

TRANSCRIPT OF PROCEEDINGS

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COMMISSION OF INQUIRY INTO SABL

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TOP FLOOR, MURUK HAUS, WAIGANI, THURSDAY 1 SEPTEMBER
2011 AT 10.35 A.M.

(Continued from Wednesday 31 August 2011)

THE CHAIRMAN: Counsel, how do you intend to proceed this morning with your witnesses?

MR TUSAIS: Mr Pouru has returned. I led his evidence previously. I will examine Mr Pouru, he is available.

KANAWI POURU Recalled:

XN: MR TUSAIS

THE CHAIRMAN: Counsel, Mr Pouru is still on oath, is he?

MR TUSAIS: Yes, Chairman.

THE CHAIRMAN: Okay, when you are ready.

MR TUSAIS: Yes, thank you. Good morning, Mr Pouru. I am just going to ask you a few questions, most of it based on your affidavit but others, they are general questions relating to – yes, your role as the Managing Director of the PNG Forest Authority and just general questions. For this Commission's understanding, just first of all, would you let us know what the main differences are between Forest Clearance Authority, logging operations is conducted under it, just in general terms and other, I think, we call it timber concessions obtained under Forest Management Areas, that is, FMA Timber Rights Purchase Agreement Areas or TRPs, I think, and local forest areas? Would you just explain generally?

A: Okay, thank you. First of all, let me start with the Timber Rights Purchase areas. The Timber Rights Purchase areas are those areas that were acquired during the former administration. These were pre-independence, mostly pre-independence, and they were acquisitions or they were areas that were acquired under the former Forestry Act, I think Chapter 216, and they are areas that are determined or defined to be areas that would support large scale industrial timber harvesting operations. Part of that was to ensure or to deliver goods and services generally for the people, for the province or for the nation, and those areas will always remain under forest cover for the full term and most of the TRPs for a term of up to 40 years; some are smaller, they could be for 20 years or 10 years. The next set of timber concession that we have is the Forest Management areas and these are the new timber concessions that are not acquired under the current Act, the Forestry Act 1991, and these are again areas or timber concessions that will cover large areas and they would

also support, similarly to the Timber Rights Purchase areas, to support large scale timber harvesting operations and they will also provide goods and services for the development of the area, the province and also contribute to the nation. Those areas will also remain under forest cover. The next set of timber concessions that we have is the local forest areas. They were again established under the former Forestry Private Dealings Act. I think it is Chapter 217. Again, they were acquired for the purpose of bringing development to the area, to the local areas and generally, they were also designed to support any land use development that the landowners might want to develop within that area and so parts of that operation could be converted to land use and parts of the concession areas will remain under forest cover.

[10.25 a.m]

So those are the areas that you referred to. There are, of course, other areas like, other operating areas that are authorized under, say a Timber Permit. So those three that I prescribed earlier, were covered under, what we now call Timber Permits. The next type of concession that we also approve is covered by a Timber Authority. For timber authorities, they are issued under section 87 of the current Act and they apply to small areas and for small volumes. So if there was a person that operates a small sawmill in the village or within the community, they can apply for a Timber Authority which will allow them to access or to harvest timber up to 5,000. So those are the prescribed limits that will support them. So one application will cover 5,000 cubic metres, when he consumes that, he can apply for another one. Timber authorities also can be issued for small scale land clearing for agriculture of up to 50 hectares. Timber authorities can also be issued to a community or for the purpose of constructing, say village access roads or roads that would be able to service the community, a TA can be issued for that purpose for a distance of up to 12.5 kilometres. So those are the limits of Timber authorities and timber authorities also can be issued for someone that wants to harvest minor forest products like, maybe bark or leaves or those sorts of things. So timber authorities is also another authority that is used for that purpose and the last is the Forest Clearance Authority, which deals with large scale or much bigger areas for the purpose of large scale agriculture or conversion of forest. So for the purpose of FCA, you actually convert the forest or you remove the forest and convert it for another form of land use.

Q: I guess what I was driving at was – I will put it this way. Your monitoring processes, as far as the permits, those four permits as compared to the Timber Authorities. Are there any major differences or

do you keep your eyes on both types of operations in the same – I mean do you monitor them with the same scrutiny?

A: Yes, in terms of monitoring all those areas that I have referred to, we are required to monitor the operations to make sure that they comply with the terms that were issued for them to operate, and that is the responsibility that we have in ensuring that those projects are monitored wherever they are in the provinces.

Q: Some of these FCAs, not necessarily FCAs but SABLs cover a very big huge area of up to 800,000 hectares. So that is where I am coming from. There is not any difference as far as requirements for royalties are concerned is there - royalties paid to the State and then to the landowners?

[0.30 a.m.] You set this out in annexure “B”, I think at page 5. Is that something that your office monitors; is that one of the things that you do? Sorry, receiving royalties and paying it out for landowners for FCA?

A: The royalties that we refer to in that attachments, those are the minimum rates that we set for the developers as part of their submission to consider and part of that is they pay the rate or higher but not lower. In terms of payments, those payments are made directly to the owners, to the tree owners.

Q: By the forest developer?

A: By the developers, yes.

Q: There are also other considerations, transfer pricing – allegations of transfer pricing of course. You refer this at page 6 of annexure “B”. Is that something that is the responsibility of Customs or do you have any oversight?

A: Yes, we play a role in terms of administering the exports of those, particularly the logs that are being exported; the raw materials. We maintain a price tracking barometer that our Export administration maintains throughout and we maintain that in consultation with other international bodies that also agencies like the Internal Timber – Tropical Timber organization and we use those and we maintain a tracking system to make sure that the prices that - and application is coming before us for

a particular consignment, that the prices they are offering for the species or for a class of timber are within the prevailing market price at that time. If they fall within that, then we accept that and we endorse that and those are then recommended to the Department of Trade who are responsible for the granting of a licence for permitting the sales. So, yes, it is a function that Trade and ourselves will perform together.

Q: Just generally, how good is your working relationship with all the other agencies involved in SABLs at Lands, Environment and Agriculture? Would you comment on that?

A: First of all, I think there is a lot of improvements that we must make in terms of these agencies to work together in making sure that these sorts of operations work well from the time they are being designed to actual implementation. Let me start to say that, and I think I alluded to this earlier, and that is that for Forest Clearance Authorities, that we grant over SABLs, these authorizes are granted only because timber that is going to be felled, in the cause of developing that particular project, there is intent to sell them commercially. And because of that intent, they are then subject to the Forestry Act. So the process, as prescribed, the developer must follow to qualify for them to be able to commercially deal with the timber that is being harvested. As I said, if they decide to cut the timber and not sell them, they would not require a Forest Clearance Authority. So having said that, the issues – some of the issues we are now facing is that because it is – and SABL where FCA goes over, in our terms, is not a sustainable forestry operation.

[0.35 a.m.]

It is a conversion of forest permanently to another land use regime, and therefore, it is not sustainable forest in our terms, in Forestry. So our responsibility there then is to ensure that that conversion is done diligently and is done properly. Because it is for land use development, we place the emphasis of ensuring that that project is a bona fide project to our colleagues and the Department of Agriculture and Livestock. So in the case where that is going be – for example, if it is going to be an oil palm project, the competency of defining that it is going to be an oil palm project in our view rest with Department of Agriculture and Livestock and not with the Forest Authority. So we will advise any developer that who is going to propose to take that proposal to the Department of Agriculture for them to appraise, evaluate, to make sure that all the

necessary requirements for an oil palm development to take place and to be successful and to be viable, they do that job. It is not our job; it is not in our domain to do that. On the basis that that proposal was evaluated to be successful by the Agriculture Department, that then process goes on and from the Forest Authority's perspective, we follow all the requirements and those are the requirements that must be fulfilled for qualification purposes are those that are prescribed in section 90A of the Act. So Section 90A allude to a number of things; alludes to the agriculture, the financing, the land issue, all those things are the prerequisites for this application to qualify for FCA. So those prescription there in section 90A, and if all those have been evaluated and all have been done, then the FCA application is then processed under the provisions of section 90B. That is where we actually now start the process. So in short, what we are looking for is that DAL will then sign off to tell us that this project we have already evaluated, it is feasible, it will deliver what it has intended to do, we have conducted a public hearing as required under section 90A and the landowners or the people who are going to be part of this project have no objection to this---

Q: Sorry, just on that, that stage, what about afterwards? After the trees have been felled, you do not have any more connection with that, whether the oil palm actually gets planted or not, is that part of your concern or not?

A: We still have a concern in there; we still have an interest in there and that is because of the controls of how much forest clearance to be made. That is still our role. But that role also will have to be done in consultation or in hand in hand with Agriculture because of the fact --

Q: Just to – I interject. That have been allegations, if you put it in that context, that some forestry logging operations have been conducted under the guise of SABLs after gaining FCAs without any real intentions to carry on the agriculture bit of it. So would you just comment on that?

A: We have those experiences where the process of applying and receiving a FCA has been followed and a FCA has been granted and in the course of implementation, then there are operational shortcomings where the forest clearance is starting but the actual preparation and the actual planting programs and all that are not falling in.

