



**OMBUDSMAN COMMISSION
OF
PAPUA NEW GUINEA**

**AN INVESTIGATION INTO THE DEPARTMENT OF
LANDS AND PHYSICAL PLANNING ON ALLEGED
IMPROPER LICENSING OF PUBLIC INSTITUTIONAL
LAND (SECTION 36 ALLOTMENT 1-6 & 21-26) UNDER
SPECIAL PURPOSE TO SOLAR INDUSTRIES LIMITED
FOR COMMERCIAL PURPOSE IN KIMBE, WEST NEW
BRITIAN PROVINCE**

**FINAL REPORT
JANUARY 2014**

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LIST OF ABBREVIATIONS

DLPP	-	Department of Lands and Physical Planning
IPA		Investment Promotion Authority
KBSA	-	Kimbe Bay Shipping Agencies
KTA	-	Kimbe Town Authority
KULLG	-	Kimbe Urban Local Level Government
PNGLB	-	Papua New Guinea Land Board
NEC	-	National Executive Council
NGI		New Guinea Islands
NPPB	-	National Physical Planning Board
OC	-	Ombudsman Commission
OLOC	-	Organic Law on the Ombudsman Commission
WNBP	-	West New Britain Province



GLOSSARY

Certificate Authorizing Occupancy: This is a certificate issued to government agencies to occupy State Land for development purposes. It is only an administrative arrangement by Lands and Physical Planning Department to permit Government agencies to develop State Land without a lease. The CAO cannot be issued to private individuals and organizations. When Government agencies do not need the land for development, they surrender them to the DLPP to make them available through tender for other purposes. However, if the DLPP wants to make it available for other purposes, it will have to get the consent of the government Department which has current occupancy of the land under the CAO.

Certificate of Planning Permission: A certificate issued to applicants of Planning Permission Applications under the *Land Act* 1996 to develop the land.

Commercial Lease: Lease granted to individual or organizations by the State for Commercial Purposes.

Commercial License: A license issued by the State to applicants to occupy State Land to do feasibility study to determine the suitability of the land for Business Purposes.

Delegate: The Minister for Lands by instrument under his hand may share with the officers all or any of his powers and functions under the *Land Act* 1996.

Feasibility Study: A study carried out by applicants to see if portions of land they are interested in, suits their development purposes.

Lagis Data: Data refers to the information contained in the Lagis. Lagis is a software management system the DLPP uses to manage the information on usage of State Land. It keeps records of all Planning Permission Applications from its lodgment and registration to the issuance of land title. It further serves as a form of security to the land information computed in the system.

License: A permission given by the DLPP to an applicant to occupy a State Land to determine its suitability for a particular purpose. It is not a right of ownership over a land. Permanent development cannot be done on the land when issued license.

Planning Permission Application: This is an Application submitted to the DLPP seeking approval to develop a State Land for a particular purpose. The purposes include Public Institutional, Commercial or Special Purposes. The application includes zoning, rezoning, survey, valuation, leasing and issuance of title. The application goes through different processes and Boards to be issued the title to develop the land.

Public Institutional: Land zoned for Public Purposes such as schools, hospitals, sports, government offices and so. To use the land for other purposes, it has to be rezoned and tendered.

Registrar's Caveat: Registrar of Titles can lodge Caveat on behalf of the State or a person to protect their interests over a particular portion of land from the rival interest to be created or transferred. The purpose of the Caveat is to prevent the Registrar from registering rival interest pending the determination of court of the caveator's claim over the land. Caveat can be in force from the date of lodgment usually three months. The Caveat can be cancelled and the Registrar of Title gives 7 days' Notice prior to the cancellation or Caveat can be removed by the Court.

Site Inspection Report: A Status Report of the land being the subject of Planning Permission Application. The Report includes the zoning, Survey Plan, value of the land and recommendation. The Report forms an integral part of the Planning Permission Application.

Special Purpose Lease: The Minister for Lands grants a State Lease under Section 100 of the *Land Act* 1996 where the Minister thinks that it would not be appropriate or possible to grant Agriculture, Pastoral, Residence, Mission Leases or leases of government owned properties. The purpose for which Special Purpose Lease can be granted is sites for hydro-electric power station, mining and petroleum. The Special Purpose Lease cannot be granted for private Residence Purposes within a physical planning area.

Survey: The act or process of determining the earth surface that includes the form, contour, position, area, height, depth, etc.

Survey Plan: A plan which includes map, aerial photograph or description of land made or obtained as part of a survey.

Survey Report: The Report of an area, these include the measurement, feature, aerial photograph, and description of the land as part of the survey to develop a plan or map. This Report can also be generated from the Central Plan Register.



CHRONOLOGY

This Section outlines the events leading to the issuance of Commercial Licenses over Section 36 Allotments 1-6 and 21-26, Kimbe, West New Britain Province, to Solar Industries Limited on 17 November 2005.

1995

- March 20 Kimbe Town Authority submitted the Planning Permission Application for Section 36 Allotments 1-26 to the DLPP. That is to rezone the land from Commercial to Public Institutional Land under Special Purpose (Market) and lease it to Kimbe Town Authority to establish the Kimbe Town Market.
- May 18 DLPP acknowledged the receipt of Kimbe Town Authority's Planning Permission Application.
- May 18 National Physical Planning Board (NPPB) during its Meeting Number 04 of 1995 approved Kimbe Town Authority's Planning Permission Application. Kimbe Town Authority then established Kimbe Town Market and a car park on Allotments 7- 20 of Section 36 and reserved Allotments 1-6 and 21-26 for future development.

2005

- July 27 Freddie Kumai, an agent of Solar Industries Limited expressed interest to the DLPP to develop Section 1-6 and 21 – 26 into a commercial center.
- July 28 Saleng J.Value, Acting Valuer General, provided Valuation Report of Section 36 Allotments 1-6 and 21 – 26 to Solar Industries Limited. The Report states that Section 36 Allotments 1-6 and 21-26 is zoned Commercial and values K16, 500 each.
- July 28 Freddie Kumai submitted the Solar Industries Limited's Business/Commercial Lease Application for Section 36 Allotments 1-6 and 21 – 26 to the DLPP. He paid K100 for each Allotment's application.
- August 25 Willie Edo, Acting Provincial Administrator, wrote to the Director Physical Planning supporting the Application of Solar Industries Limited for Commercial Lease over Section 36 Allotments 1-6 and 21 – 26 to develop it into a commercial center.
- August 29 Ben Madiu, Provincial Land Advisor, provided the Site Inspection Report of Section 36 Allotments 1-6 and 21-26 to Solar Industries Limited to assist in its Application for Commercial Lease.

- August 30 Willie Edo, Acting Provincial Administrator, again wrote to the Director Physical Planning supporting the Application of Solar Industries Limited for Commercial Lease over Section 36 Allotments 1 – 6 and 21 – 26.
- August 30 Ben Madiu, Provincial Land Advisor, wrote to the Director for the DLPP supporting the Application of Solar Industries Limited for Commercial Lease over Allotments 1-6 and 21-26.
- Nov 17 Romilly Kila Pat, Deputy Secretary Corporate and Regulatory Services, issued Licenses Numbers 11/2005 (Island) and 12/2005 (Island) to Solar Industries Limited to do feasibility study for Commercial Purposes.
- Nov 17 Romilly Kila Pat as the delegate of the Minister for Lands and Physical Planning exempted Section 36 Allotments 1-6 and 21-26 from advertisement.
- 2006**
- May 23 Hubert Kava, Acting KULLG Manager, wrote to the Secretary for Lands, Pepi Kimas, enclosing a Brief dated 22 May 2006 on alleged improper rezoning of Section 36 Allotments 1-6 and 21-26 from Public Institutional Land to a Commercial Land.
- June 5 Leo Kalasi, Mayor of Kimbe Town, wrote to the DLPP on unlawful allocation of Public Institutional Land- Kimbe Town and copies to the Minister for Lands, Inter – Government Relations and the Ombudsman Commission.
- June 21 Leo Kalasi, Mayor of Kimbe Town, wrote to the Ombudsman Commission to investigate the unlawful rezoning and allocation of Public Institutional Land to Commercial Land for Commercial Purposes.
- June 26 Ivan O’Hanlon, Managing Director for KBSA Group, wrote to the Acting Provincial Administrator, Willie Edo, on illegal allocation of land and lack of physical planning in West New Britain. He was referring to Section 36 Allotment 1-6 and 21 – 26.
- June 27 Ivan O’Hanlon wrote a second letter on the same subject to Minister for Lands and copies to the Governor, Manager – Lands Regional Manager and the Ombudsman Commission.
- December 29 Ombudsman Commission Letter of Notice to the DLPP to investigate the alleged improper issuance of licenses over Section 36 Allotments 1-6 and 21-26 to Solar Industries Limited.

2007

- Feb 5 Then Acting Secretary for Lands, Pepi Kimas, instructed the Registrar of Titles to issue Registrar's Caveat over Section 36 Allotments 1-6 and 21-26 until Ombudsman Commission completes its investigation into the matter.
- Feb 6 Then Acting Secretary for Lands, Pepi Kimas, wrote to the Ombudsman Commission advising of his instruction to Registrar of Titles to issue Caveat over the property till Ombudsman Commission completes its investigation.
- Feb 6 Then Secretary for Lands, Pepi Kimas, issued the Registrar's Caveat over Section 36 Allotments 1-6 and 21-26 until Ombudsman Commission completes its investigation.
- March 13 Celestine Rameng; the New Guinea Islands Regional Office Physical Planner issued the Certificate of Planning Permission to the Solar Industries Limited to erect the fence around the land in issue.
- May 25 Freddie Kumai took a court action against KULLG to return his lands documents taken from the Provincial Lands Advisor's office.
- May 25 Freddie Kumai issued KULLG an Exparte Order.
- June 6 Kimbe District Court ordered KULLG to return all the lands documents to Freddie Kumai.
- 2008** DLPP officers produced an Investigation Report on the Status of Commercial land in Kimbe. It was recommended that Section 36 Allotments 1-6 and 21-26 to be returned to KULLG.



