



COMMISSION OF INQUIRY INTO SABL

MR JOHN NUMAPO

CHIEF COMMISSIONER
& CHAIRMAN

TOP FLOOR, MURUK HAUS, WAIGANI, MONDAY 26 SEPTEMBER 2011
AT 10.35 A.M.
(Continued from Friday 23 September 2011)

THE CHAIRMAN: Counsel, how many matters have you got for this morning?

MR KETAN: Chief Commissioner, I have got five matters for this morning. Two of the matters listed number 36 and 37; Toriu Timbers Limited will be opened this morning. Matter number 38, Wowobo Oil Palm Limited will be mentioned and an adjournment will be sought. For the other two matters; Nuku Resources Limited and Nungawa Rainforest Management Alliance Limited, they will also be – we will be seeking an adjournment of those matters as well. So if I can---

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THE CHAIRMAN: Those are for this morning, are they? Is that correct?

MR KETAN: Those are the ones that are listed for this morning. The matters listed for the afternoon, there are three matters; Urasir Resources Limited, Mapsera Development Corporation Limited, and West Maimai Investments Limited and Yangkok Resources Limited. Those are listed for the afternoon. They will be mentioned at 1.30 pm this afternoon.

THE CHAIRMAN: Okay.

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MR KETAN: If I mention the matters in which we will be seeking adjournments first, Chief Commissioner, and in that regard if I can mention matter number 38?

THE CHAIRMAN: Yes.

MR KETAN: The matter of Wowobo Oil Palm Limited.

THE CHAIRMAN: Have you got any reasons to why you are seeking adjournments of those?

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MR KETAN: Yes, as we were in the process of doing the opening, in preparation for the opening addresses and that this morning, we received a supplementary file from the Department of Environment and Conservation and there might be matters in there that might affect what we will say in the opening statements. So we just need a bit more time to peruse that. So it is on that basis that we are seeking an adjournment of this matter to 5 October which is next week Wednesday at 9.30 am.

THE CHAIRMAN: Okay, that is for Wowobo Oil Palm Limited?

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MR KETAN: Yes.

THE CHAIRMAN: Okay, so adjourned to 5 October at 9.30 am?

MR KETAN: Yes.

THE CHAIRMAN: All right.

MR KETAN: Chief, if there are people in the audience that are here and they are interested in that matter, then they can come back at that time.

10 THE CHAIRMAN: Okay.

MR KETAN: The next matter is matter number 39, Nuku Resources Limited. We seek an adjournment of that matter to 6 October 2011 at 9.30 am on the same basis.

THE CHAIRMAN: Okay.

MR KETAN: That is next Thursday; next week Thursday 6th.

20 THE CHAIRMAN: Yes.

MR KETAN: The next matter is matter number 40; Nungawa Rainforest Management Alliance Limited. Again, we seek an adjournment on the same grounds as we have sought adjourn and---

THE CHAIRMAN: What was the date again for the adjournment?

MR KETAN: Yes, and also on the---

30 THE CHAIRMAN: What was the date for the adjournment, for Nungawa Rainforest? What was the date?

MR KETAN: To the 6th.

THE CHAIRMAN: 26th?

MR KETAN: 6 October next Thursday.

THE CHAIRMAN: 6th, sorry, that is next Thursday as well, okay?

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MR KETAN: Yes.

THE CHAIRMAN: All right, thank you.

MR KETAN: In that matter, we have received comprehensive submissions from the landowners today, this morning so we need to examine those before we make the opening address.

THE CHAIRMAN: So those are three for this morning?

MR KETAN: Those are the three matters this morning that I mentioned and seek adjournments.

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[10.40 am] THE CHAIRMAN: All right, that is fine, Counsel. I have got no objection to that. We can have the three matters adjourned to the dates that you have nominated on 5th and 6th of October next week. The other parties of people representing those landowners will have to also be informed of that so they are aware of the matter been adjourned.

MR KETAN: Yes.

THE CHAIRMAN: Are there anyone in the audience today? Would you know of anyone in the audience today that you ---

MR KETAN: No. In relation to the Nungawa Resources matter, sorry, the
20 Nungawa Rainforest Management, a Lands matter, there have been interested parties representing the landowners and we have had a meeting with them before we came into the hearing room and we will let them know as to this date. But we indicate through them in anticipation that that matter will be adjourned to the 6th that we were going to adjourn it to the 6th. So we just confirm that with them.

THE CHAIRMAN: All right, okay, what about the two?

MR KETAN: For the Nuku Resources Limited matter, people who are interested in the matter, I understand are present in the hearing room.

THE CHAIRMAN: So they are aware of it, of the adjournment?

30 MR KETAN: Well, they are present in the hearing room.

THE CHAIRMAN: So I take it ---

MR KETAN: This gentleman at the back here.

THE CHAIRMAN: Okay, so they are aware of the adjournment.

MR KETAN: Yes.

THE CHAIRMAN: Okay, that is fine.

MR KETAN: I am not sure whether there are any other interested persons in relation to matter number 38 Wowobo Oil Palm Limited but if there is anyone here in the hearing room, then they are obviously listening to this application for adjournment.

If I can return to matters 36 and 37, Toriu Timbers Limited, those two matters, Chief Commissioner, will be dealt with in a single opening statement which will cover both of them as they are obviously related.

10 THE CHAIRMAN: Yes. Counsel, do you have a brief for me you on that as well?

MR KETAN: Chief Commissioner, if I can proceed.

THE CHAIRMAN: Yes, go ahead.

MR KETAN: 1. As I mentioned, this opening statement will cover the two SABLs. The Special Agriculture Business Leases were granted to the company Toriu Timbers. The areas that these two SABLs cover are located adjacent to each other in the Gazelle District of the East New Britain Province.

10.45 am] The project is an agro-forestry project referred to as the Inland Lassul
20 Baining Integrated Agriculture Project, and it appears to have been established under both of these SABLs.