[10.40am]

Those have been happening, and where those are happening, we issue a stoppage, so that means that we no longer allow any more clearance until areas that have been cleared and actions that must be taken like, setting up the nursery and making sure that the seedling are there and then starting to clear and plant, those things start to happen, and then only when they come to a level where we think the program now is running then we can then allow further clearing to go. If you actually look at the practicality of these things, it is that we have been looking at the process, that if it is bona fide agriculture, the way we are looking at it is that, we should be allowing – in Forestry - we should be allowing at the most three areas to be cleared or to be worked on concurrently. In that way, you do not slow down the actual investment because when the agriculture and investment has being planned out, the investor would already say that, I should be planting at this rate to be able to commence harvesting at this rate, to have a cashflow about this rate. So those kinds of projections are there, so that is why the land area that you are going to use for development, that is where we are interested in. We want to see the whole plan, and we say how much is going to be required to reach that kind of productivity and that kind of thing. So that is why you can have free areas and sometimes it can be quite risky when that operation actually does not happen. So there are footprints of those in some of the projects, and for us to exercise those actions in suspension, it forces the developers to start to catch up. But I guess, if I go back to what you were saying earlier, these are some of the, perhaps the improvements that the agencies will have to, like if we had Agricultural extension officers over there to help and make sure that they guide these processes, then it will be easy because while my men are on the ground, they are there to look at areas only for clearing but they cannot advise on the schedules of how nurseries and how oil palm and how all these things should happen. So there are some areas that we need to improve.

Q: Sorry, I interrupt just to ask you on that point. Right now, out there in the field, out there where forests have been cleared and supposedly crops or animals are to be set up afterwards, how in real terms, what is the level of cooperation between the Forest Service and the DPI guys out there – all didiman? I mean are they working together or what is the situation?

A: That is a problem. That is a serious problem that we will have to improve on. As it stands today, our suspend would be that, if we went by province – a province that has actually dedicated, has taken this kind of development seriously because they see it as part of the overall provincial development is East New Britain. In East New Britain they actually set up capacity within the province and they have dedicated extension

officers to be looking after and they are based in the projects and each day this is what they are doing. All the other provinces, we have not seen that level of commitment. While they know the project is there, while they have been involved in the approval process of it, when it comes into implementation, their presence needs to be improved.

COMMISSIONER JEREWAI: In other words, the Provincial Governments have not taken ownership of that kind of process?

A: Exactly, yes. And that we want to do that and I can say that I have at one of the sessions, when the administrators had a meeting, I did express that to them, that an issue that we all must work together to improve on is all these Forest Clearance Authorities that are in most of the provinces and these are projects that are – should be contributing to the economic and social well-being of our people there, but our commitment at the provincial level is not visible and it is causing a lot of problems for me. When I start to suspend, I get a lot of people say, why are you stopping the development, and I say, well, it is not happening, and I cannot continue to let the forest be cleared. So these are the issues that we really need to improve on.

MR TUSAIS: Just on your interacting with departments, both Environment and Conservation, what is your comment on – what is the turnaround time, if I can put it that way, from when that Department is required to submit permits for level 3 activities with most large scale forest clearance?

[10.45am]A: Generally, it is a process that they have to go through and we do not have any control or much say in what they do but we monitor and we make sure that there is another part of the process that we qualify the application before we keep moving it on. So it is like, towards the end of the process where the application is now coming to a point that it is going to be processed for approval, what it requires now is an environment plan approval. So that process goes there. Our experience are that, generally, they have been dealing with that and processing that within the required time that they have, and once we receive the permits that are required to be issued by them then we know that that part is complete and we can then move the entire application to the PMSC and to the Board for them to consider.

COMMISSIONER JEREWAI: Counsel, may I take on from Counsel and just – I think it is a very important issue about the interactions between your organization as well as the Department of Agriculture, as well the Department

of Environment and Conservation. Because pretty much –are they not looking at the same documentation relative to the project involved in the particular area, in this case we are considering SABLs. First of all, pretty much they are looking at the same kinds of documents in their respective applications, whether they are applying for FCAs or whether they are applying for the Environment and Conservation permit or the approval of the Agriculture Development Plan. First of all, can you confirm that – they are pretty much looking at all of the documentation relative to a proposed project that will affect forest contained within?

A: The project, because it is defined and they have the prescriptions of what constituted an environment plan, so that is what they are getting the investors or the developers to provide to them. So we assume that the documents that they receive are complete to their requirements and standards and then they proceed to evaluate that.

Q: And because of that, naturally, you have to interact within the different authorities that you are---

A: That is right. Sorry - the interactions there that perhaps should happen is that we are dealing with the same area and secondly, perhaps the important one is that we dealing with aarea that is not overlapping with another area that may have another authority over it or may be another jurisdictions. And I can say that there are ---

Q: Or excluded by virtue of being an LFA, Local Forest Authority, aTRP or one of the other Local Forest Management Area (LFMA).

A: Correct. There are, I think it is evidence to us that some of the SABLs that have been issued are over areas that are already under a Forest Management area or under a TRP or as Commissioner is mentioning. So those are the sort of things that, if we had good communications or consultations in the course of processing the application, we would probably avoid those sorts of issues.

10.50 am]Q: For instance, in relation to FCAs, Department of Environment and Conversation, in accordance with the Conservation Act, ultimately will have to conclude an environmental impact study, and I suppose they consider that and determine whether to grant or not to grant an environmental permit, and based on which, you will then consider whether you will approve the application for FCA?

A: Correct. And then those situations happens like when we find an application that comes, that is, now we see that the land area that the application is now looking at overlaps an area that has already been granted under another authority, this is already an issue so we will not process that. We believe that when Environment and Conservation also is going through their process, they will also know that there is an overlap or this area is encroaching into another area that they would have previously dealt with, so those sorts of things will come out in the process of that.

Q: Yes, all right, I understand. Now continuing with the line of thought, I believe Counsel Tusais is leading you; will you be able to comment as to how you can suggest improving this cooperative interaction so that these processes assist rather than detract from the whole intention of SABLs where forest is involved?

A: Yes, I think as I said, if the consultation and coordination between, I would say, the Agricultural Department, the Lands Department, Environment and Conservation, the Forest Authority and the province or particularly, the four national departments, that will go a long way in ensuring that we do not have encroachment, we do not face all these problems of overlapping and all these sorts of things. That is, it would be very simple from the beginning that when an application falls with DAL, the area that is being talked about can easily be certified by Lands, Forestry and that this area does not fall into an existing development. That can be done. But when that communication is not happening, when the application is just going through, then this is what is happening. But whilst for us, we are dealing with a FCA down the line, we have a situation that we might not or we will go to the board informing the board that this particular FCA is encroaching into another area, so the recommendation would be that the board might – should not approve. But that is an action that is being taken after a SABL or a lease has already been granted. So once a lease has been granted – I mean this is a lease granted under the Act and we fully respect the status of the document that has already been granted and so it does cause a problem for us when those sorts of overlaps happen.

Q: I was going to come to the DLPP, the other department. You said you fully respect the titles. We have heard evidence recently that maybe you should amend that respect. The titles in that office seem to be not very secure and some have gone missing. But seriously, you have, maybe as a reflection of that, I am not saying it is, but maybe as a reflection of that, you have prescribed stringent provisions under section 90A about

determining who the actual landowners are. Section 90 – sorry, 3A – section 93. I will ask in this way. Just in your affidavit, you have got annexure “A”, that is, the checklist. I think that is found in most files. At least the ones we have received, you put this checklist as a guide to your officers to tick off, tick off at the end of which if they are all ticks or maybe mostly ticks, you grant FCAs?

A: Yes.

0.55 am] Q: Okay. There is also an annexure “B”, that is the - excuse me, that is just guidelines for preparation and submission of project proposals. Is this also annexed to the files or who is this for - aimed at?

A: Yes, we issue that to the developers or people who are interested in putting together a proposal for an FCA. Those are the sort of information that would be required, if that is the sort of development that they are pursuing, and so that helps them in the course of preparing ---

Q: This is for the use of the developers?

A: Yes.

Q: All right. I went through the checklist, that is annexure “A”, and there is no requirement or there is no checklist, any box in there requiring your officers to verify, you know, whether the landowners are real, not some trickster or fraudster.

A: I think ---

Q: Sorry, if I will just finish. In your annexure “B”, that is the guidelines you require developers to verify ownership. Annexure “B”, page 3, at paragraph 5, I think, yes. Could you just explain why you do not put that requirement out on your checklist, annexure “A”?

A: Because the land that we are dealing with, the land that we are dealing with, is land that would be under a lease. So to grant that lease or for them to have a lease, they have to comply with the requirements of the Lands Department, not ours. So when we, that is why I said earlier, when we get – when they present to us the lease document, we take that in good faith that they have ensured ---

COMMISSIONER JEREWAI: Lease title.

A: That that title is with the right people. So we do not question the - and we do not probe into the ownership issues.

THE CHAIRMAN: Counsel, Mr Tusais, can I just indicate here and wish to raise a housekeeping basically, housekeeping matter. I realize that Secretary, Dr Iamo is sitting at the back with Michael Wau and I have just been consulting with my Commissioners, they have got few more questions to ask Mr Pouru. And I think it will be unfair on our part to keep them waiting. I suggest we reschedule and probably bring them after lunch if possible instead of him sitting here. He probably ---

MR TUSAIS: If that is okay with ---

THE CHAIRMAN: If you want to consult with Secretary and find out what is a convenient time. Departmental heads are busy people and we do not want to keep them waiting. Thank you, Counsel.

