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COMMISSION OF INQUIRY INTO SABL

MR JOHN NUMAPO

THE CHAIRMAN & CHIEF
COMMISSIONER

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TOP FLOOR, MURUK HAUS, WAIGANI, THURSDAY 6 OCTOBER 2011
AT 10.12 A.M.
(Continued from Wednesday 5 October 2011)

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

MR KETAN: Chief Commissioner, the matters scheduled for this morning originally were three. With the two that were adjourned to this morning from yesterday, there are five matters this morning.

THE CHAIRMAN: Okay. So which one do you intend to start off with first?

10 MR KETAN: If I can mention two of the matters that were to be adjourned or stood to the afternoon, those are the matters of Nungawa Rainforest Management and Brilliant Investment.

THE CHAIRMAN: They are listed for this morning, are they, those two?

MR KETAN: Yes. If they can be adjourned to the – or stood over to the afternoon.

THE CHAIRMAN: Any reason for that, Counsel?

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MR KETAN: To be dealt together with the other matters by Ms Peipul and Mr Tusais.

THE CHAIRMAN: Thank you. So it is Nungawa Rainforest Management?

MR KETAN: Yes, and Brilliant Investment.

THE CHAIRMAN: Brilliant Investment?

30 MR KETAN: Yes.

THE CHAIRMAN: Okay. This means you have got for this morning---

MR KETAN: Three matters.

THE CHAIRMAN: Nuku Resources and plus the two others that were stood over from yesterday.

MR KETAN: Yes.

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THE CHAIRMAN: Koaru Resources Limited and Mekeo Hinterlands Holding Limited.

MR KETAN: That is right.

THE CHAIRMAN: All right, that is fine. Which one do you intend to start off with first, Counsel?

MR KETAN: If I can perhaps start with Nuku Resources which was scheduled for this morning.

10 THE CHAIRMAN: Sorry, before you proceed, can I give you some indication with regard to the afternoon cases? Commissioner Mirou will be presiding over all afternoon cases scheduled for 1.30.

MR KETAN: Very well.

THE CHAIRMAN: Including these two that we have just stood over now to 1.30, Commissioner Mirou will preside over them.

MR KETAN: Yes.

20 THE CHAIRMAN: Okay.

MR KETAN: Very well.

[10.15 am] THE CHAIRMAN: So you want to start with Nuku Resources first, did you say?

30 MR KETAN: Yes. The Commission of Inquiry file on this matter is number 47, Nuku Resources Limited. That involves SABL portion 26C in the Milinch of Yellow southeast; Maimai northeast, northwest, southeast, southwest; Masalaga, northwest, southwest; and Wongomush, northeast, northwest, Fournil of Aitape and Wewak in the West Sepik Province. It is a lease for 99 years. It covers an area of 239,810 hectares of land and is delineated on a Class 4 Survey Plan bearing catalogue number 2/149. It was a direct grant to Nuku Resources Limited. The grant stated 2 April 2009, and it was gazetted. The notice of the grant was gazette on 1 April 2009 in National Gazette number G58 of 2009 under the hand of the then Secretary for Lands and Physical Planning, Mr Pepi Kima, exercising his powers as a delegate of the minister.

40 The Commission of Inquiry has received documents from the Department of Lands and Physical Planning on this matter. The PNG Forest Authority has submitted some files. The Department of Environment and Conservation has produced some files, the Department of Agriculture and Livestock and the Investment Promotion Authority in relation to the composition or make up of

the grantee. We have received submissions from persons of interest also, both voluntarily and in response to invitations by the Commission in advertisements that we ran in the newspapers.

10 Nuku Resources Limited was incorporated on 12 March 2009. Its shares are held equally by two Papua New Guineans; a John Bagra and Ray Lewis, both of whom are also the company directors. It should be noted that John Bagra is involved in another company which appears from information we have to be a rival to Nuku Resources Limited. The company, namely, Arkama Resources Limited, spelt A-r-k-a-m-a. There is more explanation on this particular aspect later in our submission or rather opening.

The Department of Lands file shows that the land investigation report was completed and seven landowner representatives signed the land investigation report. Three persons out of six listed neighbouring villages signed off on it acknowledging no interest in the land. The Provincial Administrator signed the Certificate of Alienability – that should be the recommendation for Certificate of Alienability or recommendation for alienability.

10.20 am] However, as stated further in this opening, the issue of informed consent is raised by persons of interest, and this will need to be further investigated and ascertained and or verified when we convene on location in Vanimo.

30 On 6 April 2009, Nuku Resources Limited granted a sublease over the SABL to a Skywalker Global Resources Company (PNG) Limited. This company has separately filed submissions for purposes of supporting its position and it appears to be the developer. The Commission of Inquiry will confirm whether Skywalker Global Resources Company (PNG) Limited is the nominated or agreed entity when we progress into hearings – substantive hearings on site.

Skywalker Global Resources Company (PNG) Limited which appears to be the developer is wholly foreign owned. According to current IPA records as at 19 September 2011, the developer is owned by a Skywalker Global Resources Company which is obviously a foreign company. That is the parent company of Skywalker Global Resources (Papua New Guinea) Limited or (PNG) Limited. The latter's shareholding and directorship will be verified after a full physical search with the Investment Promotion Authority and screening of the returns and that.

40 One other aspect that needs to be stated at this juncture is that on 1 October 2010, the Managing Director of Skywalker Global Resources Company (PNG) Limited, a Tam Chinn Hin wrote to the Registrar of Titles requesting him to ask

the Papa New Guinea Forest Authority to issue a Forest Clearance Authority for the project on portion 26C.

In the course of his letter, Mr Tam Chinn Hin confirmed, amongst others, that a LeRoi Holdings Limited which he said was a listed company in the Hong Kong Stock Market held majority shares equating to about 51 per cent in Skywalker Global Resources Company (PNG) Limited. Again, this statement needs to be verified as it is obviously a variance with current IPA records.

- 10 There is another obviously erroneous entry in the IPA records, as we note, the original sole shareholder in Skywalker Global Resources Company (PNG) Limited, a Desucatan Lisa – it may be a male or a female – but that person transferred all of his or her 100 shares to Skywalker Global Resources Company on 12 April 2007. However, this person’s shareholding status has not entered to reflect the transfer. Therefore, the Commission of Inquiry needs to call her for clarification and also from the Investment Promotion Authority evidence as to the accuracy or reliability of its records that was set up.

