

**REPORT OF THE
ADMINISTRATIVE INQUIRY
INTO THE LAND
TRANSACTIONS AND DEALS
INVOLVING THE FIVE
PORTIONS OF LAND BY THE
MINISTRY OF DEFENCE AND
THE MINISTRY OF PUBLIC
ENTERPRISES AND STATE
INVESTMENTS**

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ADMINISTRATIVE INQUIRY
INTO SALE AND PURCHASE OF LAND PORTIONS AND FINANCIAL TRANSACTIONS
INVOLVING STATE AGENCIES AND STATE OWNED ENTERPRISES

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TRANSACTIONS AND DEALS INVOLVING THE FIVE PORTIONS OF
LAND BY THE MINISTRY OF DEFENCE AND THE MINISTRY OF
STATE ENTERPRISES AND INVESTMENTS

The Honourable Peter O'Neill, CMG, MP
Prime Minister of the Independent State of Papua New Guinea
& Chairman of the National Executive Council
Office of the Prime Minister
P O B ox 639
Waigani
National Capital District
Papua New Guinea

Dear Prime Minister

I have the Honour of submitting the Report of the Administrative Inquiry into the land transactions and deals involving the five portions of land by the Ministry of Defence and the Ministry of State Enterprises and Investments.

Mr John **Anthony** Griffin, Q.C.
Chairman

Dated this 7th day of October 2017.

2. Establishment of Inquiry

- 21 On 7 March 2017, the National Executive Council, chaired by the Honourable Peter O'Neill, Prime Minister of Papua New Guinea, appointed the Administrative Inquiry into the transactions relating to the acquisition of land for the relocation of the Papua New Guinea Defence Force land and naval bases, particularly the Murray Barracks, Taurama Barracks and the Lancron Naval Base, all of which had been located in Port Moresby [see Annexure 2(1)].
- 2.2 The establishment of the Administrative Inquiry was necessitated by the general public's perception and outcry that the sums paid to acquire the parcels of land were exorbitant and the processes adopted were highly irregular. Matters raised in the public outcry are referred to below.
- 2.3 It is understood that due to the then pending Supreme Court litigation as to the validity of the *Commissions of Inquiry Act* (Chapter 31), the National Executive Council considered it prudent and cost-effective to constitute an inquiry of an administrative nature as opposed to a Commission of Inquiry appointed under the *Commissions of Inquiry Act* (Chapter 31).

3. Terms of Reference

- 3.1 The Terms of Reference were settled in the following terms:

INQUIRY INTO LAND TRANSACTIONAL DEAL INVOLVING FIVE PORTIONS OF LAND BY THE MINISTRY OF DEFENCE AND MINISTRY OF STATE ENTERPRISE & INVESTMENTS

To: Mr John Griffin QC

STATEMENT OF CASE

Introduction

Serious allegations of impropriety in five (5) land transaction deals have been raised on the floor of Parliament and the Prime Minister is required to take appropriate action to the Parliament through the National Executive Council, NEC.

The principles of accountability and transparency in the conduct of government business have been seriously questioned in the land transactions warranting the Prime Minister at the authority of the National Executive Council to take firm action. The Prime Minister has appointed Mr John Griffin QC to inquire into and report on the five transactions concerned.

The appointment of the Inquiry will not prevent the Police Fraud Squad, the Ombudsman Commission and the Department of Personnel Management from carrying out investigation under their legislative powers.

Background

The allegations are that between 2014 and 2016 five (5) land acquisition transactions were entered into by the Ministries of Defence and State Enterprise & State Investments on behalf of the Papua New Guinea Defence Force (PNGDF) under alleged controversial circumstances. The land transactions which are the subject of this Inquiry are related to and concerned with the National Government decision made in 2012 to relocate two Papua New Guinea Defence Force barracks and two other facilities to new locations. These are Murray Barracks, Taurama Barracks, the Lancron Naval Base at the Fairfax Harbour waterfront and the PNGDF Engineering Battalion in Lae.