EXECUTIVE SUMMARY

Overview

This is a Final Report of an investigation into improper issuance of licenses over Section 36 Allotments 1-6 and 21-26, Kimbe, West New Britain Province, to Solar Industries Limited to do feasibility study for commercial purposes.

It is alleged that the Department of Lands and Physical Planning (DLPP) issued Commercial Licenses to Solar Industries Limited over a Public Institutional Land contrary to the *Land Act 1996* and *Physical Planning Act 1989*.

This Report focuses on establishing whether the administrative systems, processes and procedures and the Acts governing the work of the DLPP were followed to issue the licenses to Solar Industries Limited for a Commercial Purpose.

Report Findings

The main findings of the Report are:

- In the opinion of the Ombudsman Commission it appears that the DLPP's failure to complete the rezoning and lease processes when KULLG applied for Planning Permission over Section 36 Allotments 1-26, is wrong.
- In the opinion of the Ombudsman Commission it appears that KULLG's establishment of the Kimbe Town Market and a car park on the land described as Section 36 Allotments 7-20 without Special Purpose Lease or a CAO, is wrong.
- In the opinion of the Ombudsman Commission it appears that the DLPP's failure to address the improper issuance of licenses over Section 36 Allotment 1-6 and 21-26 to Solar Industries Limited when concerned individual and organizations raised it in 2006 is wrong.
- In the opinion of the Ombudsman Commission it appears that the DLPP's failure to act when Solar Industries Limited failed to comply with licenses' conditions is wrong.
- In the opinion of the Ombudsman Commission it appears that Provincial Land Advisor, Ben Madiu's acceptance of gifts from Freddie Kumai, an agent of Solar Industries Limited, is wrong.

Irregularities

The main irregularities uncovered by this investigation are:

- DLPP did not complete the rezoning and leasing processes when KULLG applied for Planning Permission over Section 36 Allotments 1-6 and 21-26 to establish Kimbe Town Market.
- Lack of proper coordination between the different Divisions (Physical Planning, Survey, Valuation, and Land Administration) of the DLPP to properly process KULLG's Planning Permission Application caused Solar Industries Limited to apply for Planning Permission over the same piece of land.
- KULLG established the Kimbe Town Market without a Special Purpose Lease or Certificate Authorizing Occupancy over Section 36 Allotment 1-26.
- DLPP failed to address the improper issuance of licenses over Section 36 Allotments 1-6 and 21-26 to Solar Industries Limited when raised by KULLG and the concerned citizens.

Findings of wrong conduct

The conducts of the following public officials were wrong:

- Provincial Lands Advisor, Ben Madiu, accepting gifts from Solar Industries Limited's agent, Freddie Kumai, for providing Land Inspection Report and supporting its Planning Permission Application to develop Section 36 Allotment 1-26 into a commercial land.

Recommendations

1. The Ombudsman Commission recommends that the Secretary for the DLPP should ensure that all land allocation and lease processes are fully complied with before developing any State land. KULLG developed the Kimbe Town Market without following the due processes and should be rectified.
2. The Ombudsman Commission recommends that the Secretary for the DLPP should ensure that all Planning Permission Applicants have Certificate of Titles or Certificate Authorizing Occupancy before developing any State land.
3. The Ombudsman Commission recommends that the Secretary for DLPP should address all land matters brought to the Department by concerned individuals and organizations in a timely manner and advise them accordingly of the outcome.
4. The Ombudsman Commission recommends that the Secretary for the DLPP should revoke licenses issued to Solar Industries Limited for breaching the License Conditions. This should also apply to all Planning Permission Applicants that do not comply with the License Conditions.

5. The Ombudsman Commission recommends that the Secretary for DLPP should discipline the Provincial Land Advisor Ben Madiu and any Lands officers found soliciting or accepting gifts when facilitating licenses and State leases.

Conclusion

This Report has found that the DLPP failed to follow the established administrative systems, processes and procedures and Acts governing the Department's operation when issuing license over Section 36 Allotment 1-6 and 21 – 26, Kimbe, to Solar Industries Limited. The DLPP must strictly adhere to its administrative processes for good administration and allocation of land to government agencies, private individuals and organizations. It must also act quickly to resolve the matter when brought to its attention before it gives rise to series of other administrative problems.



1. JURISDICTION AND PURPOSE OF INVESTIGATION

[1.1] INTRODUCTION

This is an investigation by the Ombudsman Commission on complaint raised by the Kimbe Urban Local Level Government to establish whether or not there was any wrong conduct surrounding the issuance of licenses over Section 36 Allotments 1-6 and 21-26 to Solar Industries Limited to do feasibility study for a Commercial Purpose.

Notice was issued under Section 17(1) of the *Organic Law on the Ombudsman Commission* (OLOC) to then Acting Secretary for the Department of Lands and Physical Planning, Pepi Kimas, on 29 December 2006 advising him of the Commission's decision to investigate this matter.

[1.2] JURISDICTION OF THE OMBUDSMAN COMMISSION

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

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

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

Schedule 1.2(1) defines "governmental body" as:

-
- (a) the National Government; or
 - (b) a provincial government; or
 - (c) an arm, department, agency or instrumentality of the National Government or a provincial government;
 - (d) a body set up by statute or administrative act for government or official purposes.
-

The Department of Lands and Physical Planning is a governmental Department in the Public Service established by Section 188 of the *Constitution*. It operates under several Acts these include the *Land Act 1996*, *Physical Planning Act 1989*, *Land Registration Act* and so on.

The Ombudsman Commission therefore has jurisdiction to inquire into the question of whether the Department of Lands and Physical Planning, its Boards or its officers made an improper decision to issue licenses to Solar Industries Limited to do feasibility study for Commercial Purpose over a Special Purpose zoned land.

[1.3] PURPOSE OF THE INVESTIGATION

In accordance with Section 219 (1) (a) (ii) of the constitution, the general purpose of this investigation was

- to determine whether any of the conduct under investigation was wrong,
- to determine whether any laws or administrative practices were defective in relation to the decision of the officers of the Department of Lands and Physical Planning.

[1.4] METHOD OF INQUIRY

The Ombudsman Commission issued a Notice on 29 December 2006 under Section 17(1) of the OLOC to then Acting Secretary for the Department of Lands and Physical Planning, Pepi Kimas, advising of its intention to investigate the allegation.

Section 17(1) states:

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

The Ombudsman Commission obtained documents and other evidence from a number of sources and used its powers under *Section 18 of the Organic Law on the Ombudsman Commission* to require people to produce documents and information.

Section 18 states:

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

[1.5] PEOPLE WHO GAVE EVIDENCE BEFORE THE COMMISSION

The Ombudsman Commission conducted interviews with key witnesses pursuant to *Section 18 (1) of the Organic Law on the Ombudsman Commission*. The following people were called and gave evidence before the Commission in 2007 and 2011:

2007

Name	Designation	Organization
Joshua Giru	Provincial Administrator	WNB Provincial Administration
Ben Madiu	Provincial Land Advisor	WNB Provincial Administration
Leo Kalasi	Town Mayor	KULLG
Daniel Katakumb	Director – Land Administration	DLPP
Samuel Kodawara	Surveyor General	DLPP
John Ofoi	Chief Physical Planner	DLPP
Freddie Kumai	Consultant	Solar Industries Limited

2011

Name	Designation	Organization
Tiri Wanga	Director Land Alienated	DLPP
Raphael Nagual	Chief Physical Planner	DLPP
Luther Sipison	Surveyor General	DLPP
Flora Kwapena	Valuer General	DLPP

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

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

[1.7] DEFINING WRONG CONDUCT

Section 219 (2) of the *Constitution* specifies that a conduct is wrong if it is –

- (a) *contrary to law; or*
- (b) *unreasonable, unjust, oppressive or improperly discriminatory, whether or not it is in accordance with law or practice; or*
- (c) *based wholly or partly on improper motives, irrelevant grounds or irrelevant considerations; or*
- (d) *based on wholly or partly on a mistake of law or of fact; or conduct for which reasons should be given but were not, whether or not the act was supposed to be done in the exercise of deliberate judgment within the meaning of Section 62 (decision in "deliberate judgment").*

[1.8] THE PROVISIONAL REPORT

Whenever the Ombudsman Commission prepares a Report of this nature, it has a duty to observe procedural fairness. Section 17(4) (b) of the *Organic Law on the Ombudsman Commission* imposes this duty.

Section 17(4) (b) states:

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

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

In order to discharge its duty of procedural fairness, the Ombudsman Commission distributed a Provisional Report of this investigation into the Alleged Improper Licensing of Public Institutional Land (Section 36, Allotments 1-6 and 21 – 26) under Special Purpose to Solar Industries Limited for Commercial Purposes in Kimbe, West New Britain Province on 13 September October 2013.

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

A copy of the Provisional Report was delivered to the Secretary for Department of Lands and Physical Planning Romilly Kila Pat on 13 September 2013. The DLPP was given the opportunity to respond in writing to the Commission's findings within 28 days from the date of our letter.

The Department of Lands and Physical Planning responded to the findings of the Ombudsman Commission's Provisional Report on 6 November 2013. The Department agreed to the findings of the Commission's Provisional Report. The Letter of response reads:

The Department concurs with your findings and would have corrected this anomaly had it not been reported to the Ombudsman Commission.

The Ombudsman Commission after receiving the response from the DLPP compiled the Final Report with its Recommendations for publication and tabling in Parliament as required under Section 23 of the *Organic Law on the Ombudsman Commission*.