- 20 In relation to a project agreement and Department of Agriculture and Livestock and Department of Environment and Conservation and PNG Forest Authority approvals, no project agreement for this project has been sighted. There is no copy on file. Therefore, the Company Secretaries of Nuku Resources Limited and Skywalker Global Resources Company (PNG) Limited will need to be called to give evidence on this particular aspect and to shed some light on it.

- [10.25 am] The Department of Agriculture and Livestock has not produced any agriculture development plan for this project. It has issued a Certificate of Compliance for large scale conversion of forest to agriculture or other land use development; a Form 235 under the Forestry Act. This is a requirement of Department of
30 Agriculture and Livestock under section 90A(3)(i) of the Forestry Act.

A certificate dated 12 August 2010 appears to have been given by the Department of Agriculture and Livestock under the hand of the Secretary Mr Anton Benjamin. Therefore, the issue of the Form 235 and the lack of an agriculture or land development plan need to be further investigated and ascertained as to the existence or otherwise of it.

- 40 Nevertheless, from other documents available to this Commission of Inquiry, it appears the agriculture component will be composed of a diversified portfolio. It appears that oil palm, rubber, teak forest, jatropa and cocoa will be the main stay of the project while vanilla and coffee will be intercropped under the proposed larger teak forest plantation.

It appears that the Department of Environment and Conservation process are complete. The Environment Inception Report was approved on 8 December 2009. An Environment Impact Statement dated 27 October 2010 has been submitted by the developer to the department. This has been presented to the public for inspection and commentary.

10 The Department of Environment and Conservation file contains letters or expressions of expressing support and also opposition for or to the Environment Impact Statement. However, the approval in principle is yet to be issued. There is no FCA or Forest Clearance Authority for this SABL. Copies of correspondence in the Department of Agriculture and Livestock file shows opposition to the grant and or issue of a FCA.

20 Two letters to the PNGFA, PNG Forest Authority Managing Director indicate this. One letter is from a Rex Yarura, the Chairman of the rival landowner company, Arkama Resources Limited and the other is from Romily Kila Pat, the Deputy Secretary Customary Lands of the Department of Lands and Physical Planning dated 1 September 2010. Both men request the PNGFA managing director to refrain from issuing a FCA on the basis that the land investigation process was not in order. At this juncture, a discovery generic to most SABLs under inquiry needs to be recorded by this Commission of Inquiry.

Section 90B(9)(a)(iii) of the Forestry Act requires forest clearance to be portioned into blocks of a maximum of 500 hectares. The PNG Forest Board may increase or decrease the figure, that is 500 hectares, for a good course. However, it seems developers, basically, FCA holders, are being permitted to clear forest of up to 5,000 hectares 10 times maximum prescribed at any one time.

30 Increases over or above the maximum allowed are being promoted by the Department of Agriculture and Livestock. Presumably, it is being done on the basis of technical advice available to it, but Department of Agriculture and Livestock has not produced examples of assessments made by it on the economical scale.

The Commissioner of Inquiry will need to summons Department of Agriculture officers including top management of Deputy Secretary and maybe the Secretary to give examples of technical assessments it has done.

40 For the further inquiry and investigation – rather, from persons of interest, we have received some statements. They are disputing the regularity of the issuance of the SABL and the nominated developer.

10.30 am] They also find fault with the land investigation report process, all these including the legitimacy of the land investigation report process and its clearance. Issuance of a certificate of alienability will need to be further investigated.

Arkama Resources Limited, the rival company to Nuku Resources is a company constituted by persons of interest. It was incorporated on 15 January 2010. Its 700 shares are held equally by seven Papua New Guineans; namely, Fredinand Akayawo, John Bagra, Thomson Mawala, Wesley Sevre, Alponse Tamalako, 10 Florian Tawahub and Rex Yarura. There are 19 directors including all shareholders and two company secretaries who are all Papua New Guineans. It is noted that John Bagra still continues to be one of the two shareholders of Nuku Resources Limited.

In terms of further investigation for the purposes of the inquiry, the Commission will travel to West Sepik Province and convene most likely at Vanimo. At this stage, it appears that we will need to call the following persons; the West Sepik Provincial Administrator, all members of the Provincial Forest Management Committee, the Chairman of Nuku Resources Limited and 20 Arkama Resources Limited, Provincial Lands Officer and the landowners; Tam Chinn Hin, the Managing Director of Skywalker Global Resource Company (PNG) Limited, other persons of interest including those that have submitted submissions and any other person that appear to be necessary and relevant.

Once on location, the Commission will confirm the accuracy and veracity of evidence generated or originated from the site and cross check evidence originating elsewhere that needs to be cross-referenced with people or sources on site and amplify its contractual and conceptual appreciation of the evidence and preliminary findings that have been mentioned here.

30 Chief Commissioner, this concludes the opening statement on this particular SABL over portion 26C and I ask that this matter be adjourned generally.

THE CHAIRMAN: Thank you, Counsel, for that opening statement. There is one thing that had come obvious in some of the presentation of the opening statements since yesterday and that is that there might be a need for us to - or for you, Counsel and the technical team- to look at the possibility of calling one or two officers from IPA because it is becoming a common trend now in many of the opening statements that some critical information with regard to 40 shareholding in companies and directorship are missing from the file and that there was no proper explanation from the IPA as to the status. So you might consider at some stage, as part of the substantive hearing into the SABL files that one or two officers from IPA be called.

MR KETAN: Yes.

THE CHAIRMAN: Thank you, Counsel. We will have this matter adjourned generally until a date that is to be set for the hearing of this matter substantively to be held in Vanimo at a date to be set by the Commission.

MR KETAN: Yes.

THE CHAIRMAN: You have got any other matters apart from that, Counsel,
10 for this morning?

10.35 am] MR KETAN: Yes, Chief Commissioner, the next matter is one of the matters that we adjourned from yesterday, Koaru Resource Owners Limited.

THE CHAIRMAN: Yes?

MR KANU: Chief Commissioner, I am Aloysius Kanu from Warner Shand and I appear for Koaru Resource Owners Company.

20 THE CHAIRMAN: Aloysius?

MR KANU: Kanu, Aloysius Kanu.

THE CHAIRMAN: Appearing for Koaru?

MR KANU: Koaru.