30 In preliminary perusals of the relevant institutional files, this is the main government agency of Agriculture and Livestock, PNG Forest Authority, Department of Lands and Physical Planning and Department of Environment and Conservation. There are issues with both the customary land ownership and with the customary concern for the initial lease of the land on the lease-lease back basis and with the landowner vehicles for the development of both the SABL covered areas and the guarantee company as well as the incorporated land groups from the area. Significant in the actual area of land being cleared by the developer, rather significant is the actual area of land, the size of the land that is being cleared by the developer and what is under the lease is unclear and we note that that is something that needs to be clarified as the Inquiry progresses with further inquiries and investigation.

What will be highlighted in this opening address or statement is what documentary evidence that has been provided and reviewed by the Commission of Inquiry team which includes the Counsel and Lawyers assisting, and the Technical Advisory team, and what further documentation must be provided in order to fully review the issues and therefore, the relevant Terms of Reference to which they relate. This process will include a list of persons to be summoned to provide further clarification and give evidence as well as produce documents to address these issues.

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2. To assist the Commission and the Commissioners, we will now briefly review or mention the Terms of Reference to which this address relates to and the issues.

- a. Determining the physical location. We need to determine the physical location of the SABL and whether there is a dispute over the matter which relates to Terms of Reference (c)(i) to (iii).

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- b. Determine if any illegality can be attributed to the granting of the SABL. This relates to the Terms of Reference (d);

- c. Confirm that these SABLs are subject to the process of the Department of Agriculture and Livestock, Department of Environment and Conservation and the PNG Forest Authority as well as the Department of Lands and Physical Planning and this relates to Terms of Reference (c)(vii); and

- d. Provide submissions in relation to the implications of the SABL on the land acquired and this relates to Terms of Reference (h).

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- 10.50 a.m.] 3. The gazettal notices and locations of the SABL, the first SABL, portion 904C was granted pursuant to a notice of Direct Grant under section 102 of the Lands Act of 1996, notice of which was published in the National Gazette 37 for a period of 99 years over this land commonly referred to as Toriu, T-o-r-i-u, being portion 904C milinch of Pondo fourmil Rabaul, Gazelle Peninsula of East New Britain, and having a area of about 11,240 hectares and registered on survey planning catalogue no 19/1913.

A valuer general's certificate dated 29 April 2010 describes the land area as being approximately 100 kilometres west of Rabaul. Low land access being by all weather gravel road or by sea.

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The second SABL, Toriu Timbers, Portion 903C was also granted by a notice of direct grant under section 102 of the Lands Act and such grant was published in the National Gazette, No 37 of 2010 for Special Agriculture and Business Lease for a 99 year period over piece of land known as Toriu being portion 903C, milinch of Pondo, Fourmil Rabaul, Gazelle Peninsula, East New Britain Province. This SABL has an area size of 42,240 hectares registered on the survey plan, catalogue number 19/1913.

10 An independent valuer in an undated evaluation certificate described this portion of land as being milinch, part Pondo (SW, SE) and (NE, NW) fourmil Rabaul. A description also confirmed in the schedule of the section 11 lease – lease back instrument.

Importantly, both portions are adjacent to each other and both appear to have been surveyed at the same time as per survey plan catalogue 19/1913 referred to above which was registered on 19 October 2009 with the Surveyor General's office.

4. With the files that we have received, first is a Department of Lands and Physical Planning Registrar of Titles and the Customary Land Division in the Department of Lands and Physical Planning.

20 4.1 Portion 904C in relation to that the Registrar of Titles provided a copy of his file, in that the title confirmed that the SABL was granted to Toriu Timbers Limited. The lease commenced from on 27 December 2009 and it was entered in the title document that a sublease of the SABL was given to another company, KK Connections Limited on 22 December 2010. They appropriately completed a sublease document between Toriu Timbers and KK Connections Limited is also included in the Registrar of Titles' file.

30 The Customary Land Division file from the Department of Lands held Native Dealings file for this portion which from, correspondence is known as NLDB 6587 but that has not been provided.

- 4.2 In relation to portion 903C, volume 19 folio 18, the Registrar of Titles has not produced a file for this particular SABL, although he

has produced a title upon summons and direction from the Commission.

[0:55 a.m]

10 This SABL also commenced on 22 December 2009. On this portion there is no sublease of the SABL as in the case of portion 904C. From the Customary Division of the Lands Department, there is a Native Dealings file as noted on the file but this has not been provided. Its reference is NLDB 6586, land file 18292/0903C. The file contains the section 11 lease back instrument and it is signed, what appears to be chairman of three incorporated land groups, namely Bernard Taignas, T-a-i-g-n-a-s of Rainga, R-a-i-n-g-a ILG, Mobilom village, then Mr Lukas Koatnaski, K-o-a-t-n-a-s-ki of Eval ILG of Alakasam village and finally Mr James Tapele of Toriu ILG, Lamarain village. In the Department of Lands and Physical Planning minute dated 15 February 2010 from the acting Director, Land Administration to the Secretary, it appears that he or she was satisfied that only three agents for the three ILGs had the majority concern of landowners established through careful consideration. However, it only makes refers to a sub-clan and not other affected clans or even ILGs. The land investigation report itself only appears to be consulting 20 villagers from three separate villages, Mobilom Sakraqi and Alakasam. The agents agreements appear to be signed by other ILG members, a total of nine ILGs identified and named and an inter-office memo from Allan Babai to advise the East New Britain Lands Mary Dadatliu. This is inconsistent with some 22 ILGs identified within the two Toriu land portions for consideration both PNGFA and Provincial Executive Committee documents which we will note in due course.

30 In conclusion, on the files of the Department of Lands and the Registrar of Titles they have provided or what has been provided, this do not fully satisfy the requirements to show that there was informed widespread concern of all two portions, totalling some 53,480 hectares of land. In other words, the land investigation by the respective provincial Lands Department officers do not appear to have been conducted properly resulting in a properly certified Lands investigation report or LIR as is commonly known and resulting eventually in a recommendation for

alienability by the Provincial Administrator and eventually by the Custodian of Trust Land with a Certificate of Alienability. Those documents are missing from the file. There appears to be a Certificate of Alienability but given the state of the LIR, whether the Certificate of Alienability was actually genuine or not is doubtful and we hope to confirm and ascertain what the true state of affairs are as we progress into the further investigations and inquiries.

