



COMMISSION OF INQUIRY INTO SABL

MR ALOIS JEREWAI

COMMISSIONER

DAGENHARDT CONFERENCE ROOM, RABAU ARCHDIOSECE,
VUNAPOPE, KOKOPO, TUESDAY 25 OCTOBER 2011 AT 10.11 A.M.
(Continued from Monday 24 October 2011)

COMMISSIONER JEREWAI: I see the new Counsel at the table.

MR NESERANA: My name is Mr Motuwe, initial "N". I appear on behalf of Mr Paisa who is in Port Moresby on a related matter.

COMMISSIONER JEREWAI: Thank you Mr Motuwe. You are the Principal of Motuwe Lawyers?

MR MOTUWE: That is correct, Commissioner.

COMMISSIONER JEREWAI: Very well. You know that this morning I am going to make a ruling in relation to Mr Paisa's submission---

MR MOTUWE: That is correct.

COMMISSIONER JEREWAI: As to whether or not the matters before this Inquiry involving your client, particularly with regard to the issues that are now before the Supreme Court of Justice and also being dealt with by this Commission of Inquiry are sub judicial?

MR MOTUWE: That is correct, I am aware of that. I have been briefed.

COMMISSIONER JEREWAI: Thank you. You may be seated and I will proceed with my ruling.

COMMISSIONER JEREWAI: Counsels and interested parties in attendance, in relation to the submissions made yesterday, not strictly based on an application to have this Commission of Inquiry refrain itself from dealing with the Inquiry into the Special Agriculture and Business Lease described as Portion 307 Milinch of Kokopo, Fourmil East New Britain Province and also the related ones, namely Portions 101 and 102 of the same Milinch and Fourmil, title to which is presently in the name of Barava Limited.

Now, as to whether or not the Terms of Reference of this Commission of Inquiry pursuant to which we will inquire into this particular SABL is sub judice or not because of the pending Supreme Court hearing in relation of an appeal involving the same lease, I have heard submissions yesterday and I will now proceed with my ruling.

RULING

This is my Ruling. The Special Agriculture and Business Lease described as Portion 307 being one of three Portions; two others being Portions 101 and 102 and not covered under this Commission of Inquiry's Terms of Reference initially is being inquiring into pursuant to – I will abbreviate Commission of Inquiry every time I mention it by referring to it as COI – yes, pursuant to the COI's Terms of Reference published on 21 July 2011 and as amended on 18 October 2011 by the Right Honourable Prime Minister, Peter O'Neill.

Portion 307 together with Portions 101 and 102 were direct grants of leases to Giregire Estates Limited by the then Minister for Lands and Physical Planning in 1991 pursuant to Section 11 of the Lands Acquisition (Development Purposes) Act, Chapter 192 of the Revised Laws of Papua New Guinea which legislation has now since been repealed.

In 1996 Giregire Estates Limited was struck off the Register of Companies and was not restored to the register until 2006. Even then certain actions were alleged to have been taken resulting in a consent order between Barava Limited and the Registrar of Companies swearing Giregire Estates Limited's restoration to the Registrar of Companies was futile pursuant to Section 48 of the Companies Act and apparently that Order under the proceedings commenced and described as MP50 of 2009 was made by consent of the parties who were involved in the proceedings and it is imperative to note that those parties were only Barava Limited and the Registrar of Companies and I believe as well the then Minister for Lands.

But prior to that while Giregire Estates Limited was still unregistered and not restored to the Registrar of Companies, the Minister for Lands granted to Barava Limited leases over Portions 101 and 102 pursuant to Sections 11 and 102 and of the Land Act being SABLs on July 2004.

On October 2004, the same took place in relation to Portion 307.

Giregire Estates Limited on 22 May 2008 instituted the National Court proceedings under OS285 of 2008 against Barava Limited, the Registrar of Companies and the Minister for Lands in which Giregire Estates sought judicial review, namely for the prerogative writ of certiorari issue and to squash the grant of the subleases to Barava Limited.

The National Court of Justice with Mr Justice Leahy presiding dismissed the action under OS285 of 2008 as brought by Giregire Estates Limited, I believe at

the leave application stage. I say this because I have not been provided all relevant documents filed in the National Court actions. In MP52 of 2009, I think earlier I referred to it as MP50 which is wrong, the correct serial number of that National Court proceedings is MP52 of 2009. In relation to that proceeding no documents at all was provided to me in the submissions yesterday. And in all the documents provided in relation to OS285 of 2008 only included the original summons itself and the supporting statement of facts pursuant to Order 16 Rule 3(2)(a) of the National Court Rules.

In relation to the Supreme Court appeal under SCA50 of 2009, only the Notice of Appeal was provided. Nonetheless, it appeared from the Court transcripts of the proceedings which went before Mr Justice Leahy on 17 April 2009 that on an application by Barava Limited objecting to Giregire Estates' standing, namely the competency to bring such court action, even been struck off the Companies Register, the court upheld the application and dismissed the judicial review sought under that OS.

Giregire Estates appealed to the Supreme Court under SCA50 of 2009 against Justice Leahy's decision to dismiss OS285 of 2008, and Mr Edward Apaisa, Counsel for Barava, advises me that that appeal will be heard tomorrow Wednesday 26 of October 2011 by the Supreme Court. Mr Apaisa appeared yesterday before this Inquiry on behalf of Barava Limited and indicated that his client wished to draw to my attention that I ought to consider if the Inquiry into the SABLs comprised Portion 307 as well as Portions 101 and 102 said milinch and four mil made mention of two issues of similar nature covered in this Commission of Inquiry's TOR, Terms of Reference, which are before the National Court of Justice and the Supreme Court of Justice and are therefore sub judice. Therefore the Inquiry into SABLs over Portions 307, 101 and 102 not be conducted. That was Mr Paisa's submissions yesterday.

Mr Paisa made written submissions to which he attached annexures "A", "B", "C", "D" and "E" which respectively were his current Lawyers Practicing Certificate, only to be told that he need to appear before this Commission of Inquiry will be granted subject to his production of his Practicing Certificate which he did being annexure "A". OS285 of 2008 filed on 22 May 2008 amends the statement under Order 16, Rule 3(2)(a) of the National Court Rules filed on June 2008. Transcripts of the proceedings in the National Court before

Mr Justice Leahy on 17 April 2009 and Notice of Appeal to the Supreme Court filed on 26 May 2009.

I also invited Counsels assisting this Commission of Inquiry to make submissions and Ms Peipul confirmed the matters before the Supreme Court and invited me to decide if indeed matters therefore the Commission of Inquiry are “ceased off” by the Court and therefore sub judiced.

I also invited if a representative of Giregire Estates may want to respond to the application by Mr Paisa to which Mr Joseph Wedau described as Chairman of the Board of Directors of Giregire Estates responded and submitted that as a layman whose lawyers are not present is unable to address me on the issue of sub judice. I know his position and I advised him to that I will proceed nonetheless to consider the issue and make my ruling as to whether there is a situation of sub judice as earlier stated.

Having heard Mr Paisa, Ms Peipul and Mr Wedau, I have now concluded that the issues previously before the National Court of Justice and now before the Supreme Court of Justice do not render, and I repeat, do not render the Terms of Reference of this Commission of Inquiry pursuant to which this Inquiry is being conducted and in particular into the Special Agriculture and Business Lease which comprise Portion 307 is sub judiced, nor do I consider that similarly issues relating to Portions 101 and 102 of the same Milinch and Fourmil are sub judiced.

Now, to be put in ordinary language, issues before the Courts of Justice are not to be commented upon on or dealt with in any way which will influence or intend to influence the outcome, particularly of the decisions of these Courts before whom these issues are placed. That in the ordinary man’s language is the meaning of sub judice, and therefore you will, in the course of my Ruling, understand why I have reached these conclusions.

I find firstly, although without the benefit of any relevant documents, that the Court action under MP52 of 2009 related to the issue of deregistration of Giregire Estates Limited, although whilst too that its deregistration affected its assets including unable to access its interests in Portions 307, 101 and 102, the subject of Judiciary Review proceedings under OS285 of 2008 and the issue now having transposed before the Supreme Court of Justice. But noting Mr Justice Leahy in his decision under OS285 of 2009 during August 2007 and

April 2009 in which he found himself without jurisdiction to set aside Justice Lenalia's decision in MP52 of 2009 striking out Giregire Estates Limited from the Companies Register.

There is therefore, no issue "ceased off" by the Court of competent jurisdiction and in this particular case to only one alive is the matter before the Supreme Court to be argued tomorrow does not involve any issue affecting the similar issues which may arise under the Terms of Reference of this Commission of Inquiry.

There is therefore in my view no issue "ceased off" by the Supreme Court that remains outstanding and therefore sub judiced. This is any inquiry into the similar issue by this Commission of Inquiry will one way or another influence or seen to be influencing the determination of the outcome of the issue before the Supreme Court, and I pause here to reiterate, the issue before the Supreme Court is to question the competency of Giregire to bring the action under OS285 of 2008 having been deregistered and therefore having no legally identified entity with the capacity to sue or not to sue. All companies being un-natural persons and therefore the only way to go before a court of competent jurisdiction is to ensure you remain alive as an entity that is un-natural and formed by law only.

Secondly, in respect of the issues raised in the actions raised under OS285 of 2008, while the validity of the grant of leases over Portions 307, 101 and 102 to Barava Limited were challenged and sought to be nullified, that whole Court action had been dismissed on 17 April 2009 and I heard over two years ago the grounds on which His Honour Mr Justice Leahy arrived at that decision was that he primarily did not have jurisdiction to deal with the question of competency of Giregire Estates Limited to sue while a deregistered company and therefore has no legal capacity to sue for that matter to be sued also.

His Honour so decided that although he agreed that the application for deregistration of Giregire Estates appeared to be irregular and the failure to involve Giregire Estates in the action under MP52 of 2009 for its deregistration appeared to have been also irregular in that it breached the rules of natural justice and may have been ultra vires.

His Honour found himself wondering in jurisdiction that he could not set aside an order of another brother Judge of able jurisdiction without an appropriate application.

I note that the application for judicial review was not an appropriate application to affect the order made by Mr Justice Lenalia in which Mr Justice Lenalia endorsed an order by consent between Barava Limited and the Registrar of Companies confirming the deregistration of Giregire Limited.

His Honour, Mr Justice Leahy therefore went on and dismissed the action in OS285 of 2008 and having considered that an application to set aside Mr Justice Lenalia's endorsed consent order to have Giregire remain deregistered was not an appropriate application for him to be able to have jurisdiction to deal with the possibility of setting aside Mr Justice Lenalia's endorsed orders.

It will be noted in the transcripts that Mr Justice Leahy did his utmost not to come out and appear to be siding with any party and he alluded as much as possible to Counsel representing particularly Giregire Limited that an appropriate application may be appropriately brought under the National Court Rules, particularly Order 12, Rule 8 which allows for application to set aside a irregularly entered Order, Judgment or Decision of a court of fellow competent jurisdiction.

The third aspect I had to consider was the Notice of Appeal instituting the Supreme Court of Appeal in SCA50 of 2009 which seeks to overturn Justice Leahy's decision on the question of competency of Giregire Estates Limited and may well therefore render the Inquiry into the SABLs in relation to Portions 307, 101 and 102 sub judiced until these issues had been determined by the National Court of Justice. But if the appeal is unsuccessful, then that puts an end to the matter and these issues are no longer alive, which therefore, we render that there is simply no obstacle in the way for this Commission of Inquiry to proceed under its own Terms of Reference to deal with any issues that may arise as covered by our Terms of Reference.

I would be really not venturing out and commenting further on matters I find in respect of the various court actions based on which I have been requested to consider the question of sub judice.

It appears, especially to Justice Leahy that Baravalimited's obligation consented to by the Registrar of Companies not to restore registration of Giregire Estates Limited to the Register of Companies may have been irregular for breach of natural justice and ultra vires.

However, it is very obvious that due to the incompetence, and I pause here, Counsels especially, to ensure that it is seriously taken note of and I am rapping

seriously the lawyers of our jurisdiction who have engaged in legal practices when not yet competent to sufficiently discharge their professional duties or to their clients. It is obvious, I therefore say, it is obvious that due to the incompetence of the lawyers, particularly for Giregire Estates Limited, instead of an appropriate application under Order 12 Rule 8, and based on case authorities, and I pause here again to mention because we did not come geared with the relevant Papua New Guinea Law Reports, but immediately which comes to mind are the cases of Grimm –vs- Grimm and Company reported some time in 1976 and then 1977 and also later on in the ‘80s, the case of the Government –vs- Mark and those cases clearly support the proposition that all irregularly entered judgments or the decisions of the courts will as a matter of rudimentary justice be set aside, and therefore, these lawyers, instead of filing an OS for judiciary review or even if the OS had been filed for judiciary review as they did in OS285 of 2008 and then the Barava Limited filed MP52 of 2009 be as it may as there may be, be as they may, the cause today by the lawyers of Giregire is to make an appropriate application under Order 12 Rule 8 so as to affect Judge Lenalia’s endorsed consent order keeping Giregire remaining deregistered.

I will venture out to say and I hope Counsels take note and I hope Mr Wedau for Giregire who is here without his lawyer takes note that irregularly entered judgments have no time limits as to any applications to set aside pursuant to Order 12 Rule 8 of the National Court Rules. Therefore, you are still entitled to bring this application, if you wish, but it is not a matter for me to deal with. This Inquiry only wants to only steer the course of this Inquiry in relation to all Special Agriculture and Business Leases so that we are unaffected by mounting applications attempting to keep this Inquiry out of inquiring into SABLs on a simply put submissions, “that the matter is before the competent Courts of Jurisdiction.”

In this case, I have found and I have found very precisely that we will inquire into the SABL involved in Portion 307 and possibly because of the amendment to the Instrument of the Terms of Reference, particularly the Terms of Reference (i) of this Commission of Inquiry as amended by the Prime Minister on 18 October 2011, possibly inquire also into Portions 101 and 102 and carry out our functions and our duties as determined under those Terms of Reference. And a blanket submission, be it before me this Commissioner or my other two brother Commissioners, who I will be conferring with, telling us not to inquire into any SABL because of pending court determinations on issues similar in nature but

not verifying sufficiently so as to enable us to determine whether those issues are sub judiced. In other words, any comments, any dealings, any investigations by this Inquiry will affect or influence the course of their decision in those cases will not be easily taken, especially not so easily taken by myself. As in this case, I find that these issues are not sub judiced and therefore this Inquiry will proceed to inquire into these SABLs.

So in summary, the Rulings are:

- (1) The Terms of Reference of the Commission of Inquiry into the issuance of the operation of this Special Agriculture and Business Lease over Portion 307, Portions 101 and 102 in particular the Terms of Reference (a), (b) and (d) are not sub judice;
- (2) The Commission of Inquiry therefore will inquire into the issuance of an operation of the SABL comprising of Portion 307, Milinch Kokopo Fourmil East New Britain; and
- (3) Pursuant to the amendment to the Commission of Inquiry's Terms of Reference (i) enabling the Commission of Inquiry to inquire to any other SABL which may come to the Inquiry's attention in the course of its inquiry Portion 101 and 102 Milinch Kokopo Fourmil East New Britain shall also be inquired into by this Commission of Inquiry.

Thank you, that is my Ruling. Associate adjourn the Inquiry for 10 minutes.

SHORT ADJOURNMENT

COMMISSIONER JEREWAI: Counsels I understand Mr Motuwe has indicated that now having made my ruling – you may sit down Counsel. We are not exactly a court proceeding and our formats not strictly in accordance with the protocols of courts of jurisdiction.

Mr Motuwe has indicated that the proposed fixture on Thursday, the 27 October may not be suitable for Mr Paisat to attend on behalf of their client, Barava Limited and he is asking for a reallocation of the fixture. Ms Peipul, will you be able to indicate if that is possible?

MS PEIPUL: Yes. That is a possibility, Commissioner. We can move it to Wednesday next week the 2nd of November. It is scheduled as continuation of Ralopal, Nakiura, Pomata but we should be able to deal with it in the afternoon of that day. That would be the 2nd of November. We would then suggest that Toriu Timbers which had been scheduled for today then be moved to Thursday because we have been served a few additional documents from landowners as well as the developer. That would give us time to at least review those documents and we can call witnesses and so forth to attend on Thursday when Barava would have proceeded. This Thursday, Commissioner.

COMMISSIONER JEREWAI: Have you been able to determine the nature of the documents which have just been served?

MS PEIPUL: Their submissions I believe there are from the East New Britain Provincial Government documents from them – these are new documents that we have not sighted as yet from the documents that we have been provided by relevant Government agencies. So we need to perhaps review those in light of that.

COMMISSIONER JEREWAI: Alright. I am just a bit worried that I may not make it back on time on Thursday. I have just been on the phone with the Attorney General's and it would appear that the matter I am attending on that involves the New Ireland Governor as well as the Attorney General, Dr Marat and the National Government team may well carry into Thursday which will mean effectively my return could be deferred until 3 o'clock in the afternoon on Thursday.