MR TUSAIS: 1.30?

THE CHAIRMAN: Okay, that is fine. After that obviously, you have got Department of Agriculture and Livestock and that is something we can decide later on after 1.30.

MR KETAN: Yes, that should complete this line of evidence.

THE CHAIRMAN: Okay, all right. Thanks Counsel. All right, Mr Tusais, continue please.

MR TUSAIS: Where was I?

COMMISSIONER JEREWAI: The ownership.

MR TUSAIS: Ownership issues, yes.

COMMISSIONER JEREWAI: Determination, satisfied of ---

A: Sorry, I was saying that that in this scheme of or in this process, we do not have the – we do not go to the extent of verifying the landowners because we are dealing with a particular area, land area, that is already under a lease and so the issue of the verification of ownership we leave that to the Lands Department to satisfy themselves, and when they are satisfied, they have granted a lease, and if that lease is given to us, then we accept that lease as a bona fide document.

1.00 am] MR TUSAIS: What about the requirement under section 90(3) that your board too has to satisfy itself that this is a genuine landowner company giving its consent to the developer to harvest its forest? Just comment on that aspect.

A: That is correct. For the board, the process is, as you can see, is a very lengthy one and it goes through a lot of those checks and various agencies that have given authority. The next statutory body under the Forestry Act that actually deals with this also is the Provincial Forest Management Committee. They are the people that, they know the project, the project is in the province, the chairmen of the PFMC are really the provincial administrator and the key people are within the communities that are members and so they also assist in ensuring that all those processes and the information that are before them are correct, and then they then make a recommendation to the board. So the board again, review all those requirements and they see that the Provincial Forest Management Committee have recommended, they are satisfied that all that is also in order and so if all things are equal, really the board does not really have much to say except to approve, unless the board can really find that it is not satisfied that there is, we do not see a permit from the Environment and Conservation Department. So it goes back or we do not see a lease, so it goes back. But if all of those are there, then the board act in good faith to approve and grant the clearance authority.

Q: All right, just on the aspect of good faith. Maybe, I will – the Provincial Forest Management Board, that is chaired by the administrator; the head of the provincial bureaucracy?

A: Correct.

Q: That official, he wears many hats. He is required to issue a certificate of alienability for the land investigation report process carried out by the Lands Department. He also decides, as the chairman of that PFMA whether to give the go ahead to a particular developer. Those roles, it becomes a bit concerning when also if, let us just say theoretically, that provincial administrator is also a shareholder in the company that ends up being the developer of that FCA. What are your thoughts on that?

A: I think really, for us, as a Forest Authority requirement, I think, we look at the whole thing. But those sorts of areas are really areas that we do not really dwell on. We are hoping that the developments are being or the

applicant that is there, they have gone through or and they are doing all things that are required by law so we accept all those again in good faith.

THE CHAIRMAN: Sorry, Counsel, can I just ask this question. Mr Poursu, do you, apart from the reports and other things that you get from the PFMC, do you also do your own separate independent checks on things just to make sure that what is being submitted is in order?

A: Yes, Commissioners, we check for the company, as part of our evaluation also when we do this, we also check on the companies that the companies are properly registered so we consult with the IPA to give us the latest record on the principal shareholders of the company, that is the applicant. Also in our own requirement, under the Forestry Act, because they are now going to undertake forest harvesting, they are also required to be registered as a forest industry participant. So that process enables us to check who are the shareholders, who are the principals of the company and that is what we consult very well with IPA on those matters, to check who they are.

Q: Thank you.

1.05 am] COMMISSIONER JEREWAI: If I may take it from Counsel Tusais again, with regard to the verification ownership process. I am looking at section 90A (2) and (3). Subsection (2) says, "An application under subsection (1) shall not be made where the proposed project is within a Forest Management Agreement Area, Timber Rights Purchase Agreement Area or Local Forest Area except with the approval of the Board and, where applicable, the holder of any relevant Timber Permit." Subsection (3)(1) says, "An application under subsection (1) shall contain – (f) a verification of ownership and the consent of each resource owning clan agent (or incorporated Land Groups if they have been formed) within the project area, which has been signed in the presence of a Village Court Magistrate or land mediator in the prescribed form", that will be an information to be submitted with the application. Is that the one you were referring to as, "production of the title being satisfactory, verification of this requirement under subsection (f) of subsection 3 of section 90(A)?"

A: Yes, we refer to that. But just to advise that that particular subsection (f) has already been repealed. So that is repealed and is replaced by a new subsection which is under the Forestry (Amendment) Act 2007. So there is a new Act and that pretty much transferred that responsibility to the

Department of Agriculture when they are doing the actual public hearing. And then coupled with the process that when the Lands Department is processing the land lease for lease – leaseback, and they make sure that --
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Q: Thank you, Counsels take note and update us on the legislation that you have provided us.

MR TUSAIS: I think I handed those up there as well. We will do that. Just while we are on that, that new amendment basically, just – okay, it says, apart from, sorry, the board does not really need to get verification of signed agreement by landowners or ILGs. That it can also come in the form of a written consent by the board, the lessee or the owner of the land. Would you just say – sorry, for the board, in what circumstances will it write a written consent? I mean, can you just explain that?

A: Yes. For the purpose of the board, as I said, the board is relying very much on the lease that has already been granted because the FCA is very specific and that is that it is being granted over this prescribed area that is already now under a special lease, and that is the lease that has already been issued by the Department of Lands. That basically is the area that the board is looking at and that this is the area that this particular development is going to be sighted or is focusing into, and the board is satisfied that that piece of land has now been given status in terms of a lease to the applicant and the applicant has got the authority now to enter and deal with that piece of land.

Q: Does that effectively mean you cutting out the landowners? That the board can decide whether landowners give consent or not, that really does not matter? I am asking you from that angle.

1.10 am]A: The board can subsequently take an interest in that. If there are complaints that might follow after, and I can say that there has been instances of that that has happened, that after the leases have been granted, the FCA has been granted, then the board receives certain representations or petition from landowners to say that you know, they question the lease that has been granted. Those matters have -those sorts of experiences, sorry, have surfaced to the knowledge of the board and that point, the board then takes an interest and inquire into that. I can say that so far the board has dealt with two of those types of issues. When

the board inquired into that, it was then, it became evident that the leases that were provided as part of the application to the board or to the authorities and finally to the board to grant the FCA, the board was then satisfied that the lease was not proper, and then that is because of the decision by a court that had considered that matter and declared that the lease is not valid. So under those circumstances the board then has taken action to go through the process of cancelling the FCA that it had granted. So those issues does happen and that is when the landowners bring the matters up and then the board, thus, take an interest to look into them.

Q: The lessee, who is this person? The other person listed under the amended subsection (f). Is that the person on the register as the holder of the SABL, the lessee?

A: In our view that is the understanding.

Q: Sorry, I am not testing your legal skills. But there is also consent from the owner of the land. Now, who would fit that description?

A: The owner of the land, in our process is that, if it was an FMA, let me just go back. With an FMA, the Forest Authority actually conduct all that process of genealogy and identifying the owners and we assist in completing all the necessary form to have them registered as an incorporated land group, to the point that the Lands Department then grant them a certificate. When a certificate of incorporation has been granted, then we take that as part of our Forest Management Agreement processes to put together for the Agreement. In the FCA situation, as I said earlier, we do not – we are not involved in that process to actually verify that the owners of this land are the true owners. Because it is, for reasons that because this is a conversion that is now going to be administered by another agency of government and that the lease area that is going to be the area that is going to be involved in this development will be under a form of State lease and so it is also being facilitated by another agency of government, and so we leave the ---

COMMISSIONER JEREWAI: That other agency being Department of Lands and Physical Planning?

A: Correct. So we leave that part of the landowner verification, all that, to them to ensure that they are granting a lease appropriately to the people

that actually owns so we do not dwell a lot in the verification. But when a complaint or a petition comes after, then the board then takes an interest and we inquire into that.

MR TUSAIS: And if you see that there the verification is false, you have the power to revoke or cancel that FCA?

A: Yes. Then we go through that. So, as I said, we are now dealing with two that actually falls now in that category.

Q: Just in your time as Managing Director, how many cancellations has the board done?

A: We are now dealing with these two here; these two that we are now dealing with.

Q: Before that?

A: Before that no, we have not dealt with any.

11.15 am]Q: Do you think – I am just asking – do you think perhaps the Forestry Board should take a little bit more interest or maybe scrutinize genuineness of – no, or verify ownership issues in light of the fact that there are reported instances of abuses?

A: Yes, as I said we would like to see that the consultation between the state agencies be improved and I think if we can do that, then I think these sorts of issues, we can be able to address at the time.

Q: On the Provincial Forest Management Board, the technical adviser from the headquarters sits, it is a requirement, is it, under the Act that technical adviser from the headquarters has to sit on each and every PFMB?

A: Yes, as under my delegation, I get one of my staff – one of my senior staff to also sit in the course of the PFMC going through this process to make sure that they understand and they are given all the necessary information for them to make their decisions.