11.00 am] THE CHAIRMAN: So Counsel, what you are saying is that there is no land investigation report been compiled as well. Are you saying that?

10 MR KETAN: There is but what they have done is, they have kind of certified that they are satisfied with three executives of the ILGs ---

THE CHAIRMAN: Without a full consent of all the landowners?

MR KETAN: Without the full consent of the ---

THE CHAIRMAN: So that is lacking.

MR KETAN: Yes.

THE CHAIRMAN: All right.

MR KETAN: 4.2 - From the PNG Forest Authority, a file of documents have been received. However, crucial documentation are not included; significantly, the FCA or Forest Clearance Authority that was reported to have been granted
20 on 15 January 2008 over an area of 30,830 hectares, a figure inconsistent with figure SABL or total SABL portions. As per the affidavit dated 24 August 2011 from Kanawi Pouru, the Managing Director of the PNG Forest Authority, the following documents must be assessed to determine whether an FCA can be granted: (i) the prescribed regulation application form; (ii) the provision of a duly completed project proposal; (iii) some but not necessarily all of the following:

- certified boundary description from the Department Lands and Physical Planning outlining the exact area of project area;
- landowner verification and consent as evidence by lease documents;
- 30 - duly completed sales and purchase agreement with the customary owners for customary land or either owners of land acquired under

lease-lease back arrangements, SABLs or other State lease or freehold;

- an agreement or MOU between landowners and developers; feasibility studies of soil suitability for proposed agriculture use;
- Department of Agriculture and Livestock report on a stakeholder public hearing near or at the project area;
- Department of Agriculture provided prescribed form possibly form 235 of the Forestry Act Regulations signed by the Secretary of the Department of Agriculture and Livestock;
- 10 - an environmental permit to be attached to the proposal presumably to be provided by the Department of Environment and Conservation.

Those are necessary to be provided but none of the required documents referred have been provided as part of the Forestry file and is not in the file that has been forwarded. With the exception of minutes taken by a National Forest Service provincial officer of a public hearing held on 2 May 2007 at Vudal University, Kokopo, East New Britain, pursuant to the statutory requirement.

There is an August 2010 report by PNGFA field officer which confirms that there is development with road construction, extension and planting of seedlings. 13,000 hectares has been reportedly cleared. However, the PNG
20 Forest Authority has kept a strict monitoring process of the 500 hectare legislative requirement to develop agriculture before moving onto the next 500 for forest clearance and salvage.

The Commission will have to call the appropriate action officer of the PNG Forest Authority to provide an explanation of the gaps in their file.

THE CHAIRMAN: Sorry, the gaps are some of the requirements that you have listed?

MR KETAN: The requirements that I have listed, yes.

THE CHAIRMAN: Under the PNG Forest Authority roles and responsibilities?

MR KETAN: Yes.

[11.053am] THE CHAIRMAN: The only document that you have on file with respect to that is a minute or minutes taken by the National Forest Service Provincial office of public hearing.

MR KETAN: Yes.

THE CHAIRMAN: Held on 2 May 2007 at Vudal University.

MR KETAN: Yes.

THE CHAIRMAN: That is the only document you have not filed?

MR KETAN: Yes, there are other one or two documents, but this is in, amongst the documents that are among the required documents, this appears to be the only document.

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THE CHAIRMAN: Okay, I see. So that is why you are now requesting.

MR KETAN: Yes.

THE CHAIRMAN: That the Commission will have to call the appropriate action officer of the PNG Forest Authority to explain what happened to the other documents that are also required?

MR KETAN: Yes.

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THE CHAIRMAN: To complete the process?

MR KETAN: Yes.

THE CHAIRMAN: All right, thank you.

MR KETAN: 4.3 - From the Department of Agriculture and Livestock, no substantive files have been received or provided by them for the Inland/Lassul Bainings (Toriu) Integrated Agriculture Infrastructure and Reforestation Project. However, there are two items of correspondence that are provided that indicated this project has the full support of the department. Pursuant to the affidavit of Mr Francis Daink, the Deputy Secretary for Technical Services from that department who gave evidence on 30 August 2011, he swore that the process to approve an agricultural project for the purpose of issuing a FCA or Forest Clearance Authority, was a three-step process. However, the records of his department's requirement to make assessments have not been provided. These are specifically assessment or evidence of: (i) the land capability and suitability or, you will recall he was using the term, "arable land"; (ii) the land use or estate development plan; and (iii) public hearings conducted for the stakeholders affected by project development. Those have not been provided.

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4.4 From the Department of Environment and Conservation, no files have been provided to date; however, we have – before we came in for the

hearing – we have received a file from the Department of Environment and Conservation, and so we are yet to peruse that. That presumably, will be in relation to the processes for approval and issuing of Environmental Permit by the Department of Environment and Conservation. But we will make submissions on that at the next available opportunity. An Environment Permit has been sighted on a person of interest affidavit that was submitted in response to the invitation by the Commission in the advertisements that needs to be clarified. The permit was granted for water extraction in and within an undefined project area the permit appears not to be in line with other similar permits granted which specifically state that they are for carrying out works and discharging wastes in specific areas. This will also need to be reviewed further and further submissions made at a later stage.

5. From persons of interest, Mr James Tapele, the Chairman of Toriu land group ILG and Director of Toriu Timbers Limited, has sworn an affidavit dated 25 August 2011 and submitted to the Commission on 29 August 2011. In it he swears generally to the following:

5.1 That in 2006 in the Inland/Lassul Baining (Toriu) Integrated Agriculture Infrastructure and Reforestation was approved by the East new Britain provincial Executive Council, however the initial PEC submission is not included to clarify the terms of the approval. It is one of the documents that we might need to seek to sight that as we go into maybe the province. Mr James Tapele states that he was Deputy Governor and Chairman of the PEC at the time and he in fact signed off on the PEC Decision. This raises obviously a conflict of interest issue with Mr Tapele's role. And one that he himself will need to clarify.

THE CHAIRMAN: So that was in his capacity as the Deputy Governor of East New Britain Province? Is that correct?

MR KETAN: Yes. The PEC decision proposal for retention by the developer of 50 per cent of log export tax payable to the National Government as well as other terms that need clarification as well. Also as regards to land ownership there are references to 22 ILGs that must be clarified by the deponent, Mr Tapele.

