the State has consented to exempting the land from advertisement as requested by Patterson Lawyers.



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## 6. EVENTS AFTER OMBUDSMAN COMMISSION LETTER TO DLPP TO ISSUE REGISTRAR'S CAVEAT

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[6.1] OMBUDSMAN COMMISSION LETTER TO THEN ACTING LANDS SECRETARY

On 25 October 2006 the Ombudsman Commission wrote a letter to the Lands Secretary to stop any action that would be taken on Section 31 Allotment 3 until its investigation report was finalized and submitted to the Secretary and Minister for Lands & Physical Planning for appropriate action.

[6.2] ACTING LANDS SECRETARY MINUTES TO REGISTRAR OF TITLES

In response to the Ombudsman Commission letter of 25 October 2006, then Acting Secretary, Mr Pepi Kimas, sent two separate Minutes to the Registrar of Titles and copies of the second Minute to all the Divisional Heads in the Department on 14 November 2006 and 5 January 2007 to issue a Registrar's Caveat over Section 31 Allotment 03 Kimbe. The 14 November 2006 Minute states:

*The Ombudsman Commission has conducted a full investigation into the above mentioned property. In their opinion it appeared that the procedural and requirements under Lands & Physical Planning Act 1989 have not been strictly followed by the Department.*

*Rot File was requested. However, according to the hand written advice dated 14/11/06 from Records Officer – of Southern that Section 31 Allotment 03 Kimbe was leased by the Department but the title was never registered.*

*Whilst the property is unregistered it is in best interest for the State of PNG and for this Department that precaution measure must be in place to prevent further land dealings over this particular property in Kimbe.*

*Hence, in the name of the State we issue this Registrar's Caveat" Instruction to Registrar Of Titles dated 15 November 2006 to put a stop to any further land dealings over the above Section 31 Allotment 03.*

The 5 January 2007 Minute of the Secretary to the Registrar of Titles states:

*According to the hand written advice dated 14/11/06 from Records officer – southern that Section 31 Lot 03 Kimbe was leased by the Department but the title was never registered.*

*It is in the best interest for the State of PNG and for this Department that a precaution measure must be in place to prevent any form of transfer.*

*In view of the above I request you to issue a "Registrar's Caveat" immediately over Section 31 Lot 03 Kimbe to allow time for the matter to be resolved.*

Note that the Titles Division registered the State Lease issued to Quinquing Trading Limited on 15 December 2006 despite the Secretary's Minutes to the Registrar of Titles to issue the Registrar's caveat over Section 31 Allotment 03.

[6.3] ACCEPTANCE OF GRANT OF LEASE

On 12 December 2006 the Managing Director of Quinquing Trading Limited Mr Roger Lin in a letter to the Secretary of DLPP accepted the State Lease granted to the company. Thus accepting the terms, conditions, provisions, restrictions and covenants of the proposed lease specified under Section 76 of the *Land Act* 1996.

[6.4] DEPUTY SECRETARY FOR LAND SERVICES ENDORSEMENT OF STATE LEASE

On 14 December 2006 the Deputy Secretary for Land Services Mr Anthony Luben endorsed the State Lease issued to Quinquing Trading Limited to be registered and on 15 December 2006 the Deputy Registrar of Titles for MOMASE & NGI Mr Mark Tola signed for it to be registered in the land titles register.

[6.5] REGISTRAR OF TITLES LETTER TO OC

On 5 March 2007 the Registrar of Titles, Mr Raga Kavana, sent a letter to the Ombudsman Commission entitled *Allotment 3 Section 31 Kimbe – WNBK*. Mr Kavana confirmed that no action would be taken on the land in issue until the Commission completes its investigation and results made known to the Department for appropriate action.

[6.6] INTERVIEW WITH QUINQUING TRADING LIMITED MANAGING DIRECTOR

On 17 April 2007 the Managing Director for Quinquing Trading Limited, Mr Roger Lin, was interviewed at Liamo Reef Resort in Kimbe, West New Britain. He told the Commission that:

- He already got the title to the land in issue after paying K43, 000.00 to the DLPP around December 2006.
- His lawyer, Mr Zachary Gelu, from Patterson Lawyers and the officers from the DLPP got the title for him. He had no knowledge whether they had followed the proper processes and procedures to obtain the land title for him.
- He is currently waiting for the Provincial Building Inspector to give him the building plan to establish the proposed shopping complex.
- The attempt to get the copies of the receipts and the land title in Mr Lin's possession was unsuccessful.
- Note that the State Lease issued to Quinquing Trading Limited was registered contrary to the Ombudsman Commission letter to the DLPP not to take any action on the land in issued on 25 October 2006 until it completes its investigation report and the Lands Secretary's Minute to the Registrar of Titles to issue the Registrar's Caveat on 14 November 2006.

[6.7] SECRETARY'S MINUTE TO REGISTRAR OF TITLES

On 24 April 2007 the Secretary Mr Pepi Kimas sent a Minute to the Registrar of Titles expressing his concern over the non compliance of his instructions. The Minute reads:

*You are advised to examine two separate Instructions for Registrar's Caveat issued to you dated 14 November 2006 and 5 January 2007. They were issued as a result of an investigation undertaken by the Ombudsman Commission.*

*The latest caveat could have detected an error deliberately created by your division by illegally issuing a title to Quin Quing [Quinquing] Trading Limited in December 2006.*

*You have failed to comply with my first instruction and this has led to administer lease title through improper procedures.*

[6.8] SECRETARY'S MINUTE TO THE DEPUTY REGISTRAR OF TITLES (MOMASE & NGI)

On 10 May 2007 the Secretary Mr Pepi Kimas sent a Minute to the Deputy Registrar of Titles Mr Mark Tola expressing his concern that the State Lease issued to Quinquing Trading Limited was registered contrary to his instruction to issue the Registrar's Caveat over Section 31 Allotment 03.

He called for an internal investigation and required Mr Mark Tola to give him a report on how it happened. Mr. Tola's report was not produced to the Ombudsman Commission.

[6.9] OMBUDSMAN COMMISSION LETTER REQUESTING FOR INSTRUMENT OF DELEGATION OF POWERS

On 25 May 2007 the Ombudsman Commission wrote a letter to the Secretary Mr Pepi Kimas to produce the Instrument of Delegation of powers to Mr Romilly Kila Pat and the senior officers in the Department to the Commission. There was no response to the letter.

[6.10] INTERVIEW WITH THE DEPUTY REGISTRAR OF TITLES (MOMASE & NGI)

On 12 June 2007 the Deputy Registrar of Titles for MOMASE & NGI, Mr Mark Tola was interviewed at the Office of the Ombudsman Commission at Deloitte Tower, National Capital District. Mr Tola stated that:

- *The Land Titles Division is the last division that processes the land title when the application had fulfilled all the requirements of the Department and had been endorsed by the Secretary.*
- *On 14 December 2006 the Deputy Secretary for Land Services endorsed the registration of the State Lease and on 15 December 2006 he signed for its registration in the land titles register."*



[6.11] INTERVIEW WITH THE REGISTRAR OF TITLES

On 13 June 2007 the Registrar of Titles, Mr Raga Kavana, was interviewed at the Office of the Ombudsman Commission at Deloitte Tower in Port Moresby. He stated that:

- *He was on leave when the land title was issued to Quinquing Trading Limited on 15 December 2006.*
- *The Secretary had issued two Minutes to the Registrar of Titles these include the 14 November 2006 Minute and 5 January 2007 Minute. It was the latter Minute that he instructed the officers in his Division to refrain from taking any action on the land in issue until the Ombudsman Commission completes its investigation.*
- *The State Lease issued to Quinquing Trading Limited was registered before the Secretary's 5 January 2006 Minute to issue the Registrar's caveat over Section 31 Allotment 03 came to his division. He knew nothing about the Secretary's 14 November 2006 Minute.*
- *The two Deputy Registrars of Titles have the same power as the Registrar of Titles to sign and issue the land titles when all the application documents are in order. The Deputy Registrar of Titles for MOMASE & NGI Mr Mark Tola signed the State Lease to be registered in the land titles register as the Delegate of the Minister.*
- *He did not issue the Registrar's Caveat as instructed by the Lands Secretary Mr Pepi Kimas. He only issued instruction to his officers not to take any action on the matter until further advice. He did not see the need to issue the Registrar's Caveat at that point in time.*
- *He would have no problem cancelling the land title if the Ombudsman Commission comes up with a good finding on the gross abuse and manipulation of the processes and procedures or the breach of the Acts.*

[6.12] INTERVIEW WITH THE DEPUTY SECRETARY – LAND SERVICES

On 19 June 2007 the Deputy Secretary for Land Services, Mr Anthony Luben, was interviewed at the Office of the Ombudsman Commission at Deloitte Tower in Port Moresby, National Capital District. He informed the Commission that:

- *He was a member of the NPPB that rejected the rezoning application of Quinquing Trading Limited. He did not know what happened after that until it came to his office for endorsement for the registration of the State Lease.*
- *The Secretary clearly instructed all the Divisional Heads not to take any action on the land in issue until the Ombudsman Commission completes its investigation. He was fully aware of the instruction but might have signed the Lease on 14 December 2006 when it came together with the other documents.*
- *His endorsement of the State Lease was only administrative and does not become a legal document until it is registered by the Registrar of Titles under the Land Registration Act.*
- *The Secretary had already instructed the Registrar of Titles not to register the land in issue and he endorsed it thinking that when it gets to the Land Titles Division it would not be registered. However the Titles Division went ahead to register it.*

- *He was aware that some people in the Compliance Unit were pushing for the land title to be issued to Quinquing Trading Limited. He did not disclose the names of these people.*

[6.13] OMBUDSMAN COMMISSION SECOND LETTER REQUESTING FOR INSTRUMENT OF DELEGATION OF MINISTERIAL POWERS

On 1 October 2007 the Ombudsman Commission sent a second letter to the Secretary Mr Pepi Kimas to produce the Instrument of Delegation of the Ministerial powers to the senior officers in the DLPP to the Commission when there was no response to the first OC letter of 25 May 2007. There was no response to the second letter as well.

[6.14] INTERVIEW WITH THE DEPUTY SECRETARY (CORPORATE & REGULATORY SERVICES)

On 10 October 2007 the Deputy Secretary Mr Romilly Kila Pat was interviewed at the Office of the Ombudsman Commission, Deloitte Tower. He informed the Commission that:

- *The land owners have given Quinquing Trading Limited 21 days to move its business out of their land. Since Section 31 Allotment 03 was the DLPP land a license was issued to the company to relocate its business to avoid it from being lost until another land can be identified for it. There were other vacant land available but they could not be allocated because they were open for public tender and anyone could dispute it.*
- *The company did not produce any document to prove that it was given 21 days to relocate its business. He only depended on the company's letter to issue the license. Further he did not talk to the land owners to verify it. He admitted that:*

*“otherwise, there is nothing from the landowners in writing to us to move these people.”*

- *The Department had revoked the CAO according to its administrative process and procedure and issued the license to Quinquing Trading Limited. It was the checklist that was not done and needs to be done for the land to be allocated to the company.*
- *The License can be issued to an applicant anytime but it does not give one the right to own the land. The license is issued for a period of 12 months and can be cancelled anytime.*
- *Prior to November 2006 the two Deputy Secretaries had the delegated power to sign and issue the licenses. He signed and issued the license to Quinquing Trading Limited when he had the delegated power and would produce the instrument of his delegation to the Commission.*
- *The State Lease application cannot go to the PNGLB without the checklist or approval of all the Divisional Heads. If it goes to the PNGLB and the title given, it becomes another issue.*
- *He denied any involvement after 2005. He claimed that he was on study leave for a year in 2006. The application of the land in issue went to the PNGLB in 2006. However the documents with the Ombudsman Commission show that he instructed the application to go to the PNGLB in 2005.*

[6.15] INTERVIEW WITH THE SECRETARY FOR LANDS

The Secretary Mr Pepi Kimas was interviewed for the second time when DLPP registered the State Lease issued to Quinquing Trading Limited. He was interviewed on 11 October 2007 at the Office of the Ombudsman Commission at Deloitte Tower. Mr Kimas told the Commission that:

- *The Deputy Secretary Mr Romilly Kila Pat recommended for the CAO to be revoked and license issued to Quinquing Trading Limited. He revoked the CAO and license was issued to the company.*
- *The license was issued to the Quinquing Trading Limited to do feasibility study for a commercial purpose. The license is a permission to occupy a land to see if it fits one's purpose. It does not give an applicant a right to own the land.*
- *Exempting a land from tender does not mean that the land will be given to the applicant interested in it. Anyone can apply to acquire it.*
- *He was confused whether he or the Minister had the power to exempt the land from advertisement when Mr David Ward from the Ombudsman Commission asked him whether he had the power to exempt land from tender.*
- *He and the Minister revoked all the powers delegated to the officers in the DLPP twelve months ago.*
- *When asked whether he had informed the two Deputy Secretaries about the revocation of the powers he said he verbally informed the Deputy Secretary for Land Services on the matter.*
- *He was embarrassed that the Registrar of Titles Division had not issued the Registrar's Caveat over Section 31 Allotment 03 and the State Lease registered despite his Minutes to the Registrar of Titles on two occasions.*
- *The State Lease issued to Quinquing Trading Limited was already registered and he would not allow it to be cancelled. If he cancels it, it would defeat the integrity of the titles issued by the Department.*
- *He assured the Ombudsman Commission that he would take disciplinary action on officers who will be implicated in the investigation report.*
- *He did not produce the instrument on the powers delegated to the officers in the DLPP and other relevant documents requested in the interview to the Ombudsman Commission.*
- *It is evident that there were no records of the original copies of these instruments in the record management system of the DLPP.*

[6.16] OMBUDSMAN COMMISSION THIRD LETTER REQUESTING FOR INSTRUMENT OF DELEGATION OF POWERS

On 29 October 2007 the Ombudsman Commission wrote a third letter to the Lands Secretary Mr Pepi Kimas when the DLPP failed to produce the same documents requested in the first two letters. The Secretary of DLPP responded to the OC letters. Refer to Findings number 6.18.