MS PEIPUL: In that case then, perhaps we then proceed with Toriu Timbers this afternoon. We will review those documentation and then we will be able to proceed, yes. But with respect to Barava Limited we would suggest Wednesday 1.30 next week, 2nd of November.

COMMISSIONER JEREWAI: Alright, then we will now formally adjourn the Barava Limited matter involving Portion 307, 101 and 102 Milinch Kokopo fourmil East New Britain to Wednesday 2 November 2011.

Thank you Mr Motuwe, the matter is adjourned to Wednesday 2 November. You may be excused.

MR MOTUWE: Thank you Mr Commissioner.

COMMISSIONER JEREWAI: Perhaps we will also adjourn until 1.30 in the afternoon and commence with Toriu Timbers.

MS PEIPUL: Yes, if we can have the matter adjourned to 1.30 this afternoon, Commissioner.

COMMISSIONER JEREWAI: Alright, Associate, adjourn the Inquiry to 1.30 this afternoon.

LUNCHEON ADJOURNMENT

COMMISSIONER JEREWAI: Yes, Counsel?

MS PEIPUL: Yes, thank you Commissioner. We intend to proceed with Toriu Timbers this afternoon. That is matter 57 and 58 over Portions 904 and 943 Milinch Pondo Fourmil Rabaul. There have been several summonses served on witnesses. We intend to call witnesses that represent the SABL grantee, Toriu Timbers Limited specially James Tapele as well as Lukas Koatnaski and Francis Kannin. They had in fact attended this morning and I believe they are in attendance this afternoon.

COMMISSIONER JEREWAI: Counsel, this is one of the files that was opened by another brother Commissioner and I do not have the file on it.

MS PEIPUL: Okay.

COMMISSIONER JEREWAI: Would you have an extra file on it?

MS PEIPUL: We do have an extra file.

COMMISSIONER JEREWAI: Thank you. If I may have a look at it. Thank you.

MS PEIPUL: Commissioner, there is no copy of an opening statement on that particular file. Perhaps we can assist with giving you a copy of the opening statement?

COMMISSIONER JEREWAI: Yes. Please if you can thank you. Perhaps the way to start this afternoon with this matter is to invite representation so that we know who is representing who with interest with regard to the Inquiry into this particular Special Agriculture and Business Lease. If I may. Those who are present this afternoon, you are either here individually or represented by your spokesman or legal counsel who may have an interest in the Inquiry into the Special Agriculture and Business Leases covering the area over which Toriu Timbers Limited operates on. So if you are here in representative capacity or yourself, in terms of making an appearance and submissions or wishing to give evidence, you may stand and come forward to the table, the seats in front. I think there is a row of seats in front. But come to the bar table where the lawyers are and inform us who you are and who you represent and what interest you have in the matter. In doing so, please indicate if you have made written submissions or you have sworn affidavits which you have provided to the lawyers assisting this Commission of Inquiry. So let us deal with this preliminary matters first. Alright, any representatives please stand up and proceed to the bar table, to the table where the lawyers are sitting.

Now all of you upfront in the front row of seats, you are here in various representative capacities, then counsels if you agree, I will commence from my left their right and call each one of them forward to introduce themselves individually and tell us what your interest is in the matter. Please we will begin with you the gentleman in the bluish black shirt. Proceed up to the seat up front there and please take a seat. Thank you. We are not exactly a court room, we are an Inquiry so please some of these formalities you hear in the court room does not apply here. Your name please first.

MR NICK LEO: My name is Nick Leo. N-i-c-k L-e-o. I came in here as in the capacity as the chairman of an entity in East New Britain the Qaqet Stewardship Council.

COMMISSIONER JEREWAY: K-a-k-a-e---

MR NICK LEO: Q-a-q-e-t.

COMMISSIONER JEREWAI: Q-a-q-e-t.

MR NICK LEO: Stewardship Council.

COMMISSIONER JEREWAI: Council.

MR NICK LEO: This council represents the social unit and the name is the Bainings of East New Britain. So we talk on issues in regards to all of the Bainings in East New Britain. I think there is in record there is some kind of a submission presented in the form of an affidavit and it has been sent to – I guess it is now in file and I will talk on the same issue today. I will try to make elaboration further as to where how we do come in and how do we see this investigation. We will try to contribute. So I will stand on that note. On behalf of the Bainings of, especially that area because that area is where the Bainings fraternity, the people from that project. Thank you. I think that is all.

COMMISSIONER JEREWAI: That is the – at least you have introduced yourself. You have indicated who you represent, the organisation you represent and that you have sworn an affidavit which you have submitted to the Commission of Inquiry team. Let me just confirm with Counsel. Indeed we have received an affidavit.

MS PEIPUL: There is a submission, it is not an affidavit per se. It is a three page submission and indeed Mr Leo has signed this submission.

COMMISSIONER JEREWAI: And that it is placed in some order in the course of the inquiry into these particular SABLs?

MS PEIPUL: Yes.

COMMISSIONER JEREWAI: For him to appear and make the substantive address?

MS PEIPUL: Yes, he will.

COMMISSIONER JEREWAI: Thank you. Alright, very good. We are done with you Mr Nick Leo. You can go back to the seat there and I will have the next person who is here this afternoon.

Please proceed.

MR ALOIS BALAR: My name is Alois Balar.

COMMISSIONER JEREWAI: Bala is spelt B-a-l-a?

MR ALOIS PALAR: B-a-l-a-r. I am a member of the Qaqet Stewardship Council and I am a signatory of this submission which is now with the Counsel Assisting the Inquiry. I am representing the landowners. When the landowners saw that land was included in the SABL they approached me. These landowners are present here, they will later introduce themselves. Thank you.

COMMISSIONER JEREWAI: Thank you very much. You just represent the landowners or are you also a landowner too?

MR ALOIS PALAR: Your Honour ---

COMMISSIONER JEREWAI: You can call me Mr Commissioner.

MR ALOIS PALAR: Mr Commissioner, in the Qaqet Stewardship Council I represent the Qaqets. There are five clans in the Bainings. Toriu Timbers operate in the Qaqet land. So I am representing the Qaqets---

COMMISSIONER JEREWAI: On the land of these five Qaqet clans?

MR ALOIS PALAR: Yes.

COMMISSIONER JEREWAI: I think that is sufficient to explain. Just while you are here, are you saying there are only five clans covering the whole of the Qaqet land area?

MR ALOIS PALAR: Yes.

COMMISSIONER JEREWAI: Alright. Thank you very much you can retire back to your seat. We will deal with you again during later hearings along the way. Now we are just hearing introductions from all the representatives. So thank you Mr Alois Balar.

MS PEIPUL: Commissioner, I can confirm that he is also signatory of the three-page submission.

COMMISSIONER JEREWAI: Thank you. Next gentleman please.

MR JAMES TAPELE: James Tapele.

COMMISSIONER JEREWAI: T-a-p-e-l-e?

MR JAMES TAPELE: Yes. Chairman, Torius Timbers.

COMMISSIONER JEREWAI: Are you chairman of the Board of Directors?

MR JAMES TAPELE: Yes.

COMMISSIONER JEREWAI: Alright, have you made any submissions so far, presented affidavits to the---

MR JAMES TAPELE: Affidavits, made a submission of affidavits and documents presented.

COMMISSIONER JEREWAI: Will you be the only one representing Toriu Timbers or will there be several more?

MR JAMES TAPELE: There are others coming after me.

COMMISSIONER JEREWAI: Alright. Who will be introducing themselves shortly?

MR JAMES TAPELE: Yes, thank you.

COMMISSIONER JEREWAI: Thank you. Alright, any confirmation their files are sworn I mean?

MS PEIPUL: Yes, an affidavit was sworn on 25 August 2011 and submitted to the Commission and it is specifically Portion 904C, Commissioner.

COMMISSIONER JEREWAI: Thank you. Thank you very much Mr Tapele. You can retire back to your seat and I will have the introductory from the next gentleman. Start with your name please?

MR ALAN BALBAL: Alan Balbal is my name.

COMMISSIONER JEREWAI: How do you spell your second name?

MR ALAN BALBAL: B-a-l-b-a-l.

COMMISSIONER JEREWAI: Alright. And you are?

MR ALAN BALBAL: I was the District Lands Coordinator at that time, which coordinated the Lands Investigation Report.

COMMISSIONER JEREWAI: Are you still the District Lands Coordinator or have you moved on?

MR ALAN BALBAL: I have transferred out from there. But I am here to present the copies of the lands Investigation Report.

COMMISSIONER JEREWAI: You have transferred out to Kimbe?

MR ALAN BALBAL: No, to our local government in the Pomio District, the Simit Local Government.

COMMISSIONER JEREWAI: Sorry, name of the local government?

MR ALAN BALBAL: Sivinit Local government.

COMMISSIONER JEREWAI: Alright. Sorry, name of the local government again?

MR ALLAN BALBAL: Sinivit Local Level Government.

COMMISSIONER JEREWAI: Sinivit Local Level Government, yes.

MR ALLAN BALBAL: Yes.

COMMISSIONER JEREWAI: But you are here to give evidence in relation to the land investigation report you would have carried out?

MR ALLAN BALBAL: Land Investigation report documents, yes.

MS PEIPUL: Commissioner, I can confirm that he has in fact given us the Lands Investigation Report yesterday and he was summonsed to also appear as well.

COMMISSIONER JEREWAI: Thank you very much Mr Balbal, you can retire to your seat.

Next please?

MR LUKAS KOATNASKI: Lukas Koatnaski.

COMMISSIONER JEREWAI: Lukas?

MR LUKAS KOATNASKI: Yes, Lukas.

COMMISSIONER JEREWAI: Second name?

MR LUKAS KOATNASKI: Koatnaski, K-o-a-t-n-a-s-k-i.

COMMISSIONER JEREWAI: And what is your representative capacity?

MR LUKAS KOATNASKI: I am vice chairman of Toriu Timbers.

COMMISSIONER JEREWAI: Vice chairman?

MR LUKAS KOATNASKI: Yes.

COMMISSIONER JEREWAI: Have you presented any submissions or affidavits?

MR LUKAS KOATNASKI: Yes, generally same as the others have given. Like chairman has given on the 903C and 904C; the agreements on 904C.

COMMISSIONER JEREWAI: You are co-signed the submission with the Chairman?

MR LUKAS KOATNASKI: Yes.

COMMISSIONER JEREWAI: Alright.

MS PEIPUL: If I may, Commissioner, Mr Tapele alone signed the affidavit. I think he is supportive, I believe, of the submissions of James Tapele.

COMMISSIONER JEREWAI: He alone provided an affidavit in support of the submission?

MS PEIPUL: Yes, Mr Tapele alone provided an affidavit. However, Mr Koatnaski has been summoned to appear.

COMMISSIONER JEREWAI: Thank you very much, you can go back to your seat and I will take the next person.

MR FRANCIS KANING: My name is Francis Kaning.

COMMISSIONER JEREWAI: Right.

MR FRANCIS KANING: K-a-n-i-n-g.

COMMISSIONER JEREWAI: Your representative capacity?

MR FRANCIS KANING: I am the Managing Director, Toriu Timbers

COMMISSIONER JEREWAI: Yes.

MR FRANCIS KANING: I co-signed the document.

COMMISSIONER JEREWAI: Document and submission?

MR FRANCIS KANING: Submission, yes. Mr Commissioner, there was no special submission but just the company documentation.

MS PEIPUL: I think he may be referring to proposals because he is one of the signatories.

COMMISSIONER JEREWAI: Alright. That is fine thank you. Later when we go into the substantive hearings then you can give more details. Thank you. Next please?

MR STANIS VALU: Stanis Valu is my name.

COMMISSIONER JEREWAI: Stanis?

MR STANIS VALU: Stanis Valu. V-a-l-u.

COMMISSIONER JEREWAI: Your representative capacity?

MR STANIS VALU: I am a senior manager representing KK Connections Limited.

COMMISSIONER JEREWAI: Senior Manager?

MR STANIS VALU: Representing KK Connections Limited.

COMMISSIONER JEREWAI: Counsel, please assist please?

MS PEIPUL: KK Connections is the developer.

COMMISSIONER JEREWAI: Right. How is that spelling, KK?

MS PEIPUL: That would be KK, letter K letter K Connections. C-o-n-n-e-c-t-i-o-n.

COMMISSIONER JEREWAI: Alright, thank you. Have you submitted any submissions or affidavits?

MR STANIS VALU: No, Commissioner.

MS PEIPUL: Commissioner, I can confirm that KK Connections have not formally given any submissions per se because some documents have been provided by them.

COMMISSIONER JEREWAI: Some documents have been provided?

MS PEIPUL: Documents, yes. That would be the agriculture proposal I believe, project proposal and that is the document that they actually submitted to us as of a few days ago, Mr Commissioner. And if it can be noted that at the same time the project proposal was delivered and the Lands Investigation Report was also delivered. However, they retrieved it in order for Mr Balbal to---

COMMISSIONER JEREWAI: Sorry, at the same time as the agriculture proposal was received ---

MS PEIPUL: Received – the project proposal – the land Investigation Report was also delivered. However, they then retrieved it in order to give it to Mr Balbal so that he could prepare it in order to formally then submit it to the Commission.

COMMISSIONER JEREWAI: I see.

MS PEIPUL: Yes. So this was given to the advance team when they came to serve summonses so we only received it when we arrived several days ago.

COMMISSIONER JEREWAI: Right. And the Land Investigation Report was retrieved so that Mr Balbal can relate to the proposal as contained in the Agriculture proposal?

MS PEIPUL: I believe it is perhaps more to compiling into a formal document and then submit to the Commission I believe.

COMMISSIONER JEREWAI: Alright, that is fine.

MS PEIPUL: And I believe that it was compiled in response to the summonses that we issued in fact.

COMMISSIONER JEREWAI: Very well, thank you very much Mr Valu. Take your seat. I see the Asian looking gentleman, who is in the front seat over there. He going to make an appearance as well or is he being represented by Mr Valu?

MR SAMUEL YAYA: Samuel Yaya. I am presenting the General Manager who is actually not fit to come. KK Connection Limited.

COMMISSIONER JEREWAI: You are one of the two whose name is contained in the letter that was delivered a few days ago?

MR SAMUEL YAYA: Yes, sir.

COMMISSIONER JEREWAI: Alright, that is fine. You are representing the GM?

MR SAMUEL YAYA: KK Connection Limited. Same with Stanis.

COMMISSIONER JEREWAI: Yes.

MS PEIPUL: Commissioner, if I may clarify. Mr Ling was in fact summonsed and as of several days ago, letter dated 21 October, he actually informed the Commission that he was unwell, that he had malaria. We did not ask for medical certificate to confirm this. And in fact one has been produced by Mr Yaya confirming that he is unwell and he needs to rest for six to eight days. We have since informed him that Mr Ling will likely be called perhaps when his illness is – however, Mr Yaya has made himself available today.

COMMISSIONER JEREWAI: Yes, also subject of the progress of the Inquiry into the crystallisation of issues as we proceed and then we will know if he is required specifically to appear or the representations that are being made will suffice. But we will not know until we are getting into the substantives. Thank you. Alright, very well you can retire to your seat. Are there any others? There is a lady with the hand up. Please come forward up to the bar table.

MS PEIPUL: Commissioner, this is Mary Dadatliu. She has been summonsed in respect to several of the matters that we will be dealing with over the next couple of weeks. She was with the Lands Division of the East New Britain Province.

COMMISSIONER JEREWAI: Mrs Mary Dadatliu?

MRS MARY DADATLIU: Yes, Dadatliu.

COMMISSIONER JEREWAI: Sorry, how do you spell your second name?

MRS MARY DADATLIU: D-a-d-a-t-l-i-u.

COMMISSIONER JEREWAI: Dadatliu, yes. What was your position again with the East New Britain---

MRS MARY DADATLIU: I was Lands advisor at the time the land investigation reports were compiled and done and I was counter-signing to those land investigation reports.

COMMISSIONER JEREWAI: You are the Provincial Lands advisor?

MRS MARY DADATLIU: Exactly.

COMMISSIONER JEREWAI: Are you still the Provincial advisor?

MRS MARY DADATLIU: Not any more. I am out of Public Service at the moment.

COMMISSIONER JEREWAI: Okay. She has provided any documents?

MS PEIPUL: She was summonsed.

COMMISSIONER JEREWAI: She appears by summons?

MS PEIPUL: Yes, that is correct.

COMMISSIONER JEREWAI: Very good madam, you can step back from the bar table to your seat, thank you. It looks like we have covered all representations. There is one more with his hand up at the back there. Please step forward. Thank you, seat down. Start with your name.

MR SIMON PUIPUI: Simon Puipui.

COMMISSIONER JEREWAI: Right.

MR SIMON PUIPUI: I was a former provincial surveyor. I did aerial survey of these two portions, Toriu.

COMMISSIONER JEREWAI: Aerial survey, right?

MR SIMON PUIPUI: Yes.