- [11.10a.m] 5.2 That the land investigation was in order for portion 903 and that it established ownership of lands to three separate clans that make up the Toriu Land Group, Rainga Land Group, and Eval Land Group.

This land investigation was carried out by then District Lands Coordinator, Gazelle District Mr Allan Babai. As stated earlier the DLPP Customary Division has been unable to produce its file NLD 6587 in order to sight Land Investigation Reports to confirm customary landownership and landowner consent.

5.3 The affidavit consistently states that Rainga, Eval and Toriu land Groups consist of the rightful customary owner clans, other persons of interest of other clans would dispute this. The status of the 22 other ILGs mentioned must be established.

10 5.4 That a valuation prepared from the Valuer-General provided confirmation of the per annum rental to be paid by the developer to the landowner groups. This valuation appears based on the mere Lands file rather than a full inspection of the land. The Valuer-General will have to confirm how they assess land that they do not fully inspect.

20 5.5 This Chief Commissioner is an additional function that appears to have been performed and we notice that in the number of the other SABLs, especially with the ones that were opened earlier with the Changhai Tapioca (PNG) Limited files in relation to the cassava project in the Rigo District. The valuations have been done and annual rents have been provided for in the lease – lease back agreements which runs directly or is contradictory to the provision of the section 102 of the Land Act which provides for no rent is to be paid for the land. This appears to have been done in this case as well, which is inconsistent with the actual law.

THE CHAIRMAN: Well, Counsel you might recall the Changhae Tapioka project is part State land, part customary land. Would that be a factor that gives rise to obtaining of leases – so that paying off rents by the developer?

30 MR KETAN: The Changhae ones that we dealt with were only to do with the seven customary land portions.

THE CHAIRMAN: Not the State land?

MR KETAN: Not the State land.

THE CHAIRMAN: Okay.

MR KETAN: You will recall that over a total of – there was one set of information that said there was about 12,000 hectares, the other was that there was about 20,000 hectares of which – if you take the 20,000, there was 6,000 of that which was State land and then 14,000 was customary land. So the rents were nominated for the customary land on the lease – leaseback documents.

THE CHAIRMAN: Yes, arrangements.

MR KETAN: So that is something that was – that is if you like contrary to the law.

10 THE CHAIRMAN: Now, what did - Counsel, what did you say was the position in these two arrangements on the rental payment?

MR KETAN: There was a valuation done by the Valuer-General, which I have just mentioned. This valuation led to rents been charged and there was some payment already made by the sublessee.

THE CHAIRMAN: Well, Counsel, can I take you back to your paragraph 5.1.4 where you stated that the valuation report was prepared by the Valuer General to confirm per annum rental payment by the developer. But then you went on to say immediately after that in the next line of sentence, you said, “this valuation appears based on mere Lands file rather than the full inspection of the land”, which I take to be full inspection of the physical land itself; the boundary?

20 MR KETAN: Yes.

THE CHAIRMAN: So you are saying that there seems to be some – I want to assume from what you are stating here that there appears to be come inconsistencies with what is on file and the actual land as far as – and I want to suggest that you probably making reference to the actual boundary and so therefore you are now saying that the Valuer-General will have to confirm how they assess land and that they do not fully inspect. And obviously, it has a lot of impact on how they would arrive at the final determination of an appropriate rent to be paid per annum. It will depend very much on the size of the land. And they work hard at a certain schedule that the Valuer-General has probably
30 got in his possession on rental payment to the landowners by the developer.

MR KETAN: Yes.

THE CHAIRMAN: So you are saying here that it would seem that there are clarification that the Valuer-General' office need to make on this particular SABL?

MR KETAN: Yes.

THE CHAIRMAN: Is that correct?

MR KETAN: Yes. They just simply did a valuation based on the Lands Department provided documents.

THE CHAIRMAN: Yes, on paper?

MR KETAN: On paper, yes.

10 THE CHAIRMAN: Okay.

[11.20 am]MR KETAN: What I was saying there, Chief Commissioner is, even that, as was the case in the Changhae Tapioka files, they run contrary to section 102 (5) which provides that "rent is not payable for a Special Agriculture and Business Lease." So I just state that as I did with the Changhae matters, which is one of the concerns – if you will recall with the Changhae matters, concerns raised by Custodian for Trust Land. Before when the Lands Department officers were requesting for certificates of alienability, before issuing those, he did raise queries, particularly in relation to portion, I think it was portion 517C that as to why, querying the rent that was being provided for and which formed as a
20 condition of the lease-lease back instrument and the lease of the land.

If I move then to paragraph 5.1.5, initial permits that have been obtained prior to the issuance of the SABLs. Mr Tapele's affidavit attaches a letter from the Department of Agriculture and Livestock dated 22 June 2006 and the PNG Forest Clearance Authority dated 15 January 2008. The environment permit appears to have been granted to Toriu Timbers on 6 June 2008 and the SABL over portion 904C was granted in December 2009. The basis for the granting of these permits must be clarified by both the deponents as well as the PNG Forest Authority. There is a typo there, the Department of Agriculture and Livestock.

THE CHAIRMAN: Yes, I note that.

30 MR KETAN: Department of Agriculture and Livestock.

THE CHAIRMAN: I think one should be Department of Environment and Conservation.

MR KETAN: Yes, the other one should be Department of Environment and Conservation. We need to call or we will be summoning Mr James Tapele to give evidence in relation to these issues.

5.2 The other person of interest is Qaqet Stewardship Council. A three page submission in the form of a letter dated 23 August 2011 was received by us on 25 August and signed by presidents of the Sinivat Baining Local Level Government and Lassul Baining LLG as well as Inland Baining LLG and seven various members of the Malai Qaqet, Uramot and Karak Clans under letterhead of the Qaqet Stewardship Council and they stated that:

- both portions 904C and 903C were granted title without the full informed consent of the majority of the landowners.
- There are allegations against one of the persons who signed the lease - lease back instrument, Mr Bernard Taingas.
- They also claim now that the development has brought conflict amongst landowners.