[6.17] INTERVIEW WITH THE DEPUTY SECRETARY – LAND SERVICES

On 30 October 2007 the Deputy Secretary for Lands Services Mr Anthony Luben was interviewed at the Office of the Ombudsman Commission at Deloitte Tower, National Capital District. He told the Commission that:

- *The two Deputy Secretaries had the delegated power to sign licenses before November 2006.*
- *He was fully aware of the Secretary's two Minutes to the Registrar of Titles to issue the Registrar's Caveat over Section 31 Allotments 03 Kimbe until the Ombudsman Commission completes its investigation.*
- *He was also fully aware that the PAC had instructed the DLPP to refrain from taking any action on Section 31 Allotment 03.*
- *He endorsed the State Lease to be registered on 14 December 2006. The reason for the endorsement of the lease was simply an oversight. Some officers capitalized on his absence and sent it to him together with the other documents which he signed without realizing it. That was after he came back from leave.*
- *He further signed the lease thinking that it would be stopped by the Registrar of Titles Division since they were already advised by the Secretary to issue the Registrar's Caveat over Section 31 Allotment 03.*
- *He was fully aware that the Minister and the Secretary had revoked the powers of all the officers in the department except the powers relating to the Office of the Secretary and Section 128 and 129 of the Land Act 1996.*
- *The officers brought the documents to him to be signed without realizing that his powers were already revoked.*

[6.18] SECRETARY'S RESPONSE TO OMBUDSMAN COMMISSION LETTERS

On 31 October 2007 the Secretary Mr Pepi Kimas responded to the Ombudsman Commission letter of 25 October 2007 requesting for the instrument on the delegation of powers. The following documents were enclosed:

- (a) Copy of the Revocation Notice gazetted on 28 December 2006.
- (b) Copy of the 47 Recommendations of the National Land Development Taskforce of National Research Institute.
- (c) Copy of the brief of the Registrar of Titles to the Secretary on the land in issue.
- (d) Copy of the Departmental Heads delegated powers and functions to the officers in the Department.

Note that the original copy of the instrument on the delegation or sub-delegation of the ministerial powers to the senior officers in the DLPP was not furnished to the Ombudsman Commission.



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## 7. FINDINGS OF WRONG CONDUCT

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### [7.1] STATUS OF FINDINGS

In this chapter, we summarise our principal findings of wrong conduct and defective administrative practices.

As we stated in Chapter 1, the purpose of this investigation was:

- To determine whether any of the conduct under investigation was *wrong*.
- To determine whether there were any *defects* in any law or administrative practices.

When the Commission conducts an investigation of this nature, it is not confined to reporting on whether breaches of the law have occurred. The constitutional mandate is much broader than this. The Commission is authorised to report on what, *in its opinion*, is *wrong* conduct, irrespective of whether that conduct was in accordance with the law.

The Ombudsman Commission is authorised to form opinions on these matters by Section 22(1) of the *Organic Law on the Ombudsman Commission*, which states:

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**The succeeding provisions of this Section apply in every case where the Commission, after making an investigation under this Law, is of the opinion that -**

- (a) The conduct, the subject of the investigation, was wrong; or**
  - (b) The law or administrative practice, the subject of the investigation, or any other law or administrative practice, is defective; or**
  - (c) The practice, the subject of the investigation is discriminatory within the meaning of**
  - (d) any law prohibiting such practices.**
- 

Some of our opinions have been formed in relation to individuals who no longer hold public office. The Ombudsman Commission is of the view that public policy and public good require we should still make these findings.

In this chapter, each opinion is set out as follows:

- the finding (i.e. opinion) is stated;
- the main reasons for forming that opinion is stated; and
- a reference is given to the paragraphs where the facts and reasons relevant to the opinion is set out in detail.

An index of the findings is set out below.

[7.2] INDEX OF FINDINGS OF WRONG CONDUCT

Finding Number	Name
1	Department of Lands and Physical Planning
2	Department of Lands and Physical Planning
3	Department of Lands and Physical Planning
4	Registrar of Titles Division – Department of Lands and Physical Planning
5	Pepi Kimas – Secretary for Department of Lands and Physical Planning
6	Pepi Kimas – Secretary for Lands and Physical Planning
7	Romilly Kila Pat – Deputy Secretary for Lands and Physical Planning
8	Romilly Kila Pat – Deputy Secretary for Lands and Physical Planning
9	Anthony Luben – Deputy Secretary for Lands and Physical Planning
10	Anthony Luben – Deputy Secretary for Lands and Physical Planning

[7.3] FINDINGS

**FINDING N<sup>o</sup> 1**

**In the opinion of the Ombudsman Commission it was wrong for the Secretary and the two Deputy Secretaries of the DLPP to exercise powers under the *Land Act 1996* without the appropriate instruments of delegation or sub-delegation of the minister's powers and functions to them.**

**Reason**

- Section 143 (1), (2) and (3) of the *Lands Act 1996* relates to the power of the Departmental Head to delegate:
  - (1) *The Departmental Head may, by writing under his hand, delegate to a person (in this Section referred to as "the Delegate") all or any of his powers and functions under this Act.*
  - (2) *Where the Departmental Head makes a delegation under Subsection (1), he may, in the same or another instrument of delegation, also delegate to the Delegate the power, by instrument, to further delegate all or any of the delegated*

*powers or functions to a person or member of a class of persons (in this Section called "the Sub delegate") specified in the Departmental Head's instrument.*

(3) *Where the Delegate makes a further delegation pursuant to Subsection (2), he may, in the same or another instrument, but subject to any restrictions placed on him by the Departmental Head, also delegate to the Sub delegate the power, by instrument, to further delegate all or any of the delegated powers and functions to a person or a member of a class of persons specified in the Delegate's instrument.*

- The instruments of delegation or sub-delegation of the minister's powers and functions are important documents that ought to be preserved in the Department's filing system for public information and a guide to ensure that the senior officers in the Department do not act outside of their delegated powers and functions.
- The Ombudsman Commission investigation into the *Alleged Improper Rezoning of Public Institutional Land to Commercial Land in Kimbe Section 31 Allotment 03* discovered that the Secretary, Mr Pepi Kimas and the Deputy Secretaries of the DLPP Mr Romilly Kila Pat and Mr. Anthony Luben have been issuing licenses and exempting land from advertisement which are Ministerial powers, not vested in them.
- On 25 May 2007 the Ombudsman Commission wrote the first letter to the Lands Secretary, Mr Pepi Kimas to produce the instrument on the delegation or sub-delegation of the minister's powers he and his senior officers have been exercising in the Department to the Commission.
- On 1 October 2007 the Ombudsman Commission sent a second letter to the Secretary Mr Pepi Kimas to produce the instrument on the delegation of the Ministerial powers to the senior officers in the DLPP when there was no response to its first letter of 25 May 2007.
- Furthermore the Ombudsman Commission requested the Deputy Secretary Mr Romilly Kila Pat on 10 October 2007, the Secretary Mr Pepi Kimas on 11 October 2007 and Mr Anthony Luben on 30 October 2007 in separate interviews to produce the instrument showing their delegated or sub-delegated powers to the Commission. The three officers confirmed that they were the Delegate of the Minister and would produce the instrument to the Commission.
- On 29 October 2007 the Ombudsman Commission wrote a third letter to the Secretary Mr Pepi Kimas after the interview requesting him to produce the instrument he and his deputies confirmed to produce to the Commission when there was no response to the first two letters.
- On 31 October 2007 the Secretary, Mr Pepi Kimas, furnished a copy of the revocation of all the delegated powers of the Minister and the Secretary to the senior officers in the Department except the powers relating to Section 128 & 129 under the *Land Act* 1996 and the Office of the Secretary gazetted on 28 December 2006, Gazettal Number G234. The copy of the Departmental Head's delegated powers and functions as specified under Section 43 of the *Land Act* 1996.
- The gazettal notice on the revocation of powers authorized by him on 11 October 2006 and the Minister on 12 October 2006 produced to the Commission as evidence that the



ministerial powers have been delegated or sub-delegated to the officers in the Department does not specify the powers that have been delegated or sub-delegated to them in the past and were now revoked. It was generalized as “all the powers.”

- The DLPP failed to produce the copy of the instrument on the delegation of the powers and functions the Lands Secretary and his two Deputies have been exercising in the Department to the Commission despite being requested to provide them through letters and interviews with them.
- Without the original copy of the instrument on the delegation or sub-delegation of the minister’s powers to the senior officers in the Department the Secretary and the two Deputy Secretaries have been exercising powers without authority.

## Reference

The facts and reasons relevant to this opinion are set out in paragraphs [6.9] [6.13] [6.14] [6.15] [6.17] [6.16] [6.18] and [5.3]

## FINDING N<sup>o</sup> 2

**In the opinion of the Ombudsman Commission the Secretary Mr Pepi Kimas’ exemption of Section 31 Allotment 03 from Advertisement without any documentary evidence that he was delegated the power by the Minister to exempt land was wrong.**

## Reason

- Section 69 (2) of the Land Act 1996 relates to the duty to advertise land and who has the power to exempt land from advertisement:
  - (1) *A State lease shall not be granted without first being advertised in accordance with Section 68 unless the land has been exempted from advertisement under Subsection (2).*
  - (2) *The Minister may exempt land from advertisement for application or tender—*
    - (a) *where the lease is granted to a governmental body for a public purpose; or*
    - (b) *where it is necessary to relocate persons displaced as a result of a disaster as defined in the Disaster Management Act (Chapter 403); or*
    - (c) *where a lessee applies for a further lease; or*
    - (d) *where the State has agreed to provide land for the establishment or expansion of a business, project, or other undertaking; or*
    - (e) *where the land applied for adjoins land owned by the applicant and is required to bring the holding up to a more workable unit, providing that the claims of other neighbouring landowners are*

*considered and their views taken into account in deciding whether to exempt the land from advertisement in favour of the applicant; or*

- (f) *where the Department responsible for foreign affairs recommends that land be made available to the applicant for consular premises; or*
- (g) *where the land is required for the resettlement of refugees; or*
- (h) *Where the applicant has funded the acquisition of the land from customary landowners in order to acquire a State lease over it; or*
- (i) *where a lease is to be granted under Section 99 or 102; or*
- (j) *where a new lease is granted under Section 110, 130 or Section 131.*

- According to Section 69 (2) of the *Land Act* 1996, it is the Minister who has the power to exempt land from advertisement for application or tender. There is no provision under this Act that states that the Departmental Head or the Delegate of the Minister may exempt land from tender.
- On 26 November 2004 the Secretary Mr Pepi Kimas exempted Quinquing Trading Limited Lease Application from tender.
- On 25 May 2007 the Ombudsman Commission wrote a letter to the Secretary, Mr Pepi Kimas to produce the instrument on the delegation of powers to the senior officers in the DLPP that gave him the power to exempt land from tender to the Commission. There was no reply to this letter.
- On 11 October 2007 the Secretary Mr Pepi Kimas told the Ombudsman Commission in the interview that he was confused whether he had the delegated power to exempt land from tender. He thought he had the delegated power to exempt land from tender but he would check and produce the instrument to the Commission.
- On 29 October 2007 the Ombudsman Commission wrote a third letter to the Secretary Mr Pepi Kimas to produce the instrument on the delegation of powers as per the first two letters and interview with the Commission.
- The Secretary, Mr Pepi Kimas did not produce the instrument on the delegation of powers to the Commission to prove that the Minister had delegated him the power to exempt land from tender in the documents he sent to the Commission on 31 October 2007. Refer to Finding Number 1.
- Without the delegated ministerial power to exempt land from tender the Secretary Mr Pepi Kimas had acted outside his powers. He therefore breached Section 69 (2) of the *Land Act* 1996.