COMMISSIONER JEREWAI: And you provided any material documents to the Inquiry now?

MR SIMON PUIPUI: Not yet.

MS PEIPUL: His summons have been prepared, he has not been served the summons as yet. I think we are looking for him.

COMMISSIONER JEREWAI: But he appeared anyway.

MS PEIPUL: But yes, he has appeared so that is good.

COMMISSIONER JEREWAI: Thank you, makes our job easy. Thank you Mr Puipui, you can step back. I can see one more down there. Can you step forward please? Start with your name please.

MR EDWARD REVISIT: Edward Revisit.

COMMISSIONER JEREWAI: Sorry, speak up.

MR EDWARD REVISIT: Edward Revisit.

COMMISSIONER JEREWAI: Edward, is it? As it in King Edward? Alright. Edward second name?

MR EDWARD REVISIT: Revisit. R-e-v-i-s-i-t.

COMMISSIONER JEREWAI: Sorry, the end bit I have not –

MS PEIPUL: I believe it is R-e-v-i-s-i-t.

COMMISSIONER JEREWAI: Revisit, okay. And you represent?

MR EDWARD REVISIT: I am the landowner of Poiniar.

COMMISSIONER JEREWAI: Landowner of Poiniar.

MR EDWARD REVISIT: Poiniar.

COMMISSIONER JEREWAI: Spell that please?

MR EDWARD REVISIT: P-o-i-n-i-a-r.

COMMISSIONER JEREWAI: Poiniar. Is that land inside the Toriu Timbers SABL?

MR EDWARD REVISIT: Outside, 903C.

COMMISSIONER JEREWAI: Outside?

MR EDWARD REVISIT: Yes.

COMMISSIONER JEREWAI: Counsel can you – we will take note but I would like you to verify the---

MS PEIPUL: Commissioner, there are maps so we can always show him a map and he can indicate where within or outside it may be located. It maybe that it is outside of the actual Portion 903 so this we will confirm. I have not sighted any submissions from Mr Revisit and he is not---

COMMISSIONER JEREWAI: Yes, but bear in mind that our Inquiry will also be touching on issues arising from adjacent landowners to all of these SABLs so---

MS PEIPUL: Of course, Commissioner. In respect there are maps available, we can always have a look at the maps and he can indicate where his interest lies in respect of the two SABLs.

COMMISSIONER JEREWAI: Alright. For the time being, he has stated that he is from a land area which is outside of the SABL we are concerned here but we will take note in the event that it relates to the area we will cover which is also the concerns of the adjoining landowners. But I think it is important that I say something in relation to people who are appearing, representing people who are not from within the land area comprising the SABL we are concerned within each particular SABL inquiry, and that is if those concerns are raised where possible incursions into the adjoining land area during the operation of the SABL, we will receive you and hear your concerns about these incursions or encroachments. But otherwise we will not dwell too long with too many of these adjacent landowners who own land that are comprise within the SABL. I just wanted to make this point clear so if there are any others who are here, in terms of adjoining landowner capacity, yes, take note that your concerns must be real and genuine and we will not waste our time in this Inquiry. Alright, thank you, you can step back. But you are noted, do not feel dismissed by the comment I just made because we also must look at the adjoining landowners. That is part of our function and duty with this Inquiry. But take note of what I said, that those must be real and it must relate to some encroachment, some violation of resources perhaps that may be found on your land, then we will hear you. Okay, you can step back, Mr Revisit. Any others? That is about it. I cannot see any hands being put up. So I have got on the list here, 11 altogether who have answered and when we begin to couple them up into different entities and organisations they represent, we will probably end up with less. I think it is appropriate at this juncture for me now to explain a matter that is very important to all of those who are in attendance and who have made appearances. I note that several of you represent the same organisations. So the first thing that I want you to understand is that the Commission of Inquiry is not bound by strict rules of evidence. In other words, if your organisation through one representative had already made submissions or submitted an affidavit or both, then it will expedite the course of this Inquiry if we can just receive one submission because it will not be necessary to hear you all if the same thing had been say your fellow representatives. I say this because in a court of law there is a rule called, “corroboration”. In other words, one set of evidence alone is insufficient to prove certain facts. And the courts usually require under the rule of “corroboration” to hear from several witnesses who say the same things or similar things to confirm a existence of a certain fact. Now we are not bound by that. You need not to “corroborate”, but if you are satisfied that what had been represented, in other words what had been said, in submissions or affidavits, that

represents what your organisation is generally saying or specifically, we will accept that as evidence to proceed with our inquisition and determine the issues that we have been sent out to check out.

So the next thing I want to explain to you is this. The issues that we have been sent out to check out are all set out in the Terms of Reference. But the Terms of Reference which are very important to you are the following ones: The first and foremost is the legal basis upon which Special Agriculture Business Leases under the provisions of the Land Act and they are specifically sections 11 and 102 under which landowners can by agreement with the State lease their land to the State and the State will lease it back to them. Right, you as landowners, you can enter into an agreement with the Government of Papua New Guinea who will lease your land and will in the period of the lease, you will surrender, you will give up in other words all your customary rights to that land. And the government then leases back to you as a direct grant without having to put it through the usual public tender process. Public tender process applies only when government land is to be advertised to make available to the general public of Papua New Guinea. But in this instance, where it involves Special Agriculture and Business Leases, you are surrendering your customary rights and control over that land for the purposes of having the government lease it back to you yourselves. So that you will be able to engage in commercial activities. And this is one way this particular law has seen fit to enable a lot of us customary landowners who are unable to get into the market economy, and which is a good idea.

The law upon which this is made possible is the first Term of Reference, that is very important to you. The second one is the one that probably – the first one was no problem; Terms of Reference (a) was no problem. The second one became a real problem and that is the processes and procedures following which you surrender your customary rights over your land to the State and the State then leases it back to you. The processes that were followed to enable you to do that sometimes became infected along the way with various non-compliances and those non-compliances occur because, perhaps ignorance of the public officials who are assisting in the processes, perhaps by sheer manipulation among your own fellow landowners; those are possible ones we are mentioning as examples only. I am not saying in any way those happened with yours, with regard to Toriu Timbers Limited SABL, but I am telling you generally for example under the Terms of Reference (b). And the Terms of Reference (c)

enables us to come and look into your individual SABLs as we are doing this afternoon with regard to Toriu Timbers SABL. And among the things we will look into is to confirm face to face with you that you are the landowners, that this is the landowner choice of a company that operates that business on the lease you have arranged through the lease – lease back system under the SABL scheme; and furthermore, you are operating with full agreement with your choice of the developer, and that in the course of your operations upon this Special Agriculture Business Lease of yours, that you are following all rules and regulations which are there to maintain; (1) the interest of total landowner groups you have within those SABLs; and (2) you are not violating any one of your member's rights; (3) that you are not abusing your members which also may include the manner in which benefits trickle or fall down to the members of your landowning groups; (4) that you are not violating the human rights; (5) that you are not violating constitutional rights; and (6) you are not engaged in illegal businesses. Because in some parts of the country, if I can elaborate, developers have brought in prostitutes in very remote places, more remote than your area. Developers have brought in prostitutes or engaged local women in prostitution and engaged in illegal firearm dealings and have engaged in drug dealings. All of these are covered under Terms of Reference (c) which we are to look into.

Having said that, I now refer to the Terms of Reference (b) which is if we encounter any of these irregularities and if they should fall within the areas of breaches of criminal law, we will refer the matter to the police to take appropriate action. If we encounter incidences that fall within the area of Leadership Code breaches, we will refer the leaders to leaders covered under the Leadership Code, to the Ombudsman Commission to be dealt with. But so far I am happy to say we have not referred anyone yet. But then again I say this, knowing that it is still early; early times yet. We have not gone deep into individual investigation of individual SABLs yet. So I hope with what I have just conveyed to you, you are fully versed with the reason we are here under the instrument of our appointment and our Terms of Reference to look into each of these SABLs. Having said that, it is very important that I emphasise one aspect. That aspect is we are not here to close anyone down. This Commission of Inquiry is not intended to be negative in terms of shutting down local people who have decided to have their land to become part of a commercial undertaking so that you can improve your own individual village community life by becoming involved in the market economy.

We hope that through this Inquiry, we will first and foremost ensure that there is very high degree of integrity in the government processes that assist in arranging this lease – lease back of your customary land under the SABL scheme. That is the most important thing and the most underlying purpose of this Inquiry. And number two, most important underlying factor for this Inquiry is, in the course of installation of integrity in the processes leading to the issue of titles under the SABL schemes, we also require and we will in due course recommend to the Prime Minister who will table this in Parliament, our final report in Parliament and recommend, including among many things legislative changes to provide far clearer procedures. While I say on one hand that those infactions included in Terms of Reference (b) processes by public officials and I say generally and it may make public officials guilty, but please do not. Because the laws do not set out the full rules and regulations providing the further procedures by which you will be guided to assist these landowners to convert into SABL. So do not feel guilty. I do not accuse you in any way at all. But as I was saying, the second most important underlying factor to this Inquiry is to also establish a set of ethical, commercial ethical standards by which the developers also must be held to be accountable. And among which if I may just think aloud as to what is at the tail end of this Inquiry will be that if developers engage in devious activities by use of money power dividing landowners to secure consents and compile false land investigation reports, you can be sure we will be recommending a blacklisting system by which a developer can well be blacklisted if they engage in such activities. In other words we want to lift the ethics, commercial ethics that must guide the developers in dealing with you. And so those are the two, in my view so far, most important underlying factors that will guide us to deal with this Inquiry. So feel no apprehension that this Inquiry is about shutting down SABLs. This Inquiry is not about shutting down SABLs. So come freely, provide information freely to assist us in making correct findings both individually in relation to each individual SABLs and jointly so that we will compile a final report with recommendations based on correct findings. That is what I needed to clarify, Toriu Timbers being the first one we are dealing with here. That is what I wanted to clarify very clearly so that you understand that we are here with you to determine the best way to ensure the system of lease – lease back gets better and not get worse.

Finally, I want to say this. If you have differences among yourselves, among you landowners yourselves, which did not relate to the general concept and agreement that you want to involved in the business, particularly agriculture

business involving the land and you have agreed to your land being surrounded into this SABL but along the way you feel that you have been marginalised or you are not holding one of the executive positions and so on, we will be alert to this; this Inquiry will be alert to this. That if it is a power struggle among yourselves and did not come from the original disagreement of any sort as to the sort you gave for your land to be involved in an SABL and accordingly you have provided the information that was collated by the officers of the State, particularly the Land coordinators and the Provincial Land advisors who compiled the report upon your statements, generally determining that there is no dispute and that the land is willingly given up for SABLs, and then you disagreed along somewhere down the path because of perhaps power positioning, control, executive positions, then this Inquiry will find you out and will not dwell too long on that because those are matters you can resolve; you can resolve without affecting the SABL. But again, let me also qualify what I am saying. That will not render that we will not hear you, we will hear you. Counsels, I think I have clarified a lot of things that must be preliminary so that all who are interested and who are present will know what we are all about, number one, and how should we proceed, number two.

Now, I would like your assistance on how we should proceed next.

MS PEIPUL: I believe the intention was to call Mr Tapele first from Toriu Timbers being SABL grantee, being also person who has given us submission and affidavit which has provided much material in it and we will take him through the affidavit and then we will proceed with perhaps, if relevant the other two are Toriu Timbers representatives, Mr Koatnaski and Mr – forgot his name again, the other gentleman and obviously if appropriate, the managing director, Mr Kaning I believe of Toriu Timbers and we would then proceed perhaps Qaqet Stewardship Council as another person of interest who has provided his submission; two of their representatives being here. So that would have been the order of the day for today, noting of course the time this afternoon.

COMMISSIONER JEREWAI: Alright, thank you for your guidance there Ms Peipul. I notice you – and thank you, you have assisted by sending up a copy of your opening statement. What I would like to suggest is, from the opening statement, obviously the preliminary identification issues would have been determined and if that had been done, the other step would be for us to consider if there are any issues first of all in relation to the official involvement, the

persons who were involved in official capacities, particularly from the Department of Lands with regard to consents, with regard to the land investigation report and if there are issues in relation to those. And then of course as it occurred in the preliminary hearings in Port Moresby, the third aspect you will have recalled after the Chief Secretary Manasupe Zurenuoc appeared that you cannot deal with customary land unless you if you get a Certificate of Alienation primarily from the Custodian of Trust Land, which include also all customary land. Bearing those in mind, may I suggest that we deal with the officials or officials who used to be in office such as Mrs ---

MS PEIPUL: Dadatliu?

COMMISSIONER JEREWAI: Yes. And if there are issues – if we can go by these steps? If number one, there are any issues in relation to the land investigation report, well commencing with the proposal to convert to SABL, and number two, that would have come from the landowners requesting the Lands Department that they want an SABL. Number two will be the Lands officers who actually conducted the investigation and ---

–BLACK OUT –

In Port Moresby, we have blackouts hours on hand. Alright. The officials who are involved in the land investigation reports, if there are any issues as to the authenticity or veracity of those things. The landowner consent involved during the land investigation, if there are any issues with those, and if we can get those preliminaries out of the way, I think we will zero in on more intensive matters of agriculture development and if it involves any forestry clearance, the FCAs.

MS PEIPUL: Yes, as the former Lands officers as well as current Lands officers are present this afternoon, I would agree with Commissioner if we could start with Mary Dadatliu, Allan Balbal, I believe Simon Puipui as well, they are the three that are here in that capacity.

COMMISSIONER JEREWAI: But before we even commence calling them, are there any issues at all regard to this official involvement?

MS PEIPUL: There are queries with regards to land investigation reports that I would want to ask questions of.

COMMERCIAL JEREWAI: Very good. Well, that is sufficient for the time being. I just wanted some indication that there are issues. Now in terms of I understand that Toriu is a rather difficult terrain to reach and perhaps we could get some indication as to – this is all for the purpose of making it convenient for the witnesses who are here or people who are going to make submissions. Are they right now staying in Kokopo while we are proceeding with this Inquiry?

MS PEIPUL: I believe that the Qaqet Stewardship gentlemen present are the ones who are residing in – that would be the position. I do not know the others are travelling to the venue for ---

COMMISSIONER JEREWAI: They do not travel daily?

MS PEIPUL: Perhaps if some of them could inform us if there are some individuals who are ---

COMMISSIONER JEREWAI: Yes. Could you please just indicate that you are not travelling daily and you are lodging in Kokopo area while the Inquiry is being conducted?

Thank you. So they are lodging within the Kokopo area while the Inquiry---

MS PEIPUL: I think the query would be others travelling to Kokopo that might have an interest and would want to speak.

MR BALA: Commissioner, the landowners leader who came in and introduced himself, Edward Revisit, he was confused and said his land was outside whereas in fact his land, Poiniar, is in Portion 905C. So they are here. They came by boat in the morning. They want to ask if the Inquiry could go and visit them in their village because the majority of the people are in the village and they want to talk directly to the Inquiry. Thank you Commissioner. So they are here. Thank you. I think we should deal with the ones who will encounter difficulties attending this Inquiry and lodging and so on. I think we need to be very conscious of that.

MS PEIPUL: Yes. If I heard correctly, he mentioned 905C, I believe that is related adjoining portion. At present we are dealing with 904C and 903C on the list. Obviously, people travelling from outside in would need to be heard. It may be one that it would be open for us to---

COMMISSIONER JEREWAI: 904C is not within the Toriu Timbers?

MS PEIPUL: No, 903 and 904 are within but he mentioned 905C and I believe that is an adjoining ---

MR BALA: I think it is 904. I am confused with all these portions. I do not like dealing with those portion numbers.

MS PEIPUL: Sorry, that is my mistake. Then if it is 904C then okay.

MR SIMON PUIPUI: That is their land, the whole land area about 60 percent or 70 percent. So he got confused talking and said it was outside. It is their land.

COMMISSIONER JEREWAI: Alright.

MS PEIPUL: Okay. So obviously these are people who are living outside, who travel to Kokopo and who obviously would need to be heard on the matter.

COMMISSIONER JEREWAI: That is Edward Revisit. Could you please come back to the table? We will speak in Pidgin. You are living in the village and you came, Mr Revisit?

MR EDWARD REVISIT: Yes.

COMMISSIONER JEREWAI: Do you have any place to stay in Kokopo?

MR EDWARD REVISIT: I have no place to stay in Kokopo.

COMMISSIONER JEREWAI: Okay. Counsels, because we started half day or less than half on this Toriu Timbers with difficulty in accessibility, we are going to have to deal with them and then adjourn to a day when they can come back prepared. At least now they understand what they have to do to make their representations. So that is how I propose to deal with this difficulty of accessibility and lodging and so on. We will identify the witnesses this afternoon who are travelling in and out of their village or villages and we will secure the date when this Inquiry into this SABL continues. When they will return and they will be specifically be given priority to give evidence or say

what they want to say over everyone else who have access to modern lodging in Kokopo or Rabaul.