They finish by inviting the Commission to visit the project area whereupon they are willing to provide oral testimony of their written submissions. So there are obvious objections and divisions indicating that the consent of all of the landowners of the area over which this particular portion of land over SABL portion 904C, there are obvious - as well as 903C – there are obvious objections and problems indicating no proper consent from the landowning clans.

But that is again, something that we will, when we go on the circuit we will have to assess and ascertain from witnesses on the ground.

Paragraph 6---

THE CHAIRMAN: Counsel, can I ask you a question? The Qaqet Stewardship Council, who are they and what are they? They are made up of some people?

MR KETAN: They are made of this Local Level Government Councillors.

THE CHAIRMAN: These are the three LLGs?

MR KETAN: Yes, we are quoting from a letterhead, letter that was used, but it appears that this is some sort of a body incorporating all these ILGs that I have referred to and landowners. So it may be a registered group, it may not be registered group but that is again something that we need to clarify.

THE CHAIRMAN: Okay, that is fine. I just want to establish that, get some clarification on that. All right.

MR KETAN: 6. - We submit that there are the following issues for consideration and loose ends or gaps that need to be tied up.

- 10 6.1. The Forestry Authority must produce relevant documents as there are glaring gaps in their file that was produced. The land granted and FCA and the SABL land portions are inconsistent.
- 6.2 The Department of Lands must produce a Registrar of Titles file for portion 903C and then a customary native land dealings file for portion 904C.
- 6.3 The Department of Environment and Conservation that has been produced - the file - we are yet to peruse it, so we reserve comments on that until a later stage.
- 20 6.4 The Department of Agriculture and Livestock must produce all agriculture proposal documentation for both portions and all documents forwarded to PNG Forest Authority in relation to their obligation under section 90A of the Forestry Act.
- 6.2 There are issues that we submit needs to be determined at the full hearing.
 - 6.2.1 Did the three persons enter into the State lease have full informed consent of the majority of all concerned landowners?
 - 6.2.2 Did Toriu Timbers follow the proper permitting process if SABL was granted after the issuance of the FCA and environment permits?
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6.2.3 Was there a conflict of interest scenario with Toriu Timbers Limited and the East New Britain provincial administration?

7. We suggest at this stage that the following people be summoned:

- Mrs Magdalene Maihua of the PNG Forest Authority;
- Francis Daink - Deputy Secretary, Technical Service of the Department of Agriculture and Livestock;
- Tiri Wanga of the Department of Lands and Physical Planning, the then acting Director of Lands Administration Division, now Director of the Alienated Lands Division;
- 10 - Department of Environment. Those files have been produced so we will determine whether anybody needs to be called once we have perused those files; and
- finally, Mr James Tapele of Toriu Timbers Limited.

And finally, we ask that this matter be adjourned generally to a later date.

11.30 am] THE CHAIRMAN: Counsel, are those the only people you intend to summon or to call to come and give evidence or is there any other?

MR KETAN: Yes, they are the only ones at this stage; maybe the target ones, maybe others but we will, as we review the matter again, particularly with the
20 Environment and Conservation file that has just come in, we will determine and then let you the Commissioners know as to any other persons that we want summoned.

THE CHAIRMAN: So you are requesting for an adjournment generally to a date to be fixed?

MR KETAN: Yes.

THE CHAIRMAN: So at this stage, you are not in a position to give us an
30 indication on the date. Is that what you are saying?

MR KETAN: That is what I am saying, this matter – further inquiries and hearings will have to be conducted. Because this is based in the East New Britain Province, further evidence will be received at the hearing on the circuit as the Commissioner travels to the East New Britain Province hopefully sometimes towards middle or end of next month.

THE CHAIRMAN: Okay, all right, that is fine. Counsel, I basically will endorse your request to have the persons that you have named to be summoned when a date has been set for them to appear. I note that some of the people you have got listed that you want them to appear are based here in Moresby and you have also indicated that the full hearing of this matter will be at the provincial center in East New Britain, for a date to be fixed, which means that you might have to consider to give sufficient notice to those representing the various government agencies and departments that are based here in Port Moresby so they also make arrangements to travel to East New Britain when a date has been nominated. I am pretty sure that you will also be able to indicate in your summons on that date which the hearing will commence in East New Britain, and it will give them sufficient time for them to make arrangements and preparations to also attend.

MR KETAN: Yes, Chief Commissioner. The Port Moresby based witnesses will be summoned to appear here in Port Moresby. The hearing of the matter will as it is being begun here, part of the hearing will go to the – will be conducted in East New Britain and then to be conducted with the last of the hearings in relation the matter before the closing addresses and submissions. So Port Moresby based witnesses will be called here.

THE CHAIRMAN: Which means that you will have to set two lots of different dates then; one for the Port Moresby resident witnesses to appear, and the other date on location in East New Britain. Is that – I mean, there are two lots of dates that you will have to nominate; one for the Port Moresby based and one for the sitting over in Kokopo, Rabaul, Kerevat or wherever.

MR KETAN: Yes.

THE CHAIRMAN: It might cause some conflict, I would imagine. I am going to suggest to you, Counsel, that you summon them and they will appear at the location that the hearing will take place. If it means the hearing is going to be held in Kokopo, so be it. These are government officers.

MR KETAN: Yes.

THE CHAIRMAN: And the government will be responsible to making sure that they attend at the location for hearing. Just in case there may be questions or issues that arise, if once we are on location in Kokopo, for example, and then we would require some clarification from government officers but then we have already heard them in Moresby, and it will be difficult. So my view would be

that you nominate a one date for this particular SABL and the location, everybody will get there.

MR KETAN: Yes.

[11.35a.m] THE CHAIRMAN: The government officers, it will be their responsibility to make sure that their officers attend at the location for the hearing.

MR KETAN: Very well. The date, unfortunately I cannot nominate a date at this stage until we ---

10 THE CHAIRMAN: That is fine. It is up to you but what I am simply saying is that just nominate one day and one venue, and these are government officers, they will attend, turn up at that venue and the date to give evidence. So you have everybody all at the same time. Just in case any other issues arises and they are not there, we might just go round and round the circle again and just simply wasting time. So that is only my suggestion to you. It is up to you as to how you want to work things out.