## Reference

The facts and reasons relevant to this opinion are set out in paragraphs [2.13] [6.9] [6.15] [6.16] and [6.18].

**In the opinion of the Ombudsman Commission the Deputy Secretary for Corporate and Regulatory Services Mr Romilly Pat Kila's conduct in licensing and issuing License Number 06 of 2004 (Island) to Quinquing Trading Limited to do feasibility studies for a business purpose without any documentary evidence that he was delegated or sub-delegated Minister's powers to issue license was wrong.**

## **Reason**

- Section 125(1) of the *Land Act* 1996 relates to the grant of the license:
  - (1) *Subject to Subsection (2), the Minister or his delegate may grant a license in the approved form to a person to enter on Government land for one or more of the following purposes:—*
    - (a) *to graze stock or a specified kind of stock; or*
    - (b) *to strip, dig and take away any valuable material or substance; or*
    - (c) *for fishermen's residences and drying grounds; or*
    - (d) *for any other temporary purpose approved by the Minister.*
  - (2) *A license shall not be granted for a purpose that would be in contravention of zoning requirements under the Physical Planning Act 1989, any other law relating to physical planning, or any law relating to the use, construction or occupation of buildings or land.*
  - (3) *A license under Subsection (1) may be granted subject to such conditions as the Minister or officer granting the license thinks proper, and, subject to those conditions, empowers the licensee—*
    - (a) *to make such temporary improvements and do such things on the land the subject of the license as are necessary or convenient for the purposes of the license; and*
    - (b) *to remove such of those improvements as are severable on or before the termination of the license, doing as little damage as may reasonably be to the land.*
  - (4) *A license under this Section continues in force for a period, not exceeding one year, specified in the license.*
  - (5) *In addition to or in substitution for the prescribed fee for a license, where a license is issued under this Section for a purpose specified in Subsection (1) (b) the licence is subject to the payment of such royalties (if any) on the material or substance stripped, dug or taken away and to such restrictions and conditions as are prescribed or as to the Minister or officer granting the licence seem proper.*

(6) *A license granted under this Division may be revoked by the Minister for failure to comply with, or for a contravention of, the conditions of the license.*

- According to the above provision of the *Land Act* 1996 the license may be granted by the Lands Minister or the Delegate of the Minister.
- On 12 November 2004 the Deputy Secretary for Corporate and Regulatory Services, Mr Romilly Kila Pat, signed and issued License Number 06 of 2004 (Island) to Quinquing Trading Limited.
- On 10 October 2007 Mr Romilly Kila Pat told the Ombudsman Commission in the interview that he was the Delegate of the Minister that empowered him to grant licenses to applicants and would produce the instrument to the Commission. He stated that ***“at that time yes I was the delegate. Delegation was done prior to me assuming the role as the Deputy Secretary. But until recently the Minister gazetted that we don’t have any powers now. But at that time we did have the powers.”***
- The Deputy Secretary Mr Romilly Kila Pat failed to produce the instrument of delegation he confirmed to produce to the Commission. Instead he produced the Revocation Gazettal Notice dated 28 December 2006 to the Commission. Refer to Finding Number 5.
- Without any documentary evidence of the delegation of powers Mr. Romilly Kila Pat acted outside his powers. The validity of the license he signed and issued to Quinquing Trading Limited is questionable.

## Reference

The facts and reasons relevant to this opinion are set out in paragraphs [2.9] [6.14] [5.3] and [6.18].

## **FINDING N<sup>o</sup> 4**

**In the opinion of the Ombudsman Commission the Deputy Secretary for Corporate and Regulatory Services Mr Romilly Kila Pat's conduct in supporting the Quinquing Trading Limited's application to go to the PNGLB contrary to the administrative process and procedures and the Secretary's instruction was wrong.**

### **Reason**

- Mr Romilly Kila Pat was well acquainted with the administrative processes and procedures of the DLPP that the State Lease Applications are approved by the NPPB before they go through checklist to all the Divisional Heads to the PNGLB. They cannot go to the PNGLB without firstly the approval of the NPPB and secondly the approval of all of the Divisional Heads. If the applicants are aggrieved by the decision of the NPPB they have to appeal against the decision to the PNGPPAT.
- According to the documentary evidence the NPPB rejected the Quinquing Trading Limited Rezoning Application on three occasions on 22 April 2005, 20 May 2005 and 28 June 2005.
- On 24 February 2005 the Secretary Mr Pepi Kimas advised the Land Administration Director Mr Daniel Katakumb that Section 31 Allotment 03 was a prime piece of land and the license issued to Quinquing Trading Limited was to be refused and the land to be advertised. The DLPP administrative system failed to implement the Secretary's instruction.
- The Acting Secretary then Mr Romilly Kila Pat knowing well that the Quinquing Trading Limited rezoning application was rejected by the NPPB three times and the Secretary instruction to refuse license and advertise the land instructed the Director for the Land Administration Division in hand written note dated 1 August 2005 in the Legal Manager's Brief to the Secretary on 28 July 2005 to ensure that a checklist was completed and the matter referred to the PNGLB. Mr Pat's instruction was contrary to the Secretary's instruction.
- On 10 October 2007 the Ombudsman Commission in the interview asked Mr Romilly Kila Pat why he supported the Quinquing Trading Limited application to go to the PNGLB when it was rejected by the NPPB and the Secretary instructing the internal administrative system to refuse the license and advertise the land.
- Mr Romilly Kila Pat denied his involvement. He said that Quinquing Trading Limited application went to the PNGLB after 2006 when he was away on study leave.
- The Ombudsman Commission clearly pointed out to Mr Pat that he supported the application to go to the PNGLB in 2005 when he was the Acting Secretary then. He went to study in 2006. Mr Pat said nothing in response.

- The Deputy Secretary deliberately supported the Quinquing Trading Limited application rejected by NPPB and the Secretary Mr Pepi Kimas instruction to refuse the license to go to the PNGLB.

## Reference

The facts and reasons relevant to this opinion are set out in paragraphs [2.9] [2.17] [2.20] [2.23] and [6.14].

## FINDING N<sup>o</sup> 5

**In the opinion of the Ombudsman Commission the Deputy Secretary for Land Services Mr Anthony Luben's conduct on 14 December 2006 in endorsing the registration of the State Lease issued to Quinquing Trading Limited to be registered without the delegation of the ministerial power was wrong.**

## Reason

- On 11 and 12 October 2006 the Secretary Mr Pepi Kimas and the Minister for Land Honorable Dr Puka Temu revoked all the powers delegated or sub-delegated to the officers of the DLPP except powers relating to Section 128 & 129 and Office of the Secretary gazetted on 28 December 2006 Gazettal Number G234.
- On 14 December 2006 the Deputy Secretary Mr Luben endorsed the registration of the State Lease issued to Quinquing Trading Limited and the Deputy Registrar of Titles for MOMASE & NGI Mr Mark Tola signed for its registration on 15 December 2006.
- The Secretary Mr Pepi Kimas told the Ombudsman Commission in an interview on 11 October 2007 that he verbally told the Deputy Secretary Mr Anthony Luben that all the powers delegated to him and other officers have been revoked. He stated: ***“I am almost certain that revocation of my delegation was made aware to two deputies. This and few matters of this kind. I asked the Minister that what you are telling me now is to remove their powers. Orally or however, I am almost certain that they were informed.”***
- Mr Anthony Luben told the Ombudsman Commission in the interview on 30 October 2007 that he was fully aware of the revocation of all the powers delegated to the officers of the Department by the Secretary and the Minister for Lands however he endorsed the State Lease anyway to be registered. In his evidence to the Ombudsman Commission Mr. Luben stated that: ***“All the other powers have been revoked. We no longer have powers to sign any of those documents anymore. I did not notice that gazette was in already. As I said people were deliberately bringing these things up for signing and I signed them.”***
- The documents produced to the Ombudsman Commission by the Secretary on 31 October 2007 did not show that Mr Anthony Luben was delegated the power to endorse State Lease at the first place. Refer to Finding Number 1.

- The Deputy Secretary for Land Services Mr Anthony Luben deliberately acted outside of his power to endorse the State Lease issued to Quinquing Trading Limited for registration that became an indefeasible title whose validity can only be challenged in court.

## Reference

The facts and reasons relevant to this opinion are set out in paragraphs [5.3] [6.4] [6.15] [6.17] and [6.18].

## FINDING N<sup>o</sup> 6

**In the opinion of the Ombudsman Commission the Deputy Secretary for Land Services, Mr Anthony Luben's conduct in endorsing the State Lease granted to Quinquing Trading Limited to be registered in the land titles register with the full knowledge that it was improper was wrong.**

## Reason

- On 30 October 2007 the Ombudsman Commission questioned the Deputy Secretary, Mr Anthony Luben in the interview whether he was aware of the Secretary's two Minutes to the Registrar of Titles to issue the Registrar's Caveat over Section 31 Allotment 3 and all officers of the Department to refrain from taking any further action on it until the Commission completes its investigation report. Mr Luben said he was aware of the Secretary's Minutes on the matter. Mr. Luben informed the Ombudsman Commission stating: *"I was. I'm aware of that. I'm fully aware of that. This particular case was the one brought up to the Public Accounts Committee. The Secretary in his Minute advised that no action should be taken on this particular land until the Ombudsman Commission completes its investigation."*
- Mr Luben also told the Ombudsman Commission that he was a member of the National Physical Planning Board that rejected the Quinquing Trading Limited Rezoning Application three times. The reason for rejection is that the site was zoned public institutional and must remain as such for the development of public utilities.
- He further said that he was aware that the Public Accounts Committee had advised the Department not to engage in any land deal in relation to Section 31 Allotment 3 Kimbe.
- However Mr Luben went ahead to sign the State Lease to be registered by the Land Titles Division on 14 December 2006.
- Mr Luben's reason for signing the State Lease for Registration was simply an oversight. It came together with the other documents and he signed it without realizing it.
- He further stated that he signed it thinking that the Registrar of Titles Division would reject it when it gets to them because they were already issued the Minute to issue the Registrar's Caveat referring to the Lands Secretary's 11 November 2006 Minute.
- The reasons provided by Mr Luben for endorsing the State Lease are unjustifiable. He knew all the facts and had deliberately endorsed the controversial land to be registered.

- He had a duty to ensure that the proper. His reasons conflict with his other responses.

## Reference

The facts and reasons relevant to this opinion are set out in paragraphs [3.3] [6.4] [6.12] and [6.17].

## **FINDING N<sup>o</sup> 7**

**In the opinion of the Ombudsman Commission the DLPP failed to comply with its administrative processes and procedures to permit the Quinquing Trading Limited lease application to go to the PNGLB for the grant of commercial lease.**

## Reason

- According to the administrative processes and procedures of the DLPP, Rezoning Applications are approved by (a) National Physical Planning Board, (b) cleared by PNGPPAT if the applicants are aggrieved by the NPPB decision, and (c) the checklists approved by all the Divisional Heads (Chief Physical Planner, Surveyor General, Valuer General and the Director Land Administration) that the applications have met the requirements of all the divisions before they go to the PNGLB. They cannot go to the PNGLB without the approval of the NPPB or the disapproval of one of the Divisional Heads.
- The NPPB rejected the Quinquing Trading Limited Rezoning Application three times on 22 April 2005, 20 May 2005 and 28 June 2005. The next step was for Quinquing Trading Limited to appeal with PNGPPAT against NPPB decision.
- The DLPP failed to appoint the members of the PNGPPAT quickly to deliberate on QTL appeal application when their term expired. Hence the DLPP internal administrative system sent the Quinquing Trading Limited application to the PNGLB without the PNGPPAT clearance.
- The DLPP also failed to allow the Quinquing Trading Limited Commercial Lease Application to be approved by all the Divisional Heads through checklist before it went to the PNGLB. The Department sent the Quinquing Trading Limited application to the PNGLB without the Divisional Heads' approval.
- The Secretary, Mr Pepi Kimas and all the Divisional Heads of the DLPP in the interviews confirmed that they had not sighted the checklist nor approved it to go to the PNGLB which was a precondition that should have been done.
- The DLPP further failed to allow the Land Administration Division responsible for the circulation and collection of the checklist and gazettal of the PNGLB items to perform its function. Some unknown officers in the Department processed the application to go to the PNGLB directly.