MS PEIPUL: If I may clarify with Mr Bala. Is the landowner you are talking about outside? Is there are gentleman – sorry, it is you. Okay, so in dealing with him today, we would then defer matters to another date to allow for others to prepare, is that what Commissioner you are saying?

COMMISSIONER JEREWAI: Specially those who are in situations such as Mr Revisit is in. He needs to take off while it is day light. And I do not know. He will have to go back to the Lassul Bay area to travel to the village? Where do you travel to your village? From which – where do you get the boat? Did you come in the boat?

MR EDWARD REVISIT: Yes.

COMMISSIONER JEREWAI: From Kokopo side or you went to Kerevat side?

MR EDWARD REVISIT: From Kerevat side.

COMMISSIONER JEREWAI: Yes, from Kovara to Lassul. Please, get as much assistance so we will organise this administratively, properly and then when we get into evidence, we know exactly who to run to.

MS PEIPUL: We have been informed sorry Commissioner, that there are in fact six gentlemen that have travelled I believe along with Mr Revisit and they are in town at this time.

COMMISSIONER JEREWAI: Then Ms Peipul, consider fixing them for a day next week, morning segment.

MS PEIPUL: I was suggesting Monday, Commissioner, the sooner the better. Commissioner, if I may clarify?

COMMISSIONER JEREWAI: Yes.

MS PEIPUL: Are we saying that we want the six gentlemen who have travelled on a boat to appear on Monday or are we giving them a opportunity to

communicate with people back home to travel to Kokopo in order to give evidence.

COMMISSIONER JEREWAI: We are just accommodating their difficulties in going back and forth in attending the Inquiry. From what I am observing from among the persons present over this Inquiry into this SABL, he is the only one in relation to whom there appears to be some difficulty. So if he and his group and I have already explained before he goes it should be explained to him that if they are all going to say the same thing, it is best they just send two of the representatives here and we will deal with them. But the others can come for the purposes of observation, they cannot be shut out but let us accommodate their difficulties, fix them in on Monday morning so that they come and say what they want to say so that they are on record. And we can hear all the other witnesses who are not facing as much difficulty as these ones.

MS PEIPUL: I would suggest, Commissioner, with that respect, if the six gentlemen are here this afternoon, there should be no impediment to us hearing them this afternoon. Commissioner, that would be my suggestion; my submission.

COMMISSIONER JEREWAI: What is the time now?

MS PEIPUL: It is 3.20, Commissioner.

COMMISSIONER JEREWAI: It is quite a distance to sail across the bay where they come from and we do not want them travelling in the night and end up at Palau or Guam.

MS PEIPUL: As per the suggestion earlier then, Commissioner, 9.30 on Monday might be the most convenient then. That is okay.

COMMISSIONER JEREWAI: Fix this particular representative of the Poiniar land, he says it is an adjoining land but it could be in the SABL. Let them come and say what they have to say at 9.30 on Monday morning.

MS PEIPUL: Okay.

COMMISSIONER JEREWAI: So we dispose of them they can go away and we will proceed with the others who are here now.

MS PEIPUL: Okay, Commissioner.

COMMISSIONER JEREWAI: Alright, Mr Revisit. We are worried that you might go and get lost at sea and the time is nearly half past three. You and your people must come here on Monday at 9.30. Half past nine, you must be here. We will give you priority to talk first. It is late now so you and your people can go home to the village. We will hear the other witnesses. That is all, you can go.

MR EDWARD REVISIT: Thank you Commission of Inquiry.

MS PEIPUL: Commissioner, we may also clarify whether the Qaqet Stewardship Council the two gentlemen present are representing the other Qaqet Council Stewardship members as well as the Qaqet people that they say they represent and there will be no other persons coming and speaking on their behalf which I can clarify---

COMMISSIONER JEREWAI: If they would like to come back on Monday morning as well, we can deal with the officials this afternoon and they can go also. Unless if they want to listen in to see what the officials have to say.

MS PEIPUL: That being, Commissioner, if we then can proceed in calling the witnesses with respect to the Lands division?

COMMISSIONER JEREWAI: Please.

MS PEIPUL: Yes, if we can call Mary Dadatliu.

MARY DADATLIU, Sworn:

XN: MS PEIPUL

COMMISSIONER JEREWAI: Thank you. Counsel, proceed.

MS PEIPUL: Yes. Ms Dadatliu, if you could just confirm your position at the moment as we as your education with respect to your position in the Public Service?

A: Thank you. My position the time when the land investigation report was conducted, I was a Lands advisor within the provincial administration and my qualification was I acquired a Diploma in Land Administration through Unitech in year 2000.

Q: And how long have you been employed therefore with the department or had you been employed with the department?

A: I have been in the Lands Division, actually I was with Lands Department, we were transferred, a couple of us into the Lands Division. I was one of those flock and I have been in the Public Service since 1988. That is almost 20 years plus.

Q: Has that only been in the capacity of Lands or if you can just clarify?

A: No, in a couple of positions that I held up until round about 2009, I was awarded a position as Lands Advisor.

Q: Ms Dadatliu, you have been called or summonsed with respect to the land Investigation reports that were prepared underneath portions 904 and 903. That is milinch Kokopo fourmil Rabaul. Specifically you signed off in your capacity as Lands Advisor on those lands investigation reports. Can you give us an indication with respect to Toriu Timbers, I suppose the process by which a lands investigation report comes about? If you can give us an idea for the records?

A: Yes. Initially the applications are being submitted to the Lands Department by the landowners themselves. Then the Provincial Administration is given an instruction by Lands Department for the Lands division to facilitate for the lands registration on the ground. And one of the requirements usually is to get down to doing the lands investigation reports by customary lands officers, which I would allude to is reports that are coordinated by my colleague at that time, Puipui Tuna, who has also

been in the Public Service on customary land registration for quite a long time. And assistance of the other officers, technical officers as well.

Q: With respect to the other technical officers that were involved, I believe Mr Balbal was involved in this particular land investigation as well. Perhaps in that capacity you could give us an indication of your ongoing discussions with him on this – if you can recall at the time; the manner in which Mr Balbal undertook to undertake the land investigation report?

A: When the instructions were given down to the Lands division for us to execute the lands investigation reports, the Lands coordinators are responsible for the field work because they are on the ground where the subject area to which, as we send it to which district the projects are being located. And District Lands coordinators they are the Lands officers on the ground, accessible to landowners and that is where the linkage is.

Q: So Mr Balbal was the Lands coordinator?

A: Exactly.

Q: Okay. I note that there are correspondences on the lands investigation report from yourself as an advisor to the manager of the customary lands section, and I also note there is also correspondence from Mr Balbal to yourself with respect to the particular project area – investigation for the project area. I note that there are specific incorporated land groups that are on the memo. If I can perhaps show you a copy of this memo to refresh your memory?

Commissioner, this memo is – you can seat down, I will give it to the associate.

The interest that we have in the particular ILGs that are on that memo, if you can confirm the particular ILGs that are listed on the memo and your assessment of those ILGs? Specifically, it goes towards to the issue of consent and the number of ILGs that are on that particular memo. My question is, what was your assessment of his advice to you?

A: My way of looking at the land investigation reports mainly conducting awareness to the people on the ground in terms of the project itself, I think these were the identified ILGs actually comprised by people who were subject to the land area.

Q: I put to you that there has been an indication that there are 22 ILGs that have been mentioned in previous correspondence in the Lands file as well as in the submissions that have been noted. What would you say to the figure of 22 ILGs that have been noted previously? Were you satisfied with what you noted on the memo? I ask that because---

A: It is really dependent on the people themselves how they have actually organised themselves. Because we are only facilitating it for them and when the Lands officers get down there to do lands investigation reports, of course, these are the people that should be consulted.

Q: Yes.

COMMISSIONER JEREWAI: Whether they are part of ILGs or not?

A: Yes.

COMMISSIONER JEREWAI: The land investigation, leading to the land investigation report is really about going in and contacting the people on the ground as identified that will be the land that covers the area proposed to be in the SABL. Is that right?

A: That is right and the Lands officers ---

(POWER BLACK OUT)

COMMISSIONER JEREWAI: Okay, you may proceed.

A: The Lands officers are there only to confirm to those land groups, whether they are really in existence.

Q: And in the course of which do you hold public hearings which include the concerned landowners, as well as yourselves as officials and adjacent landowning groups?

A: Normally in the land investigation report process, officers normally get down there to actually conduct awareness, making sure that people know of what the process is in lands investigation reports.

Q: Or what is being proposed? Making sure that they are aware of what is being proposed?

A: Exactly.

Q: And verifying what is being proposed, have their agreement and consents?

A: Yes, that is right.

Q: In this case did you do that?

A: Officers were actually on the ground and I think the reports are compiled and everything should be in the reports.

Q: Certainly. Ms Counsel?

MS PEIPUL: Yes.

COMMISSIONER JEREWAI: I was just coming in with – while you were conferring with Mr Ketan.

MS PEIPUL: Thank you Commissioner. I suppose leading on to the land investigation report, when you look – if I may confirm that you did look through the land investigation report in this respect? What do you look for in the land investigation report when you examine land investigation report? I mean what particular thing – do you need to be satisfied with to accept what is in the lands investigation report?

A: Yes. I make sure that the particulars of the people who are concerned to the project are being done in the investigation report, the valuations are done, and the surveys are done. That is what I look for.

Q: With that respect, when you are looking through, let us say the signatures and so forth that are on a particular – within the actual lands investigation report, you need to obviously be satisfied with all of that, if I am correct?

A: Yes. I mean with officers being down and they have been commissioned by the East New Britain Provincial administration that they are there purposely to conduct the land investigation reports on behalf of the Provincial administration and the Lands division.

Q: Yes, of course. With respect to this, I note from some correspondence that it did take a long time in terms of accessibility of the area and the amount of logistics involved in accessing the particular area in terms of the contact that he would have had with as many people as possible, were you satisfied that enough contact had been made with enough or as many people as you possibly could be in contact with?

A: With the assistance of the landowners themselves because the projects are being initiated by the landowners.

Q: But were you satisfied that it was the landowners that were initiated, they were happy with the project?

A: Yes.

Q: You were satisfied with that?

A: Yes.

Q: In terms of the recommendation of alienability, who prepares the recommendation of alienability? The certificate that needs to be,

obviously, the last document that is signed off on the land investigation report?

A: Sorry, just come again?

Q: No, I said in terms of the certificates of alienability, who prepares that and who would then sign off on it?

A: Actually we have the customary lands officers who are specialist officers in doing so, especially in the alienability certificate.

COMMISSIONER JEREWAI: Provincial or national?

A: Well, we – when the officers submit those things, they are already in documents for my endorsement.

Q: It might be worthwhile to explain to the witness.

MS PEIPUL: Sorry Commissioner?

COMMISSIONER JEREWAI: Because from the preliminary hearings in Waigani, it became obvious to me that even the Provincial Lands advisors were not really aware that there was a requirement for certificate of alienability in relation to SABLs. And to push the witness along those lines when she probably was among the officials who were unaware that there was a requirement for certificate of alienability. It would be futile.

May I ask you a question. Were you aware that there was a requirement or some clarification needed to have been given to all of you provincial land advisors about the possible need of certificate of alienability? In other words, there is only one person who is the custodian of all trust land in Papua New Guinea, including customary land. And he is the only person who is the final authority to clear where the customary land is available for any purpose, including also SABLs. And that person usually is by virtue of his office, the Secretary of the Department of Provincial and Local Level Government Affairs. Were you aware of that or not?

A: No, I do not think so, absolutely not.

Q: There you are.

MS PEIPUL: Thank you Commissioner. In that respect, can you confirm that it was the Provincial Administrator that signed off on the certificate of alienability or for this particular---

A: Well we all countersigned into all those various documents as the normal thing we normally do, yes.

Q: But the standard for certificates of alienability that are signed off at the end of the end of – they are usually signed off at the end of land investigation reports. Can you confirm that it was the provincial administrator who signed off on it?

COMMISSIONER JEREWAI: And it might comfort you to know that that almost occurred with every province from our preliminary investigations and not only East New Britain.

MS PEIPUL: I note that in your recommendation and comments on one of the pages, page 41 of this particular land investigation report, you refer to the Toriu Integrated Project and the fact that it is a project that was initiated by the indigenous landowners through the landowner company. Now, in your own assessment of the initiative, can you indicate – I suppose it would come from your provincial or rather the Lands coordinator as to the I suppose the status of any assistance that might have been given by potential developers on the ground? Can you give us an indication to your knowledge whether there was any assistance with your Lands coordinator initially with any potential developers at that time?

A: I cannot recall.

Q: You do not recall?

A: No.

Q: Alright.

A: Maybe he should be asked.

Q: He will be asked. Thank you. Unless Commissioner has any further questions you would like to ask Ms Dadatliu and we finish with her?

COMMISSIONER JEREWAI: You have to pardon me. I am still finding it difficult to pronounce your surname.

A: Dadatliu.

Q: Dadatliu?

A: Exactly.

Q: Dadatliu, thank you. Mrs Dadatliu, with the last question that counsel posed to you, it is only of significance if there is any question about your impartiality in the production of a land investigation report after you conclude your investigation – land investigation report. But we all know and we can all appreciate that when customary landowners approach the Department of Lands to enter into a SABL, which is a lease-lease back, they almost always do not have any financial resources to be able to meet

the cost of the conduct of this land investigations. And always, almost, the government of Papua New Guinea as well as the provincial governments do not have the financial resources sufficiently placed aside to assist customary landowners in those processes. So I noted your hesitancy but you need not feel threatened in any way when you are asked a question like that. You should come out and be forthright about it. If you are being offered assistance by the selected or choice of developers by the landowners because they have the cash capital to be able to assist, there is nothing wrong with that. I just wanted to make it clear. So I need not repeat the question to you. It is not of that great significance at this point, unless if some serious issues about impartiality comes up, then of course, we will have you recalled to verify this. Is that all right, counsel?

MS PEIPUL: Yes, thank you Commissioner.

COMMISSIONER JEREWAI: I would like to be more proactive and encourage people to come forth, that they are under no threat whatsoever.

MS PEIPUL: Yes. Of course, Commissioner, we merely want to find the truth of course.

COMMISSIONER JEREWAI: I have a few more questions Mrs Dadatliu. As a provincial lands advisor, obviously the land coordinators on the ground were the ones who carried out the investigations and they report back to you. Was that so?

A: Sorry, the---

COMMISSIONER JEREWAI: Being in the position of provincial lands advisor, the actual work of carrying out the land investigation would have been conducted by the land coordinators who are supervised by you. So were they the actual people who conducted the investigations into this particular land area?

A: That is right.

Q: And they later reported to you their findings and then you incorporated it into a land investigation report which you adopted. Is that correct?

A: Yes.

Q: And that is the document you conveyed to your provincial administrator?

A: Exactly.

Q: To recommend the issue of the particular SABL as in this case?

A: That is right.

Q: That is correct, is it not?

A: That is right.

[3.35 p.m]Q: The particular lands coordinator would have been Mr Balbal? Mr Balbal?

A: Yes.

Q: Balbal. Alright, that leads us to Mr Balbal then. Thank you very much, you may step down. But as I indicated, if we should encounter matters to be verified, we will let you know and ask you to kindly come back and assist this Inquiry. But thank you very much for coming this afternoon.

A: Thank you.

THE WITNESS WITHDREW

MS PEIPUL: Commissioner, she will be called for other matters as well.

COMMISSIONER JEREWAI: Very well.

MS PEIPUL: Thank you Commissioner. That leads us to Mr Balbal, Allan Balbal, if he can be called to the witness stand?

COMMISSIONER JEREWAI: Mr Associate, have him sworn in.

ALLAN BALBAL, Sworn:

XN: MS PEIPUL

COMMISSIONER JEREWAI: You may take a seat there, thank you. Counsel, proceed.

MS PEIPUL: Thank you Mr Balbal. If perhaps you can state your name as well as your current occupation, your previous occupation while the land investigation report was being compiled by yourself and perhaps some of your educational qualification as well, plus your experience, the number of years of experience within the department?

A: Thank you, my name is Allan Balbal. I am currently the acting Local Government manager for Sinivit Local Level Government. But I was the former district Lands coordinator for Gazelle in which portions 903 and 904C are with him. I am, of course, with the public service since 1988, I think it is well over 20 years. But within these years I have held various positions within the provincial administration of East New Britain with the Finance and Revenue, the Local Level Governments and with Lands and I think I am back to Local Governments as of today. I hold a Diploma in Public Administration. That is it, thank you.

Q: Mr Balbal, with respect to the work as a lands coordinator in the department previously, how many land investigations had you conducted prior to – in total, in that position?

A: Thank you, for 903C and 904C, at the very first land investigation that I coordinated during my time as the coordinator for lands in Gazelle, yes.

Q: So you were under the supervision of Ms Dadatliu, is that correct? Or how were you---

A: Normally, I think it was me coordinating it, the land investigation was facilitated by the division of – I mean the provincial division with I think the officers of the customary lands section.

Q: And that would be Mr Ereman Peril, is that correct?

A: Ereman Peril, yes.