2. LAND ALLOCATION AND LEASE PROCESS

This Chapter sets out the administrative processes involved in the allocation and leasing of State Land to individuals and organisations. These administrative processes have their basis in the legislation (*Lands Act 1996, Physical Planning Act 1989, etc.*) that governs the DLPP administration. An abuse of these administrative processes will amount to breach of these Acts. The applicants interested in the State Land lodge Planning Permission Applications with the DLPP. The type of applications lodged with the Department and the processes involved in processing them is outlined below:

[2.1] DLPP RECEIVES GENERAL APPLICATION FOR:

- Business Commercial Lease
- Residential Lease
- Special Purpose Lease
- Agriculture Lease
- Mission Lease
- Pastoral Lease
- Urban Development Lease

[2.2] STATUS CHECKED TO CONFIRM LAND AVAILABILITY

- Application recorded in application register
- Land file information checked
- LAGIS data checked
- PNGIS data checked
- Physical inspection conducted or requested

[2.3] PHYSICAL PLANNING OFFICE CHECKS FOR CONFIRMATION OF ZONING

- If subject to zoning, applicant notified

[2.4] OFFICE OF SURVEYOR GENERAL CHECKS FOR CONFIRMATION OF SURVEYING

- If subject to Survey, applicant is notified

[2.5] OFFICE OF VALUER GENERAL CHECKS FOR ASSESSMENT OF UNIMPROVED VALUE OF LAND

[2.6] UNIMPROVED VALUE ASSESSMENT RECEIVED

[2.7] LAND ADVERTISED, EXEMPTED OR LICENSE ISSUED

[2.8] PRE – LAND BOARD

- Land Board Agenda Item are prepared
- Minute containing Lease conditions are prepared
- Land Board meeting is scheduled in consultation with Divisional Directors & Provincial Managers/advisors
- Land Board Agenda Item is gazetted
- Notify Applicants of date, time and venue to present their developmental proposal before the Board
- Land Board Meeting – considers agenda items and make recommendations

[2.9] POST LAND BOARD

- Land Board recommendation collated and minute prepared
- Applicants are notified of Land Board Recommendation
- 28 days statutory period from date of notification is allowed for appeal
- No appeal - Submission prepared and referred to Minister for approval of Board recommendation. If there is appeal it goes through the appeal process.
- Successful Applicant is Gazetted
- Referred to Lease Administration Division for Lease Acceptance Form and Grant of Lease

[2.10] LEASE PROCESS

- Lands file received from the Land Board Section
- Check all relevant information to commence process
- Issue first Notice of Grant and Lease Acceptance Form
- Issue Second Reminder Notice after expiry of 28 days
- Issue third and final Reminder Notice
- Lease document processed after Lease Grant/Lease Acceptance Forms executed with fees paid in full
- Submit to the Manager and Director for Land Management
- Secure Minister or his delegate approval
- Lodge leases document at the Registrar of Titles for registration
- Ensure that the registered lease title is returned to Lease Coordinator
- Ensure that the title information is entered into LAGIS
- Explain all terms and conditions of the title/sign and release the State Lease title

[2.11] COMMENT

The Planning Permission Application for any State Land has to go through the administrative processes and procedures set out by the DLPP. Failure to follow or complete these administrative processes will result in the abuse of the processes, thus breaching the Acts governing the operation of the DLPP. It is very important that these administrative processes are strictly followed by individuals and organizations when applying for Planning Permission.



3. FINDINGS OF FACT

[3.1] GENERAL

This Chapter discusses the facts relating to the Kimbe Town Authority and Solar Industries Limited's Application for the Business Commercial Lease over the same piece of land described as Section 36 Allotments 1-26 Kimbe, West New Britain Province. Kimbe Urban Local Level Government claims that the described land was rezoned from Commercial to Public Institutional Land under Special Purpose (Market) for it to establish the Town Market and a car park and reserve Allotments 1- 6 and 21 - 26 for future development. It further alleges that the Department of Lands and Physical Planning had improperly issued licenses to Solar Industries Limited over Allotments 1-6 and 21-26 to do feasibility study for Commercial Purposes without rezoning it to Commercial Land.

[3.2] On 20 March 1995 the Kimbe Town Authority (name changed to Kimbe Urban Local Level Government) applied for rezoning and Special Purpose Lease or Planning Permission over Section 36 Allotments 1- 26 for Stage One Development of the Kimbe Town Market through the West New Britain Provincial Administration and Regional Physical Planning Office.

[3.3] On 18 May 1995 the National Physical Planning Board during its Meeting Number 04/95 approved the Planning Permission Application of KULLG for rezoning from Commercial to Public Institutional Land under Special Purpose(Market). The National Physical Planning Division then rezoned Section 36 Allotments 1- 26 from Commercial to Public Institutional under Special Purpose (Market). However, the rezoning and lease processes were not completed.

[3.4] The Ombudsman Commission investigation discovered that the Physical Planning Board decision to rezone Section 36 Allotments 1-26 from Commercial to Public Institutional Land was not gazetted. More so, KULLG's Planning Permission Application with Physical Planning Plan that the land was rezoned did not go to Survey, Value, and Land Administration Divisions for clearance and the office of Secretary to Papua New Guinea Land Board for the grant of lease. In other words, KULLG was not granted Special Purpose Lease or Certificate Authorizing Occupancy to develop the land.

[3.5] Without the State Lease or Certificate Authorizing Occupancy (CAO) the Kimbe Urban Local Level Government established a public market and a car park and reserved Allotments 1 – 6 and 21 – 26 for future development.

[3.6] On 27 July 2005, Freddie Kumai, an agent of Solar Industries Limited, expressed the interest of the company to develop Section 36 Allotments 1-6 and 21 – 26 into a commercial center. His letter states *“We express interest to one of the*

undeveloped portion of land in Kimbe Town, West New Britain Province Section 36 Block 1-7 and 21-26 adjacent to Kimbe Market and opposite Kimbe Police Station.

[3.7] On 28 July 2005 Freddie Kumai submitted the Solar Industries Limited's Commercial Lease Application for Section 36 Allotments 1-6 and 21-26 to the DLPP. The Application contained the following attachments:

(a) Application fee receipts; K100.00 was paid for each Allotment.

(b) Acting Valuer General, Saleng J. Hosa's Valuation Report of the unimproved Section 36 Allotments 1-6 and 21-26 dated 28 July 2005. The Valuer's Report described the land as Commercial consisting of Allotments 1-6 and 21 – 26. Each allotment is valued K16, 500.00. The total value of Allotments 1-6 and 21-26 is K198, 000.00.

(c) There was also Provincial Land Advisor Ben Madiu's Improvement Inspection Report dated 29 August 2005. The Report states that Section 36 is zoned commercial and *are smaller in size and cannot accommodate big development on one allotment. For large scale development the allotments had to be consolidated to cater for the purpose.*

[3.8] On 30 August 2005 the Provincial Land Advisor, Ben Madiu, wrote to the Director for the DLPP supporting Solar Industries Limited's interest in developing the undeveloped portions 1-6 and 21-26 of Section 36. He states that *the company had already lodged the Commercial Lease Application and it is only fair that it be assisted to fulfill its business interest.*

[3.9] Ben Madiu further claimed that the company was owned by a local businessman and should be allowed to participate in the development of the province. Ben Madiu did not produce any documentary evidence to prove that the Solar Industries Limited was owned by a local businessman.

[3.10] On 30 August 2005 then Provincial Administrator, Willie Edo, also in his letter supported the Application of the Solar Industries Limited. He stated that Solar Industries Limited is owned by a local businessman and should be allowed to do business on the land. His letter reads:

Our office has fully support their proposals. We recommend that their application over the proposed commercial lease be granted in their favor.

[3.11] To discover whether Solar Industries Limited was owned by the local businessman, KULLG sponsored Pryke & Janson Lawyers to do company search from Investment Promotion Authority. The finding show that Solar Industries Limited is owned by three Korean Businessmen namely Leong Du Lee, Myung Sook Kim and Yong Ho Kim and not a local businessman from Talasea District as claimed by the Provincial Administrator and the Provincial Land Advisor. The company was registered as a foreign company with the Investment Promotion Authority. Freddie Kumai is not mentioned in any document as the shareholder of the company.

- [3.12] On 9 September 2005 the Solar Industries Limited paid a total of K720.00 for two licenses; one for Section 36 Portions 1-6 and the other for Portions 21-26. The fee for each license is K360.00; a total of K720.00.
- [3.13] On 17 November 2005 the Deputy Secretary (Corporate and Regulatory Services) for DLPP, Romilly Kila Pat, signed and issued Licenses Number 11 of 2005 (Island) and 12 of 2005 (Island) of Section 36 Allotments 1-6 and 21-26 to Solar Industries Limited to do feasibility study and Engineering Designs for the proposed business activities. Issuance of license to private individuals and organizations is a Ministerial responsibility. There is no document to show that Romilly Kila Pat and other senior officers in the DLPP had been delegated Ministerial responsibilities to issue licenses. Therefore Romilly Kila Pat had acted without any power to issue licenses to Solar Industries Limited.
- [3.14] Also on 17 November 2005, the Deputy Secretary for Lands, Romilly Kila Pat, signed the Exemption Notice under Section 69(2) (d) of the *Land Act* 1996 exempting Section 36 Allotment 1-6 and 21-26 from advertisement for Public Tender. Exempting a Planning Permission Application from advertisement is a Ministerial responsibility and remains the prerogative of the Minister for Lands. There is no documentary evidence to prove that Romilly Kila Pat was delegated or sub-delegated the Ministerial responsibility to exempt Planning Permission Applications from advertisement. Therefore, Romilly Kila Pat acted without any power to exempt Solar Industries Limited's Application from advertisement.
- [3.15] On 13 March 2006, Celestine Rameng, the NGI Regional Office Physical Planner, issued the Certificate of Planning Permission to Solar Industries Limited to erect the fence around the land in issue when obtaining the license from the DLPP. Freddie Kumai erected the fence and he has been collecting fees from the vendors selling secondhand clothes to this day.
- [3.16] On 23 May 2006 Hubert Kava, Acting Urban Local Level Government Manager, wrote to the Secretary for Lands, Pepi Kimas, enclosing a Brief dated 22 May 2006 on improper allocation of a Public Institutional Land to Commercial for Solar Industries Limited to do business.
- [3.17] On 5 June 2006 Leo Kalasi, Mayor of Kimbe Town, wrote to the then Governor of West New Britain Province, Honorable Clement Nakmai, on unlawful allocation of Public institutional Land in Kimbe Town and copies to the Minister for Lands, Inter-Government Relations and the Ombudsman Commission. He advised the then Governor making reference to Acting Provincial Administrator Willie Edo's letter dated 30 August 2005 and Provincial Land Advisor's letter dated 29 August 2005 to the DLPP supporting Solar Industries Limited as a company owned by a local businessman and should be granted Planning Permission to do business on Section 36 Allotment 1-6 and 21- 26, to do business was misleading. The company is owned by Asian businessmen. He further stated that Section 36 Allotments 1-6 and 21 -26 is a Public Institutional Land and the Commercial License issued to Solar Industries Limited is illegal. He made recommendation for an inquiry into the illegal land deal.