- On 1 May 2006 the Director for the Land Administration, Mr Daniel Katakumb, informed the Commission in the interview that the Land Administration Division responsible for the distribution and collection of the checklist for the Secretary's approval and gazettal did not distribute any checklist nor gazetted it to go before the PNGLB.
- The Director for the Land Administration also informed the Commission that he physically went to the PNGLB Meeting and clearly stated to the Board that this particular application cannot be considered since (a) it was rejected by the NPPB, (b) it was not approved by all the Divisional Heads, and (c) it was not endorsed by his Division and the Secretary. The PNGLB went ahead to approve the State Lease Application on the condition that it would go back to the NPPB and seek rezoning approval. The Commercial Lease was issued to the company on 20 October 2005. This process was not correct.
- More so, the DLPP failed to allow the Land Administration Division to again receive the PNGLB Meeting Minute to make a formal submission to the Secretary to go to the Minister for endorsement for gazettal when it was approved by the Board. It was again done by some unknown officers in the Department and the lease was gazetted on 24 November 2005, Gazettal Number G171.
- The DLPP's failure to advertise Section 31 Allotment 03 and issue the Registrar's Caveat is explained in detail in Finding Numbers 8 and 10.
- The DLPP totally disregarded the established systems, processes and procedures resulting in the issuance and registration of the State lease to Quinquing Trading Limited.

## **Reference**

The facts and reasons relevant to this opinion are set out in paragraphs [2.20] [3.1] [3.4] [4.3] [4.4] [4.5] [4.6] [4.7] and [4.8].

## FINDING N<sup>o</sup> 8

**In the opinion of the Ombudsman Commission the DLPP failed to comply with Section 68 and Section 69 of the *Land Act 1996* to advertise the land as recommended by the PNGPPAT.**

### Reason

- Section 68 of the *Land Act 1996* on the *Advertisement of the Lands Available for Leasing* states:
  - (1) *Except where land has been exempted from advertisement under Section 69, the Departmental Head shall give notice, by advertisement in the National Gazette, of all lands available for leasing under this Act.*
  - (2) *An advertisement under Subsection (1) shall contain the following information:—*
    - (a) *the type of lease available to be granted;*
    - (b) *the purpose of the lease;*
    - (c) *The length of the lease;*
    - (d) *a description of the land to be leased;*
    - (e) *the amount of rent (if any) payable for the first period of the lease;*
    - (f) *In the case of a special purposes lease—any royalties that are payable;*
    - (g) *the terms and conditions of the lease;*
    - (h) *the reserve price;*
    - (i) *such other information as the Departmental Head thinks fit or the Minister directs.*
  - (3) *A statement contained in an advertisement under this Section does not in any way bind the State in the granting of a lease over land the subject of the advertisement or constitute an offer to lease land.*
- Section 69 of the *Land Act 1996* on *Duty to Advertise State Leases* states:
  - (1) *A State lease shall not be granted without first being advertised in accordance with Section 68 unless the land has been exempted from advertisement under Subsection (2).*

(2) *The Minister may exempt land from advertisement for application or tender—*

- (a) *where the lease is granted to a governmental body for a public purpose; or*
- (b) *where it is necessary to relocate persons displaced as a result of a disaster as defined in the Disaster Management Act (Chapter 403); or*
- (c) *where a lessee applies for a further lease; or*
- (d) *where the State has agreed to provide land for the establishment or expansion of a business, project, or other undertaking; or*
- (e) *where the land applied for adjoins land owned by the applicant and is required to bring the holding up to a more workable unit, providing that the claims of other neighboring landowners are considered and their views taken into account in deciding whether to exempt the land from advertisement in favor of the applicant; or*
- (f) *where the Department responsible for foreign affairs recommends that land be made available to the applicant for consular premises; or*
- (g) *where the land is required for the resettlement of refugees; or*
- (h) *where the applicant has funded the acquisition of the land from customary landowners in order to acquire a State lease over it; or*
- (i) *where a lease is to be granted under Section 99 or 102; or*
- (j) *where a new lease is granted under Section 110, 130 or Section 131.*

- According to Section 68 of the *Land Act* 1996 the rezoning of a public institutional land to commercial land at the first instance has to be advertised unless the land is exempted from advertisement by the Minister as specified under Section 69 subsection 2. Subsection 2 provides reasons (a–j) that exempt the land from tender.
- The reason invoked by the Lands Secretary Mr Pepi Kimas to exempt Section 31 Allotment 03 from advertisement on 26 November 2004 is Section 69(2) (d).
- There is no agreement or undertaking from the Governor General on behalf of the State for this clause to be invoked. The Secretary’s hand written comment that states “proceed recommendation” on the Deputy Secretary’s Minute is not explicit thus it cannot be inferred that the State has agreed to provide the prime institutional land for business purposes.
- On 16 August 2006 the PNGPPAT in Meeting Number 02 upheld the rezoning appeal application of Quinching Trading Limited against NPPB decision and recommended for the DLPP to advertise the land in question.
- The PNGPPAT recommendation for the advertisement of the said piece of land superseded the Secretary’s Exemption from Advertisement Notice of 26 November 2004.

- On 20 October 2006 Patterson Lawyers wrote a letter to the Secretary for Lands Mr Pepi Kimas that their client had a legal and equitable interest over the said piece of land and it should be given to it without tender.
- There is no documentary evidence that the State has agreed to exempt the land from advertisement after the PNGPPAT recommendation and Patterson Lawyer's letter to the Secretary.
- DLPP failed to advertise the said piece of land as recommended by PNGPPAT under Section 69 of the *Land Act* 1996. It granted the State Lease to Quinquing Trading Limited and registered it in the land titles register without advertising it.

## Reference

The facts and reasons relevant to this opinion are set out in paragraphs [2.13] [5.1] and [5.4]

## **FINDING N<sup>o</sup> 9**

**In the opinion of the Ombudsman Commission the Lands Titles Division failed to issue the Registrar's Caveat as requested by the Ombudsman Commission through the office of Secretary for Lands Mr Pepi Kimas.**

## Reason

- On 25 October 2006 the Ombudsman Commission wrote a letter to the Secretary Mr Pepi Kimas requesting the DLPP not to take any action on the land in issue until the Commission completes its investigation and the report made available to the Department for action.
- The Secretary, Mr Pepi Kimas then sent two Minutes to the Registrar of Titles, Mr Raga Kavana to issue the Registrar's Caveat over Section 31 Allotment 03. These include the 11 November 2006 Minute and 5 January 2007 Minute which was copied to all the Divisional Heads. The January Minute does not make reference to the November Minute.
- According to the documents furnished to the Ombudsman Commission on 14 December 2006 the Deputy Secretary Mr Anthony Luben endorsed the State Lease issued to Quinquing Trading Limited.
- On 15 December 2006 the Deputy Registrar of Titles for MOMASE & NGI, Mr Mark Tola signed the State Lease to be registered in the land titles register.
- On 5 March 2007 the Registrar of Titles, Mr Raga Kavana wrote a letter to the Ombudsman Commission confirming that no further action will be taken on the land in issue until the Commission completed its investigation and results made known to the DLPP for appropriate action.
- On 24 April 2007 the Lands Secretary sent a minute to the Registrar of Titles expressing concern that his instruction to issue the Registrar's Caveat over Section 31 Allotment 03

was not followed and the land title illegally issued to Quinquing Trading Limited on 14 December 2006.

- On 10 May 2007 the Lands Secretary Mr Pepi Kimas sent another minute to the Deputy Registrar of Title Mr Mark Tola that his instruction was not followed and the lease issued to Quinquing Trading Limited was registered in the land titles register. He wanted him to investigate and give him a report explaining what happened.
- On 12 June 2007 Mr Mark Tola Deputy Registrar of Titles for MOMASE & NGI stated in the interview that he was unaware of the November Minute. He was only aware of the 5 January 2007 Minute.
- On 13 June 2007 the Registrar of Titles Mr Raga Kavana told the Ombudsman Commission in the interview that he was unclear whether he received the 14 November 2006 Minute of the Secretary, stating that he forgot to check with his secretary on this instruction. When describing the minute he refers to a document that was copied to all directors, this could only refer to the second minute. The first minute was not copied to any other staff.
- On 29 October 2007 the Ombudsman Commission wrote a letter to the Secretary, Mr Pepi Kimas to produce to the Commission a printout copy from the register at the Land Titles Division to confirm when the November Minute was received when the views of the two offices contradict each other. The Secretary did not produce it to the Commission nor did the Registrar of Titles Mr Kavana.
- Note that the land registration file of the land in question went missing from the Registrar of Title's office when he was on leave. Consequently the documents containing the date of the Secretary's first Minute to the Registrar of Titles cannot be established. The result of the internal investigation into the missing file was not made known to the Ombudsman Commission. Hence what the Registrar of Title's officers are saying is questionable and the question then is why the land registration file has gone missing during the Ombudsman Commission investigation.
- The underlying fact is that the internal administrative system of the DLPP failed to issue the Registrar's Caveat over Section 31 Allotment 03 as instructed by the Secretary at the request of the Ombudsman Commission when conducting a full investigation into the matter.

## Reference

The facts and reasons relevant to this opinion are set out in paragraphs [6.1] [6.2] [6.4] [6.7] [6.8] [6.10] [6.11] [2.13] [6.16] and [6.17].

## **FINDING N<sup>o</sup> 10**

**In the opinion of the Ombudsman Commission the DLPP failed to require the applicant to produce evidence to substantiate the desperate situation the company encountered for the urgent acquisition of the State Lease.**

## Reasons

- Mr Roger Lin's letter to the Deputy Secretary, Mr Romilly Kila Pat on 28 October 2004 stated that the customary land owners have given him 21 days to move his business out of their land and requested that the DLPP allocates him a land to relocate his business to prevent it from being lost. Mr Lin did not provide any documentary evidence to prove his claim.
- The Provincial Land Advisor Mr Ben Madiu's letter to the Secretary for DLPP enclosing his Site Inspection Report on 2 November 2004 did not state the reason Mr Roger Lin stated. He only mentioned that the company needed the land to do business.
- Mr Ben Madiu's another letter to the Director Land Management, Northern/Island Region (LMDNIR) and a copy to the Acting Provincial Administrator Mr Willie Edo on 18 November 2004 did not state the reason Mr Roger Lin stated. He stated that Quinquing Trading Limited wanted the land to do business.
- The Ombudsman Commission trip to Kimbe, West New Britain Province, discovered from Mr Ben Madiu himself on 3 April 2006 that he was not aware of any land owner in Kimbe giving the company a 21 days ultimatum to relocate its business. He only knew that the company expressed interest to develop the land.
- The Deputy Secretary Mr Romilly Kila Pat's Minute to the Secretary, Mr Pepi Kimas on 26 November 2004 to exempt the land from public tender did not produce any documentary evidence of Quinquing Trading Limited to prove to the Secretary that the company urgently needed the land to relocate its business. In his evidence to the Ombudsman Commission, Mr. Kila-Pat admitted that there was nothing from the landowners in writing to us to move this people.

## References

The facts and reasons relevant to this opinion are set out in paragraphs [2.5] [2.6] [2.10] [4.1] and [2.13].



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## 8. RECOMMENDATIONS

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### [8.1] LEGAL FRAMEWORK FOR MAKING RECOMMENDATIONS

As indicated in Chapter 1, the general purpose of this investigation was to determine whether any of the conduct under investigation was wrong and to determine whether any laws or administrative practices were defective.

The Ombudsman Commission is expressly authorised to form an opinion on such matters by Section 22 (1) of the *Organic Law on the Ombudsman Commission*.

If, after conducting its investigation, the Commission comes to the conclusion that some of the conduct was wrong or that any law or administrative practice was defective, it is authorised to make specific recommendations. Such recommendations are made under Section 22(2) of the *Organic Law on the Ombudsman Commission*.