THE CHAIRMAN: Mr Kanu, that is to keep in line with the current practice on the appearance of Counsels, we will acknowledge your presence here this
30 morning on behalf of the Koaru Resource Owners Limited, and you do under section 8 of the Commission of Inquiry Act have the right to seek leave from the Inquiry to make appearance but we would rather reserve that until we commence a formal substantive hearing at some stage and a date will be set and yourself and people or your clients will be informed in good time once a date has been set for this.

So in the meantime, we will just acknowledge your presence. If you do have any documentation, any submissions that you wish to put in, you may do so. You are at liberty to do so but the proper hearing of it will be at a later date.
40 Thank you. All right, Counsel.

MR KETAN: Thank you. The Commission of Inquiry file on this matter is number 23. The grantee of the SABL is Koaru Resource Owners Limited. The

SABL was granted on 3 August 2007, over land commonly known as Tearu Meporo being portion 323C, Milinch Kukipi, northwest and southwest, Cupola northeast, Fourmil Yule, Gulf Province, covering an area of 59,460 hectares.

This is, as is the case with most of the SABLs, a direct grant under section 102 of the Land Act 1996 by the former Secretary of Lands, Mr Pepi Kimas, exercising powers as delegate of the minister for a period of 99 years, the notice of which was published in National Gazette number 115 dated 3 August 2007.

The physical location of the land is located somewhere between Malalaua and Kerema towns in the Gulf Province. The lease is an agro-forestry lease
10 entailing the clearing of forest and development of an oil palm estate, a pine wood plantation and any other agriculture crop development.

The lease has been granted to Koaru Resource Owners Limited, contrary to the agreement of the landowners being Pacific International Resources PNG Limited who now appears to be the development partner with Koaru Resource Owners Limited. The only file we have received from the relevant government agencies is a file from the Department of Environment and Conservation.

[10.40 am] We have not received any files from the Department of Lands and Physical
20 Planning, neither the Department of Agriculture and Livestock, nor with PNG Forest Authority. The Investment Promotion Authority has provided records in relation to these companies; namely, Koaru Resource Owners Limited, and the Pacific International Resources PNG Limited, the developer.

Despite the lack of sufficient or adequate records from most of the relevant agencies, there has been a reasonable amount of response from persons of interest who have come forward with their submissions for the consideration by this Commission of Inquiry and from which we are able to make some preliminary findings and note the existence of information and documents and
30 note the status in relation to various aspects of this SABL. From material currently available to us, we have been able to understand the sequence of events which I state as follows:

The Gulf Provincial Government appears to have initiated the proposal by way of a Gulf Provincial Executive Council Resolution 36/03 at a meeting number 4/03 conducted on 20 June 2003, in which resolution the Gulf Provincial Executive Council recommended to the National Executive Council to approve an integrated agro-industry project over at Taure/Meaporo TRP; that should be Timber Rights Purchase area and Meaporo and Kakoro FMA, Forest
40 Management Areas, based on section 137 of the National Forest Management Act.

Following that decision, the Gulf Provincial Government appears to have entered into a MOU, Memorandum of Understanding, with Pacific International Resources PNG Limited on 25 August 2006 for Pacific International Resources PNG Limited to develop the Taure/Meaporo Oil Palm Project, including logging to clear the forest for the oil palm project.

10 There subsequently appears to have been the Taure/Meaporo project awareness meeting held at Moreave-Heavala village on 20 October 2006 which was chaired by the District Administrator for East Kerema, Epavea Hailaeavila, which included Mr Alanson Avae, the Provincial Forest Officer; Mr Roddy Koaru, the Provincial Legal Officer; Mr Mond Palme, District Lands Officer and local landowners. These were the people who attended that meeting. The meeting is said to have been held to alert and highlight to the landowners the pros and cons of the proposed Taure/Meaporo forest project.

A public hearing was then said to have been held on 31 October 2008 at Koaru village. The meeting is said to have been held to conduct public awareness and to gauge public opinion on the establishment of the Kerema/Meaporo Agro-Forestry project.

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[10.45 am] This meeting is said to have been attended by the landowners and various senior officials including Mr Leka Mou, Director, Department of Agriculture and Livestock Southern Region; Mr Miai Larelake, Administrator Gulf Province, who is now the former administrator, Mr Roddy Koaru, Project Coordinator for Agro-Forestry Project; Mr Sam Toti, Environment Specialist; Mr Alanson Avae, Forest Officer, Gulf Province; Mr Dominic Evere, NGO specialist as well as Local Level Government Chairman's and villagers and landowners.

30 It is recorded in the minutes that at that meeting, the project was explained and all ILG chairman and persons who spoke were in favour of it and that their preferred developer was Pacific International Resources PNG Limited. It is however to be noted that this public hearing occurred on 31 October 2008, but the SABL has been granted to Koaru Resources Owners Limited on 3 August 2007 about a year earlier. Prior to the public hearing at Koaru village on 31 October 2008, a Certificate of Compliance for a Forest Clearing Authority for large scale conversion of forest to agriculture or other land use development Form 235 was signed by Secretary for Agriculture and Livestock, Mr Anton Benjamin, and forwarded to PNG Forest Authority with strong recommendations for the granting of the FCA or Forest Clearance Authority.

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Mr Benjamin, in his letter to Mr Kanawi Pouru, the Managing Director of the PNG Forest Authority dated 20 August 2008, indicated that the Land Use Study and the socio economic impact assessment was done by his department which

indicated that the project is both economically and technical viable for major agricultural investment. Mr Benjamin further stated that all procedural requirements under the Agro-Forestry Act 2000 and the NADP, that is National Agriculture Development Program project guidelines have been satisfactorily complied with.

Unfortunately, Mr Benjamin and his department have been unable to provide any documentary evidence to the Commission of Inquiry to date. A copy of Mr Benjamin's letter is annexed to Mr Koaru's affidavit. Mr Koaru has submitted
10 an affidavit to the Commission of Inquiry. Just recently, a copy of the Agriculture Development Plan said to be jointly prepared by the Department of Agriculture and Livestock - the National Department of Agriculture and the Provincial – and the Provincial Department of Agriculture and Livestock officers and the developer was handed to the Commission of Inquiry by the grantee being Koaru Resources Limited.