Following the National Executive Council Decision of 2012, certain portions of land in the Central Province were identified for the relocation by the various agencies of Government including Department of Defence and State Enterprises and Investments. The intention of the Government was for the Department of Defence as the lead agency to work in close consultation and cooperation with relevant government agencies to implement the NEC Decision on relocation in a planned and coordinated manner.

However, it has come to light recently that land acquisitions were made by Ministry of Defence which included the funding assistance from Ministry of State Enterprise between 2014 and 2016. These land transaction deals involving four (4) portions of land in Kairiku-Hiri District of the Central Province and another portion near ATS in NCD have become controversial raising serious questions on accountability and transparency in the transactions. The portions of land are described as:

- a) Portion 422, Milinch of Manu, Fourmil of Aroa, Central Province;*
- b) Portion 423, Milinch of Manu, Fourmil of Aroa, Central Province;*
- c) Portion 406, Milinch of Manu, Fourmil of Aroa, Central Province;*
- d) Portion 154, Milinch of Manu, Fourmil of Aroa, Central Province; and*
- e) Portion 698, Milinch Granville, Fourmil Port Moresby.*

It is alleged that the Ministries and Departments of Defence and State Enterprise and State Investments colluded with the proprietors of the said portions of land and paid millions of Kina in both compensation and purchase price, and that the proprietors were either associates, relatives and/or friends of persons holding responsible positions within the Ministries of Defence; State Enterprise. Lands and Physical Planning, Kumul Consolidated Holdings Limited, Motor Vehicle Insurance Limited, State Solicitor and the Valuer General.

Objective

The objective of the Inquiry is to inquire into the land transactions referred to above and establish if there was impropriety in the transactions, The Inquiry will enquire into the transactions relating to each of the portions of land and establish facts related to issues of statutory compliance as regards the processes and procedures followed and payments made in respect of each of the portions of land concerned. The inquiry will seek to establish if there was impropriety on the part of any of those directly or indirectly involved in the transactions including State Ministers, Heads of Departments and State Agencies, Government officials and CEOs and Boards of State owned companies.

The Inquiry is to be completed within the time given and present its final report to the Prime Minister for tabling at the National Executive Council.

TERMS OF REFERENCE

I, Hon. Peter O'Neill, CMG, MP, Prime Minister of Papua New Guinea, Chairman of the National Executive Council reposing confidence in your integrity and ability to do so, hereby require Mr John Griffin QC to inquire into the following matters:

- a) Inquire into and establish whether the National Government through its agencies approved for Defence to acquire the land portions identified as:
 - 1) Portion 422, Millinch of Manu, Fourmil of Aroa, Central Province;*
 - 2) Portion 423, Millinch of Manu, Fourmil of Aroa, Central Province;*
 - 3) Portion 406, Millinch of Manu, Fourmil of Aroa, Central Province;*
 - 4) Portion 154, Millinch of Manu, Fourmil of Aroa, Central Province; and*
 - 5) Portion 698, Millinch Granville, Fourmil Port Moresby.**
- b) Inquire into and establish facts related to the role played by the Ministries for Defence and State Enterprises and Investment, and other relevant Government Departments and their Departmental Heads including Departments of Defence, Lands and Physical Planning, Justice and Attorney General, Kumul Consolidated Holding Limited, Motor Vehicle Insurance Limited, Central Supply and Tenders Board in the acquisition of land portions 154, 406, 422 and 423 at Manumanu in the Kairiku Hiri District of Central Province and Portion 698 in the NCD.*
- c) Inquire into and establish whether there was statutory compliance in the land acquisition process.*
- d) Inquire into and establish the total cost of the acquisition of the five portions of land.*
- e) Inquire into and establish whether there were any circumstances of conflict of interest in the land deals.*
- f) Inquire into and establish whether there were any wrong doings by Ministers and the senior officers involved in the land transactions deal, in the best interest of the State*
- g) Inquire into whether there was any impropriety in the transactions and as to who benefited from the transactions.*

AND I FURTHER direct that the Inquiry be conducted in the National Capital District, or at such other places in Papua New Guinea or elsewhere as to you may appear necessary and expedient.