Each recommendation is set out as follows:

- the recommendation is stated;
- the recipients (i.e. the person to whom the recommendations are directed) are identified;
- the main reasons for making the recommendations are stated.

### [8.2] RECOMMENDATIONS CONCERNING PARTICULAR INDIVIDUALS

We recommend that some individuals have their continuing public employment carefully reviewed. The Ombudsman Commission is of the opinion that holders of public offices must continue at all times to be accountable for their actions, even if they have left the position in which they were found to have committed the wrong conduct and are occupying new positions.

### [8.3] RECIPIENTS OF RECOMMENDATIONS

When we make recommendations we are obliged by Section 22(2) of the *Organic Law on the Ombudsman Commission* to identify the service, body, person or other appropriate authority who has to carry them out.

We are also obliged by Section 22(2) of the *Organic Law on the Ombudsman Commission* to report our recommendations to both the Minister and, if appropriate, the permanent or statutory head responsible for the service, body or person who has to carry out the recommendations.

In relation to each recommendation made in this chapter, recipients of the recommendations are listed as follows:

- first, the service, body or person we are asking to do things is identified;
- secondly, the Minister responsible for that service, body or person is identified;

- thirdly, if appropriate, the permanent or statutory head responsible for that service, body or person is identified.

[8.4] RESPONSIBLE MINISTERS

Section 148 of the *Constitution* provides that each department, section, branch or function of government must be the political responsibility of a Minister. The Prime Minister has the power to determine the titles, portfolios and responsibilities of the Ministers.

At the time of the preparation of this report, the service, body or persons to whom specific recommendations are being directed were the responsibility of the Ministers set out in the table below.

[8.5] MINISTERS RESPONSIBLE FOR FOLLOWING UP IMPLEMENTATION OF RECOMMENDATIONS

<b>Service, bodies or persons being asked to do things</b>	<b>Responsible Minister</b>
Secretary for DLLP	Minister for Lands and Physical Planning
Deputy Secretary for Corporate & Regulatory Services	Minister for Lands and Physical Planning
Deputy Secretary for Land Services	Minister for Lands and Physical Planning
Registrar of Titles	Minister for Lands and Physical Planning

[8.6] DUTIES OF RECIPIENTS OF RECOMMENDATIONS

The fact that our opinions on things to be done are expressed in the form of “recommendations” does not mean that recipients are entitled to ignore them.

Each recipient is required under Section 22(3) of the *Organic Law on the Ombudsman Commission* to notify the Ombudsman Commission in writing within 30 days after the days of the service of the report of the steps proposed to be taken to give effect to our recommendations.

Section 22(3) states:

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**If the Commission so requests, the responsible Minister, Permanent Head or statutory head as the case may be, shall, within such period as is specified by the Commission, notify the Commission as to the steps (if any) that he proposes to take to give effect to its recommendations.**

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Accordingly, there is a *duty* placed on each recipient of a recommendation to notify the Commission; and if it is proposed not to implement any recommendation, there is a further duty to give cogent and convincing reasons why the recommendations cannot or should not be implemented. These duties arise due to the combined effect of the *Constitution* and the *Organic Law on the Ombudsman Commission*.

[8.7] RECOMMENDATIONS

**Recommendation N<sup>o</sup>.1**



The Ombudsman Commission recommends that the Secretary for Lands ensures that the DLPP reviews its system of delegations to ensure that all officers are aware of the scope of their delegations, that the delegations are in writing as required by Section 68 and 69 of the *Land Act* 1996, and that they are maintained in a register that is accessible to senior officers and external oversight agencies.

### **Recipients**

- Minister for Lands and Physical Planning
- Secretary for Lands
- Deputy Secretary for Lands - Corporate and Regulatory Services
- Deputy Secretary for Lands - Lands Services
- Director for Land Administration, Chief Physical Planner, Surveyor General, and Registrar of Titles.

### **Reasons:**

- The delegation of powers of the Departmental Head are contained in the instrument of delegation of powers as specified under section 143 (1), (2) and (3) of the *Land Act* 1996.
- None of the instrument of the delegation of powers of the Secretary, Deputy Secretary for Corporate and Regulatory services and Deputy Secretary for Lands Services were produced to the Ombudsman Commission when requested through letters on 25 May 2007, 1 October 2007 and 29 October 2007 and interviews conducted with Mr Romilly Kila Pat on 10 October 2007, the Secretary Mr Pepi Kimas on 11 October 2007 and Mr Anthony Luben on 30 October 2007.
- The gazettal notice on the revocation of powers issued by the Secretary on 11 October 2006 and Minister for Lands Honourable Puka Temu on 12 October 2006 sent to the Ombudsman Commission by the Secretary Mr Pepi Kimas on 31 October 2007 to substantiate that they were the Delegate of the Minister was not the instrument of delegation of powers. It did not specify the powers delegated to them in the past and were now revoked. It was simply a generalised notice.

### **Recommendation N<sup>o</sup>.2**

The Ombudsman Commission recommends that Minister for Lands ensures that the Secretary for DLPP Mr Pepi Kimas is disciplined for acting outside of his powers.

### **Recipients**

- Minister for Lands and Physical Planning.

### **Reasons:**

- On 26 November 2004 the Secretary for Lands Mr Pepi Kimas exempted Quinquing Trading Limited Commercial Lease Application for Section 31 Allotment 03 from tender.

- According to Section 69 (2) of the *Land Act* 1996, it is the Minister who has the power to exempt land from advertisement for application or tender. There is no provision under this Act that states that the Departmental Head or the Delegate of the Minister may exempt land from tender.
- The Secretary for Lands Mr Pipi Kimas did not produce any instrument of delegation of powers to substantiate that he was delegated the power to exempt land from tender when the Ombudsman Commission requested for it through letters on 25 May, 1 and 29 October 2007.
- On 11 October 2007 the Secretary Mr Pepi Kimas told the Ombudsman Commission in the interview that he was not sure himself whether he had the delegated power to exempt land from tender but would find out and advise the Ombudsman Commission which he never did.
- On 31 October 2007 the Secretary, Mr Pepi Kimas produced a gazettal notice on the revocation of powers to the Ombudsman Commission to substantiate that he was delegated the power to exempt the land from public tender. The document did not specify that he was delegated the power to exempt land. More so, it was not an instrument of delegation of powers. It was merely a gazettal notice for the revocation of power.

### **Recommendation N<sup>o</sup>.3**

The Ombudsman Commission recommends that the Minister for Lands ensures that the Deputy Secretary for DLPP Mr Romilly Kila Pat is disciplined for acting outside of his power to sign and issue License Number 06 of 2004 (Island) to Quinquing Trading Limited.

### **Recipients**

- Minister for Lands and Physical Planning.

### **Reasons:**

- The Deputy Secretary for Corporate and Regulatory Services Mr Romilly Kila Pat issued license number 06 of 2004 (Island) of Section 31 Allotment 03 to Quinquing Trading Limited to do feasibility study for commercial purposes on 12 November 2004.
- According to the section 125 (1) of the *Land Act* 1996 the license may be granted by the Lands Minister or the Delegate of the Minister.
- Mr Romilly Kila Pat told the Ombudsman Commission in the interview on 10 October 2007 that he had the delegated power to issue licenses but failed to produce the instrument of delegation of power to substantiate it.
- The Revocation Gazettal Notice dated 28 December 2006 Mr Romilly Pat Kila produced to the Ombudsman Commission to substantiate that he was delegated the power to issue licenses was not an instrument of delegation of powers. It was a generalised notice on the revocation of powers delegated to the senior officers in the Department which did not specify what power was delegated to him and was revoked.

#### **Recommendation N<sup>o</sup>.4**

The Ombudsman Commission recommends that the Minister for Lands ensures that the Deputy Secretary for DLPP Mr Romilly Kila Pat is disciplined for deliberately supporting the Quinquing Trading Limited Commercial Lease Application to go to the Land Board contrary to the Secretary's instruction and it being rejected by NPPB three times.

#### **Recipients**

- Minister for Lands and Physical Planning.

#### **Reasons:**

- The Deputy Secretary (then acting Secretary) willingly supported the Quinquing Trading Limited rezoning application to go to the PNGLB despite rejection by NPPB three times and the Secretary Mr Pepi Kimas advice to refuse the license.
- On 10 October 2007 the Ombudsman Commission in the interview asked Mr Romilly Kila Pat why he supported the Quinquing Trading Limited application to go to the PNGLB when it was rejected by the NPPB and the Secretary's advise to refuse the license and advertise the land.
- Mr Romilly Kila Pat said the Quinquing Trading Limited application went to the PNGLB after 2006 when he was away on study leave. He denied supporting the application to go to PNGLB.
- The Ombudsman Commission clearly pointed out to Mr Pat that he supported the application to go to the PNGLB in 2005 when he was the Acting Secretary then. He went to study in 2006. Mr Pat said nothing in response.

## **Recommendation N<sup>o</sup>.5**

The Ombudsman Commission recommends that the Minister for Lands ensures that the Deputy Secretary for DLPP Mr Anthony Luben is disciplined for acting outside his power to endorse the State lease to be registered by the Land Titles Division.

### **Recipients**

- Minister for Lands and Physical Planning.

### **Reasons**

- On 14 December 2006 the Deputy Secretary for Land Services Mr Anthony Luben endorsed the State Lease issued to Quinquing Trading Limited to be registered in the land titles register.
- According to the gazettal notice dated 26 December 2006 all the powers delegated or sub-delegated to the senior officers of the DLPP except powers relating to Section 128 and 129 of *Land Act* 1996 and Office of the Secretary were revoked by the Secretary Mr Pepi Kimas and the Minister for Land Honourable Dr Puka Temu on 11 and 12 October 2006. Had Mr Luben been delegated the power to endorse State leases for registration, it was revoked at that time of revocation of powers.
- The Secretary for Lands Mr Pepi Kimas confirmed to the Ombudsman Commission in the interview on 11 October 2007 that he told Mr Anthony Luben that the powers delegated to him and other senior officers have been revoked.
- Mr Anthony Luben himself told the Ombudsman Commission in the interview on 30 October 2007 that he was fully aware that the power delegated to him and the senior officers in the Department were revoked by the Secretary and the Minister for Lands, *however, he endorsed the State lease on 14 December 2006 and was registered on 15 December 2006 in the land titles register.*
- Furthermore the gazettal notice on the revocation of powers dated 26 December 2006 produced to the Ombudsman Commission by the Secretary Mr Pepi Kimas on 31 October 2007 did not specify that Mr Anthony Luben was delegated the power to endorse the State Lease at the first instance.

## **Recommendation N<sup>o</sup>.6**

The Ombudsman Commission recommends that the Minister for Lands ensures that the Deputy Secretary for DLPP Mr Anthony Luben is disciplined for neglecting his duty to thoroughly check and avoid signing documents he was not supposed to sign.

### **Recipients**

- Minister for Lands and Physical Planning.
- Secretary of Lands
- Deputy Secretary for Lands - Land Services
- Deputy Secretary for Lands - Corporate and Regulatory Services

### **Reasons**

- The Deputy Secretary for Land Services Mr Anthony Luben signed the controversial land in relation to Section 31 Allotment 03 to be registered with the Land Titles Division after knowing all the facts surrounding it.
- The Deputy Secretary for Land Services was a member of NPPB that rejected the Commercial Lease Application of Quinquing Trading Limited three times.
- Mr Luben was well aware that Public Accounts Committee of the National Parliament PAC advised DLPP not to deal with any land in relation to Section 31 Allotment 03.
- Mr Luben was also aware of the Secretary's two Minutes to the Registrar of Titles to issue Registrar's Caveat over Section 31 Allotment 03 and all officers to refrain from taking any action on the land until the Ombudsman Commission completes its investigation.
- Despite knowing these facts very well Mr Luben went ahead to sign the land in relation to Section 31 Allotment 03 to be registered with the Land Titles Division
- His reason for signing the State lease to be registered was simply oversight thinking that the Land Tiles Division would reject it since they were already informed to issue Registrar's Caveat was unjustifiable and wrong.

### **Recommendation N<sup>o</sup>.7**

The Ombudsman Commission recommends that the Secretary for Lands ensures that the DLPP strictly comply with the established administrative systems, processes and procedures when licensing, rezoning and leasing State land to private individuals and organisations for commercial purposes.