There is no indication as to whether the agriculture plan was approved or not. However, the National Executive Council in its decision number 290/ 2008, or
20 decision 290 of 2008 in its meeting number 12 of 2008 on 11 December 2008 approved the submission for the Kerema Integrated Rural Development Project. There is no land investigation report, no certificate in relation to boundaries, no recommendation as to alienability, no instrument of lease for customary land under section 11 of the Land Act and no SABL section 102 Lease Agreement; this is the lease-lease back agreement. There is however a copy of the title on file.

In relation to forestry approvals, an application for a forest clearing authority to carry out a large scale conversion of forest to agriculture was lodged with the PNG Forest Authority on 22 December 2008. But there is now information
30 available to us as to the current status of that application.

In relation to submissions from interested persons, the Commission of Inquiry has received submissions and representations from several individuals, ILGs, landowners and other interested persons and they are from the following persons:

10.50 am] The first one is from Koaru Resource Owners Company Limited, the grantee of the SABL. Its Chairman, Mr Roddy Koaru, has filed or submitted an affidavit as I have mentioned, which is very detailed and comprehensive, however, it
40 does not explain how Koaru Resource Owners Company ended up being granted the SABL instead of the landowner nominated company, Pacific International Resources PNG Limited.

Mr Koaru has expressly stated in his affidavit that he has no intention of testifying before the Commission of Inquiry. But in our submission due to his pivotal dual role as project coordinator for the Gulf Provincial Government and the Chairman of the grantee or lessee being Koaru Resource Owners Company Limited, he will need to be called or he will be asked to either voluntarily or summons to give evidence in relation to his role and the circumstances leading up to the issuance of the lease to his company rather than Pacific international Resources PNG Limited as was the nominated company by the landowners.

- 10 The second person of interest who made submissions is a Mr Sevesoa Maso. Mr Maso claims to be a landowner and member of Mirihea ILG in the SABL area and has registered his objection to the grant of the SABL to Koaru Resource Owners Company Limited. He has indicated preparedness to testify or give evidence and we will be calling him at the substantive hearing of this matter.

- 20 The third person of interest who has made submissions is Levemora-Keauja ILG, Incorporated Land Group. This ILG has expressed great concern over the manner and the process through which the State lease – rather, the SABL was processed and granted to Koaru Resource Owners Company Limited. The ILG as through its chairman, vice chairman and other officers made formal representations and have authorized Messrs K Kingsley Lore and Abel Tore who were also members of the ILG to represent their views at the Commission of Inquiry. The two gentlemen will be asked to give evidence in this context.

- 30 The fourth person or for the interested person is Laripi Land Group Incorporated. This ILG has indicated it is still working on the affidavits to present to the Commission of Inquiry. However, they indicated they are extremely concerned over the manner in which the SABL was granted to the grantee and will appear at the hearing to give evidence. The say now that the grantee obtained the SABL by fraud and they are concerned that the SABL has been granted to a one man company. Representatives of this ILG will need to be called at the substantive hearing either here or on location.

The fifth person to express interest or fifth interested person is a Lawrence Eka. This person claims to be a landowner and has written to the Commission of Inquiry expressing his dissatisfaction with the grant of the SABL to Koaru Resource Owners Company Limited. He appears to be resident in Madang. He may be invited to give evidence if he is still interested.

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10.55 am] The last person is Koaru village ILG. This ILG has written objection to the grant of the SABL to Koaru Resource Owners Company Limited and has lodged its submission or objection with the Commission of Inquiry. The

Secretary to the ILG, a Mr Kalasi Oavelare has made those submissions. He will be asked to give evidence at the substantive hearings in relation to what is and his ILG objections are. It is noted that the proposed developer, Pacific International Resources PNG Limited which, as I have mentioned earlier is the landowner nominated nominee for the SABL was somehow not granted the lease but interestingly that company has now not made any representation or filed any submissions with the Commission of Inquiry.

10 It is also to be noted that as this is a Gulf Provincial Executive Council and National Executive Council approved and sanctioned agro-forestry project, it is surprising that the three key-implementing agencies being the Department of Lands and Planning, and Department of Agriculture and Livestock, and PNG Forest Authority have not made their records and files available to the Commission of Inquiry and this needs to be followed up and pursued with the calling of officers from those various agencies to give evidence as to this particular situation. There was a sublease created on this SABL from documents made available by the Department of Environment and Conservation, it appears that this particular SABL has been subleased by the grantee Koaru Resource Owners Company Limited to Pacific International
20 Resources PNG Limited, the company originally nominated by the landowners to be granted the SABL.

By a document titled Agriculture Sublease executed on 6 August 2007 which was actually three days after the grant of SABL to Koaru Resource Owners Company Limited, Koaru Resource Owners Company Limited and Pacific International Resources PNG Limited by that agreement or sublease arrangement, have granted 90 years of the lease to Pacific International Resource PNG Limited at the rental of K60,000 per annum and royalties of 10
30 per cent net profit for the first 20 years presumably from logging, and 15 per cent of net profit thereafter from the oil palm and other agricultural developments; the rent and royalties payable to the Landlord being Koaru Resource Owners Company Limited and not the landowners.

In relation to the companies, the company Koaru Resource Owners Company Limited, the grantee of this SABL is registered with the Companies office or Registrar of Companies and is company number 1-57954 and was registered on 22 May 2007, about two and a half months before the grant of the SABL to it. The company's registered office is said to be at section 14 allotment 12, Pepoharo, Kerema, Gulf Province.

40 The total number of shares issued for that company is 50 shares and they are all held by Roddy Hila Koaru. Mr Koaru apparently owns the company 100 per

cent. The directors of the company are Avia Roddy, Roddy Hila Koaru and Tore Koaru. The Company Secretary is Roddy Hila Koaru.

[11.00 am]Koaru Resource Owners Company Limited is therefore, as we note, a one- man company owned and controlled by Mr Roddy Koaru who is the project coordinator appointed by the Gulf provincial government to facilitate this agro-forestry project.

Pacific International Resources (PNG) Limited is registered as a company number 1-54994 with the Registrar of Companies and its registered office is at Unit 34, Level 3, First Heritage Center, Waigani Drive, National Capital District. That company has issued 1,000 ordinary shares. And the shareholders are one, Hock Cheong who is noted as a Papua New Guinean with 5,000 shares; Huai Wen Cheong, who is noted as a Malaysian with five shares; Shi Chun Zhu who is noted as a Chinese, his or her as the case maybe, has 200 shares; and Grand Pacific Resources Propriety Limited, a company has 990 shares. Grand Pacific Resources Propriety Limited is noted to be a Singaporean company ---

THE CHAIRMAN: Sorry, Counsel, that means the share issued is 100 ordinary shares not 1,000 as you indicated if you look at the break up.