Q: In reality, do you listen to his advice or her advice about whether everything on the ground is above board?

A: Yes, in the course of when they are deliberating on the matter or the applications that is before them, an application that – and all the application and information that are there, those that are at my office or at

my directorate level office, we are making sure that all the necessary information and all the attachments and whatever that must constitute that application are there and we pass it on. Then an accompanying officer that goes in, he or she also is very conversant with the whole process to assist and guide PFMC in the process.

Q: Do you think it would help if it was legislated that your technical adviser, as part of veto over – because the chairman is the administrator of the province and sometimes, as I alluded to earlier, the chairman's impartiality and integrity may come into question. I am just asking. What is your opinion on that?

A: I guess the forestry is a very sensitive one. The current processes and the way the legislation has been now is that it tries not to vest power or the decision making to one person or one individual, but rather, within a body of people or a committee and then that is the way it sits. So I see where that is coming from. But I think if you look at the membership of the committee or the membership of the board, they actually come from different interest groups – very strong – and I think they will be able, at that level, they will be able to resist any sort of interest that might try to derail the whole process. So I think, in my view, we have a process that can still be able to withstand those kinds of issues.

COMMISSIONER JEREWAI: Would it help if, in relation to SABLs, you have a SABL council, which is a form of a committee to consider with representation - first of all - with representation from all these organizations, including Department of Lands and Physical Planning, Department of Environment and Conservation, Department of Agriculture and Livestock, Department of – beg your pardon – PNG Forest Authority, National Forest Service of which you are the head, maybe Trade and Industry, would it help if you have such a council as their ultimate committee to consider proposed commercial developments in relation to SABL leases – SABLs?

11.20 am] A: It is my view. Again, I am not---

Q: Before you answer, Mr Poursu, one of the Terms of Reference of this Inquiry is to recommend the kind of administrative and legal framework to be considered to set up to assist in the process rather than impede the process. Go ahead.

A: I was saying that I understand that granting leases within the legislative framework of the Lands Department, I believe goes through that, a similar process, and it is decided by perhaps the Land Board or something

like this, and if – I do not know the actual composition of that membership – but if that is the process, then maybe that is what should be happening. I tend to understand that the granting of leases are being granted by delegations, and I think that is where it should be looked at again. That may be the powers that are being delegated for a certain person to exercise granting of leases, it may need to be reviewed and vested back to where it is because of the possibilities of abuse and all these.

Q: Mr Pouri, I am not suggesting for one moment that the kind of council I have described should take over the functions of the individual responsible departments and authorities that may be in the preparatory processes leading towards the commercial activity to be conducted in the – or in or upon the SABLs. I was just trying to gauge your comment on whether it would be appropriate to have an umbrella council ultimately to consider the proposed commercial activity on a SABL as the final authority to bring the matter before so that all of these aspects are looked at jointly with the composition of the board as it may be and give the final approval. You do not have to comment. If it is beyond you, you do not have to. That is a matter we will have to consider in any case. But it will be good to have your view on it.

A: It is just that, I think, we have a lot of different authorities and committees already dealing with all of these and, you know, it is just going to be, I guess, it is the issue of how, whether it would be – it can be efficiently done perhaps at the most shortest possible time to do this. I guess some of the experiences that some projects that we have facing, for example, you have a council for the Environment, and they should be – they deal with these things before a permit is issued and this can take a long time to process. But I think, if we – after considering everything – I think maybe it may be a possible – it may be a proposal to look at after, considering all the other information and other things.

COMMISSIONER MIROU: Or is there a need to look at all the Regulations that you administer, the respective departments that administer those Acts? Is there a need where some compromise could be made to at least deal with SABLs as the way they are at this point in time because of the large concerns that have been raised with regard to SABLs in a development set up?

A: Yes. I think maybe by looking at the current legislation. For example, with the Forest Board granting a FCA, the chairman of the board does not have the power to grant without a board resolution. That is the sort of

check and balance. So he cannot act on his own to approve a submission that goes before him and he just grants a FCA.

.1.25 am]

The law is that it must be by after a resolution of the board. So it goes to the board and the board having considered, meaning all these members and they are all satisfied that the application has complied, then they pass the resolution that an FCA is granted. At that point the chairman can then grant. So may be with SABLs, may be the law should be looked at and perhaps the law should be streamlined to make it a bit more accountable to those sorts of levels.

THE CHAIRMAN: Counsel, I have - Commissioner Mirou, okay, go ahead, that is fine.

COMMISSIONER MIROU: I think going back to Counsel Tusais; Mr Tusais, a question in relation to forest management or Provincial Forest Management Committees, this is the monitoring aspects of it and then compliance and enforcement. You have stated that East New Britain Provincial Government has done well in terms of SABL. How effective or I should put it this way. How do you assist those provinces which do not have the capacity to monitor the actual Forest Clearance Authorities that have been issued to the developers? Now, say for example, road ways that are – the corridors are being - forest are being cleared to beyond 12.5 kilometers. How do you monitor that if those forests exceed what your requirements are?

A: Again, the issue of monitoring is that, for the Forest Authority, we are a unified service, and that is that, the men and the women that are in the province or in the field, are a part of this National structure that we have. Therefore, the communications and the directions that we issue are from the top, it goes right down. The issue, I guess, with our other colleague agencies are that you have a provincial administration and you have a national, and in the case of agriculture, the Department of Agriculture Livestock do not have people in the province. The people in the province doing agricultural extension are staff of the province. There is quite a high possibility that the communications are not going to link very well. This is probably what we are seeing. So that is one issue. We had that issue 18 years ago when Forestry was also under provincial administration. We had a forest administration based in Port Moresby that had no directive authority over the forestry people in the provinces.

So there were degrees of - where things are not being done concurrently or within the standards that we would like. So this is the issue that we see, particularly in the case of agriculture. We see that the staff that are the agricultural extension officers in the province are part of the administrations and that is why we have been urging the provinces that they must take an interest and so they can commit. So in the case of East New Britain, they have taken the decision and they commit their agricultural extension people to be stationed in those projects and so they can carry out the day to day monitoring, together with the Forest monitoring officers that comes under us, who are also assigned to look after those projects. That is probably a major administration and management issue that we have to look at it, particularly for in terms of monitoring and managing these kinds of projects.

1.30 am] Q: Thank you.

THE CHAIRMAN: Mr Pouri, I just got one question and that is that, you mentioned that with FMA you conduct the due diligence check on everything; the genealogy, the landowning group unit and all these, before it is issued. But you are not doing that for FCAs and the reason is that because it is a conversion by another agency of government, and you want to therefore, rely on whatever advise or whatever documentations that are submitted to you for the issuance of the FCA. The question, I guess I want to ask is, because FCA involves a large portion or tract of customary land, does it ever occurred to you or your department, your agency, that there is a need for a check on all these things in order to make sure that everything is in order before the FCA is issued rather than accepting on face value what is being submitted to your agency for the issuance of a FCA?

A: Yes, it is one that we have been tossing around. I think from our point of view, we look at it this way, that as a development activity for the nation, we of course, see that and we see how we can support and facilitate. When it comes to our real mandate as a forest authority, we are not supposed to be removing forest. We are supposed to be managing that forest on a sustainable basis. But if we are going to remove it for something else then that is not forestry. This is probably where the line where we drew in terms of where does our responsibility lies. So if it is that this forest must be removed permanently for something else, then that is a domain of another agency, and they must take full responsibility,

and they must take full accountability of it. If there is any process that we will be involved in, then our process only is limited to conveying the work that is going to be used for commercial use and then that is where the Act gets in. So that is where we try to define where we stand and how much do we get in and how much we do not do.

Q: Thanks.

A: So that is probably the toss up to it.

Q: Good, thank you. The next question leading on from that is, you indicated earlier on that you are also doing monitoring after the FCA is issued to make sure that the conditions of the permit and the FCAs are complied with. How effective is that monitoring? How can you rate it, you would rate it highly that there is a strict monitoring regime in place for that?

A: I do not rate it high. We still have a lot to do, a lot to do ourselves and a lot to do as government to make sure that the intent of those projects are actually delivered. There is one project or one or two projects that, after our continuous intervention to stop start, stop start, it is now taking or at least it sends the message to the developers that, you know, if this is what you want to do, we want you to do what you sent and not just taking timber, because we are not going to allow that. So that is what is happening. If we do our job properly, and particularly, I would appeal to my colleagues in Agriculture that they should be a bit more diligent in the evaluation and assessment of the investors.

[1.35 am]

Are they really in this business or not? Our experience shows that they are not in the business. That is the reason we are having difficulties in the implementation. It is not taking off as it should be because it does not have the expertise and the experience in that particular business. That is the problem. So if we can do that properly in the beginning, then we would not fall into all of these. Of course, it is a very challenging one, it is just the same as we do the same, if there was a forest operator that wants to and they tender for a Forest Management Agreement, we go through to also check to see that they have the experience and they have got the capacity financially and the know-how, and that they have been doing this kind of work before. We can then be rest assured that yes, they know the business. But if they do not know, they have not done it at all

then they should not be allowed to get involved. I think there is a lot of those sort of work that if we can, as agencies, to be a bit more diligent in what we are doing, I think we can really save a lot of these issues.