- [3.18] On 21 June 2006 Leo Kalasi, Mayor of Kimbe Town, wrote to the Ombudsman Commission to investigate the unlawful rezoning and allocation of Public Institutional Land to Commercial Land for Commercial Purposes. He stated that Section 36 Allotment 1-6 and 21-26 is a Public Institutional Land and DLPP illegally licensed it to a private company named Solar Industries Limited and should be investigated to have the land freed for development by State agencies for the benefit of the people. Ombudsman registered the case based on Kalasi's letter.
- [3.19] On 26 June 2006, Ivan O'Hanlon, Managing Director for KBSA Group, wrote to the Acting Provincial Administrator, Willie Edo, on illegal allocation of land and lack of physical planning in West New Britain. He was referring to Section 36 Allotment 1-6 and 21 – 26 that it was illegally licensed to Solar Industries Limited which Willie Edo supported knowing well that it was owned by foreigners and not a local businessman. The investigation did not find any documentary evidence on Willie Edo's response to Hanlon's letter of concern.
- [3.20] On 27 June 2006 Ivan O'Hanlon wrote a second letter on the same subject to Minister for Lands and copies to the Governor, Manager – Lands Regional Manager and the Ombudsman Commission. He advised that there is a total abuse of power by the Provincial Land Advisor, Ben Madiu, in allocating State Land to private individuals and organizations without going through the proper process. For instance, Solar Industries Limited was improperly issued Commercial License over Section 36 Allotments 1-6 and 21 – 26 to do feasibility study which is a Public Institutional Land. He stated further that Freddie Kumai, an agent of Solar Industry Limited, had erected the fence and had been collecting fees from the vendors selling second hand clothes. More so, Ben Madiu and Willie Edo claiming that Solar Industries Limited was owned by a local businessman and should be allowed to do business, is misleading. The company is owned by foreigners of Asian origin.
- [3.21] On 16 November 2006, the Solar Industries Limited, paid K360.00 each for the renewal of Licenses Numbers 11 and 12 of 2005 (Island) and consolidation of Portions 1-6 and 21-26 when the licenses issued for a period of one year had lapsed.
- [3.22] On 29 December 2006 Ombudsman Commission issued the Notice to investigate the DLPP for improper issuance of licenses over Section 36 Allotment 1-6 and 21 – 26 to Solar Industries Limited to do feasibility study. The DLPP was required to respond within 28 days. The DLPP did not respond within the given days despite continuous reminders.
- [3.23] On 6 February 2007 the Secretary for DLPP, Pepi Kimas, through the Office of the Registrar of Titles issued the Registrar's Caveat over Section 36 Allotments 1-6 and 21- 26 Kimbe. It was to be lifted when the Ombudsman Commission completes its investigation.

[3.24] **COMMENT**

DLPP failed to complete the rezoning and lease processes when KULLG applied for rezoning and a Special Purpose Lease over Section 36 Allotment 1-26. When NPPB approved KULLG's Planning Permission Application, the decision was not gazetted, nor did the Physical Planning Division provide the Physical Planning Plan

to the Surveyor General to give new description to the land and update the Lagis Record. According to the Lagis Record the land is zoned Commercial and not leased to any individual or organization. KULLG established the Town Market and a car park anticipating that a CAO or a Special Purpose Lease would be granted to it. This caused Lands Officers to advise Solar Industries Limited that Section 36 Allotments 1-6 and 21-26 is a Commercial Land and it applied to develop it into a commercial center.

The issuance of licenses to private individuals and organizations and exempting their Planning Permission Applications from advertisement are Ministerial responsibility. Based on 2010 Ombudsman Commission Final Report on a similar lands case in Kimbe, West New Britain, the Ombudsman Commission had discovered that the Deputy Secretary Romilly Kila Pat and then Secretary for Lands Pepi Kimas had issued a Commercial License to Quinquing Trading Limited and exempted its Planning Permission Application from advertisement without the delegation of any of the Ministerial responsibilities. The Ombudsman Commission made recommendations for the Instrument of Delegation to be maintained in a Register for the senior officers in the Department and the external oversight agencies to access. The DLPP had not written to the Ombudsman Commission to this day that it had implemented the recommendations on the issue of the delegation of Ministerial responsibilities to the senior officers in the Department.

Therefore, Romilly Kila Pat had acted without any power to issue licenses to Solar Industries Limited and exempting its Application from Advertisement which is illegal. Note, that the findings on the delegation of Ministerial responsibilities had already been published in the Final Report in 2010 which is with the DLPP for implementation and advice to the Ombudsman Commission. Hence the same findings in this Report will not be included as one of the findings.



4. INTERVIEWS WITH OFFICERS OF DLPP & WNBPA

This Chapter discusses the evidence given by the officers of the DLPP based in Port Moresby and Kimbe and the officers of West New Britain Provincial Administration during the interview with the Ombudsman Commission. The purpose of the interview was to:

- Establish the correct zoning for the particular land,(i.e. check whether the rezoning and lease processes have been followed),
- Establish the owner of the land,
- Establish the reasons for the existence of discrepancies in the land allocation and lease processes in relation to this particular land, and
- Establish the underlying reasons for the DLPP not resolving the matter when brought to its attention.

The detailed transcript of the interview can be obtained from the interview transcript.

INTERVIEW WITH JOSHUA GIRU

[4.1] On 10 January 2007 the Provincial Administrator, Joshua Giru, was interviewed in Kimbe, West New Britain Province. He admitted to the Ombudsman Commission the mess created by then Acting Provincial Administrator, Willie Edo, in relation to land matters and he has taken necessary steps to change the situation.

[4.2] Joshua Giru said he had established a Provincial Physical Planning Board to properly screen the Planning Permission Applications before sending them to the National Lands Office to minimise the abuse of the processes and procedures of the Department by the National and Local Lands Officers.

INTERVIEW WITH LEO KALASI AND HUBERT KAVA

[4.3] On 10 January 2007 the Kimbe Town Mayor, Leo Kalasi and Acting KULLG Manager Hubert Kava, were interviewed in their office (KULLG) in Kimbe, West New Britain Province. They said that:

- The KULLG did not have a Certificate Authorising Occupancy or a Special Purpose Lease over Section 36 Allotments 1- 26.
- KULLG applied for Planning Permission through the office of the Provincial Lands Advisor and the Acting Provincial Administrator, Willie

Edo, to the DLPP for Special Purpose Lease. To date neither the DLPP nor the Provincial Land Advisor had informed them of the status of their Application. However, they have already established the Kimbe Town Market.

- The agent of Solar Industries Limited, Freddie Kumai, had erected a fence around the land in issue and had been collecting gate fee from the second hand clothes sellers.

INTERVIEW WITH BEN MADIU

[4.4] On 11 January 2007 the Provincial Land Advisor, Ben Madiu, was interviewed in Kimbe, West New Britain Province. He told the Ombudsman Commission:

- That based on Kimbe Town Plan, the Kimbe Town Authority established the public market on Section 36 Allotments 11-16 and car park on Allotments 7-10 and 17-20 which is approximately 0.512 hectares.
- That the Northern part of Section 36 Allotments 1-6 and 21-26 is approximately 0.747 hectares which Ben Madiu, Provincial Land Advisor, thought belonged to the Kimbe Urban Local Level Government until Freddie Kumai erected the fence and asked him to provide the Site Inspection and Survey Reports for the company.
- That Ben Madiu had no knowledge of the Commercial Lease Application of Solar Industries Limited; everything was done at the National Lands Office in Port Moresby. He came to know about it when Freddie Kumai came to his office for the Site Inspection and Survey Reports.
- That when Ben Madiu completed the Inspection Report Freddie Kumai gave him K100.00 for his lunch.

INTERVIEW WITH DIRECTOR LAND ADMINISTRATION

[4.5] On 5 February 2007 the then Director for the Land Administration, Daniel Katakumb, was interviewed at Deloitte Tower in Port Moresby, National Capital District. Katakumb informed the Ombudsman Commission:

- That the Land Administration Division had not processed any Planning Permission Application of the Solar Industries Limited to go before the Papua New Guinea Land Board. If the Solar Industries Limited's Application had gone to the Physical Planning Board, it would have been rejected automatically because the Application would have been made against the *Physical Planning Act* 1989.
- That the Licenses granted to the Solar Industries Limited were for a period of twelve months. They could easily be cancelled when expired and the property remain as originally zoned.

- That on 6 March 2007 the Director for Land Administration informed the Ombudsman Commission that the Special Purpose Lease Application of Kimbe Town Authority with the Department will be processed after Ombudsman Commission completes its investigation.

INTERVIEW WITH SAMUEL KODAWARA

[4.6] On 6 February 2007, then Surveyor General, Samuel Kodawara, was interviewed at the Ombudsman Commission Office at Deloitte Tower in Port Moresby, National Capital District. Samuel Kodawara told the Ombudsman Commission that:

- The office of the Surveyor General recognizes Section 36 Allotments 1-26 as a Commercial Land. The Lagis data base describes the land as such.
- If a new Survey Plan was sent to the Office of Surveyor General, it would have been described as having superseded the original Survey Plan. However, the Surveyor General's office had not received any new Survey Plan through the Office of Physical Planning. Hence the original plan that Section 36 is a Commercial Land remains.