MR KETAN: Sorry, yes, 1 million ordinary shares, yes. Thank you, Chief Commissioner. Grand Pacific Resources Propriety Limited is a Singaporean Company and it has been given 990,000 shares. It is noted that to have its registered office at Kenhill Road, number 08-03 Kenhill Plaza, Singapore. Apparently, this company owns 99 percent Pacific International Resources (PNG) Limited.

The directors of Pacific International Resources (PNG) Limited Company are Shi Chun Zhu, Malaysian of section 144, lot 4, Matirogo, Badili, in National Capital District; a Hock Cheong, Malaysian of Unit 34, Level 3, First Heritage Center, Waigani Drive, Waigani. Huai Wen Grace Cheong, Chinese, of section 144, lot 4, Matirogo, Badili.

In relation to an agriculture plan, a copy of an agriculture plan has been forwarded to us by the grantee as I mentioned earlier. This plan is said to have been jointly prepared by the Department of Agriculture and the developer, Pacific International Resources Limited. There is however, no information as to whether this has been approved, has been formally endorsed and approved.

In relation to environmental approvals, the Department of Environment and Conservation has made available to the Commission of Inquiry, a file from which we note the following; Pacific International Resources Limited submitted a notification of preparatory works to the Department of Environment and Conservation on 7 January 2008. The Department of Environment and Conservation, after assessing the notification issued a notice to undertake environment impact assessment on 30 June 2008. Pacific International Resource Limited, being the developer, submitted an environmental inception report on 24 July 2009 and the Department of Environment and Conservation received and approved the environmental impact report on 6 August 2009.

Pacific International Resources Limited submitted its environmental impact statement on 10 August 2009 and the assessment and public review process was carried out.

Chief Commissioner, I think there is a mistake here; “The notice to undertake environmental impact assessment” should actually be, that I mentioned earlier, should actually be “of an environment inception report”, not “environment impact assessment” which comes later. Which was submitted on 10 August 2009 as I have just mentioned.

[11.05 am] The Environment Council refused the environment impact statement at its meeting number 01 of 2011 on 25 February 2011 this year and required further information from the developer, being Pacific International Resources Limited. Pacific International Resources Limited provided the additional information on 20 May 2011 in its meeting number 3 of 2011 conducted on 30 June 2011, the Environmental Council by decision number 12 of 2011 approved the environment impact statement and recommended to the Minister to grant an approval in principle to the developer Pacific International Resources (PNG) Limited. The Minister, then Minister Mr Benny Allen, issued the approval in principle on 20 July 2011.

Pacific International Resources Limited then applied for an environmental permit under - should be under section 68 of the Environment Act 2000 on 14 August 2011 and was subsequently granted environmental permits numbers WDL 3(316) to commence on 22 August 2011 and to expire on 21 July 2061, and WEL 3(238) which is the other permit to commence on 22 August 2011 and expire on 21 July 2061.

The environmental permits and approvals for the development of this SABL by Pacific International (Resource) Limited as we note appear to be in order. For further investigations and inquiry, we suggest that the following witnesses be called; Mr Roddy Koaru, the chairman and sole shareholder of Koaru Resources Owners Company Limited, the grantee of the SABL; Gulf provincial lands officer to testify on aspects of the SABL grant; manager, customary lands, Department of Lands and Physical Planning to testify on aspects of the grant of the SABL as well; the managers and directors of Pacific International Resources Limited to give evidence on its sublease from Koaru Resource Owners
10 Company Limited; Sevesoa Maso of Miria ILG in relation to their objection to the grant of the SABL to Koaru Resource Owners Company Limited; Messrs Kingsley Lore and Abel Tore of Loremora, Keauja ILG in relation to their concerns over the grant; chairman and executives of Laripi ILG in relation to their objections to the grant; and the chairman and executives of Koaru village ILG in relation to their objection to the grant.

This is our opening statement on this particular SABL, Chief Commissioner and I ask that this matter be adjourned generally.

THE CHAIRMAN: Okay, thank you, Counsel for this comprehensive opening statement with respect to this particular SABL. I noted that there are few issues
20 or number of issues that needs to be properly clarified, especially for the purposes of the Inquiry. There is also a FCA, TRP being issued so that is into large scale logging and then of course, if there is any logging then, if it is for purposes of SABL then those are some of the things that need to properly be clarified. I am not able to have it clear in my mind as to what is the exact operation. It could be done in the disguise of SABL. But this is just a thought that come to mind initially. But it will be subjected to further examination and obviously evidence that will be presented to the Inquiry when we sit for the substantive hearing. So we will have this matter generally adjourned. You got any particular location or venue that you will nominate for this; the hearing of
30 this SABL?

11.10 am] MR KETAN: I am not familiar with the Gulf Province but it might be Kikori or might be Kerema. Yes, Malalaua might be - well according to the audience, Malalaua is the nearest government station to the project area.

THE CHAIRMAN: There is a road connection there? There is a highway, road connected?

MR KETAN: Yes.

THE CHAIRMAN: All right, we will get the Commission's Secretariat staff to arrange for a sitting at Malalaua on a date to be nominated. For the benefit of the public, we will be putting up a listings of all the dates on which the matter will come up for substantive hearing and I think at this stage we have decided that it will be over in Malalaua. So we are putting out the dates and it will be published in the papers; Post Courier and the National and other papers and media outlets so you all aware of when the matter will come up for the proper hearing and the venue will be in Malalaua.

10 Counsel, thank you very much for that. We will have it generally adjourned to a date to be set and it will be published and with scheduled hearing dates including the venue. All right, thank you, you got another matter for this morning?

MR KETAN: Yes, the last matter for this morning is the matter of Mekeo Hinterland.

THE CHAIRMAN: Mekeo Hinterlands Holding Limited, is that correct?

MR KETAN: Yes.

THE CHAIRMAN: Is there a copy of the opening statement with you?

MR KETAN: Chief Commissioner, Ms Koisen will make the opening
20 statement on that.

THE CHAIRMAN: Okay.

MR KETAN: That is the matter of which she has carriage.

THE CHAIRMAN: You have got a copy for me?