MR KETAN: Very well.

THE CHAIRMAN: Alright, so that is all for this morning, Counsel?

MR KETAN: That is all for this morning.

20 THE CHAIRMAN: We have got how many matters for this afternoon? Did you say about two, is it three? Two for this afternoon?

MR KETAN: This afternoon there are ---

THE CHAIRMAN: Three actually.

MR KETAN: Three matters.

THE CHAIRMAN: Urasir Resource Limited?

MR KETAN: Yes, all of those matters, Chief, we will be requesting adjournments on those matters so if we adjourn to 1.30 and then we can come at say 1.30 and mention them and we adjourn to another time.

THE CHAIRMAN: Yes, that is fine.

30 MR KETAN: We can mention them now but because it has been advertised that there might be people interested in the matters might turn up at 1.30 so ---

THE CHAIRMAN: Counsel, I totally agree with you on that. We will adjourn to 1.30 and have them mentioned. If people are – yes?

MR KETAN: There are, I think the gentlemen here are interested in the Toriu matters but they have heard what has transpired, if they want to talk about anything then they can come and see us through the reception.

THE CHAIRMAN: Let me just explain. The purpose of this is really we are opening up all the files of SABL and we are doing the same for Toriu. The hearing proper will take place over in East New Britain. The date will be set next Monday, that is what the Counsel has indicated. In the meantime if you
10 have any information, any additional information that you want to give to the Commission, see the Counsel and his team in the office and you can give your additional information or submission, whatever, that is fine with us. We have no problem with that. Alright, Counsel, we will adjourn until half past one.

LUNCHEON ADJOURNMENT

[1.53 pm] THE CHAIRMAN: Okay, Counsel, you got some matters for this afternoon?

MR KETAN: Yes.

THE CHAIRMAN: I think there were about three, did you say?

20 MR KETAN: Yes, Chief Commissioner. Those are the matters of Urasir Resources Limited number 41, Mapsera Development Corporation Limited, number 42 and West Maimai Investments Limited and Yangkok Resources Limited matter, matter number 43.

THE CHAIRMAN: So how do you intend to proceed on with them, Counsel?

MR KETAN: The first two matters, matter number 41 and 42, we wish to seek an adjournment of those two matters. The third matter this afternoon, matter number 43, we will make an opening address.

THE CHAIRMAN: Is there any particular reason you want to have these two matters adjourned?

MR KETAN: Yes. With matter 41, Urasir Resources Limited matter, this morning we received a file, a thick volume of file from the Department of Environment and Conservation which we need to look at before we open the file and make our opening address. We also have received numerous copies of correspondences and submissions from the landowners, in particular Urasir Resources Limited which have been received as late as lunch time today. So we need to review them and incorporate any regulations that those documents have into the opening address. So I seek an adjournment of that matter, matter number 41 to perhaps 5 October.

10 THE CHAIRMAN: Have you got a timing for that; you want to nominate a time for that?

MR KETAN: Yes, at 9.30 am in the morning, that is next Wednesday.

THE CHAIRMAN: Okay. And on that date you would be in a position to make an opening statement on this?

MR KETAN: Yes.

THE CHAIRMAN: Is that correct?

MR KETAN: Yes.

THE CHAIRMAN: All right, that is fine by me.

20 MR KETAN: There are persons with interest in that matter in the hearing room. I have informed them of my application and they can take note of this date. The next matter, Mapsera Development Corporation Limited, that matter we seek an adjournment to 6 October at 1.30 pm, and the reasons for that are the same as the matter of Urasir Resources Limited. There are also people in the hearing room who have interest in that matter and they have been advised of our intention to apply for the adjournment and they can also take note of that.

THE CHAIRMAN: Okay, I got no objection to that and I agree to your suggestion to have it adjourned to 6 October at 1.30 pm. Are there any others for adjournment on the list for this afternoon?

30 MR KETAN: No. Those are the only two matters for adjournment. The other matter in this afternoon's list, West Maimai Investments Limited and Yangkok Resources Limited, as I mentioned, we will make an opening address on that matter.

[1.53 pm] THE CHAIRMAN: You got a copy of that opening address, Counsel?

MR KETAN: Yes, I will hand it up. Chief Commissioner, this is matter number 43 on the list. The Commission of Inquiry file number is 60. This is a 99 year old SABL where there is a title contained in the file which is unclear but a copy is available to the Inquiry of portion 229C, in the milinch of Lumi, fourmil of Aitape, in Wewak in West Sepik Province. It covers an area of about 149 hectares or thereabouts of land and it is delineated on survey plan class 4 catalogue number 2/151. The SABL is dated 26 April 2010.

10 The SABL is in the Nuku District, N-u-k-u of the West Sepik Province or commonly referred to as Sandaun Province. On the title deed it appears that the SABL over portion 59C was a direct grant to West Maimai Investment Limited, Yangkok Resources Limited and Palai Resources Limited as joint tenants under the hand of the then Secretary of the Department of Lands and Physical Planning, Mr Pepi Kimas, exercising his powers as a delegate of the Minister for Lands and Physical Planning. The grants dated 26 April 2010, as previously mentioned, for some reason it was gazetted earlier on 23 April 2010 through National Gazette Issue No 83 which was published on that same date. A further difficulty noted with this matter is that the gazettal notice refers to portion 594C and not 59C. This anomaly needs to be investigated further and explained
20 during the course of the Inquiry. It may just be a typographical error or it may attach some significance to it. But we will clarify that during the course of the Inquiry.