INTERVIEW WITH CHIEF PHYSICAL PLANNER

[4.7] On 7 February 2007, then Chief Physical Planner, John Ofoi, was interviewed at the Office of Ombudsman Commission in Port Moresby. John Ofoi told the Commission:

- That Section 36 was initially zoned Commercial (shops, etc.). It was divided into a total of 26 small commercial allotments.
- That in 1995 the Kimbe Town Authority requested the DLPP to rezone Section 36 from Commercial (Shops) to Commercial (Market) or Public Institutional under Special Purpose (Market). The NPPB during its Meeting Number 4 of 1995 approved the rezoning of the land as requested. The Physical Planning Division then rezoned the land from Commercial (shops, etc.) to Commercial (Market).
- That he was not aware of any rezoning of the Commercial (Market) by any party from its current use to the proposed use. If the Commercial Lease was granted over Section 36 zoned Commercial (Market) then it is improper. A lease cannot be issued contrary to the zoning.

INTERVIEW WITH FREDDIE KUMAI

[4.8] On 18 April 2007 Freddie Kumai, an agent of Solar Industries Limited, was interviewed at Liamo Reef Resort in West New Britain Province. He made the following points:

- That Solar Industries Limited was registered with the Investment Promotion Authority as a foreign company. On 9 March 2005 an agreement was signed between the company and FK Limited to become a partner in business

activities. FK Limited was to contribute K500, 000.00 equity capitals which include the cash and consultancy services which includes the negotiation for a land to do business. Hence Kumai submitted the application for License and Commercial Lease over Section 36 Allotments 1-6 and 21-26.

- Kumai sought the advice of the Provincial Land Advisor, Ben Madiu, on the status of the land opposite the public market. He was advised that the land was Section 36 and unknown allotments. Kumai then came to the National Lands Office in Port Moresby to do a search to identify the allotments and the zoning.
- At the National Lands Office, Vincent Sam, an officer in charge of land matters in NGI assisted Freddie Kumai in the search. He advised him that Section 36 was an undeveloped Commercial Land and he should submit the Application to do business. On 27 August 2005 Freddie Kumai lodged twelve Tender Applications for Portions 1-6 and 21-26 to the DLPP and paid K100.00 each for the Application.
- Freddie Kumai was further advised to see the Valuer General for the Valuation Report of the unimproved land. On 28 July 2005 the Valuer General, Saleng J. Hosa provided him the Valuation Report. Each portion of land was said to have valued K16, 500.00.
- Upon the advice from the officers of the National Lands Office, Freddie Kumai asked the Provincial Land Advisor, Ben Madiu, to do a Site Inspection Report for the company which he did on 22 August 2005.
- Ben Madiu also wrote a recommendation letter for the company and advised Freddie Kumai to get another recommendation letter from then Acting Provincial Administrator, Willie Edo, which he did on 30 August 2005.
- In September 2005 Freddie Kumai presented the Commercial Lease Application to Terry Wanga, the Land Allocation Manager, and copies to Vincent Sam. At the same time Freddie Kumai lodged the Application for Licenses.
- On 11 November 2005 Terry Wanga informed the company that the small portions of land were consolidated and licenses approved. The licenses were issued together with the Exemption from Advertisement Notice exempting them from being advertised for Public Tender.
- On 17 March 2006 the Solar Industries Limited applied to the Regional Physical Planner, Celestine Rameng, for approval to fence the land in issue. It was approved and a Certificate of Planning Permission was issued to erect the fence on 13 March 2006.
- Freddie Kumai finally sought the approval of the Provincial Planning Board to erect the fence. It was approved and the fence was erected.

- On 12 January 2007 Freddie Kumai admitted to the Ombudsman Commission that he gave Ben Madiu K100.00 as a token of appreciation for assisting him with the Application.

INTERVIEW WITH THE LANDS OFFICERS IN 2011

In 2011 after the Restructure in the DLPP the Ombudsman Commission interviewed the new Lands officers occupying the Director positions of various Divisions to clarify certain issues.

[4.9] On 19 April 2011 at 10.00 am, Tiri Wanga, Director for Alienated Land was interviewed at the Ombudsman Commission Office at Deloitte Tower in Port Moresby. Wanga confirmed that Section 36 Allotments 1-6 and 21-26 is a Commercial Land. He said investigation had been conducted on the described land and recommendation made for it to be returned to KULLG to construct their office.

[4.10] On 19 April 2011 at 2.00 pm, Raphael Nagual, Director Chief Physical Planner, was interviewed at the Ombudsman Commission Office at Deloitte Tower in Port Moresby. He made it clear that Section 36 Allotments 1-6 and 21-26 is a commercial land. The Kimbe Town map he produced to the Ombudsman Commission during interview confirmed the described land is zoned Commercial. Further the Lagis Report he produced indicate that Section 36 Allotments 1-6 and 21-26 is not allocated to any individuals or organization. It does not have a folio and volume number.

[4.11] On 20 April 2011 at 10.00 am, Luther Sipison, Surveyor General, was interviewed at the Ombudsman Commission Office at Deloitte Tower in Port Moresby. He also confirmed that Section 36 Allotments 1-6 and 21 – 26 is zoned commercial. There is no Record in the Lagis that it was rezoned Public Institutional under Special Purpose (Market).

[4.12] On 20 April 2011 at 2.00 pm, Flora Kwapena, Valuer General, was interviewed at the Ombudsman Commission Office at Deloitte Tower in Port Moresby. Kwapena also confirmed like her colleagues that Section 36 Allotment 1-6 and 21-26 is zoned Commercial.

[4.13] COMMENT

The DLPP officers past and present interviewed confirm that Section 36 Allotment 1-26 is zoned Commercial except then Chief Physical Planner, John Ofoi, who claimed that it was rezoned from Commercial to Public Institutional Land under Special Purpose (Market). The investigation discovered that due to lack of proper coordination between the different Divisions in the DLPP the lease process was not completed. Hence, the land is still commercial and KULLG establishing the Town Market and a car park without a Lease or a CAO and Solar Industries Limited applied for the same piece of land to develop it.

The problem would have been avoided if the DLPP had completed the lease process and granted the State Lease to KULLG or resolved the matter as soon as it was brought to its attention.



5. FINDINGS

This Chapter sets out the preliminary findings of the Ombudsman Commission based on the facts from the material documents and interviews with the officers of DLPP and West New Britain Provincial Administration. The relevant laws are also applied to the facts where necessary as reasons for the findings.

[5.1] FINDING N^o. 1

In the opinion of the Ombudsman Commission it appears that the DLPP's failure to complete the rezoning and lease processes when KULLG applied for Planning Permission over Section 36 Allotments 1-26, is wrong.

Reasons

- On 20 March 1995 the Kimbe Town Authority (name changed to Kimbe Urban Local Level Government) applied for rezoning and Special Purpose Lease over Section 36 Allotments 1- 26 for Stage One Development of Kimbe Town Market through the West New Britain Provincial Administration and Regional Physical Planning office.
- On 18 May 1995 the National Physical Planning Board during its Meeting Number 04/95 approved KULLG's Application to rezone Section 36 Allotments 1-26 from Commercial to Public Institutional Land under Special Purpose for the establishment of Kimbe Town Market and office.
- According to the due process the NPPB decision will be gazetted, the rezoning done and Physical Planning Plan given to the Survey Division to give new description to the land and Lagis Register updated before it goes to Valuation Division and the PNGLB for the Grant of State Lease.
- In this case, the NPPB decision was neither gazetted nor Physical Planning Plan given to the Survey Office for Section 36 Allotments 1-6 and 21 – 26 to be given new description and Lagis Register updated. Further the Application had not gone to the Valuation Division and PNGLB for the Grant of State Lease. KULLG's Planning Permission Application stopped with Physical Planning Division.
- According to the Lagis Report Section 36 Allotment 1-26 is a Commercial Land and had not been leased to any individual or organization.

Reference

The facts and reasons relevant to this opinion are set out in paragraphs [2.1 – 2.11] [3.1 – 3.5] [4.4 – 4.6] and [4.9 – 4.13]

[5.2] FINDING N^o. 2

In the opinion of the Ombudsman Commission it appears that KULLG's establishment of the Town Market and car park on Section 36 Allotments 7 – 20 without a Special Purpose Lease or a CAO, is wrong.

Reasons

- In accordance with Section 77 of the *Physical Planning Act* 1989 on Application for Planning Permission, KULLG applied for Planning Permission over Section 36 Allotments 1-26 to establish the Kimbe Town Market. However, the DLPP did not complete the rezoning and lease processes for a State Lease or a CAO to be granted to KULLG to fulfill its purpose. The Lagis Register Report confirms it. Refer to Finding Number 1.
- The Kimbe Town Mayor, Leo Kalasi, himself also confirmed to the Ombudsman Commission during the interview in Kimbe, West New Britain Province, on 10 January 2007, that KULLG does not have a State Lease or a Certificate Authorizing Occupancy over Section 36 Allotments 1- 26. It established the Town Market anyway anticipating that its Application would be approved and lease granted.
- KULLG breached Section 74 of *Physical Planning Act* 1989 when establishing Kimbe Town Market without a State Lease or a CAO. Section 74 states:
 - (1) Subject to this section, a person who carries out development, or uses a building or land, in a zone for a purpose that is not an authorized purpose in relation to the building or land is guilty of an offence.
 - (2) Where—
 - a) a building or land was, at any time, for a period of not less than 60 days within the period of six months before the date of a Board's decision to publish the relevant notice of zoning under Section 71, used for a purpose that is not an authorized purpose in relation to the building or land; or
 - b) a building in a zone was, at the date of a Board's decision to publish the relevant notice of zoning under Section 71, under construction and intended to be used for a purpose that is not an authorized purpose in relation to the building, or land may, subject to Subsection (3), continue to be so used, or may be so used, as the case may be, after the date of publication of the relevant notice in the National Gazette.
 - (3) Subsection (2) ceases to apply to and in relation to a building or land—
 - a) on the discontinuance for a period of six months of its use for the purpose referred to in that subsection; or

- b) in the case of a building—on its destruction.