11.13 am] MS KOISEN: Chief Commissioner, the Commission of Inquiry file number 28 has been opened in relation to this particular SABL over portion 45 volume 31, folio 249, milinch Kasevuna and Central Province, in the Central Province. The SABL is issued in the name of Mekeo Hinterlands Holdings Limited and is situated between Goilala and the Kairuku Districts of the Central Province. The total area of this SABL is 116,400 hectares. Out of the total area it is
30 anticipated that the developer who is Albright Limited will log out about a 116,427 hectares of forest. That is the information that is on file which needs to

be clarified because the total amount that is on the SABL is a116,400. So the added 27 hectares will need to be clarified when we go into substantive hearing.

Information on the files show that some of the areas are solely for logging purposes and some for commercial agriculture crops. So it is a logging operation and subsequently once the logging operation is cleared, it is anticipated that the landowners will then go into growing commercial crops.

The active file on this particular SABL just contains the current extract of Mekeo Hinterlands Holdings Limited and is dated 2 August 2011. There is no extract with regard to Albright Limited so we are unable to give any information on that or make any findings on this company's shareholding and who are the directors might be. However, with Mekeo Hinterlands there is a total number of 90 shares that have been issued. So far those shares are equally divided between shareholder, directors Mathew Poya, Chris Aia, Andrew Rudaka, Michael Buiais, Charles Iweki, John Kala, Leo Amewa, Leo Ambross and Peter Ailai.

Since its registration this particular landowner company has only filed one annual return. The extract actually shows nil for assets and liabilities and so far no employees have been employed by this particular landowner company.

Of interest to the Commission of Inquiry is the fact that the shareholder directors of the Mekeo Hinterlands Holdings Limited appear on this particular extract to be holding shares in their personal capacities. At this stage it may be safe for the Commission to make a preliminary finding that and Mekeo Hinterlands Holdings Limited is not a landowner company but is a private company with shares held not in trust but in personal capacities. The Commission of Inquiry is also to note that although the IPA file has been given its – it fails to give elaborate details with regard to the administration of this file. However, a thorough perusal of another file; the Department of Environment and Conservation file reveals that the Investment Promotion Authority may have had more involvement than it shows on the IPA file.

On the Department of Environment and Conservation file, the following documents were discovered. A copy of a certificate of incorporation dated 6 April 2006, registration number 1-56187 of Albright Limited who is the developer; a copy of a certificate of incorporation dated 07 August 2006, company registration number 1-56310 of Mekeo Hinterlands Holdings Limited.

So there are two certificates of Incorporation. They just do not happen to be in the IPA file but in another file.

What is of interest is the following; the first is a letter dated 17 November 2006 from Ivan Pomaleu, the Managing Director of Investment Promotion Authority to Dr Wari Iamo, the Secretary for Environment and Conservation. In essence, that letter is informing the Department of Environment and Conservation that the Office of the IPA had been facilitating the interests of a Malaysian investor named, Aya Molek Plantations Bhd. The letter requested a meeting to be held with the officials of the Department of Environment and Conservation together
10 with the officials of IPA and the investor. A meeting was called to give the investor an opportunity to present its plan for developing Mekeo Hinterland. Information on file further indicates that the Department of Environment and Conservation officials did not attend that meeting, there is also no information on file to suggest that that meeting took place.

[11.19 am] About 18 months later, on 18 June 2008, there is another letter, correspondence from the Managing Director, Ivan Pomaleu of the IPA, this time to the Minister for Lands, the former Minister, Dr Puka Temu. This letter expressed disappointment that landowners had signed a separate sublease agreement with the current developer, Albright Limited. The letter proposed that the Lands
20 Minister nullify the sublease agreement with Albright Limited and accept Aya Molek Plantations Limited Bhd as a developer.

On 4 August a letter was written by the Member for Goilala, former Member or current Member, Mr Mathew Poya to Dr Puka Temu, former Lands Minister and the letter essentially stated that the landowners were happy with Albright Limited as its developer and that they would not be entertaining any other developer.

This letter is of particular interest to the Commission of Inquiry, in that it made very serious insinuations against the IPA office that the IPA office was being used by the developer, well, the potential developer, Aya Molek Plantations
30 Bhd, subsequently registered as CP SAW IT LIMITED and that particular letter has made insinuations that the IPA Office was being used by this particular company as a contact point or as a go between landowners and the potential developer.

On 25 August 2008, CP SAW IT LIMITED wrote a letter to the Minister for Lands, basically complaining that it had been left out of that particular sublease

and the one that was signed with Albright Limited. So that information is of particular interest. It is not in the IPA file but it is in the Department of Environment and Conservation file.

In the National Forest Authority file, there is a copy of Albright Limited being a foreign enterprise, there is a certificate for an foreign enterprise to carry on business in activity. So Albright Limited is a foreign company from the evidence on file and that is found in the National Forest Authority file, not in the IPA file.

10 With this evidence on hand, the Commission of Inquiry can make a preliminary finding that the Investment Promotion Authority or at least staff in the Investment Promotion Authority may have been involved in the negotiation of engaging a potential developer for Mekeo Hinterlands Limited. Such conduct one could say, being right outside of the legal ambit of the activities of the IPA.

11.22 am] Otherwise, without the company extract on Albright Limited, the Commission of Inquiry, as I earlier said, is unable to confirm its shareholding and identity of directors. Thus, Commission of Inquiry will need to most probably call – request for an extract or do a physical search on the file at IPA. It may be necessary also at this stage for the Commission when it goes into full hearing, perhaps to call the managing director of IPA to clarify the correspondences that
20 have been placed as evidence in terms of the IPA's involvement with a potential developer.

In the Department of Environment and Conservation, the following documents were sighted;

1. A notice to undertake environment impact assessment dated 21 April 2008;
2. An environment inception report dated 30 April 2008;
3. An internal review of the EIR dated 1 May 2008;
4. The approval of an environment inception report dated 9 May 2008,
5. An environment impact statement dated 21 May 2008;
- 30 6. Acceptance of the EIS, the environmental impact report for assessment;
7. Public review of the environment impact statement to various stakeholders dated 17 June 2008;
8. A notice for public grievance submission on the environment impact statement dated 18 June 2008; and

9. A recommendation for approval in principle for the issuance of the environment permit under the hand of Dr Wari Iamo dated 05 December 2008,
10. An environment permit pursuant to section 65 of the Environment Act, number (WL3210) issued under the hand of Dr Wari Iamo on 30 January 2009 to Mekeo Hinterlands Limited for a period of 25 years to expire on 29 January 2033. The permit allows for discharge of level 3 activities, initially associated with logging, followed by agriculture development of oil palm, citrus and other commercial agriculture products. Amongst other terms of permit, it is interesting to note, this particular permit requires that the permit holder is to conduct regular water quality monitoring and submit the same in its environment performance report,
11. A second environment permit was also issued pursuant to section 65 of the Act for the use of water at the Vangama Creek.