[2.03 pm] The Commission of Inquiry file on this matter has various sub-files received from the Department of Lands and Physical Planning, PNG Forest Authority, Department of Environment and Conservation and Department of Agriculture and Livestock. Those being the main government agencies involved in the SABL scheme. Some files contain more information than others. One or two have a few or none at all. As is the case with the other SABL matters, there is an Investment Promotion Authority file containing extracts of companies
30 associated with the SABL either as grantees or sub-lessees. It is an integrated agro-forestry project. There is a file with submissions from persons of interest in relation to this SABL. The three SABL; first one is West Maimai Investment Limited. That company was incorporated on 27 January 2010. Its sole shareholder is a Mr Benjamin Hasu. Him and one other, Charles Welei, W-e-l-e-i, are the directors of the company. Both of these persons are noted as Papua New Guineans. Palai Resources Limited, which is the other guarantee, was incorporated on 13 April 2010. Its shareholders are Stephen Waleke, W-a-l-e-k-e; and Eddie, E-d-d-i-e Yanamba, Y-a-n-a-m-b-a; again, two Papua New

Guineas who were also the Directors of the company. There are no extracts for Yangkok Resources Limited at this stage and further investigations, searches and inquiries are progressing. In relation to the developer of the project, there are also no extracts for the development partner; namely Gold Resources Co. (PNG) Limited – PNG is in brackets – that is at least known from an unverified source that Gold Resources Co. (PNG) Limited is a Hong Kong based company which that has been incorporated in PNG as a PNG incorporated company on 18 January 2010. Details of this company and Palai Resources Limited will be obtained in the next round of IPA searches to be conducted or are being conducted at this stage. This information that we mentioned now is from what is on the file. In relation to the project agreement and the Department of Agriculture and Livestock, and Department of Environment and Conservation approvals and the FCA or Forest Clearance Authority from the Papua New Guinea Forest Authority, there is a project proposal prepared by the developer and is available on the file. It just expounds upon the viability of a proposed integrated agro-forestry project. It is not an agricultural land development plan which, we submit, are two different things. The existence of the project proposal is information that needs to be reported for the record at this stage, and again, things will turn out as we progress into further inquiries into the project.

There is evidence of the Department of Environment and Conservation process having been completed or commenced for that matter. Sorry, Commissioner, that should be, “there is no evidence”. Obviously, further investigation and inquiry is needed in relation to the DEC process. DAL processes are also not completed at this stage.

[2.08 pm] In fact, there is some indication that the public hearing by the department or organized by the Department of Agriculture and Livestock is set for December 2011. Obviously, it is still early days yet for a FCA to have been issued over this SABL, and it is not clear if one has been applied for.

In line with the practice adopted for at this stage with the openings of the Commission of Inquiry files, for the record, it is noted that there are no indications that the Forestry Act is a requirement under section 90B(9)(a)(iii) for division of forest clearing to be – or portioned into blocks of a maximum of 500 hectares is being ignored. This trend might yet apply for this project over portion 59C.

This section does authorize the PNG Forest Board or Authority to either increase or decrease the maximum of 500 hectares, but this is only to ensure that the planned agriculture or other land use takes place; however, in some instances developers or FCA holders, are arbitrarily permitted to clear forest of up to 5,000 hectares, 10 times the maximum prescribed at any one time.

All indications are that this arbitrary increase is over and or above the maximum allowed are being promoted by the Department of Agriculture and Livestock presumably based on technical advice and information available to them. But the Department of Agriculture and Livestock has not yet produced samples of assessments made by it on the economics of its decision.

10 The Commission of Inquiry will need to summon the Department of Agriculture and Livestock personnel to present evidence of examples of technical assessment with this project. Again, what we state here in our comments is, as is indicated from the files that we have, these are all subject to change or confirmation from further enquiries and investigations that we commence as the matter progresses.

THE CHAIRMAN: Yes, Counsel, the – sorry, if I may interject here. When you are referring to technical assessments, you are referring to things like the soil testing and whether or not the land is arable for agriculture and so forth? Is that what you are referring to?

20 MR KETAN: This is only – what I am saying is only to the viability of the project from the economic – yes, with the 500 hectare limit under the Forestry requirements.

THE CHAIRMAN: Yes, all right, I see the point there.

MR KETAN: Yes. The SABL holders and their preferred development partner Goldwell Resource Co. (PNG) Limited entered into a sublease agreement that was executed and registered on the day of the direct grant, 26 April 2010. A copy of the Registrar of Titles office deed has not been produced so it is not
30 known if the lease was registered on the title deed instrument. This is the main SABL lease as to whether the sublease was registered on the list to indicate that there had been a sublease.

[2.13 pm] In relation to submissions by persons of interest, there is representation particularly from of Yangkok area, that is, those who are supposed to have interest Yangkok Resources Limited. As we mentioned earlier, there is now extracts on that company of the three companies, the grantees of the SABL.

40 There is allegation of lack of consent; there are allegations of lack of public hearings; and there is an allegation that some of the landowners may also be listed as landowners of this particular SABL, portion 59C, and others adjacent to it including portion 26C over which other integrated agro-forestry projects

are proposed involving other landowning groups and developers. All these need to be verified by further evidence and inquiries.

In relation to expert witness, at this stage at least for this and possibly other adjoining SABLs and integrated agro-forestry projects, this Inquiry needs to call in expert witnesses and assistance of technology. The Commission also needs to call Dr Sharman of the University of Papua New Guinea's Remote Sensing Center. His evidence and assistance is needed, we submit, in locating the boundaries of the adjoining SABLs now so that allegations of anomalies on boundaries will be properly cross-checked and verified in context when this COI convenes on location.

Other preliminary findings will need to be confirmed, cross-checked or amplified after site visits and further inquiries in relation to witnesses who have given evidence in relation to this SABLs, generic to all SABL files and specific to this particular SABL portion 59C, this Commission has heard the then acting Deputy Secretary for Lands, Mr Romily Kila Pat; the then acting Deputy Secretary Customary Land, Mr Adrian Abby; the Registrar of Titles, Mr Henry Wasa; the Managing Director of the Forest Authority, Mr Kanawi Pouru; the Secretary of the Department of Environment and Conservation, Dr Wari Iamo; the acting Executive Director Environment Wing of the Department of Environment and Conservation, Mr Michael Wau; Secretary of the Department of Agriculture and Livestock, Mr Anton Benjamin and his Deputy Secretary for Technical Services, Mr Francis Daink, this Commission has also heard the Chief Secretary, Mr Manasupe Zurenuoc in his capacity as the Custodian of Trust Land pursuant to section 167 of the Land Registration Act. His evidence, again, is generally to all SABLs.