Reference

The facts and reasons relevant to this opinion are set out in paragraphs [3.11] [3.12] [3.24] and [4.3].

[5.3] FINDING N^o. 3

In the opinion of the Ombudsman Commission it appears that the DLPP's failure to address the matter on improper issuance of licenses over Section 36 Allotment 1-6 and 21-26 to Solar Industries Limited when concerned individuals and organizations raised it in 2006, is wrong.

Reasons

- On 22 and 23 May 2006 Acting KULLG Manager Hubert Kava and Town Mayor Leo Kalasi wrote to the DLPP on improper issuance of licenses over Section 36 Allotments 1-6 and 21 – 26 to Solar Industries Limited. The DLPP did not acknowledge their letters nor made any attempt to resolve the matter.
- On 27 June 2006, Ivan O'Hanlon, Managing Director for Kimbe Bay Shipping Agencies Limited, wrote to the Minister for Lands and copies to Governor for West New Britain Province, Manager for Islands Lands Regional Office and Ombudsman Commission on illegal allocation of lands (these include Section 36 Allotment 1-6 & 21 – 26) in West New Britain Province for administrative actions to be taken against the practice. However, the DLPP did not make any attempt to correct it or provide any reason for not addressing the matter.
- On 29 December 2006 the Ombudsman Commission issued the DLPP Notice of its intention to investigate when it failed to resolve the matter brought to its attention by Hubert Kava, Leo Kalasi and O'Hanlon. The DLPP did not respond to OC's letter within the given 28 days.
- The DLPP failed to address the improper land deal issue brought to its attention by concerned individuals and organizations.

Reference

The facts and reasons relevant to this opinion are set out in paragraphs [3.16 – 3.20] and [3.22].

[5.4] FINDING N^o. 4

In the opinion of the Ombudsman Commission it appears that the DLPP's failure to act when Solar Industries Limited failed to comply with the Licenses' conditions, is wrong.

Reasons

- On 17 November 2005 the DLPP Deputy Secretary, Romilly Kila Pat, issued License Numbers 11/2005(Island) and 12/2005 (Island) to Solar Industries Limited for Allotments 1-6 and 21-26 on the following conditions:
 1. *The licensee shall enter upon the land and carry out feasibility study and engineering design for their proposed developments.*
 2. *The licensee to make such temporary Improvements and do such things on the land the subject of the license as is necessary or convenient for the purpose of the license.*
 3. *The licensee to remove such of those improvements as are severable on or before the termination of the license, doing as little damage as may reasonably be to the Lands.*
- However, the Solar Industries Limited had erected the fence and had been collecting fees from the vendors selling second hand clothes to this day contrary to the licenses' conditions.
- This is a breach of the licenses' conditions and the licenses could be revoked under Section 125 (6) of *Land Act 1996*. It states *a license granted under this Division may be revoked by the Minister for failure to comply with, or for a contravention of, the conditions of the license.*
- The DLPP failed to advise the Lands Minister to revoke the licenses when Solar Industries Limited failed to comply with the conditions of the licenses.

Reference

The facts and reasons relevant to this opinion are set out in paragraph [3.13] [3.15] and [4.3].

[5.5] FINDING N^o. 5

In the opinion of the Ombudsman Commission it appears that the Provincial Land Advisor, Ben Madiu's acceptance of gifts from, Freddie Kumai, an agent of Solar Industries Limited, is wrong.

Reasons

- General Order paragraph 15.19 (h) states that an officer commits a disciplinary offence (of a minor or serious nature), if he or she solicits or accepts a free award, gratuity or gift in connection with the discharge of his official duties (other than his/her official remuneration).
- On 11 January 2007 Ben Madiu, Provincial Land Advisor, when interviewed in his office in Kimbe, West New Britain Province, admitted to the Ombudsman Commission that Freddie Kumai, an agent of the Solar Industries Limited, had given him K100.00 for providing the company the Site Inspection Report and the Support Letter.
- On 12 January 2007 Freddie Kumai when interviewed admitted to the Ombudsman Commission that he gave Ben Madiu K100.00 as a token of appreciation for the assistance rendered to him.
- Ben Madiu had therefore committed an offence by accepting the gift from Freddie Kumai whilst executing his official duty for which he is paid fortnightly salary.

Reference

The facts and reasons relevant to this opinion are set out in paragraphs [4.4] and [4.8].



6. RECOMMENDATIONS

[6.1] CONSTITUTIONAL FRAMEWORK FOR MAKING RECOMMENDATIONS

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

The Commission is expressly authorized to form such opinions by Section 22(2) of the *Organic Law on the Ombudsman Commission*.

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

Section 22(2) OLOC:

If in any case to which this section applies the Commission is of the opinion that any service, body, person or other appropriate authority should –

- (a) consider the matter further; or**
- (b) take certain specific action; or**
- (c) modify or cancel any administrative act; or**
- (d) alter any regulation or ruling; or**
- (e) explain more fully any administrative act; or**
- (f) do any other thing,**

the Commission shall report its opinion and the reasons for its opinion, to the Minister responsible for the relevant service, body or person and to the Permanent Head or statutory head responsible for the service, body or person, and may refer the matter to the Public Prosecutor if action by him is warranted and may make such recommendations as it thinks fit.

In this chapter, recommendations are made based on the findings of wrong conduct and defective administration referred to earlier in the Report.

Each recommendation is set out as follows:

- The recipients (i.e. the persons to whom the recommendations are directed) are identified.
- The main reason for making the recommendation, are stated.

[6.2] RECOMMENDATIONS CONCERNING PARTICULAR INDIVIDUALS

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

[6.3] RECIPIENTS OF RECOMMENDATIONS

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

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

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

- first, the service, body or person we are asking to do things is identified;
- secondly, the Minister responsible for that service, body or person is identified;
- thirdly, if appropriate, the permanent or statutory head responsible for that service, body or person is identified.

[6.4] RESPONSIBLE MINISTERS

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

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

[6.5] MINISTERS RESPONSIBLE FOR FOLLOWING UP IMPLEMENTATION OF RECOMMENDATIONS

- Minister for Department of Lands and Physical Planning

In the event that the title or responsibilities of the Minister changes after the date of this report, the responsibility for notifying the Ombudsman Commission of the steps being taken to give effect to its recommendations, will pass to the Minister who, from time to time, has political responsibility for the services, bodies or persons who received our recommendations.

[6.6] DUTIES OF RECIPIENTS OF RECOMMENDATIONS

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

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

Section 22(3) states:

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

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

A failure to comply with these duties may result in the Ombudsman Commission commencing enforcement proceedings in the National Court pursuant to Section 23 of the *Constitution*.

[6.7] RECOMMENDATIONS

Recommendation No 1

The Ombudsman Commission recommends that the Secretary for the DLPP should ensure that all land allocation and lease processes are fully complied with before developing any State land. KULLG developed the Kimbe Town Market without following the due processes and should be rectified.

Recipients

- Minister for Lands
- Secretary for Department of Lands and Physical Planning

Reasons

- KULLG’s Planning Permission Application for rezoning and establishment of the Kimbe Town Market did not go through the land allocation and leasing processes to be granted the State Lease to develop the land. The Application stopped at the National Physical Planning Division and did not go to Survey, Valuation and Administration Divisions to the Land Board for approval for the grant of Lease.

- Hence Section 36 Allotment 1-26 is still a commercial land and has not been leased to any developer. Kimbe Urban Local Level Government established the Kimbe Town Market in an unauthorized zone.

Recommendation No 2

The Ombudsman Commission recommends that the Secretary for DLPP should ensure that all Planning Permission Applicants have Certificate of Titles or Certificate Authorizing Occupancy (CAO) before developing State lands.

Recipients

- Minister for Lands
- Secretary for Department of Lands and Physical Planning

Reasons

- Kimbe Urban Local Level Government developed the Kimbe Town Market without a Certificate Authorizing Occupancy or a Certificate of Title.

Recommendation No 3

The Ombudsman Commission recommends that the Secretary for DLPP should address all land matters brought to the Department by concerned individuals and organizations in a timely manner and advise them accordingly of the outcome.

Recipients

- Minister for Lands
- Secretary for Department of Lands and Physical Planning

Reasons

- The DLPP did nothing to address the issue on improper issuance of licenses over Section 36 Allotments 1-6 and 21 – 26 to Solar Industries Limited when Lord Mayor for Kimbe Town, Managing Director for Kimbe Bay Shipping and the Ombudsman Commission brought to its attention.

Recommendation No 4

The Ombudsman Commission recommends that the Secretary for the DLPP should revoke the licenses issued to Solar Industries Limited for breaching the License Conditions. This should also apply to all Planning Permission Applicants that do not comply with license conditions.

Recipients

- **Minister for Lands**
- **Secretary for Department of Lands and Physical Planning**

Reasons

- Section 125 (6) of *Land Act 1996* states that *a license granted under this Division may be revoked by the Minister for failure to comply with, or for a contravention of, the conditions of the license.*
- The DLPP failed to revoke the licenses issued to Solar Industries Limited to do feasibility Studies for engineering purposes when it erected the fence and collected fees from vendors selling second hand clothes.

Recommendation No 5

The Ombudsman Commission recommends that the Secretary for the DLPP should discipline Provincial Land Advisor Ben Madiu and any lands officers found soliciting or accepting gifts from Planning Permission Applicants when facilitating licenses and State leases.

Recipients

- **Minister for Lands**
- **Secretary for Department of Lands and Physical Planning**

Reasons

- General Order paragraph 15.19 (h) states that *an officer commits a disciplinary offence (of minor or serious nature), if he or she solicits or accepts a free award, gratuity or gift in connection with the discharge of his official duties (other than his/her official remuneration).*
- Provincial Land Advisor Ben Madiu accepted gifts of K100 cash from Freddie Kumai, an agent of Solar Industries Limited for producing him the Land Inspection Report.