#### **Recipients**

- Minister for Lands and Physical Planning
- Secretary for Lands
- Deputy Secretary for Lands - Corporate and Regulatory Services
- Deputy Secretary for Lands – Lands Services
- Director for Land Administration, Chief Physical Planner, Surveyor General, and Registrar of Titles.
- Staff of the Department of Lands and Physical Planning

#### **Reasons:**

- The DLPP sent the Quinquing Trading Limited Commercial Lease Application to the PNGLB despite being rejected by NPPB three times and without the clearance of the PNGPPAT.
- The DLPP administrative system did not appoint the PNGPPAT members to consider the appeal applications when their term expired which caused the application rejected by the NPPB to be sent straight to the PNGLB for the grant of lease.
- The DLPP sent the commercial lease application of Quinquing Trading Limited to the PNGLB without all the Divisional Heads approving the checklist.
- The DLPP administrative system allowed some unknown officers in the Department to gazette the PNGLB agenda items and not the responsible Division which is Land Administration Division.
- More so, the DLPP failed to allow the Land Administration Division to again receive the PNGLB Minutes to make a formal submission to the Secretary to go to the Minister for endorsement for gazettal when it was approved by the Board. It was again done by some unknown officers in the Department and the lease was gazetted on 24<sup>th</sup> November 2005, Gazettal Number G171.

### **Recommendation N<sup>o</sup>.8**

The Ombudsman Commission recommends that the Secretary for Lands ensures that all officers in the DLPP fully understand Section 68 and Section 69 of the *Land Act* 1996 that relates to the advertisement of the land made available for leasing and strictly comply with it.

#### **Recipients**

- Secretary for Lands
- Divisional Heads and staff of DLLP
- Minister for Lands and Physical Planning.

#### **Reasons:**

- Section 31 Allotment 03 was not advertised when it was rezoned from public institutional land to commercial land. Section 68 (1) of the *Land Act* 1996 states that except for lands that have been exempted from advertisement under Section 69 the Departmental Head shall give notice by advertisement in the National Gazette of all the land available for leasing under the Act. Section 68 (2) (a – i) specifies the information the land available for leasing under the Act should contain in the advertisement. Section 68 (3) qualifies the statement contained in an advertisement under this section that it does not in any way bind the State in the granting of a lease over land the subject of the advertisement or constitute an offer to lease land.
- Section 69 (1) to (2) of *the Land Act* 1996. Section 68 relates to the advertisement of the land and section 69 related to exemption from advertisement. It clearly states that it is the Minister who will exempt the land from advertisement.
- The State did not agree to exempt Section 31 Allotment 03 from advertisement. The Secretary for the DLPP stating *proceed recom* in the Deputy Secretary for Corporate and Regulatory Services Mr Romilly Kila Pat's Minute dated 26 November 2006 cannot be concluded that the State has agreed to exempt the land from advertisement.
- The land was not further advertised when the PNGPPAT in Meeting Number 02 on 16 August 2006 upheld the appeal application of Quinquing Trading Limited against NPPB decision and recommended for DLPP to advertise the land in question.

### **Recommendation N<sup>o</sup>.9**

The Ombudsman Commission recommends that the Secretary for Lands ensures that the System for lodging caveat operates without delay to protect Torrens Land Titles Registration.

#### **Recipients**

- Secretary for Lands
- Registrar of Titles.

**Reasons:**

- The Ombudsman Commission requested the Secretary to issue Registrar's Caveat over Section 31 Allotment 03 until it completes its investigation and appropriate recommendations made to the Department.
- The Secretary for Lands Mr Pepi Kimas issued two Minutes to the Registrar of Titles on 11 November 2006 and 5 January 2007 to issue the Registrar's Caveat until Ombudsman Commission completes its investigation.
- On 15 December 2006 Mr Mark Tola the Deputy Registrar of Titles for MOMASE & NGI registered the State lease granted to Quinquing Trading Limited.
- Deputy Registrar of Titles Mr Mark Tola and Registrar of Titles Mr Raga Kavana in their interview on 12 and 13 June 2007 told the Ombudsman Commission officers that they were not aware of the Secretary's 11 November 2006 Minute. These claims cannot be substantiated because the file went missing during the Ombudsman Commission investigation on the matter.
- Registrar of Title Division failed to issue the Registrar's Caveat over Section 31 Allotment 03 despite being advised through the Secretary's office.

**Recommendation N<sup>o</sup>.10**

The Ombudsman Commission recommends that the Secretary for Lands ensures that the DLPP thoroughly check all relevant documents and seek confirmation from responsible persons for applicants seeking urgent acquisition of the land prior to allocating it to them.

**Recipients**

- Secretary for Lands
- Deputy Secretary for Lands - Corporate and Regulatory Services
- Deputy Secretary for Lands - Lands Services
- Director for Land Administration, Chief Physical Planner, Surveyor General and Registrar of Titles.

**Reasons:**

- The DLPP did not check with Mr Roger Lin for any documentary evidence that he was given 21 days ultimatum by the land owners to move his business out of their land.
- Nor did the DLPP ask the Provincial Land's Advisor Mr Ben Madiu who was in Kimbe to confirm with the land owners and advise the officers at the headquarters to make a sound decision to allow Quinquing Trading Limited acquire the land.
- The Ombudsman Commission officers' trip to Kimbe, West New Britain Province, discovered from Mr Ben Madiu that he was not aware of the reasons Mr Lin provided



which the DLPP used to support his company's application without any documentary evidence.



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## 9. CONCLUSION

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The Department of Lands and Physical Planning has the duty to comply with the administrative systems, processes and procedures and the Acts governing the Department when transferring State land from one government agency to another, granting State lease to private individuals and companies and registering land titles in a transparent and accountable manner. The investigation into alleged improper rezoning of Section 31 Allotment 03 from public institutional land to commercial land and leasing it to Quinquing Trading Limited discovered that:

- The conduct of the senior officers of DLPP these include the Secretary and the two Deputy Secretaries were ultra vires in that they exercised powers under the *Land Act* 1996 without the appropriate instruments of delegation or sub-delegation of the minister's powers and functions to them. These include the signing and issuing of license to Quinquing Trading Limited to do feasibility studies, exemption of Section 31 Allotment 03 from advertisement and endorsement of State lease issued to Quinquing Trading Limited for registration.
- The two Deputy Secretaries for of the DLPP failed to exercise duty of care when supporting the Quinquing Trading Limited application to go to the PNGLB contrary to administrative processes and procedures and the Secretary's instruction and endorsing the State lease granted to Quinquing Trading Limited to be registered in the land titles register.
- DLPP failed to comply with the administrative systems, processes and procedures to allow the Quinquing Trading Limited lease application to go to the PNGLB for the grant of commercial lease.
- DLPP failed to comply with Section 68 and Section 69 of the *Land Act* 1996 to advertise Section 31 Allotment 03 as recommended by the PNGPPAT.
- DLPP failed to respond to reasonable request by the Ombudsman Commission through the office of the Secretary to issue the Registrar's Caveat.
- DLPP failed to require the applicant to produce evidence to substantiate the desperate situation the company encountered for the urgent acquisition of the State Lease.

The DLPP has failed to live up to the expectation of the people and State in complying with the processes and procedures and the Acts governing the operation of the Department.

The officers of the DLPP are strongly advised to learn from the recommendation made by this report and make special effort to correct the mistakes for the good of the Department and the people of Papua New Guinea.

The leaders to whom the Ombudsman Commission directs its recommendation are asked to carefully and conscientiously consider the recommendations and implement them.

 <b>CHRONOX MANEK</b> <b><u>CHIEF OMBUDSMAN</u></b>	 <b>JOHN NERO</b> <b><u>OMBUDSMAN</u></b>	 <b>PHOEBE SANGETARI (MS)</b> <b><u>OMBUDSMAN</u></b>
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**PORT MORESBY**  
**19 January 2010**



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## 10. RELEVANT LAWS

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**The following laws were examined to verify the legality of matter:**

### **[10.1] LAND ACT 1996**

The *Land Act* contains many provisions relevant to this investigation. The long title describes the Act as:

Being an Act relating to land, to consolidate and amend legislation relating to land, and to repeal various statutes, and for related purposes,

MADE by the National Parliament to come into operation in accordance with a notice in the National Gazette by the Head of State, acting with, and in accordance with, the advice of the Minister.

**Other relevant provisions are set out below:**

#### **SECTION 2 - INTERPRETATION**

IN this Act, unless the contrary intention appears-

“Public purpose” means—

- (a) the purpose of ensuring that land that is not being developed in a manner and to an extent conducive to the best public interest, is properly developed; or
- (b) the purpose of making land available to citizens for—
  - (i) subsistence farming where other land in the area for that purpose is insufficient; or
  - (ii) for economic development so that they may share in the economic progress of the country; or
- (c) any educational, social welfare or community development purpose where other suitable land is either unavailable or insufficient; or
- (d) the purpose of preventing disruptive conduct on the part of a leaseholder in a declared land settlement scheme or development scheme from endangering the scheme; or
- (e) a purpose connected with the defense or public safety of Papua New Guinea; or
- (f) a purpose of public health, utility, necessity or convenience; or

- (g) the purposes of a hospital, school, training institution, public library or other similar institution; or
- (h) a purpose of or connected with navigation or the safety of navigation by land, air or water; or
- (i) the purposes of or connected with a quay, pier, wharf, jetty or landing place or port or harbor purposes, or an aerodrome or landing pad; or
- (j) The purposes of or connected with a road, track, bridge, culvert, ferry or canal; or
- (k) a purpose of or connected with radio, telegraphic, telephonic or other communication, and the purposes of the National Broadcasting Corporation or the Departments responsible for transport or civil aviation matters; or
- (l) the purposes of an oceanarium, or of an aquarium or of oceanographic research and education; or
- (m) the purposes of an agricultural, horticultural, veterinary or forestry experimental, treatment or demonstration institution, and the purpose of or a purpose connected with re-afforestation, water conservation, the prevention or control of soil erosion or the reclamation or rehabilitation of land; or
- (n) the purposes of a reservoir, aqueduct or water-course; or
- (o) the purposes of or connected with the generation or supply of electricity; or
- (p) the purposes of a park or recreational area; or
- (q) a purpose of industrial development; or
- (r) the purpose of accommodation for employees of the State and any other prescribed authority, and the purpose of the settlement or resettlement of residents of urban areas; or
- (s) the purpose of ensuring that land designated under the Physical Planning Act 1989 for a particular use or uses is made available for that use or uses; or
- (t) the purposes of a cemetery or other place for the interment of the dead; or
- (u) the purposes of a coronus pit or a quarry; or
- (v) the purposes of or a purpose connected with a welfare centre; or
- (w) a purpose declared by any law to be a public purpose for the purposes of this Act; or
- (x) a purpose ancillary to or necessary or convenient for the carrying out of a purpose referred to in any of the preceding paragraphs of this definition;

**The following provisions relate to State Leases and the procedures for granting a State Lease.**

## **DIVISION 1.—STATE LEASES GENERALLY**

### **65. GRANT OF STATE LEASES.**

The Minister may grant State leases of Government land as provided by this Act.

### **66. STATE LEASES NOT TO BE INCONSISTENT WITH LEASE FROM CUSTOMARY LANDOWNERS.**

Notwithstanding anything in any other law a provision of a State lease of customary land leased by the customary landowners to the State that is inconsistent with the terms and conditions of the lease from the customary landowners, is, to the extent of that inconsistency, of no effect.

### **67. STATE LEASES NOT TO BE INCONSISTENT WITH ZONING, PHYSICAL PLANNING, ETC.**

A State lease shall not be granted for a purpose that would be in contravention of zoning requirements under the Physical Planning Act 1989, any other law relating to physical planning, or any law relating to the use, construction or occupation of buildings or land.

### **68. ADVERTISEMENT OF LANDS AVAILABLE FOR LEASING.**

- (1) Except where land has been exempted from advertisement under Section 69, the Departmental Head shall give notice, by advertisement in the National Gazette, of all lands available for leasing under this Act.
- (2) An advertisement under Subsection (1) shall contain the following information:—
  - (a) the type of lease available to be granted;
  - (b) the purpose of the lease;
  - (c) the length of the lease;
  - (d) a description of the land to be leased;
  - (e) the amount of rent (if any) payable for the first period of the lease;
  - (f) in the case of a special purposes lease—any royalties that are payable;
  - (g) the terms and conditions of the lease;
  - (h) the reserve price;
  - (i) such other information as the Departmental Head thinks fit or the Minister directs.
- (3) A statement contained in an advertisement under this Section does not in any way bind the State in the granting of a lease over land the subject of the advertisement or constitute an offer to lease land.