Q: Now if you can kindly go through your input within the land investigation itself, specifically with regards to your site visits and communication you had with the landowners at that time?

A: The land investigation for these two portions commenced in May 2009 after a policy and directive issued by the Provincial Executive Council for us to implement those investigations. It did went through the Provincial Executive Council where there was a directive number 19 of Meeting No 4 of 2000 to 2006 was issued. So in 2008, we did, in our annual program for 2009, we accommodated the activity to do an investigation in our annual work program. So then in May 2009, we commenced with those investigations. During the time of the investigation, there were various awareness been done to all the wards that are implicated in the project

area. So at the same time during our awareness, we conducted the land investigation report.

Q: Perhaps you can give us an indication of the awareness that was conducted at the time, like how many; how widespread was the awareness at that time 2009?

A: Alright, the awareness was conducted especially in those wards within those two portion areas so as a couple of wards within the inland Baining. These two portions are within the Lassul Baining Local Government area. And there were a couple of wards that were also implicated from the inland Baining which we also covered with the awareness.

Q: Would you mind just mentioning those particular wards for the record, if you can recall them?

A: They are roughly eight wards, there is Yayam ward, Malasite ward, Raunsepna ward, Lamarang, Alakasa, Mobilon, Mandrabit, Konako---

Q: When you sat, where was it the last time, sorry?

A: Mandrabit.

Q: Mandrabit?

A: Mandrabit ward. Konako, yes, I think ---

Q: That is what you can recall?

A: Yes.

Q: When you say, "awareness", that means you would walk, would that mean you would walk through or do you have a particular meeting or what is the nature of the awareness?

A: The awareness was done by boat tour. We travelled by boat. Some wards we travelled by vehicle and some other wards we walked on the land.

Q: But in terms of the actual awareness itself was talking to people rather than a meeting or how exactly would you conduct awareness sessions themselves?

A: It was a gathering that we called for them to meet us and then we do the awareness to them. It is through organised meetings.

Q: Okay. With respect to the awareness as opposed to the actual investigation, was it separate or did the investigation itself soon follow the actual awareness? What was the timeframe between the awareness and the investigation?

A: In fact they were going together. Straight after the awareness, whatever information that we need to collect for the investigation, we collected at the same whilst we are there with the people.

Q: Now with all these travel, in terms of the logistics of travelling in and travelling out, how long did it take? How long did this total?

A: It took us nearly six months, from May 2009 to November when the land investigation report was compiled and submitted.

Q: And during these six months, how was the land investigation report logistics, how was it supported? Who funded the travel, the awareness, the very broad awareness, the actual land investigation report itself?

A: Yes, as I have mentioned earlier on, that the investigation of these two portions was catered for under the annual work program for me as the District Lands coordinator. So we have been using funds within there. But so was the landowners were chipping in, as we can see the geographical features of that area. But it was with the assistance of landowners – landowner company that helped us to successfully do this or complete this land investigation report.

Q: That landowner company is Toriu Timbers?

A: Toriu Timbers.

Q: In terms of the coverage of the two portion 904 and 903, you were satisfied that you had sufficiently covered the different villages, the different wards to say that you had majority consent? Is that correct?

A: Looking at the map, with the nine wards that I have just mentioned, it is covered within that area. And I was satisfied that we covered the whole area.

Q: You were Mr Peril and Mr Peril also assisted in ensuring that landowners were spoken to and their appropriate input was made on the land investigation report?

A: You are right. Mr Peril was the – in fact, he was the technical officer to assist me in coming up with that land investigation report.

Q: You have submitted to us a land investigation report yesterday. Mr Balbal, you have actually submitted to us yesterday a copy of the land investigation report that you were a part of creating. We have your document here. Do you have your copy in front of you?

A: Definitely.

Q: You do? Okay, we can turn to your letter that you have – that is the cover to the submission. Mr Commissioner, the letter, - sorry, Commissioner, unfortunately we do not have a copy of the letter but it is with respect to responding to the summons. We did summons Mr Balbal. Would the Commissioner want him to read the letter into the record? For the record? As it is in response to the summons.

COMMISSIONER JEREWAI: Perhaps, he should.

MS PEIPUL: Okay.

COMMISSIONER JEREWAI: Go ahead then, Mr Balbal.

A: Thank you Mr Commissioner. The letter was addressed to the Chief Commissioner. But he is not around so maybe you can take that. It is titled, “Summons for a witness. It is 40, Allan Balbal, portion 903C and 904C, milinch of part Pondo and open fourmil of Rabaul. I am in response to the above received on 21 October 2011 at 1540 hrs in Kokopo. Sir, I of course will be verbally presenting myself to answer to your questions but here is a prepared document of the task done and the requirement of the land dealings for a lease – leaseback arrangement as per division 9 section 902 of the Land Act 1992 and that I was the then Gazelle District Lands coordinator coordinating all land dealings in that district at that time.

The documents mainly are required towards the approval of a lease – lease back under Special Agriculture and Business Lease where we see as the proof to the Commission on the land dealings there. All these documents form this book and are as follows:

- (1) The land investigation report for portion 903C, which includes the field notes;
- (2) The schedules of owners’ status and rights to land;

- (3) A valuer general's requirement; a valuation certification;
- (4) Alienation;
- (5) clan and locality sketch;
- (6) the declaration of custom in relation to land tenure;
- (7) declaration of recognition of customs in respect to the rights in the land;
- (8) a certificate in relation to boundaries, owners' appointee of agents and agency agreements;
- (9) reservations of the land; the recommendation for alienability by the Provincial administrator; and
- (10) other correspondence regarding this LIR or land investigation report.

There is also a land investigation report for portion 904C which contain the same notes that I have gone through. The property report and valuation, this is required and also form part of the land investigation report, but this report and valuation is also included in this book for verification purposes. A registered survey plan on catalogue 19/1913 for portions 903C and 904C. I think the plan is in the original copy submitted to the Counsels; and the sub-sublease agreement for portion 904C and the copy of the title. The sub-sublease agreement is more or less between the landowners and the developer, but for verification purposes, and that the Lands did facilitate in that, so I also included as per transaction general number I14872 of the sub-sublease to KK Connections Limited, which is the developer.

Portion 903C and 904C milinch of part Pondo and open fourmil of Rabaul are in fact the same clans, incorporated land groups of the Lassul-Baining and Patinen-Baining Local Level Government. So you will note in the land investigation report the registration of these two portions go all the way back to 2006 when the preparation and intention of these landowners was to have logging operation there and on the desire to sacrifice their resource for development as they were left out on major infrastructure development for so long by the Government.

The opportunities of registration of this large land mass, in terms of cost factor, came in at a time too when – and so as securing and sustaining of their ownership and the development of their land to get maximum economic benefits.

The landowners in terms of their application did obtain the endorsement of the Lassul-Baining Local Level Government for executive council in 2006 and further recommended for provincial executive council deliberation and approval by the Gazelle Joint District Planning and Budget Priorities Committee that same year.

Meeting No 4 of 2006 of the PEC passed the project under Decision No 19/2006 and become a policy and directive to the Provincial administration to include under its work program to implement accordingly in terms of monitoring and coordination by sectors implicated under the newly integrated arrangement project type as per amended Forestry Act in 2000.

Documents of these endorsements and recommendations will be provided by the East New Britain Provincial Administration as I will give only an account on land dealings.

The directive on land matters, land investigation, was entered into the division of Lands and Physical Planning on 6 November 2008 as ENBLA12/08 and filed as 5-2-32.

In May 2009, voluntary customary land registration awareness were conducted to the wards implicated in the project area and further to the conduct of land investigation report and ended in November 2009. It took more than six months on the awareness and the land investigation. Between this period, as required under the land investigation, the property report or valuation was conducted between the 16th and the 17th of October 2009 and the survey of these two portions conducted and drawn first week of October 2009 and registered on 19th October 2009 by the Surveyor General of the old logging operation area.

These activities were coordinated by me and facilitated by the technical officers of the division of Lands and Physical Planning which was successfully done and documented as required.

The Provincial Administrator's recommendation for alienability was signed on 26 November 2009 and that completed the land investigation report and submitted to the National Lands Department for blessing before approval by the Minister. And this, did go through and a lease – lease back instrument was prepared accordingly.

The actual signing of the lease-leaseback within the customary landowners, through their clans, ILGs or agreed agents, as per the land investigation report and the State represented by the Director, Customary Leases, National Lands Department was done on 22 December 2009 on site at the Toriu land.

I could not provide a copy of the lease – leaseback instrument as it was taken back to the National Lands for final completion and never had a copy to date but I believe the Counsels have a copy of that signed lease – leaseback instrument.

The Native Land Dealing No 6587 was given for this and the base title issued under the landowner company, which is Toriu Timbers Limited as Volume 19 Folio 80 for Portion 903C and Volume 19 folio 81 for Portion 904C. Police reference 18298/0904C.

Sir, Portion 903C today is still under the landowner company, Toriu Timbers Limited and Portion 904C has been the targeted land for the then proposed oil palm project further went through for sub-sublease arrangement to sublease to KK Connections Limited, the developer, for that purpose. So on 30 April 2010 a sub-sublease agreement was signed between the base title holder, the Toriu Timbers Limited, which is the landowner company and the KK Connections Limited, the developer, for 60 years sublease. A copied document is also included in this book.

On 27 October 2010, the stamp duty for – of K57,007.60 was paid into the Internal Revenues Commission and stamped accordingly and further approved by the Minister for Lands and Physical Planning that same day and sublease general number I14872 was affected on the title to KK Connections Limited.

Lastly, I believe that the consent of the identified landowners as per the lands investigation was obtained. At the same time awareness conducted to educate them and the procedures were followed as required from the Lands Division of the province and further submitted to the National Lands Department for approval.

I see this is a check and balance. I thank our government of the day for establishing this Commission of Inquiry to identify the witnesses and improve on as I for one do believe in the Special Agriculture and Business

Leases. And that is workable if the right people are dealing with it to fully enable the rightful landowners obtain maximum economic benefits.

Sir, thank you for the opportunity on summoning me to give you information on Portion 903C and 904C land dealings which are in this book and I believe are sufficient for your requirement.

May the Good Lord richly bless you and the Commission.

Sincerely yours.”

Thank you Mr Commissioner.

COMMISSIONER JEREWAI: Thank you. The letter is addressed to the Chief Commissioner but for the records, each one of us will exercise equal powers in conducting the Inquiry and arriving at findings and recommendations in respect of the individual SABLs. So I will accept your letter in the exercise of those powers under the Commission of Inquiry Act.

MS PEIPUL: Thank you. If I can just go through the submission that you have given, including the letter. Firstly, you make reference to a council – provincial, I believe executive council meeting essentially endorsing the project. It is decision No 19 2006 at Meeting No 4 2006 I believe, you make reference to it. I notice there is no copy of that on file or on the submission you gave. However, I do have a copy that has been provided by another person of interest and if I can just make note of the contents of that. It is in fact the Provincial Executive Council record of the decision and it is on the affidavit of James Tapele. Mr Tapele obviously will be called and his affidavit tendered at the time. However, an interest that you are in fact relaying upon the decision that was made at that Provincial Executive Meeting, I will read out an extract from the decision that was made. If I can actually show it to you first so that you can sight and at least you can see what I am referring to. Is this in fact the decision you were referring to? As you will note on that decision there is a reference to 22 incorporated land groups. You may have heard previously in my examination of Mary Dadatliu, a reference to 22 incorporated land groups with respect to that particular integrated agriculture project which is this, the project that covers the two land areas, portion 903 and 904. Perhaps you can explain why it is that less than 22 ILGs have been specifically mentioned in the land investigation report?

A: Thank you. In the actual ILGs that will be covered, there is about nine and we did obtain that during the land investigation report of those nine ILGs.

Q: So you are saying that it was only nine ILGs with respect to the actual land investigation report?

A: Land investigation.

Q: In terms of the 22 incorporated land groups that are mentioned within this NEC decision, what is your position on that? If you can give us a---

A: Yes. I can only respond by saying that the ILGs that we covered during the time of the land investigation report and the awareness are the ones that are listed on my list.

[3.45 p.m] COMMISSIONER JEREWAI: So have you sighted any agreement by individual landowners, either directly or through their agents agreeing to have title to 903 and 904C issued in favour of Toriu Timbers Limited?

A: Yes.

Q: And if you did sight, can you point me to that agreement?

A: Yes, Mr Commissioner. I think with the – the agreement is not in my presentation but I think it is in the presentation that the other summoned--
-

Q: I do not care how it comes before me, I just want to sight it.

A: You want to sight it? Okay---

Q: I do not want to sight a lone investigation report and I do not want to sight the so called concerns. I want to sight all of them together with the landowner agreement agreeing to issue title in favour of Toriu Timbers Limited.

A: I think, Mr Commissioner, in the land investigation report, if I can say this, there are agency agreements agreeing to certain people within the landowner company to be as their agents so---

Q: Very well. But have they signed an agreement agreeing to title being issued in favour of Toriu Timbers?

A: Mr Commissioner, I think I cannot provide that right now to you.

Q: Will you be able to provide me one later on?

A: Yes, Mr Commissioner, we will provide it.

Q: Fine. You have a copy down there? Can you give it to Mr Balbal? What is the document called?

A: Mr Commissioner, it is on Sales and Purchase Agreement form 268. It is a Sales and Purchase Agreement. This agreement is made between Toriu Timbers - I just came across this so I ---

Q: Take some time to read it and understand the document that you are looking at. Can you sit down please? He will identify the document himself.

A: Mr Commissioner, it is a Forestry Act, this is a form on forestry, form 268.

Q: I do not want to hear anything about the forestry at this stage.

A: Mr Commissioner, I think---

Q: Have you got a copy of something of the nature I am speaking of? Counsel?

MS PEIPUL: Commissioner, would you be referring to the lease – leaseback instrument?

COMMISSIONER JEREWAI: No. Section 102(2)(b) is very specific. There must be agreement by the landowners, be it through agents or be it

through them directly, the title must be held in the approved entity to hold a title.

MS PEIPUL: I believe it may be the lease – leaseback, Commissioner. At the end of the lease – leaseback there is agents for and on behalf of the landowners. There is somewhere that they do sign, Commissioner. I am not too sure---

COMMISSIONER JEREWAI: Counsel, I have read through, I have gone through the lease –lease back prior to lease-lease back, there must be agreement by landowners that they have chosen Toriu to be the entity to hold title. The lease-lease back is between the State and the landowners but having being lease back the title from the State, they must now agree to the entity who should be holding the title on their behalf. If there is none, obviously there is none and that is what this Inquiry will have to conclude.

MS PEIPUL: Yes. In terms of the land investigation report, it is merely an agreement that certain individuals act as agents with respect to those, I believe, those sorts of negotiations. So in terms of land investigation report, there is no specific mention of Toriu Timbers being the entity that they would agree to.

COMMISSIONER JEREWAI: Well, if Toriu Timbers had not been mentioned at that point, then that is an aspect that must be embarked upon and undertaken very stringently. Because the whole concept, and I will repeat this as we go along with other SABLs as well, the whole concept is to revert the lease back to the local, to the customary landowners, not to any other entity that the landowners do not agree to be the title holder. And that constitutes the statement of the case of this Inquiry. 5.2 million hectares of customary land have been lost to people who are not supposed to be holding title to these lands. And the most vital agreement has to be the agreement by landowners however represented, directly or indirectly, under an agreement that they agree to that particular entity they choose to hold title to a particular SABL. And I will not be swayed from that position.

MS PEIPUL: I believe, Commissioner, with respect to that in terms of the land investigation report, it is merely agency with respect to individuals that will act on behalf of the landowners.

COMMISSIONER JEREWAI: And you mentioned that there is no mention of any agreement inside the land investigation report that title be issued in favour of Toriu Timbers Limited. That is a strict requirement of the Act, Section

102(2)(b) says that. And I constitute in part of this Inquiry, assigned to New Guinea Islands will require that this aspect be sufficiently proven to me.

MS PEIPUL: Commissioner, thank you. From what the documents that have been produced, there is no documentation referring to that. Suggestions have been that it could be a resolution by ILGs where they agreed to a particular company or developer that is a possible way to---

COMMISSIONER JEREWAI: Let us have the resolution. Let us have a copy of the resolution. That may well be Counsel.

MS PEIPUL: What I am saying is if there are those resolutions, that needs to be presented.

COMMISSIONER JEREWAI: Yes. If in this case there are such resolutions or is such a resolution, produce a copy of it. Mr Balbal, and that goes for other witnesses awaiting.

MS PEIPUL: Thank you Commissioner. At this stage we would like to tender the submission formally.

COMMISSIONER JEREWAI: That is the submission from---

MS PEIPUL: Mr Balbal.

COMMISSIONER JEREWAI: Mr Balbal?

MS PEIPUL: Yes, that is correct.

COMMISSIONER JEREWAI: Alright. How shall we serialise these exhibits in the East New Britain segment of the Inquiry?

MS PEIPUL: It would have to be marked.