1.25 am]

This permit number is WE-L3(155) and is for a period of 25 years as well. The terms and conditions of the permit among other things, require a waste management plan and an environmental monitoring plan, both of which have been provided.

12. On the face of all the documents that are on the Department of Environment file, the developer may have met all requirements under the Environment Act but I do note that there is no evidence of any hearings held or conducted with regard to the use of water and also the environment permit. So that maybe a matter that we may need to – the COI may need to clarify with the Department of Environment and Conservation. Otherwise, it appears on the face of the evidence that we have on file that the requirements have been met under the Department of Environment and Conservation.

- 30 With regard to the Department of Lands and Physical Planning, this file contains very little information. What is obviously missing is the land investigation report, very vital document. The section 102 Notice of Grant and the section 11 Notice of a Direct Grant; those are both missing. However, I put a notation that the section 102 notice is subsequently - a copy of that was found in the National Forest Authority file. So that, it appears that there was a section 102 publication but it is in a different file.

Without the land investigation report and a section 11 notice, the Commission of Inquiry is unable to make any preliminary findings on whether the legal

requirements of the Land Act may have been complied with or not. What is certain is that on 22 November 2007, an SABL was issued and there are copies of that SABL title on file. What is also of interest on this land file is there is an internal memo titled, a minute dated 13 August 2007. This memo is written by Elizabeth Tobe, Manager, special projects to Lands officers Manu Kala, Murray Charlie, Arthur Unage, Gulu Raga and Kila Bae.

From the information on that memo it appears that Messrs Kala, Charlie, Unage, Raga and Bae took a trip to the SABL portion on the site, portion 30C to conduct a land investigation report. What has become of that report we, the
10 Commission of Inquiry does not have evidence on that and in essence, that memo was talking more about their entitlements and the fact that CP SAW IT Limited paid these particular officers to go on the trip. Those officers will definitely be needed; will be called in, the COI will need to call them in to find out what happened to that land investigation report. The file contains no other documents other than that memo and a few correspondences from one officer to another with regards to the issuance of the SABL.

Without the LIR and without the vital documents such as the certificate or recommendation of alienability, a certification of boundaries and consent of landowners, the Commission of Inquiry will probably need to also call in more
20 senior officers such as the Secretary to clarify how the SABL was issued without the land investigation report.

[11.30 pm]The Department of Agriculture and Livestock file is almost empty except for one correspondence and it is a letter dated 20 June from the DAL Secretary, Anton Benjamin to the Managing Director of the National Forest Services, Kanawi Pouru.

The letter is basically advising the National Forest Service that the developer Albright Limited has complied with all legal requirements of DAL and therefore it should be issued with a Forest Clearing License. The other piece of
30 document on this file is a copy of that National Gazette of Section G182 indicating publication of the Notice of Direct Grant under Section 102 of the Land Act and that particular Gazettal is under the hand of the former Minister Puka Temu, Lands Minister.

Other than those two documents that are on that file, there are no other documents such as the Soil Suitability Report or a project plan. What is of interest is the evidence of that Gazettal without the Land Investigation Report. So like I said earlier, the Secretary for Lands or some senior officer may have to

be called in. At this stage, the Commission of Inquiry may or may not within its discretion call the former Minister for Lands, that is something that the Commission would have to decide on.

The Commission may also require the presence of the Secretary for DAL, Anthon Benjamin to clarify whether all legal requirements under the Forestry Act have been met prior to the issuance of his letter and where the evidence is to that effect. Otherwise the file contains no other documents which the Commission can rely on to make a preliminary finding.

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With regard to the National Forest Authority, this file contains a certificate issued to Albright Limited as a Forest Industry participant on the 21 July 2006. It also contains a Forest Clearance Authority Certificate No 0301 issued on 26 June 2009. This Forest clearance Authority gives authority to Albright Limited to carry out large scale conversion of forest to agriculture or other land use.

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There is a deed of undertaking also in this file between Albright Limited and Mekeo Hinterlands Limited dated 8 May 2008 showing evidence of landowners consent for the logging project to proceed. So it appears that logging is proceeding without any evidence from DAL, Department of Agriculture and Livestock as to what plans there may be already by the developer, any documentary evidence to show what it intends to do after logging. So the Commission of Inquiry may call in the Secretary as I said earlier to clarify this because it can be a matter of concern.

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Also the NFA, National Forest Authority has a sub lease agreement between the developer, Albright Limited and Mekeo Hinterlands Limited. What is notable on that lease agreement is the fact that the land rent is to be paid annually and as we know under Section 11, land rent on a SABL is non payable so that particular clause may be invalid.

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What is also notable is clause 15 of the Lease Agreement. It gives the Chairman of Mekeo Hinterlands the power of attorney to do and make decisions on behalf of Mekeo Hinterlands Limited. Whether or not there is an actual power of attorney executed by Mekeo Hinterlands Limited, there is no evidence of that on the file, and of course there is no evidence of a board resolution to that effect in the IPA file. What is of concern is the fact that one person is empowered to make decisions for a few people who live over a parameter of over 16,000 hectares of land which could easily be said with a few thousand people on that area of land.

The Commission of Inquiry may see the need at this stage by call in Mr Poia to clarify the power of Attorney or perhaps produce a copy of his document on the

power of Attorney so that Commission is clear on the extent of that power of Attorney that he holds.

[11.35am] With relation to persons of interests, the first person that has submitted documents goes by the name of Matthew Rudaka. He happens to be a Director and shareholder on the Mekeo Hinterlands Company Holdings Limited. There are numerous correspondences he has submitted. He is basically complaining that one board member, Mr Hon Mathew Poia, he is making decisions without consent from the rest of the company directors or without proper resolution from the company.