## **69. DUTY TO ADVERTISE STATE LEASES.**

- (1) A State lease shall not be granted without first being advertised in accordance with Section 68 unless the land has been exempted from advertisement under Subsection (2).
- (2) The Minister may exempt land from advertisement for application or tender—
  - (a) where the lease is granted to a governmental body for a public purpose; or
  - (b) where it is necessary to relocate persons displaced as a result of a disaster as defined in the Disaster Management Act (Chapter 403); or
  - (c) where a lessee applies for a further lease; or
  - (d) where the State has agreed to provide land for the establishment or expansion of a business, project, or other undertaking; or
  - (e) where the land applied for adjoins land owned by the applicant and is required to bring the holding up to a more workable unit, providing that the claims of other neighbouring landowners are considered and their views taken into account in deciding whether to exempt the land from advertisement in favour of the applicant; or
  - (f) where the Department responsible for foreign affairs recommends that land be made available to the applicant for consular premises; or
  - (g) where the land is required for the resettlement of refugees; or
  - (h) where the applicant has funded the acquisition of the land from customary landowners in order to acquire a State lease over it; or
  - (i) where a lease is to be granted under Section 99 or 102; or
  - (j) where a new lease is granted under Section 110, 130 or Section 131.

**The following provisions relate to business and residential leases. These provisions also relate to the processes involved in getting these leases.**

### **DIVISION 5.—BUSINESS AND RESIDENCE LEASES.**

#### **92. GRANT OF BUSINESS AND RESIDENCE LEASES.**

Subject to this Act, the Minister may grant leases of Government land for business or residence purposes or for both business and residence purposes.

### **93. TERMS OF LEASES.**

A residence lease, business lease or lease for both business and residence purposes may be granted for such term, not exceeding 99 years, as to the Minister seems proper.

### **94. SPECIFICATION OF CLASSES OF BUSINESS.**

A business lease or lease for both business and residence purposes may specify the class or classes of business for which the land may be used.

### **95. LAND IN PHYSICAL PLANNING AREAS.**

Subject to Sections 69 and 73, before a lease under this Division of land in a physical planning area is granted, the land shall, in the first instance, be offered for lease by tender.

**These provisions in the Land Act relate to the procedures used to grant licenses and the various reasons for granting licenses.**

## **PART XVI.—LICENCES.**

### **DIVISION 1.—LICENCES GENERALLY.**

#### **125. GRANT OF LICENCE.**

- (1) Subject to Subsection (2), the Minister or his delegate may grant a license in the approved form to a person to enter on Government land for one or more of the following purposes:—
  - (a) to graze stock or a specified kind of stock; or
  - (b) to strip, dig and take away any valuable material or substance; or
  - (c) for fishermen's residences and drying grounds; or
  - (d) for any other temporary purpose approved by the Minister.
- (2) A license shall not be granted for a purpose that would be in contravention of zoning requirements under the Physical Planning Act 1989, any other law relating to physical planning, or any law relating to the use, construction or occupation of buildings or land.
- (3) A license under Subsection (1) may be granted subject to such conditions as the Minister or officer granting the license thinks proper, and, subject to those conditions, empowers the licensee—
  - (a) to make such temporary improvements and do such things on the land the subject of the license as are necessary or convenient for the purposes of the license; and



- (b) to remove such of those improvements as are severable on or before the termination of the license, doing as little damage as may reasonably be to the land.
- (4) A license under this Section continues in force for a period, not exceeding one year, specified in the license.
- (5) In addition to or in substitution for the prescribed fee for a license, where a license is issued under this Section for a purpose specified in Subsection (1) (b) the licence is subject to the payment of such royalties (if any) on the material or substance stripped, dug or taken away and to such restrictions and conditions as are prescribed or as to the Minister or officer granting the licence seem proper.
- (6) A license granted under this Division may be revoked by the Minister for failure to comply with, or for a contravention of, the conditions of the license.

**Division 2 of the *Land Act* states the procedures used to grant licenses over resumed land.**

**DIVISION 2.—LICENCES OVER RESUMED LAND.**

**126. GRANT OF LICENCE OVER RESUMED LAND.**

- (1) Notwithstanding any other law, the Minister, or any officer authorized by him in writing for that purpose, may grant a licence in a form approved by the Minister to the person from whom any land has been acquired under this Act or a repealed Land Act, or where that person does not apply for a licence, to some other person, for the purpose of allowing him to use the land for the purpose or purposes for which it was used immediately before the date of acquisition or any other purpose.
- (2) A licence under Subsection (1) may be granted subject to such conditions as the Minister or officer granting the licence thinks proper, and, subject to those conditions, empowers the licensee to make such improvements and do such things on the land the subject of the licence as are necessary or convenient for the purpose of the licence.
- (3) A licence under this Section continues in force for such period as is specified in the licence.
- (4) A licence granted under this Section is subject to the payment of—
  - (a) the fee; and
  - (b) the amount of premium (if any), fixed in relation to it by the Minister.
- (5) A licence granted under this Division may be revoked by the Minister at any time for failure to comply with a condition of the license.

**Part 23 of the *Land Act* relates to the delegation of the Departmental Head’s powers and functions to the senior officers in the Department of Land & Physical Planning.**

**PART XXIII.—DELEGATION BY DEPARTMENTAL HEAD.**

### **143. POWER OF DEPARTMENTAL HEAD TO DELEGATE**

- (1) The Departmental Head may, by writing under his hand, delegate to a person (in this Section referred to as "the Delegate") all or any of his powers and functions under this Act.
- (2) Where the Departmental Head makes a delegation under Subsection (1), he may, in the same or another instrument of delegation, also delegate to the Delegate the power, by instrument, to further delegate all or any of the delegated powers or functions to a person or member of a class of persons (in this Section called "the Sub-delegate") specified in the Departmental Head's instrument.
- (3) Where the Delegate makes a further delegation pursuant to Subsection (2), he may, in the same or another instrument, but subject to any restrictions placed on him by the Departmental Head, also delegate to the Sub-delegate the power, by instrument, to further delegate all or any of the delegated powers and functions to a person or a member of a class of persons specified in the Delegate's instrument.

### **[10.2] PHYSICAL PLANNING ACT 1996**

The *Physical Planning Act* contains many provisions relevant to this investigation. The long title describes the Act as:

Being an Act to establish a comprehensive mechanism for physical planning at national and provincial levels of government and to provide powers for the planning and regulation of physical development and to repeal the *Town Planning Act* (Chapter 204), and for related purposes,

MADE by the National Parliament to come into operation in connection with a notice in the National Gazette by the Head of State, acting with, and in accordance with, the advice of the Minister.

**Other relevant provisions are set out below:**

#### **SECTION 2 - APPLICATION.**

- (1) This Act binds the State.
  - i. All land in Papua New Guinea is subject to this Act.

#### **17. FUNCTIONS OF THE NATIONAL PHYSICAL PLANNING BOARD.**

- (1) The National Physical Planning Board shall consider and determine—
  - (a) all physical planning matters that are considered to be primarily of national interest except those which are wholly within the National Capital District; and

- (b) all physical planning matters from provinces where a Provincial Physical Planning Board has not been established or is not presently empowered to hear matters due to suspension of physical planning powers under Section 30.
- (2) Notwithstanding any provision to the contrary, where—
    - (a) no Provincial Physical Planning Board has been established; or
    - (b) a Provincial Physical Planning Board has been suspended, the National Physical Planning Board shall have the right to exercise the full powers of those Boards under this Act.
- (3) The National Physical Planning Board shall advise the Minister on—
    - (a) the declaration of an area as a physical planning area for the purposes of this Act; and
    - (b) the exercise of his powers to order the preparation of development plans.

**56. LAND FOR PUBLIC PURPOSES.**

- (1) A development plan may designate land which may be required for public purposes as prescribed in the Land Act (Chapter 185).
- (2) A development plan may recommend to the Minister responsible for land matters that a parcel of land be reserved from lease in accordance with Section 25 of the Land Act (Chapter 185).

**71. ZONING OF PHYSICAL PLANNING AREAS.**

- (1) Where it is authorized to do so under this Act, a Board may, by notice in the National Gazette—
  - (a) divide a physical planning area or part of a physical planning area into one or more zones; or
  - (b) declare that a physical planning area or part of a physical planning area is a single zone; or
  - (c) declare that a physical planning area or part of a physical planning area is a redevelopment zone; or
  - (d) do any combination of Paragraphs (a), (b) and (c), and all of the above procedures shall be known as zoning.
- (2) A redevelopment zone may be declared on land that is, or is part of, another zone and the declaration does not affect the incidence of the other zoning.
- (3) Any request for a change in the zoning of land shall be treated as an application for planning permission.

**72. USE AND DEVELOPMENT OF LAND AND BUILDINGS WITHIN A ZONE FOR AUTHORIZED PURPOSES.**

- (1) Subject to this section, the purposes for which a building or land may be used in a zone (other than a redevelopment zone) are—
  - (a) the purposes specified in respect of that zone; and
  - (b) any other purpose for which planning permission has been granted in a particular case.
- (2) Subject to this section, the purposes for which development may take place in a zone (other than a redevelopment zone) are—
  - (a) the purposes specified in respect of that zone; and
  - (b) any other purpose for which planning permission has been granted in a particular case.
- (3) Subject to Section 73, the purposes for which a building or land may be used in a redevelopment zone are—
  - (a) where the land is also in another zone—a purpose for which a building or land may be used in the other zone; and
  - (b) a purpose for which planning permission has been obtained in a particular case.

**73. DEVELOPMENT IN REDEVELOPMENT ZONES.**

- (1) Subject to Subsection (2), a person who carries out development in a redevelopment zone without planning permission is guilty of an offence.
- (2) Subsection (1) does not apply to the completion of building or engineering operations where those operations had commenced before the declaration of the redevelopment zone.
- (3) Subsection (1) does not apply to a change of use of a building or land to a purpose which is permitted under Section 72 (3) (a).

**74. USE AND DEVELOPMENT OF LAND AND BUILDINGS IN A ZONE FOR UNAUTHORIZED PURPOSES.**

- (1) Subject to this section, a person who carries out development, or uses a building or land, in a zone for a purpose that is not an authorized purpose in relation to the building or land is guilty of an offence.
- (2) Where—
  - (a) a building or land was, at any time, for a period of not less than 60 days within the period of six months before the date of a Board's decision to publish the relevant notice of zoning under Section 71, used for a purpose that is not an authorized purpose in relation to the building or land; or

- (b) a building in a zone was, at the date of a Board's decision to publish the relevant notice of zoning under Section 71, under construction and intended to be used for a purpose that is not an authorized purpose in relation to the building, or land may, subject to Subsection (3), continue to be so used, or may be so used, as the case may be, after the date of publication of the relevant notice in the National Gazette.
- (3) Subsection (2) ceases to apply to and in relation to a building or land—
  - (a) on the discontinuance for a period of six months of its use for the purpose referred to in that subsection; or
  - (b) in the case of a building—on its destruction.

**75. PLANNING PERMISSION REQUIRED PRIOR TO SUBDIVISION OR CONSOLIDATION.**

- (1) Where a person intends to apply for—
  - (a) a subdivision of land under Section 71 of the Land Act (Chapter 185); or
  - (b) a consolidation of leases under Section 72 of the Land Act (Chapter 185), and where any part of the land concerned is within a physical planning area, he shall first obtain planning permission to carry out that subdivision or consolidation.
- (2) Where an application is made to the Minister responsible for land matters—
  - (a) for a subdivision of land under Section 71 of the Land Act (Chapter 185); or
  - (b) for a consolidation of leases under Section 72 of the Land Act (Chapter 185), and that application is accompanied by planning permission whether specific or deemed, the Minister responsible for land matters shall not refuse the application for any physical planning reason.

**76. BOARD TO WHICH APPLICATION FOR PLANNING PERMISSION TO BE MADE IN THE FIRST INSTANCE.**

- (1) An application for planning permission shall be made in the first instance—
  - (a) where the development concerned is in a province and a Provincial Physical Planning Board has been established in that province and is not suspended—to that Provincial Physical Planning Board; or
  - (b) where the development is in the National Capital District—to the National Capital District Physical Planning Board; or
  - (c) where the development is in a province and no Provincial Physical Planning Board has been established or the Provincial Physical Planning Board is suspended—to the National Physical Planning Board.