7. CONCLUSION

Good and desirable governance of the public institutions as well as the nation is dependent upon good and sound management and decisions being made by those placed in responsible positions. Good public officials and managers understand their roles and responsibilities and perform their duties within the ambit of the law that governs their conduct. Public officials who are empowered by law make decisions that will affect the lives of individuals must ensure that they carry out their duties in good faith and in compliance with the laws.

Public officials must exercise due diligence, honesty and dedication in the work they are entrusted with. Inconsistency in decision making or non compliance with relevant laws creates doubt in the minds of the public that the decision maker has been influenced by outside sources and forces not conducive to good governance and accountability. Professional negligence by public officials must be dealt with seriously.

Some characteristics of good governance necessary to eliminate bad administrative practices include honesty, diligence, consistency, competency, compliance with established laws and procedures, and standing up to political interference.

This Report highlights irregularities in the land allocation and lease processes the DLPP followed to issue commercial license over Section 36, Allotments 1-6 and 21 – 26 to Solar Industries limited to do feasibility study for commercial purposes. The Report also highlights the DLPP not taking any remedial administrative actions when the anomalies relating to the matter were brought to its attention and officers in the Department soliciting or accepting gifts from Planning Permission applicants.

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

The officers of the DLPP are to take note of the findings and recommendations made in this Report and make special effort to correct the irregularities for the good of the Department and the people of Papua New Guinea.

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

.....
RIGO LUA, LLB, OBE
CHIEF OMBUDSMAN

.....
PHOEBE SANGETARI ,LLB, LLM
OMBUDSMAN

**Port Moresby
14 January 2014**

8. RELEVANT LAWS

[8.1] CONSTITUTION OF THE INDEPENDENT STATE OF PAPUA NEW GUINEA

Five National Goals and Directive Principles are proclaimed in the preamble to the *Constitution*. No. 4 relates to natural resources and the environment.

4. Natural resources and environment

We declare our fourth goal to be for Papua New Guinea's natural resources and environment to be conserved and used for the collective benefit of us all, and be replenished for the benefit of future generations.

WE ACCORDINGLY CALL FOR -

- (1) wise use to be made of our natural resources and the environment in and on the land or seabed, in the sea, under the land, and in the air, in the interests of our development and in trust for future generations; and
- (2) the conservation and replenishment, for the benefit of ourselves and posterity, of the environment and its sacred, scenic, and historical qualities, and
- (3) all necessary steps to be taken to give adequate protection to our valued birds, animals, fish, insects, plants and trees.

Section 148 of the *Constitution* is concerned with the functions and responsibilities of Ministers.

- (1) Ministers (including the Prime Minister) have such titles, portfolios and responsibilities as are determined from time to time by the Prime Minister.
- (2) Except as provided by a Constitutional Law or an Act of the Parliament, all departments, sections, branches and functions of the Prime Minister is politically responsible for any of them that are not specifically allocated under this section.
- (3) Subsection (2) does not confer on a Minister any power of direction or control.

Section 25(4) obliges the Ombudsman Commission to take the National Goal and Directive Principles fully into account in call cases as appropriate.

In its investigations into the alleged wrong conduct of public bodies and public officials the Ombudsman Commission has a duty under Section 219(1) and (2) to take into account amongst other things the National Goal and Directive Principles.

In this particular case the Ombudsman Commission has the duty to ensure that the decision to rezone the land from a public institutional land to a commercial land would ensure that wise use is made of this land will benefit of the future generations of Papua New Guineans in mind.

Section 219 of the *Constitution* lists the functions of the Ombudsman Commission. The first of these functions is:

- a) to investigate, on its own initiative or on complaint made by a person affected by any conduct on the part of any governmental body or an officer or employee of any such body specified by or under an Organic law in the exercise or function vested in it or him by law in cases when the conduct is or may be wrong, taking into account amongst other things, the National Goals and Directive Principles...

[8.2] LAND ACT 1996

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

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

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

Other relevant provisions are set out below:

SECTION 2- INTERPRETATION

IN this Act, unless the contrary intention appears-

"Public purpose" means—

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

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

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

DIVISION 1.—STATE LEASES GENERALLY

1. GRANT OF STATE LEASES.

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

2. STATE LEASES NOT TO BE INCONSISTENT WITH LEASE FROM CUSTOMARY LANDOWNERS.

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

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

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

68. ADVERTISEMENT OF LANDS AVAILABLE FOR LEASING.

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

69. DUTY TO ADVERTISE STATE LEASES.

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

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

DIVISION 5.— BUSINESS AND RESIDENCE LEASES.

92. GRANT OF BUSINESS AND RESIDENCE LEASES.

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

93. TERMS OF LEASES.

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

94. SPECIFICATION OF CLASSES OF BUSINESS.

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

95. LAND IN PHYSICAL PLANNING AREAS

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

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

PART XVI.—LICENCES.

DIVISION 1.—LICENCES GENERALLY.

125. GRANT OF LICENCE.

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

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

DIVISION 2.—LICENCES OVER RESUMED LAND.

126. GRANT OF LICENCE OVER RESUMED LAND.

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

[8.3] PHYSICAL PLANNING ACT 1989

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

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

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

Other relevant provisions are set out below:

SECTION 2- APPLICATION.

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

17. FUNCTIONS OF THE NATIONAL PHYSICAL PLANNING BOARD.

- (1) The National Physical Planning Board shall consider and determine—

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

56. LAND FOR PUBLIC PURPOSES.

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

71. ZONING OF PHYSICAL PLANNING AREAS.

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

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

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

73. DEVELOPMENT IN REDEVELOPMENT ZONES.

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

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

- (1) Subject to this section, a person who carries out development, or uses a building or land, in a zone for a purpose that is not an authorized purpose in relation to the building or land is guilty of an offence.
- (2) Where—
 - a) a building or land was, at any time, for a period of not less than 60 days within the period of six months before the date of a Board's decision to publish the relevant notice of zoning under Section 71, used for a purpose that is not an authorized purpose in relation to the building or land; or
 - b) a building in a zone was, at the date of a Board's decision to publish the relevant notice of zoning under Section 71, under construction and intended to be used for a purpose that is not an authorized purpose in relation to the building, or land may, subject to Subsection (3), continue to be so used, or may be so used, as the case may be, after the date of publication of the relevant notice in the National Gazette.
- (3) Subsection (2) ceases to apply to and in relation to a building or land—

- a) on the discontinuance for a period of six months of its use for the purpose referred to in that subsection; or
- b) in the case of a building—on its destruction.

75. PLANNING PERMISSION REQUIRED PRIOR TO SUBDIVISION OR CONSOLIDATION.

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

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

- (1) An application for planning permission shall be made in the first instance—
 - (a) where the development concerned is in a province and a Provincial Physical Planning Board has been established in that province and is not suspended—to that Provincial Physical Planning Board; or
 - (b) where the development is in the National Capital District—to the National Capital District Physical Planning Board; or
 - (c) where the development is in a province and no Provincial Physical Planning Board has been established or the Provincial Physical Planning Board is suspended—to the National Physical Planning Board.
- (2) Where a development straddles the boundary between—
 - (a) two or more provinces; or
 - (b) a province and the National Capital District, a separate application shall be made in respect of each province, and in respect of the National Capital District, in accordance with Subsection (1), and each application shall be accompanied by a statement specifying to which other Boards application has been made.

77. APPLICATION FOR PLANNING PERMISSION.

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

78. PROCEDURE OF BOARD FOLLOWING APPLICATION.

- (1) A Board shall, after receiving an application for planning permission under Section 77—
 - (a) consider the application as soon as possible; and
 - (b) subject to Subsection (3), make its decision on the application within the prescribed time from the receipt of the application by the Board, unless the Board has obtained from the applicant an extension of time.
- (2) Where an application relates to a matter to be considered and determined by the National Physical Planning Board—
 - (a) a Provincial Physical Planning Board; or

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

79. DECISION OF BOARD.

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

80. BOARD TO GIVE NOTIFICATION OF DECISION TO APPLICANT.

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

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

87. REVOCATION OR MODIFICATION OF PLANNING PERMISSION BY AGREEMENT.

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

[8.4] GENERAL ORDER NO. 15

DISCIPLINE

GENERAL INTRODUCTION

Use of Disciplinary Action

- 15.1 Each Departmental Head is responsible under the Public Services (Management) Act for discipline in his or her Department. Disciplinary action will not be used solely as punishment. It is often more important, to use disciplinary action as a means of improving an officer's performance or behavior.
- 15.2 Broadly speaking, there are two types of circumstances which require disciplinary action:
 - (a) The first involves a specific incident, e.g. a stealing offence where disciplinary action is used primarily as a punishment. In these cases, the Departmental Head needs to assess how serious the offence has been and sets the punishment accordingly.
 - (b) The second circumstance occurs where an officer's behavior or performance deteriorates in some way over a period of time, e.g. poor attendance or negative attitude to work. In these circumstances, disciplinary action should serve initially as a warning with the main aim being to secure an improvement in the behavior or performance. If the officer continues to misbehave, or performs poorly, what was initially minor becomes more serious and may finally result in dismissal. It is important therefore, that minor disciplinary problems are identified and dealt with at an early stage before they become serious. It is also important to allow an officer sufficient time and assistance to try to improve his performance or behavior before further disciplinary action is taken.

Application of Disciplinary Provisions

- 15.3 The provisions of this General Order apply to all officers of the Public Service, other than those employed on contracts. Disciplinary provisions in respect of contract officers are dealt with under their respective General Orders No.11 or No.18.

Role of the Public Services Commission

- 15.4 If disciplinary action has been taken against any officer, he/she has the right to have that decision reviewed by the Public Services Commission, as stated in General Order 1.

Disciplinary Powers and authorizations

- 15.5 The Public Services (Management) Act 1995 makes each Departmental Head responsible for discipline within his or her Department. A Departmental Head may delegate to another senior officer in writing, the following disciplinary responsibilities:

- (a) to deal with minor disciplinary offences, including the laying of charges and issuing written reprimands and warnings; and/or,
- (b) to lay serious disciplinary charges against an officer, and to recommend to the Departmental Head appropriate action and penalties; and/or,
- (c) to suspend an officer on pay, when the Departmental Head is not available.