Q: Okay, let me ask you the last question. There are four agencies or departments as it appears that are directly involved in SABLs. That is Department of Lands and Physical Planning, your PNG Forest Authority, Department of Environment and Conservation obviously, Department of Agriculture and Livestock. As departmental heads, do you ever at some stage get together to discuss some common issues involving SABL? And if there are difficulties and problems within the links or the linkages that you have for a common course, do you ever had an opportunity to come together to try and discuss and address some of the issues and problems? Because of four of you; the agencies are directly involved in that.

A: For the four heads to come together and have a discussion, no, we have not had an opportunity to do that. But with Agriculture when this operation started, we had a committee between ourselves and them, a technical committee to try and work together to have these applications been processed. The Secretary for Environment, of course, is a member of the Forest Board so I guess with all the applications that come, he and I are sitting there so we probably have that opportunity to go through to make sure that they are meeting up with the requirement. But in short, for the four heads of the agencies meeting together to discuss these issues, we have not actually had an opportunity.

COMMISSIONER JEREWAI: Counsel, sorry, if I can commence with a line of questioning. Before I do, Mr Poursu, I want to restate for the record that the stated objectives of this Inquiry are clear but there are underlying objectives also, and among the underlying objectives for this Inquiry to determine and establish and possibly, return some ethics, business ethics, business integrity back into operations of SABLs, including also sanctity of agreements so that both investors and Papua New Guineans who own land on which SABLs are located understand that when you enter into agreements, you must honor the sanctity of agreements and so that the business can proceed with a high level of ethics and integrity. Having said that I want to take you down the line of questioning, particularly with regard to your organization's involvement, particularly because by law, you are responsible for any commercial dealings

with forest where SABL proposed business of different kinds, including agriculture mainly, are to be the main activity.

[1.40 am] So I just want to go back to the affidavit which you have filed – you have tendered on 24 August and in relation to which I think at paragraph 18, you set out three of the FCA projects. I quite understand now FCAs are issued in relation to SABL type leases. They are defined leases issued by the State on a lease-leaseback basis and FCA was the way to go to be the process rather than go through the other processes you have outlined such as found under sections 90C and D. FCA is the way to go and you have, in paragraph 18, set out Illi-Waswas Integrated Rural Development project, Illi-Waswas Roadline Development Construction project and ET Stand Alone Integrated projects as the ones your authority, your organization, rather, had granted FCAs. Now, the preliminary information availed through your organization to our technical staff shows about 10 FCAs which have been issued in favour; (1) Vanimoya Jaya Limited and One Uni Development Corporation that involves 47,626 hectares and that SABL titleholder is – first of all, that SABL is described as Portion 248C, Tadjai, Aitape, Sandaun Province, and it was gazetted by Gazettal No 143, dated 20 July 2006. I will just stop there. I have got nine more to go but you are aware of that? You are aware of that one?

A: Yes.

Q: Thanks. The other one - second one is Brilliant Investment Limited, Portion 146C Angoram, specifically Marienberg, East Sepik Province, comprising 25,600 hectares; gazetted by Government Gazette No 22 dated 15 February 2007.

MR TUSAIS: Sorry, Commissioner, if I could interrupt?

COMMISSIONER JEREWAI: Yes.

MR TUSAIS: Perhaps, we should provide a list to the witness?

COMMISSIONER JEREWAI: Please.

MR TUSAIS: You have a copy there?

COMMISSIONER MIROU: Please. You have got a copy there?

MR TUSAIS: Yes, copy of---

THE CHAIRMAN: Okay, you might want to do that. It makes it easy for the witness.

COMMISSIONER JEREWAI: Are you able to – Mr Poursu, sorry.

A: Yes,

Q: Are you able to pick up those two I have mentioned so far?

A: Yes.

Q: All right. Can you confirm that Brilliant Investment has been granted FCA?

A: Yes, that is correct.

Q: All right. Number (3) Rakubana Development Pty Limited is the title holder to Portion 817C, Dolomakas, Namatanai, New Ireland Province, comprising 24,581 hectares; published – well, gazetted, rather, in Gazette No G161 dated 17 October 2007. Are you able to confirm also that FCA in relation to that one had been granted?

A: Sorry, Commissioner, can you – portion?

Q: The titleholder is Rakubana Development Pty Limited, Portion 871C?

A: Yes.

Q: Will you be able to confirm that they also have been granted FCA?

A: Yes.

Q: Number 4 is Central New Hanover Limited. The SABL it holds is described as Portion 887C Lavongai, Kavieng, New Ireland Province?

A: Yes.

[11.45 am]Q: Comprising 56,592 hectares, gazetted in Government Gazette G161 dated 17 October 2007. You will note that that was gazetted at about the same time as the previous one mentioned?

A: Yes.

Q: Are you able to confirm that FCA had been issued in relation to that?

A: Yes.

Q: Number 5 is Mekeo Hinterland Holdings Limited who is the titleholder to Portion 45C Omeri, Yule Island, Central Province, comprising 116,400 hectares and published in Government Gazette G182 dated 22 November 2007?

A: Yes.

Q: FCA had been granted in that one too?

A: Yes.

Q: Thank you. Number 6 is Bewani Oil Palm Development Limited, Portion 160C, Oenake, Vanimo, Aitape, West Sepik Province, comprising 139,909 hectares and gazetted in Government Gazette No. G124 dated 14 July 2008. Confirm that FCA had been issued?

A: Yes.

Q: Number 7 is Sepik Oil Palm Plantation Limited, the titleholder to Portion 144C, Tring, Wewak, East Sepik Province, comprising 116,840 hectares and gazetted in Government Gazette No G145 dated 14 August 2008?

A: Yes, confirmed.

Q: Thank you, FCA issued. Number 8 is – I think there are two conflicting names but we will get the correct name. It is either known as Atabeda Agro Forest Limited or Abeda Agro Forest Limited. The two names related to the same portion. So I will just use Abeda Agro Forest Limited for the purpose of this line of questioning first as the titleholder to Portion 409C, Epo, Kairuku, Yule, Central Province, comprising 11,700 hectares gazetted in the National Gazette G152 dated 1 September 2008?

A: Yes.

Q: FCA is granted for that. Thank you. Number 9 is Tiriu Timbers Limited, the titleholder to Portion 904C Pondo, Rabaul, East New Britain Province, comprising 11,240 hectares gazetted in the National Gazette No. G37 dated 26 February 2010. FCA issued for that too – granted?

A: Yes.

Q: Thank you. Number 10 same company Tiri Timbers Limited who hold also title to Portion 903C, Pondo, Rabaul, East New Britain Province, comprising of 42,240 hectares gazetted in the Government Gazette G37 dated 26 February 2010?

A: Yes.

Q: Those which have been issued – those FCAs granted to each one of these 10 SABL titleholders, those FCAs had been granted prior to 2007 Amendment to the Forest Act, specifically amending particularly section 90, would have been granted under the previous Forestry Act provisions, would they not, and post 2007, they would have been granted under the 2007 Amendment? But that can be easily ascertained. Do not labour on it. I am just pointing it out for the record.

A: Yes.

Q: You have a set up in the requirements for compliance before an applicant is granted a FCA under section 90 and section 90B of the Forestry Act for agriculture and business purposes. Between paragraphs 16 to 15 of your affidavit?

A: Yes.

[1.50 a.m] Q: Right. Are there FCAs granted by your organisation's Board which have not complied with these requirements in your administration of these FCAs so far?

A: All these first lot, the 10 projects that you referred to has been processed through the process that I was referring to in paragraph 15 or 10---

Q: Mr Pouru, the Chief Commissioner has an appointment at lunch and I am just looking at the time, perhaps if I can get an indication from Counsels if Mr Pouru can be available after lunch for us to continue this line of questioning and that will enable him lunch hour to address your mind to this aspect. I do not know but I am just saying it aloud, I have not conferred with the Chief Commissioner yet. Can you indicate – can you help Mr Pouru if he can be available after lunch?

MR TUSAIS: He is hearing you, Commissioner, he can indicate.

THE CHAIRMAN: Are you able to come back after lunch?

A: Actually, because we agreed, today I have actually set it aside for this session.

COMMISSIONER JEREWAI: Then if I can indicate to you so that you come back a bit more informed by checking your records perhaps or consulting with your officers that my line of questioning will take you to the next question which will be – are you in a position to indicate to the Inquiry if those with FCAs as granted, if you can provide confirmation by your records that they have been in breach of many of the conditions or any of the conditions of the FCA that will naturally comprise of also agriculture developments, as well as environment and conservation because we need to get this out while we have the opportunity with you in the witness stand. If you can just attend to these matters over luncheon, we can have an informed exchange after that when we resume after lunch.

MR TUSAIS: Thank you. Excuse me Commissioners, just consulting with Ms Peipul about the files that Commissioner mentioned. I think we have got some on record but Mr Pours has been directed to address his mind on certain aspects of the---

COMMISSIONER JEREWAI: Requested.

MR TUSAIS: Requested, yes. I am sorry Chief Commissioner, I did not get the last part of your query.