- (2) Where a development straddles the boundary between—
  - (a) two or more provinces; or
  - (b) a province and the National Capital District, a separate application shall be made in respect of each province, and in respect of the National Capital District, in accordance with Subsection (1), and each application shall be accompanied by a statement specifying to which other Boards application has been made.

**77. APPLICATION FOR PLANNING PERMISSION.**

- (1) Subject to Subsection (2), an application for planning permission shall be for—
  - (a) outline planning permission reserving specified matters for subsequent approval; or
  - (b) full planning permission; or
  - (c) approval of reserved matters following outline planning permission.
- (2) An application for planning permission for a rezoning or to allow the use of a building or land for a particular purpose shall be an application for full planning permission, unless it forms part of an application for building, engineering, mining or other operations.
- (3) An application under Subsection (1)—
  - (a) shall be in writing; and
  - (b) shall include such particulars and be accompanied by such documents as are prescribed; and
  - (c) where applicable, shall contain a statement under Section 76(2) of other Boards to which application has been made; and
  - (d) shall be accompanied by the prescribed fee; and
  - (e) shall be made by—
    - (i) the owner of the land the subject of the application; or
    - (ii) the agent of that owner; or
    - (iii) a person who has complied with Subsection (4).
- (4) Where an applicant is not the sole owner of land or an agent appointed by the sole owner, the applicant shall—
  - (a) notify all of the owners that the application is being made; or

- (b) where it is not possible for good reason to notify an owner, publish in a newspaper circulating in the area in which the land is situated, a notice giving details of the application.
- (5) Where Subsection (4) applies, the applicant shall, at the request of any owner of the land, supply to that owner, free of charge, a copy of the application.

**78. PROCEDURE OF BOARD FOLLOWING APPLICATION.**

- (1) A Board shall, after receiving an application for planning permission under Section 77—
- (a) consider the application as soon as possible; and
  - (b) subject to Subsection (3), make its decision on the application within the prescribed time from the receipt of the application by the Board, unless the Board has obtained from the applicant an extension of time.
- (2) Where an application relates to a matter to be considered and determined by the National Physical Planning Board—
- (a) a Provincial Physical Planning Board; or
  - (b) the National Capital District Physical Planning Board, as the case may be shall—
  - (c) refer the application to the National Physical Planning Board within one month of receipt; and
  - (d) advise the applicant that such reference has been made.
- (3) Where a Board requires additional information from the applicant concerning the application, it shall advise that applicant of its requirement within 14 days or such other time as may be prescribed of the receipt by it of the application and the prescribed time within which the decision is to be made shall commence from the date on which the additional information is submitted to the Board by the applicant.
- (4) Where the development proposed in an application straddles the boundary between—
- (a) two or more provinces; or
  - (b) a province and the National Capital District, and application has been made to more than one Board in accordance with Section 76 (2), all Boards to whom application has been made shall, before making a decision, consult with each other.
- (5) Where the Boards referred to in Subsection (4) fail to agree, the matter shall, in accordance with Section 4, be dealt with as a matter primarily of national interest by the National Physical Planning Board.

**79. DECISION OF BOARD.**

- (1) A Board may, after consideration of an application for planning permission under Section 77—
  - (a) grant planning permission, with or without conditions; or
  - (b) refuse planning permission.
- (2) Conditions referred to in Subsection (1) (c) may be for any physical planning purpose including, but without prejudice to the foregoing generality, all or any of the following:—
  - (a) conditions regulating the development or use of any land under the control of the applicant (whether or not it is the land in respect of which the application was made) or requiring the carrying out of works on such land, so far as appears to the Board to be expedient for the purposes of or in connection with the development authorized by the planning permission;
  - (b) requiring the removal of any building or works authorized by the planning permission, or the discontinuance of the use of land so authorized, at the end of a specified period, and the carrying out of any works required for the re-instatement of land at the end of that period;
  - (c) requiring the retention of any tree.

**80. BOARD TO GIVE NOTIFICATION OF DECISION TO APPLICANT.**

A Board shall give to an applicant written notification of its decision in respect of the application within 14 days or such other time as may be prescribed, and where the Board—

- (a) imposes conditions on planning permission; or
- (b) refuses planning permission, it shall advise the applicant of its reasons for so doing.

**87. REVOCATION OR MODIFICATION OF PLANNING PERMISSION BY AGREEMENT.**

- (1) Where it appears to a Board that a planning permission previously granted by that Board needs to be revoked or modified in the public interest, that Board may revoke or modify the planning permission granted by agreement with the owner of the land affected.
- (2) Where any planning permission is revoked or modified by agreement, such agreement may provide for compensation to an owner, occupier or developer of the land and such compensation may take the form of—
  - (a) a planning permission; or



- (b) a monetary consideration; or
- (c) such other consideration as may be agreed between the parties concerned; or
- (d) any combination of Paragraphs (a), (b) and (c).

**These provisions of the Physical Planning Act 1989 are used to appeal against the decision of National Physical Planning Board.**

**PART VIII.— APPEALS**

**88. PAPUA NEW GUINEA PHYSICAL PLANNING APPEALS TRIBUNAL.**

- (1) A Papua New Guinea Physical Planning Appeals Tribunal is established for the purpose of hearing appeals and of giving rulings as to whether a matter is of national interest or not.
- (2) The Tribunal shall consist of five members comprising—
  - (a) a lawyer as defined in the Lawyers Act 1986; and
  - (b) either a registered engineer or a registered architect or a registered surveyor or a registered valuer or a professional town planner, who holds appropriate qualifications in his field and has extensive experience of the practice of physical planning; and
  - (c) a member nominated by the Premiers' Council to represent a provincial viewpoint; and
  - (d) a member nominated by the Minister to represent a National Government viewpoint; and
  - (e) a member nominated by the Minister, following consultation with the Papua New Guinea Chamber of Commerce or a similar private sector organization, to represent a private sector viewpoint.

**94. APPEALS AGAINST A BOARD'S DECISION.**

- (1) An applicant, or an owner or an occupier of land who is aggrieved by a decision of a Board, may appeal to the Tribunal within the prescribed time from the date of the decision or, in the case of a zoning, the date of the gazettal of the decision, whichever is the later.
- (2) An appeal under Subsection (1) may only be against—
  - (a) a decision on a planning permission; or
  - (b) a condition imposed on the approval of a planning permission; or
  - (c) an order for the preservation of trees; or

- (d) a requirement by a Board to supply additional information under Section 78(3); or
  - (e) non determination within the prescribed time under Section 78(1); or
  - (f) a stop work notice under Section 99(1); or
  - (g) a demolition notice under Section 99(2); or
  - (h) the declaration of a zone under Section 71, (except as provided under Subsection (3)), provided that, in the case of Paragraph (f) and (g), the appeal may only be made on the grounds that the operations are authorized under the Act.
- (3) An appeal may not be against the approval of a development plan or against the declaration of a zone by gazettal of final approval of a development plan.

**These provisions of the Land Registration Act provides for the issuance of the Registrar's Caveat.**

### ***[10.3] LAND REGISTRATION ACT***

Being an Act to unify the law relating to the registration of title to land, and for related purposes.

#### **PART VIII.—CAVEATS.**

##### **82. ENTITLEMENT TO LODGE CAVEAT**

Subject to Section 92, a person claiming an estate or interest may, by a caveat lodged in accordance with the requirements of this Part, forbid—

- (a) the registration of instruments affecting that estate or interest; or
- (b) the amendment of a certificate of title under Section 153.

##### **83. SCOPE OF CAVEAT**

A caveat under Section 82 may be expressed to operate—

- (a) absolutely or until after notice of intention to register the instrument has been served in accordance with Section 94; or
- (b) to forbid one or more instruments or classes of instruments.

##### **84. REQUIREMENT FOR CAVEAT**

A caveat—

- (a) shall be in the approved form; and

- (b) shall be signed by the person by whom or on whose behalf the caveat is lodged or by his lawyer or agent.

## **85. COMMENCEMENT**

- (1) A caveat does not come into force until it is accepted by the Registrar.
- (2) For the purposes of Subsection (1), a caveat is accepted when the Registrar makes a note to that effect on the caveat.
- (3) Notwithstanding acceptance of a caveat, where the Registrar considers that the caveat does not comply with a provision of this Act he may raise a requisition in relation to that caveat.
- (4) Where a requisition under Subsection (3) is not complied with within the prescribed period the Registrar may annul his acceptance of the caveat.

## **86. RESTITUTION ON DEALINGS**

- (1) Subject to Subsection (2), while a caveat under Section 82(a) remains in force, the Registrar shall not register an instrument the registration of which is forbidden by the caveat.
- (2) Where an instrument otherwise affected by Subsection (1) is endorsed with the consent of the caveator, that instrument may be registered.
- (3) While a caveat under Section 82(b) remains in force the Registrar shall not amend the certificate of title to which the caveat relates.

## **87. NOTICE TO PERSON AFFECTED**

- (1) On receipt of a caveat under Section 82(a) the Registrar shall notify the receipt to the person against whose right to deal with land the caveat is lodged.
- (2) On receipt of a caveat under Section 82(b) the Registrar shall notify the receipt to the person who made the application under Section 153.
- (3) Notification by the Registrar under Subsection (1) or (2) may be sent by post in a prepaid registered letter, addressed to the person entitled to the notice at his last known address.

## **88. COURT ORDER RELATING TO CAVEAT**

- (1) In this section "affected proprietor", in the case of a caveat—
  - (a) under Section 82(a)—means the proprietor against whose title to deal with an estate or interest a caveat has been lodged and includes a person claiming under a transfer or other instrument signed by the proprietor; and
  - (b) under Section 82(b)—means the person who has made an application under Section 153.

- (2) Where a caveat has been lodged the affected proprietor may summon the caveator to attend before the Court to show cause why the caveat should not be removed.
- (3) The Court may, on proof that the caveator has been summoned, make such order in the matter and as to costs, either ex parte or otherwise, as it deems just.
- (4) Without limiting the powers of the Court under Subsection (3) the Court under that subsection, may order that the caveat—
  - (a) continue in force; or
  - (b) be removed.
- (5) The Registrar may make such entries and endorsements as are necessary to give effect to the order of the Court.

#### **89. CANCELLATION BY REGISTRAR**

- (1) Where it is proved to the Registrar's satisfaction—
  - (a) that the estate, interest or claim of the caveator has ceased or been abandoned or withdrawn; or
  - (b) that the caveator's rights are satisfied or arranged; or
  - (c) subject to Subsection (2), that the nature of the caveator's estate, interest or claim does not entitle him to forbid the sale or mortgage or other dealing with the land, estate or interest referred to in the caveat, the Registrar may cancel the caveat.
- (2) At least seven days before cancelling a caveat on the ground specified in Subsection (1) (c), the Registrar shall cause notice to be served, in accordance with Section 94, on the person who lodged the caveat.

#### **91. LODGEMENT OF CAVEAT WITHOUT REASONABLE CAUSE**

Where a caveat is lodged with the Registrar without reasonable cause a person aggrieved by the lodgement of the caveat may bring an action to recover damages against the person who lodged the caveat.

#### **91. LAPSE OF CAVEAT**

- (1) Subject to Subsection (2), a caveat lapses after the expiration of three months from the time it came into force.
- (2) Where—
  - (a) a caveat is lodged with the written consent of—
    - (i) an equitable mortgagee; or

- (ii) the registered proprietor of the land affected by the caveat; or
- (b) the caveator has, within the period specified in Subsection (1), taken proceedings in the Court to establish his title to the estate or interest specified in the caveat and has given written notice of those proceedings to the Registrar, the caveat does not lapse in accordance with Subsection (1).

## **92. PROHIBITION AGAINST FURTHER CAVEAT**

Where—

- (a) a caveat has been lodged by or on behalf of a person; and
- (b) the caveat has lapsed or the Court has ordered its removal, that person shall not lodge another caveat on substantially the same grounds.

## **93. WITHDRAWAL OF CEVEAT**

- (1) A person who has lodged a caveat, or his lawyer or agent, may withdraw the caveat at any time before commencement of proceedings in the Court in relation to that caveat.
- (2) A caveat shall be withdrawn under Subsection (1) by giving notice to the Registrar in the approved form.

## **93. SERVICE OF NOTICES ON CAVEAT**

All notices relating to a caveat or to proceedings in respect of a caveat may be served on the caveator by being left at the address specified in the caveat or, where the caveat has been signed by a lawyer or agent, at the office of the lawyer or agent, as the case may be.

**The above mentioned Acts were used to determine the authenticity of the matter.**