An acting Departmental Head on relief basis shall not exercise any disciplinary powers unless he is formally appointed by the Head of State.

Types of Offences

- 15.6 Offences fall into two categories, either (a) criminal offences in which case the Public Services (Management) Act sets down a strictly defined course of action to be followed; or (b) other types of offences in which case the Departmental Head must decide how serious the offence is and act accordingly. Both types of offences are considered separately below.

CRIMINAL OFFENCES

Suspension

- 15.7 Where an officer is charged by the Police with a criminal offence he/she shall:
- (a) where the offence relates to the duties of his/her office, be suspended without pay by his/her Departmental Head; or
 - (b) where the offence does not relate to the duties of his/her office, be suspended on full pay by his Departmental Head, unless he/she absconds or the Secretary, Department of Personnel Management, after receiving a report from the Departmental Head, orders otherwise; and

- (c) notwithstanding (a) and (b), the officer shall be charged concurrently with a Public Service offence, wherever possible, to allow him or her to conduct an effective defense, which will be recorded administratively.

N.B. Criminal Offences are defined under the Criminal Code and the Summary Offences Acts, and for the purpose of charging an officer under the Public Services (Management) Act, with a serious disciplinary offence, the definition of Serious Disciplinary Offence under Section 50 of the Public Services (Management) Act shall be utilized.

- 15.8 In deciding whether an offence relates to the duties of his office, the Departmental Head should assess the nature of the offence and its relationship with the officer's duties. For example, if an officer occupies a position which involves responsibility for money and he is charged with stealing money either in his job or outside, then this relates to the duties of his/her office and he/she should be suspended without pay. Similarly, a driver who is charged with a serious driving offence should also be suspended without pay.
- 15.9 A notice of suspension of an officer charged with a criminal offence shall be made on Form 15.1

Conviction

- 15.10 Where the officer is convicted of a criminal offence which relates to the duties of his/her office, he/she shall be dismissed from the Public Service by the Departmental Head on Form 15.2.
- 15.11 Where the officer is convicted of an offence which does not relate to the duties of his office, then he shall be dismissed from the Public Service by the Departmental Head on Form 15.2, unless the Departmental Head decides otherwise, for good reason.
- 15.12 The Departmental Head may take into account the severity of punishment imposed by the Courts for the offence committed and decide not to dismiss the officer. The officer shall be notified of the removal of his suspension on Form 15.3. The Departmental Head may however, impose a less severe punishment, including removal from office, demotion and/or surcharge.

Reappointment of Certain Convicted Persons

- 15.13 Where a person has been convicted of a criminal offence and terminated, and subsequently:
 - (a) the conviction is quashed; or
 - (b) he receives a pardon; or
 - (c) the conviction is otherwise nullified; or
 - (d) he is released from prison as a result of an inquiry into the conviction;that person may be re-appointed to the Public Service by the Secretary, Department of Personnel Management.
- 15.14 Re-appointment shall be to an office not lower in classification to that occupied immediately prior to dismissal. The Secretary, Department of Personnel Management, may dispense with any period of probation if he thinks fit.

- 15.15 An officer re-appointed under this provision shall be deemed to have continued in the Public Service as if he had not been dismissed, but had been on leave of absence without pay from the date of dismissal to the date of re-appointment. That period of absence shall form part of the officer's period of service for all purposes.

Non-Conviction

- 15.16 If an officer, who has been charged with a criminal offence, is not convicted of that offence (or any other offence), then the Departmental Head shall notify the officer of the removal of his suspension on Form 15.3.
- 15.17 If the officer has been suspended without pay, he shall be paid all monies owing during his period of suspension effective from the first day of that suspension.
- 15.18 If given all the evidence available, the Departmental Head believes that the officer has committed a disciplinary offence as defined in paragraph 15.19, notwithstanding his non-conviction by the Courts, the Departmental Head may charge the officer with a disciplinary offence under the normal procedures, as described herein.

OTHER DISCIPLINARY OFFENCES

- 15.19 An officer commits a disciplinary offence, (of a minor or serious nature), if he or she:
- (a) commits a breach of the Act (including the General Orders); or,
 - (b) except as authorized in the course of official duty, uses or divulges, directly or indirectly, any confidential information concerning public business or any matters of which he has official knowledge; or,
 - (c) except with the consent of the Head of State, acting on advice, or of an officer authorized for the purpose by the Head of State, acting on advice, publicly comments on administrative action or the administration of a Department; or,
 - (d) willfully disobeys or disregards a lawful order made or given by a person having authority to make or give it; or,
 - (e) is negligent or careless in the discharge of his/her duties; or,
 - (f) is inefficient or incompetent from causes within his/her own control; or,
 - (g) uses intoxicating liquors or drugs to excess; or,
 - (h) solicits or accepts a free reward, gratuity or gift in connection with the discharge of his official duties (other than his/her official remuneration); or,
 - (i) is guilty of disgraceful or improper conduct in his/her official capacity or otherwise; or,
 - (j) does or says anything in violation of the oath or affirmation made on joining the Public Service (Form 3.1 or 3.2 in General Order 3); or,
 - (k) seeks the influence or interest of any person in order to obtain promotion, transfer or other advantage; or,

- (l) supplies to another officer, for use for any purpose referred to in paragraph (k), a certificate or testimonial relating to official capacity or the performance of official duties.
- 15.20 Having determined that an offence has been committed, the Departmental Head, must decide whether he considers the offence to be minor or serious and act accordingly.

Minor Offence

- 15.21 A minor offence is one in which the Departmental Head determines that only a caution or reprimand is warranted.
- 15.22 If the Departmental Head has reason to believe that an officer has committed a minor disciplinary offence, he/she may formally lay charges (or inform the officer verbally) and call upon the officer for an explanation as to the alleged offence.
- 15.23 If after considering the explanation, the Departmental Head or his/her delegate considers that the offence has been committed, he may caution or reprimand the officer concerned.
- 15.24 The caution or reprimand should be made on Form 15.4. A copy should be sent to the officer and a copy placed on his personal file.
- 15.25 If the caution or reprimand has been made by an officer other than the Departmental Head, a copy shall also go to the Departmental Head.

Serious Offence

- 15.26 If the Departmental Head is of the opinion that an officer has committed a serious disciplinary offence, he/she must first decide whether the nature and seriousness of the offence warrants suspension.

Suspension

- 15.27 Suspension in this context, refers to suspension from duty, (i.e. the Departmental Head may suspend an officer from his/her current office and transfer him to another office if he/she considers it appropriate). Suspension in this context is with pay unless the officer absconds or the Secretary, Department of Personnel Management, orders otherwise. In the event that a Departmental Head wishes to suspend an officer without pay, he/she shall obtain prior approval from the Secretary, Department of Personnel Management.
- 15.28 The Departmental Head may suspend an officer, immediately (that is, before laying the charge), or at the same time as laying the charge, or after the laying of the charge. The suspension should be served on Form 15.5.
- 15.29 The main circumstances where it may be necessary to suspend an officer are as follows:
- (a) where the officer's continued presence may influence investigations into the alleged offence;
 - (b) where the officer's continued presence at work presents a risk to life or property;

- (c) where the Departmental Head considers it likely that the officer may repeat the alleged offence.

15.30 The Departmental Head may, also remove the suspension at any time pending the determination of the charges and he must do so if the charge is not sustained. This shall be completed on Form 15.3

Nature of Charge

15.31 The Departmental Head shall, as soon as practicable, formally lay a charge on an officer on Form 15.6.

Reply to Charge

15.32 The officer who is being charged, is required to reply to the charge within 7 working days from the date of receipt of the charge. If the officer fails to reply within this period, he/she may be deemed to have admitted guilt of the charge and a decision made accordingly.

Decision on Charge

15.33 If after considering reports relating to the offence and charge, the reply and explanation (if any) of the officer charged and any further report that he thinks necessary, the Departmental Head concerned, is of the opinion that the charge has been sustained, he may:

- (a) fine the officer a sum not exceeding 20 per cent of the officer's gross fortnightly pay; or
- (b) reduce the officer's pay by one salary point or more, so long as the officer's pay remains within the salary range of the officer's designation, or
- (c) reduce the officer to an office having a lower classification, and to a salary within that classification; or
- (d) in addition to or instead of imposing a punishment specified in paragraph 15.33 (a), (b) or (c), transfer the officer to some other office or locality; or
- (e) dismiss the officer from the Public Service. In this case the officer shall receive no notice period, but shall receive Furlough Leave if he/she is entitled to it, and refund from POSF, if applicable.

The five types of punishment indicated above are in approximate order of seriousness.

15.34 The Departmental Head shall notify an officer on Form 15.7 of a punishment imposed under paragraph 15.33 above. If the Departmental Head finds that the charge is not substantiated, he/she shall notify the officer that the charge has been dismissed on Form 15.8.

15.35 (a) The officer must be notified of the decision within 21 working days of the Departmental Head receiving the officer's reply to the charge.

- (b) In circumstances where there is no decision within 21 days, the charges are deemed null and void.

Abscondment

- 15.36 Where an officer does not report for duty without good reason for a period of 2 weeks, then the officer will be charged with a serious disciplinary offence under 15.19 (a). If the address, or whereabouts, of the officer is unknown, then the procedure described in paragraph 15.39 shall be used.
- 15.37 If no response is received from the officer within 7 days of receipt of the charge (allowing for normal postal delivery, if applicable), then the officer shall be dismissed.
- (b) a monetary consideration; or
 - (c) such other consideration as may be agreed between the parties concerned; or any combination of Paragraphs (a), (b) and (c).

These are the relevant laws General Order used to determine whether the conduct of the government officers involved in the licensing of Section 36 Allotment 1-6 and 21-26 in Kimbe was wrong or defective.