This Commission will travel to the project site in the Telefomin District of the West Sepik Province where it will hear from the Provincial Administrator, members of the Provincial Forest Management Committee, other interested persons, representatives of the SABL holder; representatives of the Forest Clearance Holder, and of course, the landowners. At this stage, we do not name any specific persons that will be called but we may, in the course of the Inquiry.

Once on location, the Commission will confirm the veracity and the accuracy of evidence generated or originating from the site and cross-check evidence originating elsewhere that needs to be cross-referenced with people or sources on site and amplify its contextual and conceptual appreciation of the evidence in preliminary findings. The Commission will summon all or any of the persons referred to in paragraph 14 of which are the possible witnesses on site and any other persons mentioned to or referred to in this opening statement that it needs

to hear for interview as informed by the investigations and inquiries as it progresses.

[2.18 pm] So with this, and in the course of further inquiry into this particular SABL, we will fill the loose ends and then try and indicate if there is any need for any summonses to be issued at a later stage before the circuits into the project area begins. This is, as Chief Commissioner will note, this is still very relatively new project and there are still inquiries going on, for example, the hearing that is scheduled in December for the Department of Agriculture and Livestock. So it is fairly a new project. But in relation to the SABL, there is one that exists having been granted on 26 April 2010.

Those are our opening statement. With that if I can ask that this matter be adjourned generally to when it commences hearings on site in the project area. This will be in Vanimu, Sandaun Province being the nearest provincial centre to where the project is located. Thank you.

THE CHAIRMAN: Thank you Counsel. Just one or two matters that will need clarification from your opening statement. I want to take you back to your paragraph 5 page 2 in which you made reference to the developer and you said that is, “I need to – there were a couple of next round of IPA searches to be able to ascertain or establish correctly that Goldwell Resource Company and get some more details of that company including the Pala Resources Limited.” I just want to comment here that that may be of importance, especially for the purposes of a SABL, the obtaining of the title and so forth. So we will need to ensure that this is done in good time before we commence our hearing on location.

There was another concern that I have and I am not too sure how we can be able to manage that. But as you have indicated that DAL will do its public hearing in December of this year and this inquiry is hopefully required to finish all the provincial hearing by the end of November so how do we marry that up? It appears that we would probably be a step ahead of the whole process.

MR KETAN: Chief Commissioner, that be as it may, the Commission is not obligated to – that is not the requirement for purposes of this Inquiry. If that is the stage of the project, project that is going to be developed on this particular SABL, by the time the Commission does its final report, it can report as it is that the project has not taken off and the Department of Agriculture and Livestock is still has not and so it can be reported as it is.

[2.23 pm] THE CHAIRMAN: Okay, good thanks, fine. There is another thing that I – if I take you back to paragraph No 10 and you made mention of that, “there is an allegation of lack of consent.” That is lack of “concern” being lack of “consent” from the landowners, is that correct?

MR KETAN: Yes. From – this is revealed from a dissenting group, if you like, who appear to, let us say, a compelling interest in the land as landowners. So it indicates – implicates the propriety of the land investigation process.

THE CHAIRMAN: Number 14 of your page 4, Counsel, under the sub-title, “Further Investigation and Location”. You named a number of people that will
10 be required to appear before the Inquiry. Provincial Administrator, members of Provincial Forests Management Committee, you also have in mind the Department of Lands and Physical Planning because they do play an important role in things like the LIR Report, Investigation Report and all these things so I want to assume that all those people will also be called in on location?

MR KETAN: Yes. That would be the Provincial Lands officers.

THE CHAIRMAN: Yes.

MR KETAN: And presumably, they will be based, in this case, in Vanimo when the circuits are conducted there or if they are based in Telefomin, then summonses will be issued prior to the circuit commencing in Vanimo so
20 hopefully they – these are Government officers - will be able to go into Vanimo.

THE CHAIRMAN: You also indicate here that you intend for the Commission to travel to the project sites in Telefomin District, West Sepik. Is that where the hearing is taking place or in Vanimo?

MR KETAN: No. The hearing will be in Vanimo but as we progress, it may be – because the project is in Telefomin, it may be, if there is difficulty in people getting into Vanimo, given that there is no road access between Vanimo and Telefomin, it is something that the Commission will need to consider and will advise the Commission in the next couple of weeks or so as to which venue is the appropriate, but usually or normally it should be Vanimo.

30 THE CHAIRMAN: Okay. Counsel, then I will leave it up to you and your technical team to work out all the logistic of it and if you are to travel to Telefomin, then for what specific purpose and reason.

MR KETAN: Yes.

THE CHAIRMAN: And if you are making reference to Provincial Administrator, he is based in Vanimo, he is not based in – so he can be heard there. The Provincial Lands officer is also based in Vanimo. But if you want us to go to Telefomin, then it is going to be on a specific purpose or reason and we need to know of that and obviously we will make arrangements on travels and so forth. Okay, I think those are the only few points that I wish to raise with regards to your opening statements on this particular SABL. So we will adjourn that generally to a date to be settled at a later time, depending on all the
10 logistical arrangements, and of course, the consultation with the secretariat.

MR KETAN: Yes. And that for the benefit of people who have interest in the matter that before the circuit into the provinces commences there will be a – the hearing time will be published.

[2.28 pm] THE CHAIRMAN: The dates will be published. Some dates have been published and we have not gone out yet. They are not being published in the Media yet or gone out to public as yet.

MR KETAN: No, not yet.

20 THE CHAIRMAN: I think there are a few more issues to be sorted out.

MR KETAN: Yes.

THE CHAIRMAN: Once we have completed all the opening of all the files and the opening statement with regard to all the SABLs then we will be put in a better position or placed in a better position to confirm the dates of our provincial visits and hearing throughout the country and once that is done then we will have the dates published in the newspaper and through the Media outlets. All right, have you got any other things to- - -
30

MR KETAN: No, not at this stage. If I can ask the hearing to be adjourned to tomorrow morning at 9.30?

THE CHAIRMAN: All right, we will adjourn until tomorrow morning at 9 am.

**AT 2.29 PM, THE COMMISSION OF INQUIRY INTO SABL WAS
ADJOURNED UNTIL TUESDAY 27 SEPTEMBER 2011 AT 9.30 AM.**