COMMISSIONER JEREWAI: Marked, exhibit---

MS PEIPUL: For identification purposes.

COMMISSIONER JEREWAI: Marked for identification as exhibit A – Toriu Timbers – what is the portion there?

MS PEIPUL: 903C and 904C.

COMMISSIONER JEREWAI: 903C and 904C?

MS PEIPUL: Yes, we are hearing them together so Toriu Timbers---

COMMISSIONER JEREWAI: What is the – add the fourmil and---

MS PEIPUL: Fourmil Pondo, Milinch Rabaul.

COMMISSIONER JEREWAI: Mil and For and put the numbers in ENBP, East New Britain Province. I think that is the way we should be serialising all the exhibits starting with this one. So when you finalise that could you read it for the records so we will know which exhibit that is.

So that would be exhibit A – Toriu Timbers 904C, 903C, that is milinchPondofourmilRabaul, ENBP.

[EXHIBIT A – SUBMISSION BY MR ALLAN BALBAL – TORIU TIMBERS – PORTION 93C & 904C, MILINCH PONDO, RABAUL. ENBP]

COMMISSIONER JEREWAI: Thank you. And the latter ones can come in the order of the alphabetical order and when you have run out of the alphabetical order, you begin to apply numbers.

MS PEIPUL: If I can just refer, Commissioner---

COMMISSIONER JEREWAI: Before you go on, having asked the question about the landowner agreement as to the entity to hold title, I have stated a very firm position on this. But let that not go to suggest in any way that I am satisfied at this stage that there was no agreement among the landowners. I will need more than that to convince me that there was disagreement somewhere. So we will still plod through the evidence and determine these aspects. Thank you.

MS PEIPUL: Thank you Commissioner.

COMMISSIONER JEREWAI: But that is a strict legal position and officials take note that if you would not be satisfied yourself with this separate document, obtained voluntarily from all the landowners or their representatives or duly appointed agents, then that is one major failing now that we have just discovered with Toriu Timbers if indeed there was no such agreement. Please proceed Counsel.

MS PEIPUL: Thank you. I turn your attention to the map. Do you have a copy of the map? You gave us this copy. You could inform us who prepared this map, which particular surveyor prepared this map and or actually conducted the survey and then which led to the preparation of the map?

- A: The actual survey was surveyed by the provincial surveyor at the time with the company of one of the principal landowners and so as I. So we did the actual aerial survey and as the provincial Lands do not have a registered surveyor, we reached out to a private registered surveyor for certification before submitting to the Department of Lands for further approval and all these.
- Q: In terms of the aerial survey and the engagement of the private surveyor, who paid for that?

A: It was given to the provincial surveyor who dealt with that so I cannot answer on that. We were together so I know of the survey. And the drawing and certification, yes.

COMMISSIONER JEREWAI: The finer points of it?

A: Yes.

Q: You are not qualified to be able to determine those.

A: Yes, I think it was conducted between the ---

Q: That is understandable.

A: Yes.

MS PEIPUL: In terms of the landowners that assisted you, were they representatives from Toriu Timbers? The landowners that were involved?

A: Yes. The principal landowner was involved; was on board on the chopper at that time too to verify the points, the boundaries.

Q: And who was the principal landowner? If you could say his name?

A: Bernard Taignas.

Q: And who else was also on the flight apart from yourself and Bernard Taignas?

A: It was the cartographer, Levi Pirit and a Samuel Puipui, the Provincial Surveyor.

Q: How long did this particular flight take? How long did it take for you to go around both portions and able to take the necessary visual assessments of the or whatever assessments needed to be done? How long did that take?

A: We took off from here in Kokopo, I think roughly two hours, about two hours, yes.

Q: Two hours. And as I repeat from my previous question, to your knowledge, who paid for that two hour flight on the helicopter?

A: It was the landowner company who paid for it.

Q: So that is Toriu Timbers?

A: Yes, I think under the land mobilisation levy.

Q: In terms of the actual – I know that perhaps it is not in your area of knowledge but to your knowledge, was the developer KK Connections in any way involved in the preparation of the survey map? Although, you said that Toriu Timbers, the principal landowner was present at that time, was then the developer or the eventual developer also involved in that process of surveying and the engagement of the private surveyor?

A: We were dealing with the landowner company so I think it was between them and the developer who did that. I think we were directly dealing with the landowner company on their request.

Q: Just with respect to portions 903 and 904C in your knowledge, you are aware, I note that you have mentioned in your submission references to the timber area and in that respect, you do have knowledge that there are previously timber TRPs over this particular area of land that incorporates and that is particularly I believe Pondo TRP in that respect? You are aware of that?

A: Pondo TRP is not included in there. It is the Toriu FCA I think.

Q: Forgive me I did the wrong TRP or FCA. But there are different areas that are previously have been specifically logging areas that are covered now within that portion 903 and 902; to your knowledge?

A: I do not know of that.

Q: Commissioner, we will also be tendering the map which – I mean this map is received from Mr Balbal as well. So it actually should be within the---

COMMISSIONER JEREWAI: Balbal. Unless if there is any serious objection, even though he is not qualified to prepare a map in terms of that technical application of whatever they do to carry out a survey, I will accept that map as being identified sufficiently to represent the area over which these particular SABLs cover. So what exhibit will be exhibit B will all---

MS PEIPUL: Sorry Commissioner, I believe it was actually a part of his, if I am correct, it was actually a part of his submission, initially that he gave to us so I was actually referring to---

COMMISSIONER JEREWAI: Alright, that would be Exhibit “A” with the appendix as tendered, appendix “A” to Exhibit “A”.

[EXHIBIT A – APPENDIX A TO EXHIBIT A – AERIAL SURVEY MAP BY ALLAN BALBAL]

While you are doing that, I think in all fairness, I want to take Mr Balbal through just a few questions to clearly differentiate between a lease –lease back agreement with all the named persons and signatories attached right at the back of the lease – lease back agreement.

Mr Balbal, in relation to the lease – leaseback, can he be shown a copy of the lease – leaseback with all the attachments? Mr Associate, can you show him this one?

Under that cover, the first document you will note there, Mr Balbal, is the instrument of lease for customary land and underneath in brackets is the lease-leaseback agreement. Do you see that there?

A: Yes.

Q: Alright, and what is the date there?

A: 22 December.

Q: December 2009.

A: 2009.

Q: Alright. Now, go right to the back where you will see the signing, I think it is on page 5. And for and on behalf of the landowners, there are three persons representing three ILGs incorporated land groups. The first one is from Mobilon village and the name of the ILG is Rainga ILG and the name of the agent is Mr Bernard Taignas. You see that?

A: Yes, Mr Commissioner.

Q: With his signature on the far right. The second signatory is from Alakasam village representing Eval incorporated land group and the agent there is Mr Lukas Koatnaski with his signature on the far right.

A: I see that.

Q: And the third is from Lamarain village representing Toriu Incorporated Land Group and the person who appears as agent is Mr James Tapele with his signature on the far right.

A: Yes.

Q: Then they are witnessed by the advisor, Division of Lands, East New Britain Provincial Administration, Ms Mary Dadatliu, who just gave evidence and also Lazarus Paul Malesa who is the customary Lands officer from the Department of Lands and Physical Planning, Waigani. And then the Secretary for Lands, Mr PepiKimas, signed right at the bottom.

A: Yes.

Q: The next page is the schedule. The schedule sets out in part 1 the description of the land – are you following me so far?

A: Yes, Mr Commissioner.

Q: Okay, part 2, the term of the lease has been for a period of 99 years. Part 3, lease commencement date, part 4, appointed nominated sublessor and it says there, Toriu Timbers Limited.

A: Yes.

Q: Part 5, purpose of the lease. And it states oil palm plantation as well as the potential of commercially cultivating and processing cash crops including cocoa and coconut.

A: Yes.

Q: Part 6 relates to rent. And the rent, State rent is not chargeable over all SABLs under law. The page after that is page 29 – beg your pardon. I may have got it wrong. No, I got that back to front. There are all the pages that is numbered eight only which I believe would be all of the declaration of custom in relation to land tenure after the agreement. Would that be right? They are numbered eight all the way where the – can I look at this document?

A: Yes.

Q: The document says, “Declaration of custom in relation to land tenure.” Without any declaration. Instead right underneath immediately it says,

“We”, and the names commence with the signature. So declaration started, “We”, and then all the names and signatures and I believe there would be a further statement at the conclusion of the names declaring to the effect that they declare custom or the custom that relates to the land that they own pursuant to the custom. Would that be correct?

A: Mr Commissioner ---

Q: This document seem incomplete here. Counsels, are you following me on this?

MS PEIPUL: Yes, were are. It may be that the way we were given the Lands files, we were given copies. Maybe it is irregularly put together. Unfortunately, that is the way we were given much of the Lands file. I think on some---

COMMISSIONER JEREWAI: So we will just have to do the best we can?

MS PEIPUL: Yes.

COMMISSIONER JEREWAI: So it is some sort of a declaration and it has names of all these people and signatures; all of these pages numbered eight, all of them. So there must have been seven, eight and nine after the agreement – the lease – lease back agreement. Nonetheless, let us move on. Then after that, there is this other document you will see in proper print, typewritten print and the heading of which is, “Schedule of Owners’ Status and Rights to the Land”. Most of them carries the description, “Full Rights”. Let us begin at the left hand corner. There is the name, and it specified whoever is an minor or an adult – sorry, prior to that the sex of the person is defined as to male or female, the next column, number third column is whether they are minors or adults, fourth column is whether they are full rights or partial rights, and all of them seem to have full rights. Their address, all of them seem to specify Mobilon and then it is specified on the far right, sixth column as to whether they are executives or agents. And that is the description throughout. Have you followed me so far?

A: Yes, Mr Commissioner.

Q: Right. However, there seems to be an absence of the conclusion to this handwritten, signed and all numbered eight documents that says something about the declaration of custom in relation to land tenure. In the absence of that, and also in view of the question I raised about agreement of the landowners as to entity who should hold title, and as a former Lands coordination officer, I just want to ask you this. In your

experience, do these documents which I have pointed out to you, constitute any form of agreement by the landowners that title should be issued in favour of Toriu Timbers as their choice of title holder?

A: Mr Commissioner, I think it contributes to the agreement. I mean in the agreement to appoint the landowner company to represent them, because I believe that all the ILGs are shareholders to that landowner company and maybe their consent here or their declaration here is declaring them to---

Q: Alright, do not, Mr Balbal, do not attempt to guess at it. My question was, in all your experience, did that in any way constitute an agreement by landowners to issue title in favour of the particular titleholder? If not, you can say so. It does not automatically nullify the title instrument. We want to establish and that may come out in other evidences as we go as to whether there was agreement that Toriu Timbers was the choice – was the genuine choice of the landowners to be granted a title. But for your part, I expect you should be very forthright and honest and tell me if you know or not. If that constitutes agreement by the landowners. If you do not, and if you are unsure, you say so.

A: Thank you Mr Commissioner. I think I would say I am not sure. Thank you.

Q: Very well.

MS PEIPUL: Thank you Commissioner. I think with respect to the submissions that have been given and tendered, we have no further questions at this time, Commissioner, but however we reserve the right to call witness back should the need arise with respect to this particular matter. So at this stage we can excuse the witness until such time he is needed. Unless there are other matters Commissioner would wish to deal with at this time with this witness?

COMMISSIONER JEREWAI: Alright, just bear with me a minute.

MS PEIPUL: And noting also that he may be called for other SABLs during the next two weeks.

COMMISSIONER JEREWAI: Yes. Because that kind of official evidence, well evidence from officials of positions that the one he previously held and therefore his involvement. Noting also that he had said from the outset that that was his first SABL which he carried out land investigation report into. And I think I should make this comment for the benefit of wider understanding as to

where we are going. Because of the – I said it in the opening address to the audience and I just want to repeat this – because of the lack of procedural provisions provided for under the relevant provisions of the Land Act, particularly sections 11 and 102 of that Act, the officials from the National Department of Lands and Physical Planning as well as provincial divisions responsible for land matters, may have done their best to follow some form of procedures to assist the landowners and because of lack of provisions, they may not have been guided sufficiently by law to diligently ensure that the most primary matter of consent and agreement to the entity to hold title as required under section 102(2)(b) of the Land Act is strictly complied with so that there is no room for error because we are talking about the possibility of customary landowners losing their land without their agreement. If they lose their land with agreement, that is fine. So that is really the process we are going through. I just wanted to repeat that again. Mr Balbal, I want to thank you very much, I know you have gone through a grilling time this afternoon but I think you have been of great assistance. You have come out very clearly and I think your evidence begins to demonstrate as we go through individual SABLs as to the great amount of work that needs to be patched up and which is among the terms of our reference in this Inquiry from your previous official standpoint. And I want to thank you very much for appearing this afternoon and you, as indicated by Counsels, will probably be required with regard to other SABLs as we continue this Inquiry over here in Kokopo and elsewhere in East New Britain. I want to ask you to continue to cooperate with us so that we can come to grips with the problem that faces many of the SABLs.

A: I will.

Q: You are excused now and thank you very much. You can step down.

A: Thank you Mr Commissioner.

THE WITNESS WITHDREW

MS PEIPUL: Commissioner, there are two other witnesses that are from the Lands Division. I am mindful of the time of course. One would be Simon Puipui August, he would be the surveyor that was part of the surveying team and the other would be Ereman Peril who was the customary lands officer who assisted with the lands investigation report. I believe Mr August is here this afternoon. If we can have him ---

COMMISSIONER JEREWAI: Can we have a five minutes adjournment and we will continue onwards. I prefer we deal with them, even if we go up until six. But let us just have five minutes adjournment and return and continue. Thank you.

SHORT ADJOURNMENT

COMMISSIONER JEREWAI: Counsel?

MS PEIPUL: Thank you Commissioner, we start with Mr Simon Puipui.

SIMON PUIPUI AUGUST, Sworn:

XN: MS PEIPUL

MS PEIPUL: Mr August, if you could kindly just confirm your current position and if it is the same position at the time of the land investigation survey and also maybe a bit of your work experience with the Lands Department as well as your qualification?

A: My name is Simon Puipui August. I am a graduate surveyor, Bachelor of Surveying PNG University of Technical. I was in the Public Service for seven a half years since 2002 and I resigned last year, 2010 June. I held the position of – only two positions as a surveyor and a provincial surveyor to the time I resigned.

Q: Thank you. And you are currently with the private surveyor at this time, is that correct?

A: Yes.

Q: Mr Puipui---

COMMISSIONER JEREWAI: Is there a particular firm he is with?

MS PEIPUL: Sorry Commissioner?

COMMISSIONER JEREWAI: A particular firm of surveyors he is with?

MS PEIPUL: Are you with any particular organisation or firm of surveyors?

A: Yes.

Q: Perhaps name their names please?

A: Xaras – it is my own company.

COMMISSIONER JEREWAI: Sorry, I did not get that.

A: Sorry?

COMMISSIONER JEREWAI: The firm?

A: Xaras Limited.

Q: How do you spell it?

A: X-a-r-a-s.

MS PEIPUL: And are you currently registered surveyor?

A: I am not registered, I am training under a registered surveyor. I normally do surveys and present – get certification from my master surveyor.

Q: Okay, alright. Was that the case when you conducted the survey in respect to portions 903 and 904?

A: Yes.

Q: Who would the master surveyor be?

A: Charles Ofoi.

Q: Perhaps at this time I can present to the witness, Commissioner, for clarification and verification of---

COMMISSIONER JEREWAI: Sorry, before you do that.

Q: Yes, Commissioner.

COMMISSIONER JEREWAI: Charles Ofoi as in the current acting Secretary for the Department of Lands and Physical Planning?

A: No. Charles Mana Ofoi is a surveyor, a registered surveyor, yes.

Q: Alright, thank you.

MS PEIPUL: Commissioner, if I may be allowed to present to the witness the survey plan and to confirm---

COMMISSIONER JEREWAI: Please do that Ms Peipul.

MS PEIPUL: Perhaps Commissioner as well you can be assisted by having a copy of the ---

COMMISSIONER JEREWAI: Yes please.

MS PEIPUL: Perhaps you can just explain to us the process of conducting a survey for this particular survey?

A: Initially, it is the instruction from my boss as a advisor and at that time---

Q: And your boss would be?

A: At that time it was Mary Dadatliu. So upon work that was presented to me by the Lands coordinator of Gazelle District and the Customary Lands officer, that is Ereman Peril, so we had to go on with what was presented to me as a concept plan, concept plan showing the boundaries of what we have here. That is ---

Q: When you say concept plan, who provided the concept plan, where did it come from?

A: It was provided by the landowners themselves.

Q: The landowners provided?

A: Yes.

Q: And that would be Toriu Timbers to your understanding?

A: Yes.

Q: Alright. Go on.

A: And from that, the concept plan that I had was not electronic and hard copy so what we do was that the coordinated points of intersections mainly creeks and rivers, these are the main coordinates that we extracted to actually execute a survey on aerial.

Q: So in that concept, the landowners showed the boundaries of their land, what they said was their land, is that correct?