A number of those correspondences are written to the Ombudsman Commission so Mr Rudaka has referred the matter earlier to this Commission of Inquiry - to the Ombudsman Commission. There is evidence on file to confirm that the Ombudsman Commission acknowledged the receipt of documents from Mr Rudaka relating to this particular project.

In view of the Ombudsman Commission's legal standing, as an independent body, the Commission of Inquiry is not able to summon anyone from the Ombudsman Commission, however, the Commission of Inquiry may see it necessary to write and enquire about that particular investigation because it is relevant to the current Inquiry on this particular SABL.

There is also documentary evidence per letter written by Directors and endorsed various incorporated ILGs comprising in the land area of the SABL to Mekeo Hinterlands Limited indicating that there is disharmony; there is disagreement between the executives on the current developer doing the project of Albright Limited.

There is correspondence also, documents on file alleging that the Hon Mathew Poia may have compromised interest of landowners and may be acting in abuse of his position of trust.

The specific allegation that is made on this document is that Mr Poia, without the consent of other Directors, secretly executed the sublease with the Secretary of Mekeo Hinterlands without the consent of Board Directors. So those are the allegations being made by – The Commission of Inquiry will probably need to call in Mr Rudaka to clarify the information that he has given to the Commission of Inquiry.

Mr Poia will – may probably also be given an opportunity at hearing to also give his side of the story.

The second person of interest is Joseph Mangabi, he is from Gongopu clan from the Okavi village, Gulf Basin, Lakekamu, Gulf Province.

Mr Mangabi has submitted an affidavit to the Commission of Inquiry in which he claims that 76,000 hectares out of the 165,000 belongs to his clan, and that he and his clan, and neighboring clans, objected to the National Forest Authority and to the Department of Lands and Physical Planning and the Department of Lands and Conservation. He made objections on the basis that the Land Investigations Report or the Land Investigation Exercise conducted by the Department of Lands and Physical Planning did not include his clan and neighboring clans. However their land has been – parts have been taken up by that – it is inclusive in the SABL.

[11.40 am] Mr Mangabi has taken the matter as far as court. There was a proceeding which has come - substantive orders have been handed down in JR OS 400/2009, a judicial review matter, basically reviewing the decision of the Department of Lands in the issuance of that particular SABL without the consent of landowners from that area. Her Honor Justice Davani, in this particular proceeding has already handed down a decision on 21 December 2010, declaring that the SABL portion is null and void. The issuance of that lease to be null and void ab initio. She ordered the surrender of the lease back to the Department of Lands. However, so far Mr Mangabi's evidence, he is saying that the Department of Lands and Physical Planning has not published a – has not put in a publication in the National Gazette to confirm that that SABL lease has been cancelled. So the orders have not, according to Mr Mangabi, have not quite been observed or carried out by the Department of Lands.

The Commission of Inquiry may want to call in officials from the Department of Lands to clarify whether or not that particular process or procedure has been determined and the SABL indeed cancelled.

The next person of interest is Victor Aisa. Mr Aisa's complaint is similar to that of Joseph Mangabi's case. In his case, he belongs to the Lolokanga clan of Inauauni village and he claims that the Department of Lands and Physical Planning did not consult or include them in the land investigation exercise. He acknowledges the court's decision on OS 400/2009 and also states the same thing that - concern that Mr Mangabi has, in that the Department of Lands so far as failed to cancel the title and publish it in the National Gazette to complete that procedure.

The next person of complaint is Roger Kipo. Mr Kipo's complaint is essentially the same as Mr Aisa and Mr Mangabi. There is evidence on file written to the Mekeo Hinterlands Holdings Limited during 2008 and 2009, basically objecting to the way in which the SABL was issued. In his correspondences, Mr Kipo is alleging that proper procedures by the Department of Lands were not met, requirements were not met prior to the issuance of that SABL.

10 Finally, with regard to preliminary findings, in view of the fact that there is a court order and the SABL has been ordered to be surrendered, the Commission of Inquiry can make a preliminary finding with regard to that particular SABL that has been cancelled. However, as I said earlier, the Commission of Inquiry may want to clarify with the Department of Lands officials as to whether or not that particular procedure has been followed. Because failure to publish it will mean that that title in effect has not been cancelled.

Chief Commissioner, that brings me to the end of this particular opening statement for Mekeo Hinterland Holdings and I request that the matter be adjourned generally.

THE CHAIRMAN: Thank you Counsel for that. Have you got any specific venue for this matter, the location for hearing? It will be Port Moresby?

MS KOISEN: Yes, Port Moresby, Chief Commissioner.

11.45 am] THE CHAIRMAN: Alright. I just wish to make one or two general observation on some presentations to date since last week with respect to the SABL and like this recent one. It appears that the logging operations have gone beyond the registered hectares that has been allocated for the SABL, and therefore, it begs the question, whether or not the developer is really serious about agriculture development or is using SABL as a disguise to want to go into a full scale logging operations. So those are some of the things that we will have to seriously look into in the course of this Inquiry because it is becoming too common since we started with the opening statement last week and again with this particular one on the Mekeo Hinterlands.

30 The whole purpose of SABL really is for the developer to do a clear felling of logs or trees, to clear up the land for agriculture development and that is the purpose of SABL. But as you will note, by the developer going beyond the SABL areas, it leaves a lot of questions to be asked. You know, it is just my assumption, they probably be using SABL as a guise or as an excuse to go into

operation. Obviously, we all know that there are two different processes; forest clearing authority for purposes of SABL and if they want to go into a full scale logging operation, it goes through another process altogether; timber rights permits and so forth and that is a matter that is entirely controlled and managed by the PNG Forest Authority and PNG Forest Services. Then carrying out a large scale conversion of forest into agriculture, in my view, it is almost a full scale logging. So those are some of the things that will come a bit more clearer in the course of our Inquiry but I am simply raising it because it is becoming too common in the last few days and I have realized or note that from your opening
10 statements that have been made.

Thank you very much for that. We will adjourn generally to a date to be set and venue as we agreed to will be in Port Moresby. Obviously, the dates will be published so parties or people who are interested will know as to when this matter will come up for substantive hearing. All right, you got any other matters for this morning, Counsel?

MR KETAN: No, those are the only matters. If the matter can be adjourned to 1.30 before Commissioner Mirou?

THE CHAIRMAN: Yes, all right, thank you. We shall adjourn to 1.30 this afternoon.

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LUNCHEON ADJOURNMENT