THE CHAIRMAN: I was just asking, Commissioner Jerewai has made a comment that I have to attend to some meetings. It is lunch time, so Mr Pours has agreed to come back at half past one for us to commence. Having said, you might want to think about Department of Agriculture and Livestock because Secretary is also making appearance and we still have got Secretary, Dr Wari, Michael Wau from the Department of Environment and Conservation, they are coming back after lunch so I would suggest that maybe you contact Secretary for Department of Agriculture and ask that they come tomorrow?

MR TUSAIS: Tomorrow morning would be better.

THE CHAIRMAN: And we will just go through it, finish with Mr Pouru after lunch and continue with Mr Iamo. And that will be ----- and tomorrow we will start with Secretary for Agriculture. Is that okay with people?

MR TUSAIS: Sorry, speaking for Counsel, perhaps we should advise Dr Iamo to come after 1.30 p.m. Thank you.

THE CHAIRMAN: In that case we will adjourn until half past one.

LUNCHEON ADJOURNMENT

2.12 p.m.] THE CHAIRMAN: I understand that we are commencing again with Mr Pouru from PNG Forests Authority?

MR TUSAIS: That is correct.

POURU KANAWI, Continuing:

XN: MR TUSAIS

Q: Mr Pouru, I am winding down actually. I am going to ask you a handful of questions and the Commissioners may ask you some others. Again, I start with one question, this is purely for clarification purposes. You probably are aware that one of the Terms of Reference for this Commission is the requirement under the Forestry Act that requires a logger operating under the Forest Clearance Authority to clear one quarter of the total area to be cleared in that the phases that the logger should go through. Could you just explain that requirement to the Commission since you are here and available?

A: Yes. The Act states that, “a quarter”, and then talks about, “a 500 hectare that could be increased or decreased as the need is.” How we are applying that in practice is that we are guided because this is an investment; it is an investment, it is a development and so all these FCAs or over all these SABLs, they are at different scales; some are large scale, some are medium, some are small. So the area of actual establishment – I

am saying, “establishment”, meaning that they are actually planting. It will be at a rate that the investor is determining. As I was saying this morning that they would have already projected that for action or for milling in the case of oil palm to start at this stage, they will have to plant certain acreage of land every year to justify that level of production for the milling. So because of that, if you apply the law, we translate that into what we call, “The Agricultural and the Forestry Logging Plant.” So what we do is once the FCA has been granted, we ask the investor to provide to us first a five-year plan, and the five-plan will actually charter out the areas that they are now going to deal with in the first five years. Then we ask them to give us a detailed annual one. So that annual will be taking one block out of that five-year plan and detail that out into the programs that they will be doing during that year. So that becomes the rate of clearance that my staff would now be working on and that rate of clearance is in line with what the Department of Agriculture would have approved as the appropriate rate for establishment. So we monitor and we monitor along that line.

Q: That would have been my question. Which division of your department or your institution carries out that monitoring part?

A: The monitoring is carried out by our Field Services department and the Field Services department are stationed in all provinces, and where there is a Forestry project, be it be FMA or FCA, we have a staff member or a couple of staff members that are assigned to oversee the operations.

Q: Does he have to do return reports to at least come to the headquarters?

A: Yes.

Q: Periodic reports, Sir?

A: Yes. They are required to do periodic audit reports and those audit reports are basically reporting on the progress and also the compliance of the requirements under that particular FCA.

Q: Those reports should be found in the files we have – the Commissioners have been provided so far?

A: Yes, we have. I have informed my team that audit reports for the projects be made available in those files so that the Commission can be able to go through them.

Q: Mr Poursu, my next question is in relation to the persons who actually conduct the Forestry project, operator or the logger basically for any Forestry logging project, whether it is under the Permits or under Authorities must be – well, the Act requires that it be a Forest Industry participant, is that correct?

A: That is correct.

Q: But for FCAs, in certain circumstances, the Board can excuse that part and allow the developer itself to carry out the Forest part of the SABL process. Is that what the Act says?

A: If a person that is involved in the harvesting of the forest, and because they will be using the forest for commercial purposes, they must be registered under the Act as a Forest Industry participant before they can carry out that activity.

[2.16 p.m.]Q: Okay, I stand corrected. I may have misread the Forestry Act. I thought there were circumstances, other circumstances, but okay, that is not the case. Now, they are in – under the FCAs that you granted, they are or are there operators that are foreign based companies or are they – are they foreign based companies doing the logging operations?

A: Yes, I think in – first of all, yes, there are foreign operators involved in this FCA projects.

Q: Okay, in your affidavit and at page 20 of the affidavit, I think, 20 and 20 onwards 21 to 22. Do you provide basically a screening process that the board or its officers has to check – check out those companies that are involved in the – or applied to be involved in the logging process? Would you just comment generally or how thoroughly your officers' check or do checks on to comply with the requirements that you send out.

A: Yes, annexure A to my affidavit basically provides what we refer to as a check list and that check list carries both requirements from our perspective in terms of assessing a project proposal or trying to assess the developer and also some of the requirements as per section 90(A) in the case of the FCA. This particular annexure is a typical check list that we

have for all the FCA and for this one it has been done for one of the FCAs. Whereas you can see when we appraise the submissions you will see the appraising officer would look for this information in the course of him doing evaluation whether this information is available or is not available. If it is available he will indicate that yes that information is available and the remarks really is just a note to say where to find that information. So those page numbers are referring to the actual proposals. So if you go to the proposal you will be able to find that information on that particular page. So this is the process they go through. And as you say if the results or if the assessment here shows that all the necessary information are there then the application is sort of becoming complete which can then be facilitated to the next level. If there are information that are not there so it will indicate no, (1) if it has a no there then it means that it may not be necessary, but if it is necessary to be there then the evaluation officer will have to go back to the applicant and request for that additional information to be provided. So that – all these will constitute that an application has been assessed to be complete with all the necessary information that is required and then we can start facilitating that which will enable say a provincial forest management committee to have all the necessary information before them to make a, you know, an assessment and their recommendations.

[2.21 pm] Q: Now just related to this – my line of questioning for forest industry participants. When you receive applications as part of the process, are there competing forest industry participants who object or say look I am the better participant, you should pick me over him. Is that part of the process?

A: That is not part of the process. The applicant that submits an application for FCA is an applicant or is a person that would have already engaged with the – say in this case with the landowners or landowners in their own actions would have sourced an investor that they feel they could be able to deliver this particular development and they then start working on putting together their conceptual idea and then eventually building that up into a formal proposal which would then be submitted for consideration by ourselves and also the Department of Agriculture if it is an agricultural project. So because of that there is no tendering process that will then allow competitive bidding and then through which you can then make assessments to then say well which could be the better proponent for this particular project. So in the case of an FCA, that process does not exist.

Q: It does not exist?

A: Yes.

Q: It is the person who has been picked by the proponent can say this is my percent nobody else?

A: Yes, the applicant that has filed that is the applicant that they had to just go through to make sure that they have a complete application that satisfies the requirement then it goes through the process. If they have not satisfied the requirement then either it is rejected or they need to provide more information or it goes through that process.

Q: Mr Poursu, my final question, of any substance I think it has already been put to you by the Commissioners, first, this is - I want your opinion just overall, in light of the controversy which has caused this Commission to be constituted and for you to come and give evidence. What is your opinion generally of Forest Clearance Authorities? Are they running well or do they need improvement? If so, then what are your suggestions?

A: Yes, the Forest Clearance Authority if – as I tried to allude to earlier is that, we see it as a window for development for our country. It is an authority that we have tried to improve by those amendments and those were done to try to support the Government's National Agricultural Development Program the NADPs and the Government's Green Revolution Policy. So those are the Government development directions that were set. Of course we note that agriculture is the biggest sector that affects our population, particularly in the rural area, and therefore because our country, 63 percent of our country is forested and that is why people go there for reasons that, one, from soil science the best soil will be found where the forest are. Because where the trees are the soils are better, it is more better in that it has got oxygen, it has got a lot of water, it is fertile because of the litter that rots in, so that is the best land. That if you cut down and you plant, things will grow much better than if you go to a grassland area where it is very degraded and you will need a lot of enhancing through fertilizer and all that to get crops growing. So by nature our people go down that road and so that is where the development happens. So because it is now going to happen in a forested area, agencies like ourselves who are now going to be – because lots of forest areas are going to be cleared and people want to use it, we also have to be involved. So we see ourselves as assisting, assisting in this sort of thing so the development option that would be decided right now is that agriculture is the development option.

[2.26 pm]

That is the preferred option by our people and that is the preferred option for them. So we become an assisting agency and our assistance is to facilitate the clearing and then the principal activity which is the agriculture then takes place. So we see that as a developing country, it is an opportunity for our people.