A: Yes, definitely.

Q: Okay, alright. When you actually conducted the survey, we understand it was by helicopter, is that correct?

A: Definitely, yes.

Q: Can you confirm how you would go about conducting a survey aerially like how you do that, what that entails?

A: On the chopper, the division has hand held GPS that we actually track by way points. So as I mentioned earlier, we have coordinated boundaries here, and especially on river intersections, creeks and down to the high water mark. We have---

- Q: When you say coordinated way points, are you referring to the numbers that are on the map?
- A: On the top left, top right corner of the survey plan.
- Q: Yes.
- A: So these points we enter them into the GPS and we track them, track by chopper so that what we say, “way points”. These points are confirmed with the landowners that were on board on the flight there.
- Q: Can you recall which landowners were on the helicopter flight with yourself?
- A: I would not know but it is one Balbal mentioned his name.
- Q: Okay, so the gentleman where Mr Balbal mentioned.
- A: Yes. We were on the same flight with Allan Balbal, the landowner and Levi Pirit, training cartographer.
- Q: So you are saying that during the – approximately two hours, Mr Balbal confirmed – can you confirm that it was approximately two hours?
- A: Yes, approximately two hours.
- Q: And during that flight you would basically hold your GPS and then – I mean, sorry, it is very technical and I do not know how it happens so perhaps you can explain that process?
- A: Yes. We enter points as way points into the GPS, it is coordinated points so it tracks. So when you are in motion it gives your direction, it gives your distance to your coordinated point.
- Q: So you are flying over those particular points and that will be recorded on the GPS like it marks the point and so we know that you have flown over that point, is that correct?

A: Correct.

Q: So in that two hours you covered the whole of Portion 903 and 904, is that correct?

A: We did cover all those.

Q: And so you marked out all these points? And that was confirmed. What was in the concept plan was confirmed in what you did, is that correct?

A: Yes, definitely.

Q: I think in terms of being up with the GPS in the helicopter, the accuracy of the GPS, the hand held GPS, because we are informed that the hand held GPS is not as accurate as the actual, the other GPS I believe that is more technical? Maybe you could explain whether it is accurate as it should be?

A: Hand held GPS' you have accuracy down to 2 metre, 1 metre radius so it is 1 metre and you have a, for rural class, I mean rural class 4 is always to be acceptable for that accuracy.

Q: So okay in terms of the rural class 4 survey, maybe you can explain a bit for the record in terms of how you conducted it with relation to the rural class survey?

A: For rural class surveys we just went – yes, rural class 4 surveys the accuracy is within, one is to I would say one is to 2,000 and one is to 3 or 4, 5,000 accuracy.

Q: Right. So it is quite a big margin in terms of accuracy?

A: Yes.

Q: Alright, thank you. With respect to the examination process of it, the actual drawing process of it, once you complete your survey, what then happens in terms of the drawing and the examination process? Maybe you can clarify us on that?

A: After the survey - actually drawing up the survey plan to meet requirements, once as per survey directions and we write a report, the report is then submitted with this survey plan and the concept from the landowners, then we submit to Department of – our regional office, Lands, for examination. And that process goes and it comes back for requisition. If you do not meet requirements, then we still have to tidy up, polish up to meet all standards.

Q: Now at any time did you actually go on the ground to do any surveying on the ground or was it only in the air?

A: Only in the air.

Q: Only in the air?

A: Yes.

Q: With respect to the land proposal or rather the proposal that you were given, were you satisfied that that was a fully informed description of the land from the landowners? I mean these were only some landowners that provided the proposal and you as a surveyor were you satisfied that the clan owning group, I mean the groups, the clans or the landowners that had given you that information, was it sufficient for you to conduct or actually mark out the boundaries? You know what I mean in terms of encroachment and in terms of whether it goes into other lands, were you satisfied in that respect?

A: Yes, I was satisfied because all things were done by the landowners, the Lands coordinators and all investigations were done by them. They drew up all the concepts so I just had to execute and I was satisfied that it was okay.

Q: So you accepted what they gave you and you proceeded with conducting survey?

A: Yes, I accepted, yes.

COMMISSIONER JEREWAI: Mr Puipui, you in other words you reduced from that form of survey the technical survey gathered into a map which is this map that is in front of you, is that right?

A: Come again?

Q: You reduced all these information including from the concept plan and the technical compilation of information in flight with the points that had been pointed out to you to be the points comprising in various lines to determine the boundaries and then from that information you reduced into a map that is in front of you now?

A: Yes.

Q: The map in front of you should show the boundaries of the particular land being surveyed. In this map the ones that we are interested in are portions 903C and 904C. Are you telling us that it is from that process that you have got here on this map on the one side 903C right, and 904C which covers what appears to be more hillier, more mountainous areas because of the closer contours, am I correct to describe it that way?

A: Yes. As you can see there is - we do not present contours on carousel survey maps. These are creeks as you can see and you can see that it is kind of steep areas there on the side.

Q: All those creeks seem to flow into, for instance, Toriu river, that flows towards the Bismark sea. Right? From the right of the map to the left. Is that correct?

A: Yes.

Q: So they could in the absence of contours, they represent steeper areas?

A: It does.

Q: Over to portion 903C, there are virtually no creeks running into rivers. So they are more level land are they not?

A: Actually that place is a bit swampy. But there are a lot lines, as I said those lines are creeks and rivers.

Q: However, that is the way you arrive at determining the boundaries of the two different portions, portion 903C and 904C.

A: Those, as per the concept gathered from the landowners and the main boundaries should be – I mean the intersections of the rivers and creeks.

Q: I quite frankly cannot follow the boundaries of 904C and 903C. If I give you this highlighter, would you be able to put it in? I cannot figure out the boundaries as between portion 903C and 904C. If you could demarcate with that highlighter the boundaries of the two portions?

A: I understand. The main boundaries should be the darker lines.

Q: We will note for the record that the witness is actually outlining the boundary of the portion 903C and 904C Milinch Pondo Fourmil Rabaul.

Mr Puipui, you have just highlighted with the yellow highlighter the boundaries separating portion 903C from portion 904C and with a red pen the boundaries separating portion 904C from other lands. Portion 903C comprises of 42,240 hectares? Can you confirm that now?

A: Confirm.

Q: Right. Portion 904C comprises of 11,240 hectares. Is that correct?

A: Confirm.

Q: Counsel, you can take it on from there.

MS PEIPUL: Thank you.

COMMISSIONER JEREWAI: Counsel, would you like the marked one?

MS PEIPUL: Yes. Commissioner, perhaps with respect to the question of due diligence on your part, do you conduct a search of any pre-existing maps that

may exist on the same portion of land that had been actually granted any type of lease or anything that had been registered, do you do that search?

A: Which is paramount importance?

Q: Yes.

A: Any existing survey within the subject area must be excluded from what we have done so I think we have done that on the bottom end part.

Q: So in---

A: There is portion 103---

Q: Yes, I note that there is a - at the corner, you have the declaration. Is that correct? Are you referring to the declaration at the corner of the map?

A: Yes.

Q: The declaration where you say there is no encroachment on – no that would not be in relation to an existing, pre-existing survey but sorry, carry on with what you were saying.

A: We have actually excluded the surveys that is within the subject area. As you have seen portion 183 on Plan No 19/748 and portion 187 remaining, Plan No 19/748 portion 756 on Plan No 19/910, that is the bottom end.

Q: Just for clarification can you just refer us back to which particular---

A: You have a land parcel just at the, where the beach front is.

Q: I see, that is 183. Is that correct?

A: Yes.

Q: Diagram B, is it?

A: Yes.

Q: Okay, and then there is diagram as referred to at the top. Is that correct?

A: Definitely. All blown up diagrams only.

Q: Yes. So those are the only pre-existing surveys or leases of any type that had been ---

A: Within the area.

Q: Okay, with that particular land area.

A: And they share a common boundary now.

Q: Okay. So in doing your search, you would obviously identify what those particular surveys are. It is quite clear there are pre-existing surveys and can you tell me what they are for?

A: Come again?

Q: Can you tell me what this particular pre-existing surveys are or for? Are you able to identify?

A: No.

Q: You are not able to identify that?

A: No, I would not.

Q: Okay. But in that respect when you conduct a search, how does that happen? You search at the bureau at Waigani and you are able to assess that there are pre-existing areas that have been registered within that portion? I mean can you tell us how you conducted a search with respect to this?

A: Yes, initially before we survey, we do search, as you mentioned. Search basically for existing surveys within that subject area and for positional datum and azimuth datum as you can see tabulated on the bottom right here. That is basically for referencing. So any survey within there should

be excluded from that total area of the subject survey so and again once we have done that – our search we do here in provincial Lands office---

Q: So you do a search here in the provincial office?

A: Yes. In the event we do not have plans there in our cabinets, we call Waigani Lands in Port Moresby, they provide the details so---

Q: Can you recall with respect to this whether you had this particular information here or was it you called Waigani to ---

A: No, we have all these information here.

Q: So all that information is located here?

A: All the information, yes.

Q: I think with respect to any other surveys in the rural class 4 you would have picked up if there were any types of similar surveys or if there were any other surveys obviously you would have picked that up, if there were any?

A: Yes. Well, if I do not pick it up – you know surveying goes through a process, examination process. In the event there is a survey in between, within the area, it will come back to me for requisition. So we will have to remove what portions are within this subject area. So it is like – there is always spot-checks before a file is sent to Port Moresby for registration.

Q: Alright. So with respect to the actual survey itself, you only conducted essentially one survey occasion which was on the helicopter? There was no other assessment or how should I say measurements of the land area apart from that helicopter---

A: No, it is only through the hand held GPS. We never did any – nothing on the ground. But only referencing is through the PSM as you can see on our Pondo plantation. That references the boundaries, the boundaries with respect to the PSM.

Q: Can you explain what a PSM is? If you---

A: It is a permanent survey mark.

Q: Okay, yes of course.

A: It is actually a brass plate that we normally connect to coordinate our survey.

Q: Yes, of course. That is what you indicated you were flying over in order to ---

A: And the survey is made reference to a permanent survey mark.

Q: I see. The reason why we are asking about pre-existing surveys is because of the timber concessions that are around that area and that in fact they are demarcated areas in terms of the plans that are pre-existing on those particular areas. Whether or not those demarcations are actually surveyed areas or not, would something like that would be picked up in your due diligence work?

A: Okay, what is on the survey plan is what you call registered plans, registered survey plans. If other surveys that have not gone through the normal process for registration then it is not indicated in here.

Q: Thank you very much. I have not further questions unless Commissioner you have some questions you would like to---

COMMISSIONER JEREWAI: No, Counsel. Mr Puipui, thank you. The process you went through in surveying those portions are very important when it comes to hearing other witnesses as well who may or may not question the boundaries and in such circumstances we might need you back here. What we hear from them, we will pose it to you and see how you arrived at that boundary determination. But you may be not the relevant witness to do that, we may have to go back to Mr Balbal or others for that. Thank you very much. You can stand down. Thank you very much for coming.

THE WITNESS WITHDREW

MS PEIPUL: Commissioner, perhaps we can also tender the marked survey now that we have---

COMMISSIONER JEREWAI: Please I was wondering, yes. We will accept that as been tendered through Mr Puipui to be applied the appropriate exhibit as annexure "B" to Exhibit A.

MS PEIPUL: Exhibit B, yes, correct. It would be exhibit B.

**[EXHIBIT B – TORIU TIMBERS 904C AND 903C MILINCH PONDO
FOURMIL RABAU, ENBP]**

MS PEIPUL: The final witness this afternoon is Ereman Peril. Ereman Peril can make his way, we can get under way.

[4.30p.m] **EREMAN PERIL, Sworn:**

XN: MS PEIPUL

MS PEIPUL: Thank you Mr Peril for being here this afternoon. Perhaps if you can let us know your precise position now as well as what you were at the time of the land investigation report and perhaps your experience within the department and your qualification as well?

A: I as Ereman Peril, at the time of the land investigation conducted, I was the land acquisition officer with the Customary Lands section within the division of Lands. Before that, I was under Lands section, a lands officer. So right now I am unattached officer.

Q: Thank you Mr Peril. We have heard from previous testimony that you were working with Mr Balbal with respect to this particular land investigation as a customary lands officer. Is that correct?

A: That is right.

Q: So you worked closely with Mr Balbal to ensure that the land investigation was approximately conducted? Is that correct?

A: We were both assigned to conduct the land investigation report.

COMMISSIONER JEREWAI: Sorry, you will have to speak up. I have to hear you. That mic is for recording purposes. You just have to speak up.

MS PEIPUL: So perhaps if you can just indicate to us how, at what point in the land investigation you would come in in assisting Mr Balbal to conduct the land investigation at that time? If you can just give us a run through?

A: The initial – we commenced the land investigation report in mid May 2009 and it took us almost six months up until November 2009. Before the land investigation report, we did carry out an awareness to the landowners on their land registration and also a bit on the voluntary customary land registration.

Q: So in your awareness, you actually fully informed them of the voluntary – sorry can you repeat what you mean?

A: We did fully inform the landowners, we tried to – the landowners to understand the concept of the land investigation report and also the customary land registration.

Q: Do you feel that you were successful in them understanding, you were getting your message across to the landowners about that?

A: We did get consent from the landowners that is why we went back to them to conduct the land investigation report.

COMMISSIONER JEREWAI: Did the landowners understand that their land was to be surrendered to the State and reissued in terms of title to another entity so that they can all become involved together with the proposed development on their land?

A: Sir, through their initiative they did ask the administration---

Q: No, forget that. When you were carrying out this awareness and investigation, did they understand that this is what was going to happen?

A: They did understand.

Q: Go on Counsel.

MS PEIPUL: If I can just take you back a little. In terms of your experience with land investigations, how many land investigations had you conducted prior to this particular one and how many since?

A: For the lease – lease back alone, Toriu was the first of it.

Q: First. But since then you have conducted a few, have you?

A: Within the office we registered our – through instruction to carry out land investigation report on project Lands, we categorise the projects the minors and the major ones. So for Toriu it is like a major project in the province.

Q: So you have your own categorisation in your office for different projects? Because this was supported by the provincial administration, then it would have been regarded as a major project?

A: That is right.

Q: Touching on the issue of this being your first land investigation and going into the communities for the awareness, basically you were communicating to the people about the concept of the lease – leaseback concept and what that meant for their customary land. Did you at any stage inform them about the fact that a developer would be coming in and that a developer was likely to then sublease that particular land? Did you also give them an understanding of that concept that it would be a 99 year lease would be subleased to a developer or could be subleased to a developer?

A: The developer was already there with them. Before we went in they had some agreement with the developer to develop their area. Which they then requested us Lands division to facilitate the land investigation report for them.

Q: Who had the agreement with the developer? When you say they had a developer, who are you referring to?

A: The landowners with the developer.

Q: But who, which landowners?

A: Toriu Timbers.

Q: Toriu Timbers, okay. Who was the developer that they had the agreement with?

A: It is now KK Connections.

Q: So the time you carried out the land investigation, there was already an agreement between Toriu Timbers and KK Connections that you could see?

A: That is right.

Q: Did you convey that to the people when you went out for your awareness, was that conveyed to the people that there was an agreement between Toriu Timbers and---

A: The agreement was the project agreement. But that time we were going down to conduct the awareness we were to verify through the land investigation report and then come up with a list to a sublease agreement.

Q: When you say verify, were you verifying consent to lease – lease back or was it consent to Toriu Timbers being the appropriate body that the lease was going to be granted to? I mean how were you, what verification were you undertaking?

A: The lease to go to Toriu Timbers.

COMMISSIONER JEREWAI: As the landowner company?

A: The landowner company, that is right.

Q: What I want to ask you is, did you encounter any resistant, objection from any of the landowners? Not their representatives but any of the landowners?

A: During that time a few but during our assistance again, we went down to--
-

Q: No. You answer my question first. Did you encounter any resistance, objections from any landowners who live within and who lay claim to ownership – customary ownership of their land comprised in portion 903 and 904C? Did you encounter any at all?

A: We did encounter a few.

Q: Will you be able to tell us who raised these objections?

A: It was the other clans from outside the project area. So the nature of the dispute was the boundary.

Q: Boundary?

A: Encroachment.

Q: And the dispute or the resistant would have been that the proposed boundary of these SABLs will be encroaching or are covering areas of dispute as between customary landowners?

A: That is right.

Q: Could you name those disputing parties?

A: It is from the other village, it is Mandrabit.

Q: Mandrabit?

A: That is right.

Q: And Mandrabit was outside of which portion? 904?

A: 904.

Q: Please proceed.

MS PEIPUL: Yes, thank you. With respect to ascertaining the consent and verifying consent which you say was with respect to Toriu Timbers being granted a sublease, can you indicate to us how you established that and how that is then reflected in your report? What exactly did you do to establish that? Did you ask questions, I mean how did you establish consent from them when you talked to them?

A: We did like conducting awareness for them to get a clear understanding of the land investigation report concept, get back to them to get their views. Every time we call up meetings, all the clan elders representatives they come to give us their consent.