Secondly, much of our land is customary land. And so if you want to put investment and you want to create such big developments the security of land becomes paramount. And that is for – we need to make sure that that is done properly and I suppose the land laws that we have would have to facilitate for that security to enable the investment and everything else to happen. So from our perspective, as I said earlier, yes although it is going to remove forest which is our mandate is to manage the forest, but as a nation and as a developing country, it is a window of opportunity for us. There will be a lot of improvements that we have to make and as I was saying there have to be more and better coordination and consultation among the key agencies that are going to be involved in there. Not only in terms of the planning, designing and creating it, but then when it comes to implementation, it has to happen. And that, from our perspective, we believe that there is a – that will be a difficult problem because of the political structures that we have in place where we have the national level where may be policies and decision making on big investments and all this sort of things are being done, but when it comes to implementation, it is being done at the other end which is at the province and then there is another political system that looks after it. So the connections can be disjointed in some areas and when that happens then it basically can affect what could be a good investment, what could be a good project and development could end up getting caught up with this sort of things. This is what we are seeing and this is what we are seeing in the FCAs now that we are not getting the support of the agricultural extension people in the province, they come under a different authority, the National Department of Agriculture is another authority and they do not sort of speak and talk together. I am not, you know, the lands administration again, at the national and at the province again there will be issues in there. So I think for us perhaps the only agency that we have a one line structure that will deal with planning, evaluation and implementation is the forest service because we are dealing with and when it gets down to a province, the man on the ground is a staff that belongs to us and they are given instructions and these are the ways they do this. So that is probably a very important area that we need to harmonize somehow to make this sort of development opportunity work for our people, particularly in the rural areas. If you look at all these FCAs, a lot of them are really in areas that have no access and the major

access is being done through the harvesting of the timber and then opening it up.

The second thing that I want to say is that, when you look at the FCAs and those that are on this list, the areas that have been defined, from the FCA perspective, I want to inform the Commission that we are only looking at a net area. A net area meaning that an FCA may be covering a total area and they have it there, say, for example, 200,000 hectares, but this proposal for oil palm could be only for 50,000 or 80,000. The FCA that we are going to administer is only going to be over that 80,000. It is not going to be over the 200,000. This is again another thing that we have been trying to get our landowners and the few developers to understand. Because if you apply the FCA over the entire 200,000, then in our view, it is abuse because the FCA, it is not a harvesting authority for selective harvesting. It is for clearing; for clear felling.

[2.31 pm]

So clear felling will only apply where you are going to take the forest out and where you are going to plant. So this is what we are trying to get our people to understand and I can say that we are running to a lot of resistance, but we are telling them that this is what it is. It is not about you cutting all of the 200,000 hectares, no, your proposal and the design of this project is for only 20 or 30 or 40,000 and that is where it stops and you are not going to go beyond that. So these are some of the issues that we are looking at, but I think the biggest is to get the agencies to work more closer and commitment particularly from the provinces to be able to roll these projects out to serve the purpose for which they were created.

MR JEREWAI: Yes, Mr Poursu, following from what Counsel had led you to give that answer. There is, and I am not too sure exactly which provision it is, but I believe it is either section 115 or 116 of the Organic Law on Provincial and Local Level Governments which requires that development of any major natural resources can only take place in consultation between the National Government and the Provincial Government in which the resource is located and also the Local Level Government within whose area of government that resource is located. From your experience in the direction of those provisions of the Constitution of that particular Organic Law, has there been effective consultation with regard to, particularly forest resources contained in a SABL and even possibly in relation to other forms of forestry permits that you consider from time to time?

A: Yes, I think that provision of the Organic Law for the forestry purposes we believe that we have taken very good care of that by the establishments of Provincial Forest Management committees. These are

committees that are by Statute they exist in law so they are there; and they are at the province and the memberships are from the key stakeholders. The presidents of LLGs, there are two of them that are required to be members. Also there is provision there that, in the event where the committee is dealing with a project, a representative of that project area must sit in that session where it has been deliberated on so that the views of the people and all that are also taken into account. So I think in that area there is full consultation, there is full participation at the provincial level, at the Local Level Government level and underpinning that, of course, is that before it actually gets up to that level, there is the public hearing that must be conducted at the actual project area so that it allows the communities within that project area to be made aware of and they are heard as to whether they would like to have such a development, they support it or they do not. These are also very important; the public hearing report is part of the process that goes through. So if the majority of the landowners say, we do not want this project then that is the decision basically. That is where it stops. If they want the project then that becomes part of the process to keep facilitating. So, we believe that in the forestry sector, the establishment of the PFMC basically enables full consultation and participation of provincial governments and authorities in the province to be involved in the decision making process.

Q: Thank you. Mr Pouri, if I may just take you back to where we left off before lunch break. I left you to ponder over lunch a couple of enquiries I was going to raise with you and that is particularly in relation to FCAs already issued.

[2.36 pm] Have you had occasion to cancel or suspend FCAs for perhaps breach of conditions and also – particularly breach of conditions which may have been imposed under subsection (8) of section 90B and the conditions that are mandatory under subsection (9) of section 90B in the amended version of the Forestry (Amendment) Act 2007?

A: Yes. At this point in time there are two FCAs that the board is now dealing with and that is the process of the cancellation. One of it is a project you referred to this morning and that is the Central New Hanover.

Q: Central New Hanover?

A: The other project is one that I think you did not refer to in the list of 10 and that is, it is a project in Oro Province.

Q: Counsel, you might be able to assist. Could that be ---

MR TUSAIS: Musa?

COMMISSIONER JEREWAI: Could that be the one that the land title had not been issued and where Mr Wasa said ---

MR TUSAIS: Musa Valley. Is it?

A: No, Musa, no. We are aware of Musa but it is not. It is a lease that was given to a landowner company called Keroro and Keroro then subleased that to the developer, Hang Agro Forest Limited to undertake the development. As I alluded to a little bit this morning that when the landowners raised the issue of land, the board then inquired into that and then the board wanted to satisfy itself as to whether the lease document that was tendered as part of the application was correct. When that inquiry went through, which started to lead into a series of court actions that landowners had taken previously, the board then was not able to be provided with the information it had asked for within the time set. So the board then concluded that this land lease is not correct. So, on that basis -
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COMMISSIONER JEREWAI: There is no clear title in other words?

A: Correct. So the board now concluded that we should go through the process of cancellation. So it has issued now the notice of intention to cancel, which of course, allowed the investor to explain themselves ---

Q: Right to be heard, in other words, yes.

A: Yes. So that is the process that is on. Similarly, that is also now happening with the Central New Ireland one. The Central New Ireland one is a case where the landowners have basically petitioned the board and saying that the leases that we granted to Tutuman, which is the developer, has been cancelled or has been withdrawn. So we have then, the board has now issued notice to Tutuman basically raising the issue of land and again, the notice of intention has also been issued. So those two are now in process.

Q: Those are the only two you are aware of?

A: Those are the only two that we have now applied that action. The others are still in.

Q: Now, just for clarity. That is the only extent to which you are involved in terms of cancellation or suspension and or cancellation of FCAs, but not to the extent of affecting the title to the SABL?

A: No.

Q: That is pretty much ---

A: Our action is pretty much dealing with just the FCA. It does not affect the SABL.

[2.41 pm] Q: That is pretty much the Department of Lands and Physical Planning?

A: Correct.

Q: Thank you. Yes, Counsel.

MR TUSAIS: Mr Poursu, as I said, I am just about finished. Just, while going through your affidavit I noticed certain parts missing or maybe it is only my affidavit but on page 26, it is annexed attachment "C", I do not have that.

A: Of annexed 2?

Q: Yes, just on page 26. I am not sure which annexure it is. I think annexure 2.

A: Annexure 2, yes.

Q: There should be an attachment there.

A: That should be attachment 6.

Q: Yes, attachment 6. Would you promise to have this to the Commission, perhaps by Monday?

A: We will attend to that straight away.

Q: Attachment 7 on page 27 that is also missing in my affidavit.

A: Yes.

Q: Attachment 8 on page 8.

A: Yes.

Q: And also 9 but 9 you made a note that, “this document is very bulky and needs to be obtained separately from project allocations directory.” Perhaps if you could, if you cannot do it by Monday, soon thereafter.

A: That is fine.

COMMISSIONER MIROU: That will be correct Mr Tusais. We also have the same missing annexures.

MR TUSAIS: It is probably an oversight, Mr Pouru. There may be some important stuff in there that will be of assistance to the Commission.

THE CHAIRMAN: You know, I think the whole lot of us are getting the same issue, Mr Tusais. It is also missing on our files. So maybe copies can be made, sufficient number of copies, Mr Pouru for all those three attachments and we can put them into the files so they are a complete files.

A: Thank you.

MR TUSAIS: Commissioners, I do not have any further questions for Mr Pouru.

THE CHAIRMAN: Thank you, Mr Tusais. Maybe one question and I will ask you that question, Mr Pouru. Political influence in the issuance of FCA, did you ever experience it in your time as Managing Director, apart from the board decision?

A: Yes, there have been instances, landowners see their members because they are unable to get some satisfactory or perhaps hear what they want to hear from my staff or myself, and so enquiries like this come through. But I think the actions that we do and the explanations that we provide them are very straight forward; they are factual issues. I think at the end even at ministerial level or at member’s level when explanation is provided to them, at the end of the day they accept. But that is the sort of things that goes on, and they want to make sure that the projects, particularly when there is a suspension that has been issued to suspend certain parts of the operation. The suspension that we issue normally is a suspension of felling; we call a suspension of felling. A suspension of felling meaning that the chainsaws that keep cutting trees, they stop. But everything else continue, because the trees that are already in the ground must be taken out otherwise it will rot, lose value and the landowners will

lose money. So that will go on; the road construction can continue; the nursery work can continue; the planting work can continue but what stop is the cutting of trees for new areas. That is what we suspend until those are issues that we have with them is addressed and then they continue. So it is a temporary and it is a measure that is applied on and off as required. So those are the ones that continue.