Q: But how was that? When you say consent, how did they do that, verbally--

COMMISSIONER JEREWAI: In open meetings?

MS PEIPUL: Signing documents, open meetings, I mean how exactly did they give consent?

- A: Like the time we were going with them down there, we were going with the field notes, land registration field notes, so same time we call up meetings, through the notes we ask questions to them.
- Q: And you asked questions and that meant that you identified with who they were, you wrote down something, did they write down, I mean we are trying to establish how they indicated consent to you and how you assessed consent from them?
- A: Like in the schedules of owners, we list them down, all the clan members and then down to declaration of customs, we get the representative down to the agents, appointees of all clan members of Toriu.
- Q: But when you say representatives, appointees, explain what you mean by that exactly? Are they representing others or because it goes to the question of consent of everyone or the majority and whether you are fully satisfying yourself if someone is a agent or some, many other people and I mean how were you satisfying yourself with their full consent; true consent?
- A: It is like the appointees from the majorities and the ones that are literate which they can dialogue with us.
- Q: So you have to fully satisfy yourself that one individual was literate is representing maybe 10-20 others within his own clan. Is that what you are telling me that you do?
- A: That is right.
- Q: And that one person is supposed to be representing the views of all the others?
- A: Yes.
- Q: So as I flip through the land investigation report, I note there are many agents, it says executives or agents. Perhaps you can explain what that means - executive and agents because agents meaning do they represent a whole, like 10 other people, people who are illiterate, I am trying to understand the actual number of people that would have consented?

A: I cannot expand on that but that we gathered from the landowners. They themselves appointed who was going to be their representative for the ---

Q: So they themselves had meetings? I am trying to understand how they appointed their agent. Can you tell us how the landowners would have done that to your understanding? Like when they came up to you and said, I am an agent, my name is this and I am an agent, how would you satisfy yourself if they are true agents, and that they then got agreement from the people they say they represented? So how did they make that decision as landowners?

A: I am not sure how they did appoint themselves.

Q: But they came and talked to and said, I am an agent?

A: They came up to us and gave us the names of who were going to represent them in the ---

Q: So they gave you the names of who they represented? For example, they would have---

COMMISSIONER JEREWAI: Was that in an open meeting?

A: It was in open meetings.

Q: Did you hold a lot of these, what you might call group meetings, throughout the area? In other words anyone who may dispute a particular agent would have said so to you in those meetings? Anyone in those meetings who may dispute a claim that that person is an agent that represent him would have raised the objection there and then in the meeting?

A: It is through their formation of forming the ILGs incorporated land group. So we also get the ILG certificate to verify who is going to their representative of the clans.

- Q: Yes, but we have heard from Mr Balbal that only nine ILGs were sufficiently represented so to speak. What about all the rest?
- A: Because of the requirement of LIR, a certificate of ILG must be attached. So like nine ILGs, their ILGs were registered ILGs.
- Q: You are trying to ascertain if everyone agreed to giving up their land and you insisted on a certificate of ILGs to be attached before they can speak? I find that to be highly irregular. You should not have done that. You were there conducting a land investigation report, everyone who has a right to speak because it involves their land must be allowed to speak, with or without a certificate of an ILG incorporation. Proceed Counsel.

MS PEIPUL: Thank you. Perhaps I can also just give you an example. We have a schedule of owners here from the Ranga clan and it is typed – and I am wondering with respect to how many times you would have visited the clan, the Ranga clan? I mean obviously they would be maybe in different villages or one village, how were you able to achieve that? Was it one meeting or would it have been couple of meetings, I mean how would you have assessed that?

A: The villages were scattered. So like we conducted a meeting on a certain village and we gave them time to get back their consent.

Q: So that means you would have conducted – so just run me through how you let them know? Would you go there, let them know we are going to come back and get your consent or understand what your position is or do you send word out that we are coming this certain time and we want you to let us know whether you are consenting, give us an indication on how you physically did it?

A: Like this schedules of owners part, we did leave some schedule of owners page with them. So we did give them time to get their consent. They did come back to us with the list. They themselves came to us to give us the list to type them.

Q: So you would have left them in different villages for that particular clan, the Ranga clan?

A: Ranga and then for other clans like---

Q: And the other clans as well? And they themselves hold on to the schedule, they write in their own details and then when you come back, then they give it you? Do you at any appoint then assess the correctness of what is in the schedule or do you just merely receive what they have given to you and then you take it back to the office and you type it up?

A: We did make follow up meetings after we left the land investigation report format with them, we come back to them to clarify after they give us all information.

Q: So that would be like about two trips you would be taking then? So at any stage was there a public hearing for anyone who had any objections to then, I mean you left the schedule, you left it to landowners themselves to fit it in but at any stage did you as a customary lands officer and the provincial coordinator, did you have a meeting to allow people to come and actually speak and express their objections or their agreement with the whole process of alienating the land?

A: We, normally after two weeks, after two weeks we go back to them to follow up with the forms.

Q: But when you say follow up, is there an actual public gathering, meeting where they can ---

A: They themselves – we left the publication with them. They go around.

Q: So you do not actually observe any public meeting, you leave it to them---

A: When we come back to next meeting, we ask them for any objection---

Q: So you actually conduct a meeting or do you just ask the person you left the schedule with? I mean, you have to clarify with us exactly how you conduct this process which is once you go back and get the schedules, do you then conduct an open meeting to hear any objections?

A: It is sort of a, yes open meeting.

Q: So there is a meeting, you can confirm there is a meeting that you conduct at which time people come and make objections?

A: That is right.

Q: At this stage, do people actually object? Are there objections to these---

A: No.

Q: You mean to say that during the whole time, you have been going to all the different wards and villages, you never heard one objection?

A: No.

COMMISSIONER JEREWAI: Except for this adjoining Mondrabet, that is the--

MS PEIPUL: My question is with regard to the schedules now. Who, in terms of who you leave them with – the schedules – within a particular village and that?

And are you satisfied that the individuals that you leave those schedules with is going to accurately get all the relevant people that should be signing it, fine.

A: Actually we left the papers with them and they themselves appoint somebody who can write and also understand the paper.

Q: When you say, they, I am wondering who the contact person is within these peoples? I mean, is it anybody or is it the LLG president or who actually is it that you are liaising with within the different villages when you leave the schedules?

A: When we were going down we were going with an extra team, so we have like from the provincial Lands, districts and also the LLG down there. So we have LLG officers down there like the LLG manager who was working close with the---

Q: So that is the person you leave the – so you have been giving the schedules to the LLG managers? Is that correct?

A: They complete the papers and they come and leave the papers with the LLG managers.

Q: So you are leaving it to the LLG managers to ensure that they are completed properly and then you come back, pick them up and you conduct a hearing or an open forum where people can come and make their objections or otherwise at that stage?

A: Through the meetings, follow up meetings.

Q: I think with respect to just maybe one or two more questions, I note of course it is getting dark now and we have to – one more question. Just with respect to – I note you have signed off in some of these land investigation reports. If I can ask you a question with regards to the boundaries and the customary, well indicating to you the customary boundaries of portion 903 and 904, how did you, in terms of the land tenure – especially with regards to the declaration in the land investigation report, declaration of custom in relation to land tenure I note that with respect to the different clans, they have been handwritten and there are a few, how would that have been done because I note there is a difference between this and then the schedule which is a typed up and it is all handwritten here so perhaps you can give us an understanding for our own clarification as to why there are differences and that? I mean the process, specifically the process on why one is different from the other? Or appears to be different from the other? It may be the same but why there is a difference in terms of handwritten and typewritten?

COMMISSIONER JEREWAI: It is attached to the back of the lease – lease back. Associate take it to him and he will have a look at it. Open to the back of the agreement there, you will see page no 8 and all of those handwritten names with signatures are all page 8. That is what Counsel is referring you to.

MS PEIPUL: All those handwritten and then obviously in the beginning there is the typed up names and especially with respect to the agents and ownership aspect that is typed. Maybe you can explain the process just for clarification?

A: For the declaration of customs in relation to the land tenure, this is where the appointees of the members, they sign here.

COMMISSIONER JEREWAI: Of each family? Is it each family or each member of the land---

A: Each member of all clans. The same goes to the agency agreement. They are declaring their rights to – for the land to be tendered.

MS PEIPUL: I am just wondering about the difference between why some are handwritten and the others are typed? Just in terms of the process that you go through when you ---

A: Like I said because of the remoteness of the area, we cannot get a day trip from one village to another village. It is will take some weeks to walk. So like which ones we got them through the LLG office, we type them in and then we give it back to them to sign and the others we got them late, we just attach them with the ones we type them in.

COMMISSIONER JEREWAI: In other words you send these forms out and they fill them out, they sign them and send them back through whoever the LLG official may be on the ground and you return and pick them up. Does that include this document here? You leave it with them and they take them and fill out the names and they sign and then they return them to the nearest official that you have asked to assist such as an LLG coordinator and you pick them up from them?

A: That is right.

Q: Counsel, with these particular SABLs, there are issues in relation to consents are there?

MS PEIPUL: Yes, there are. I suppose with respect to finalising my questions, I will just refer you to two things, perhaps it is in that particular land investigation report you have. But I note there is a page 39, maybe it is on page 39 of what you have there. Unfortunately the documents we receive from the Lands Department have not been well provided. So I

hope you have a page 39. But in any event, the bottom of page 39 is I note your certificate of agreement to lease – lease back and that you have in fact signed off that you are satisfied that the owners listed in the schedule owners, excluding absentees, and they had been informed by their landowner group, clan executives. So I mean that to me, as you were explaining means that you have been giving these schedules to particular representatives and they have gone and as clan group executives, they then received on these schedules and you are actually saying that that is an acceptable form of consent for you and you are signing off on it. That is in fact your signature, is that correct?

A: Solely, yes.

Q: Commissioner, I think I have no further questions for this witness. However, obviously if there are any further issues that need to be put to the witness, we ask that we will be allowed to call him at a later stage if it is possible?

COMMISSIONER JEREWAI: Absolutely. That is why I asked the question if in the preliminary stages you have noted any issue with regard to the question of consent. And the question of consent must be from or issues taken with regard to consent must be from the persons claiming customary rights to the land within the two SABLs. If that is the case, it is imperative to ensure that these witnesses appear when this matter next comes on so that we hear their side of the story after we have finished with all the witnesses who have reported here this afternoon.

MS PEIPUL: I think Commissioner with that, perhaps if the witness can be excused and I think we can then confirm a date of which we can continue with Toriu Timbers.

COMMISSIONER JEREWAI: I will just ponder a question that pass through my mind but in the course of which I have – I will just ponder and I will not just excuse him yet. I would like you to know that as a land coordinator under the supervision of your supervisor, you had conducted possibly at the best of your capability what you were instructed to do, and particularly taking into account the difficult terrain that these two portions of SABLs are located over there. I am sure most of you did the best you could. That is why I need to ask you this

and I also need you to answer me truthfully several of the questions leading on from what I spoke a little bit harshly earlier. Please do not take offense to that. I needed to emphasise this. Too often we are guided by forms and filling out of forms and documents without thinking as to the effect of these forms. That is why I did not take too kindly to any suggestion that anyone who must speak in relation to matters affecting their customary interest in the land that they claim such interest should be guided that the officials enquiring into what their attitude is towards a specific proposal such as the one that you investigated, that the officials should be guided by a document, a document that is only meaningful in terms of the corporate set up of it. But it is totally meaningless if you are to determine the voluntary consent of the person whose interest you are about to affect if you do not allow him to speak. So I would like you to elaborate on why and perhaps in time we will call Mr Balbal back, but elaborate on why or whether you only restricted persons to speak if they had a properly registered incorporated land group and they produced the certificate of that incorporation. Did you do that or you were merely trying to explain to me that the nine ILGs who made representation were the only ones who came forth? Can you explain to me why the other 13 did not appear on your list?

A: Like, when we were going down, we did ask them to organise themselves into ILGs which a few they went through and they were registered.

Q: You asked them to organise themselves into ILGs and so they can participate in the SABLs through an incorporated ILG? Now, those who did not register their ILGs, incorporate their ILGs, were they kept out in later discussions in public meetings or individual consultations? Were they left out at all in the process of both the investigation that led to determining whether all consents had been obtained? Were they left out or not?

A: They were not left out. They were all informed to be registered which only the nine came back with the certificates and the others were still in process with the registrar of ILG.

COMMISSIONER JEREWAI: From your official's stand point, and you must understand you represent the people, you do not represent the landowner company, nor do you represent the developer. From your official position, did you feel any undercurrents of uncertainty or objections to this whole process? And because of the lack of development in the area, whether they were all very forward about this perhaps, were they very positive about the proposal to issue Special Agriculture and Business Leases over their land?

A: The landowners did fully understand it and they really supported this whole project, it is theirs; it is their project.

Q: They have their local level government and obviously they have their ward councillors and Mr Balbal outlined quite a number of these wards.

Counsels, how many altogether? Counsels, how many wards altogether that Mr Balbal count?

MS PEIPUL: He counted eight wards. He actually said eight wards. It could be more but what he said it was eight.

COMMISSIONER JEREWAI: One of the process is to verify if indeed people agreed to these processes and ultimately to give up, surrender the customary rights to their land for 99 years to get the ward representatives, ward councillors to provide a letter of support and I do not see any of these letters of support among the evidence before us. Why have this not been obtained? Because elsewhere they do. Can you answer that?

A: It was brought up through their LLGs and the LLGs up to the PC, Provincial Executive Council for the approval of the whole project.

Q: But where are the evidence of these?

A: I cannot provide it now Sir.

Q: You can? Take note to request that Mr – sorry, I did not get your second name?

A: Peril, P-e-r-i-l.

Q: P-e-r-

A: I-I.

Q: We will continue the Inquiry into this particular SABL at 9.30 a.m. on Monday morning. It would be of great assistance if you can bring copies of ward councillor's - usually letters of support or letter verifying that the persons within the wards they represent consented with these things.

MS PEIPUL: Perhaps just in leading on with what Commissioner, you are saying is, do you – because this was your first land investigation, did you fully appreciate the significance of the process of alienating of the land; in fact the 99 year lease – lease back and did you have that appreciation when you went in to conducting that land investigation?

A: Yes, because the product for the landowners of getting their lease title.

Q: Commissioner, just in noting in him being recalled, you indicated Monday, however, and when we discussed or noted the villagers that were going to be travelling in, we indicated Monday for them as well. I think in terms of the continuation of the resident witnesses, the Toriu Timbers and so forth, perhaps that could continue on Friday – this Friday?

COMMISSIONER JEREWAI: Yes, that is fine.

MS PEIPUL: And if that is the case, then perhaps he can continue then on Friday rather than on Monday.

COMMISSIONER JEREWAI: Mr Peril, we will have you stand down as a witness but you remain on oath until Friday morning at 9.30 a.m. But look, however we make exchanges with you, feel no fear. We are all here for the same reason and which I have stated and you have heard me in the opening remarks earlier on. So once again I want to thank you very much for having appeared here this afternoon and having kept you until very late. It is also 25 past 6. Mr Peril, thank you very much. You are excused until Friday.

MS PERIL: And perhaps he can produce the document that he indicated he will produce as well?

COMMISSIONER JEREWAI: Yes, he has indicated that, yes.

MS PERIL: I think at this stage Mr Commissioner, he was the final witness for and official witness from the Lands Department and perhaps if I can ask that we adjourn until Friday morning at 9.30 where we would then carry on with Toriu Timbers, specifically with the landowner company, Toriu Timbers itself and others?

COMMISSIONER JEREWAI: Very well, the Inquiry into the SABL over portions 903C and 904C held by Toriu Timbers is adjourned to 9.30 in the morning on Friday 28 October 2011. Associate adjourn the Inquiry please.

**AT 6.30 P.M. THE COMMISSION OF INQUIRY INTO SABL
ADJOURNED TO FRIDAY 28 OCTOBER 2011 AT 9.30 A.M.**

INDEX

PAGE NO

MARY DADATLIU, Sworn:.....
 XN: MS PEIPUL.....

THE WITNESS WITHDREW.....

ALLAN BALBAL, Sworn:.....
 XN: MS PEIPUL.....

THE WITNESS WITHDREW.....

PUIPUI AUGUST, Sworn:.....
 XN: MS PEIPUL.....

THE WITNESS WITHDREW.....

EREMAN PERIL, Sworn:.....
 XN: MS PEIPUL.....

THE WITNESS WITHDREW.....

EXHIBIT

PAGE NO

EXHIBIT A – SUBMISSION BY MR ALLAN BALBAL –
TORIU TIMBERS – PORTION 93C & 904C,
MILINCH PONDO, RABAU. ENBP

EXHIBIT A – APPENDIX “A” TO EXHIBIT “A” –AERIAL.....
SURVEY MAP BY ALLAN BALBAL

EXHIBIT B – TORIU TIMBERS 904C AND 903C MILINCH.....
PONDO FOURMIL RABAU, ENBP