Q: Thank you. The other question I have and that is going back to what you said earlier on this morning about a tracking system that you have with the loggings, in particular, or the trees. How reliable is that? Would you say that it is one that is the best around or that there could be improvements on the tracking system so that people get value out of it?

[2.46 pm] A: Yes. The tracking that I may have alluded to is that it is the identification of the origin of the timber that is being taken out. As I said our interest is only in the process where we want to make sure that any timber that is being taken out is properly accounted for. So what we have is that once an FCA has been granted, there is a number that is issued, the FCA number. That FCA number we register that with our third party independent monitoring, which is SGS PNG Limited. They are our contractors or they are the contractors to the State and they are an independent firm. They are contracted to monitor and make sure that the recording and the records of all the forest produce or the logs that are being taken out, they are done properly. So when we give them that information SGS then get, what we call, log tags manufactured. The log tags have bar codes on them; the same bar code that you will see in every item in the shop in the supermarket. So they have those bar codes on the actual tags.

So, say if we were dealing with the Wewak Turubu project in East Sepik, then the FCA number 11.1 will now be put on to that log tag with the bar code and that bar code basically is for purposes of that when the log is going through, you can easily just scan just like when you go to supermarkets and you use scan. So that automatically lists them down with the actual measurements of the logs, size and everything so that it is easier for the processing of it. So that is the system that we have in place so that every time when the log is now going to be – so this tag is put on in the bush, in the forest, before it is actually trucked out. So they have scale that, they put the tag and there are two tags that the tags have got two parts to it, and it is on the truck and it goes in. So when it goes into shipping, when the shipping happens, the SGS staff who is there who has got a

scanner and he just scans every log that just runs through and it peels out one part. So there is one part, it stays there; one it takes back so that he can do a reconciliation of the tab plus the scanner to make sure that he has a complete record of what is going out.

Q: Thank you. Counsel, I think we are just about done with the Commissioners. We do not have any other questions to ask unless---

MR KETAN: Just a question, I guess, for completeness sake. You were referring to the public hearings with the developers to gauge the views of other landowners and people who might be in the area who might be affected by the log felling activity or forest clearing activity. If that activity is related to and based on a lease, a special agriculture business lease which has been allocated to a certain lessee and that person has nominated under the - requirements under the Land Act – that person has nominated a person to whom the lease has to be issued and then there has been a proposal with maybe a development partner, either as a joint venture on the lessee's own account, what is the utility of those meetings if that is not going to change the lease to the proponent?

A: When the public hearings are conducted, there can be situations that there are other interests and the reason for having this public hearing is to try and bring those sort of things out into the open to gauge and to establish as to whether there is this one interest, or there are other interests and what is the interest that the people are preferring. Then that is one of the outlying reasons for having this.

[2.51 pm]A: In some of the some of the public hearing that happens is that, when that is done, you can very clearly see there are factions within the landowners. So one faction is saying that, we have this proposal and another faction is saying, we have this proposal, and for us, we just say, if there is this, then you guys are going to have to sort it out first before we can proceed. So this process has to go on. If there is no competing interest and there is only one, well the public hearing is basically to hear the people out that this is the development and this development going to be this scale, it is going to have all these sort of things are going to happen, this area of forest here, that has been identified, is going to be replaced with this kind of development and so this are the things that the owners of the land or the communities that are going to be affected are directly or indirectly within that – they have an opportunity to express their views as to whether they would support this or they will not. So at the end, that is what we are getting through. Some of the experience we have is that we can, if at the end of the process, if everybody agrees, and as the process is going pass the public hearing, and is going in, you get all sorts of things

happening again. So part of the process is to continue to still have those processed and considered until you come to the point where you get the board to approve or in some cases, the project is just on the shelf waiting for these issues to happen. There are some projects like that. There is one in West Sepik and one in East Sepik, because there is a competing interest, when we had a look at that, we had a JIS mapping over both of them, and we find that yes, they do overlap. And we circle that out, we give it to them and we said, "listen, you have this issue. So as landowners, you have to decide, are you in this project or are you in this project or until you do that, we are not moving this application." So it will sit. So these processes are ongoing.

Q: Yes, do you know the names of those two projects?

A: Yes, the two projects that they have overlapped each other and that we put back and there is project in Nuku. I think it is Nuku Palai and the other is - that is in West Sepik, and the East Sepik one is the Nogoia Bongos and then the place is called Nogoia Sengo and so they overlap, over each other. So we returned that to the landowners and we said, you have got to sort this one out before we can do any further work on it.

Q: Those people, the proponents of the development would already have a SABL issued to them. Now, that SABL would have been issued in compliance with Lands Department procedures, one of which is the investigation carried out by the Provincial Lands Officer and conjunction with the National Lands departmental officers at the end of which process a Certificate of Eligibility would be issued by the Provincial Administrator. This process that you are referring to is another process from your perspective.

[2.56 pm] COMMISSIONER JEREWAI: Counsel---

MR KETAN: The public hearing that you conduct. Two questions that I want to ask in relation to that. One is, do the Lands Department, in considering the lease – lease-back process when they are going to the provinces for the meetings, do they invite officers from the Forest service to come along and be involved at that stage?

COMMISSIONER JEREWAI: Counsel, if we can just make sure that Mr Poursu is very clear.

MR KETAN: Yes.

COMMISSIONER JEREWAI: If I may assist. Mr Pouri, what Counsel Assisting the Inquiry is directing this line of enquiry toward is that the Lands Department, prior to granting of the SABL title to an applicant, usually goes to a process which involves also a public hearing. What perhaps Counsel is asking is, when they reach this process of public hearing, does that involve you in relation to that kind of public hearing you are talking about at the same time, or you do yours separately?

A: No, in terms of land in a public hearing, I do not recall us being involved or being invited. The public hearings that the Agricultural Department conducts, we are invited to attend and in many cases when that happens, I just simply authorize my provincial forestry officer on site to accompany the team and be present and observe the meetings. So with Agricultural public hearings, yes, we attend and we are invited or we are informed. With the Lands public hearing, we are not. I am not aware if we have been in, in many instances.

MR KETAN: The next question is, in view of that, do you think that before a SABL is issued by the Department of Lands, that there should – when it is known that the application for the SABL will – is with a view to developing an agro-forestry project, that one of the conditions should be that the forestry requirements, including the public hearings, are conducted before the Lands Department finally makes a decision to issue a SABL?

A: That would be the preferred way we would want to see happening which is not happening.

Q: Yes, because of the fact that the person who has a SABL, who has obtained that with a view to obtaining a FCA, does not get it if, in your process – when you administer your process – there are problems that you identify, you do not issue a FCA. So SABL is useless?

COMMISSIONER JEREWAI: SABL is going to be problematic.

MR KETAN: Problematic, yes.

A: Yes it is. Because of the lack of consultation, that is what happens later on our side. For us we have a mapping jayah system that every area that we are dealing with, we make sure that it is mapped so that if there is another application or another interest that comes in, we can quickly get that, feed into our system, we will be able to see whether it is clearly standalone or it is bordering with some or it is overlapping with others.

Then that is the exercise that we do and that is why with those two projects, we are able to see that they have actually encroaching over each other so we raise the issue back to the applicant to say that, your application, we are unable to process for FCA, you have a SABL lease but for FCA purposes, there is a conflict and you must go back to deal with the landowners before we can proceed with this.

[10.49 am] MR KETAN: Thank you.

THE CHAIRMAN: The Counsel, it appears that we are done with Mr Pouru, insofar as questions are concerned with respect to his affidavit. Mr Pouru, on behalf of the Commission, thank you for coming and spending almost a whole day with us here. Should there be any need again in future for us to call you, we will do so. It will be probably on specific certain areas that we need further clarification and as usual, we will give you notice in good time before you come but I would like to thank you for coming. Thank you very much.

A: Thank you.

THE WITNESS WITHDREW

THE CHAIRMAN: Counsel, you want to indicate the business for tomorrow?

MR KETAN: If the hearing be adjourned to 9:30 as usual?

THE CHAIRMAN: Who is coming tomorrow?

MR KETAN: Tomorrow we have got the Environment and Conservation Department Secretary and the Director, Environment Protection Wing, Michael Wau.

THE CHAIRMAN: What about the Department of Agriculture and Livestock? Are they also making appearance as you indicated in the morning today?

MR KETAN: They were initially coming tomorrow, so we will, after the adjournment, try and ask them to come may be 8.00 am in the morning so that we can deal with the Department of Environment and Conservation and then deal with their evidence after that.

THE CHAIRMAN: That is fine. It is up to you to organize how you want to present them before the Inquiry. So what you are saying now is that we will commence with the Secretary for the Department of Lands and Conservation and Director for Conservation, Mr Michael Wau, and then after lunch tomorrow would be the Department of Agriculture and Livestock?

MR KETAN: Yes. We will let you know of the change in time.

THE CHAIRMAN: Ok. If that is the case then we will adjourn until tomorrow morning at 9:30 am to recommence again. Thank you. Please adjourn.

**AT 3.04 P.M. THE COMMISSION OF INQUIRY INTO SABL
ADJOURNED TO FRIDAY 2 SEPTEMBER 2011 AT 9.30 A.M.**

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