AND I FURTHER direct that you shall commence with the Inquiry without delay and proceed therein with all dispatch and render to me your final report within 4 weeks from the date of commencement of inquiry.

Dated this 7th day of March 2017

Hon, Peter O'Neill, CMG, MP

Prime Minister & Chairman of the National Executive Council

4, Appointment of Personnel

- 41 Mr John Griffin Q.C. was appointed Chairman of the Administrative Inquiry.
- 4.2 The Secretary to the Administrative Inquiry was Mr Mathew Yuangu.
- 43 Mr Gibson Geroro was appointed Leading Lawyer.
- 44 Mr Herbert Wally was appointed Lawyer Assisting.
- 45 Mr Jerry Fruanga was appointed Assistant Investigator.

5. Background to PNG Defence Force land and naval bases relocation

- 51 When the Administrative Inquiry was established, the Department of Defence furnished it with documentation.
- 52 A covering letter from the Department of Defence dated 20 April 2017 also set out background matters: see Annexure 5(1).
- 5.3 It was made clear that the matters the subject of the Administrative Inquiry arise primarily from the decision in 2012 to relocate military and naval installations away from Port Moresby. The relocation involved a number of decisions being made by the NEC, which commenced with a formal decision to relocate Murray Barracks and the PNG Defence Force landing craft base (the Lancron Naval Base) to new locations. Those locations were plainly intended to be selected by the Defence Force.
- 5.4 The Defence Force letter stated that the Defence Force looked for possible sites. It was said that there was a desire *"to obtain sites which had State Leases for them to be acquired easily as we did not want to be entangled in customary land issues with landowners causing unnecessary delay in the program"*.
- 5.5 The letter stated that the Department of Defence liaised with the State Solicitor and Department of Lands and Physical Planning on the means and process involved to obtain the selected land. It stated that *"we were advised to use the compulsory acquisition process."*
- 5.6 The letter then referred to land purchases at Manumanu including Portions 422, 423 and 406, Portion 406 being said to be the one selected for the maritime base.
- 5.7 The land the subject of the Administrative Inquiry consisted of four portions (being Portions known as 154, 406, 422 and 423) located at Manumanu. The other Portion, namely 698, was not part of the exercise of purchasing land for the purpose of relocating Murray Barracks and the Lancron Naval Base. It was land situated adjacent to the Port Moresby airport. Portion 154 was not purchased. It was vacant State land, a State Lease over the land having expired in 2006.
- 5.8 During 2015, Portion 422 was compulsorily acquired for K7.4 million, Portion 423 was acquired for K9.2 million, and Portion 406 was acquired for K46.6 million.
- 5.9 The transaction that was first brought to public attention was the purchase of Portion 406 for K46.6 million. Portion 406 consisted of 847.25 hectares, and the price reflected a per hectare rate of approximately K55,000. Portions 422 and 423 were smaller allotments but the per hectare rate paid for the land was much the

same in their case. The details of these transactions are taken up in the body of the Report.

- 5.10 The fifth property was not one which was involved in the relocation of bases outside Port Moresby. It is dealt with separately in Section 13 of the Report.
- 5.11 It is appropriate at this point to make reference to the decisions of the NEC that were made in conjunction with the base relocations.
- 5.12 As stated above, in 2012, a decision was taken to relocate the naval and military bases to new locations outside of Port Moresby. The decision was made on 18 October 2012 when the National Executive Council in NEC Decision number 70/2012, *"Approved to relocate the Lancron Naval landing base and Murray Barracks to a new location outside Port Moresby"*.
- 5.13 The Decision also approved the establishment of a project management team to co-ordinate and oversee the relocation. It also directed the Minister for Lands and Physical Planning to assign officers to work with the project management team in the conduct of valuation, physical planning, surveying, land lease and registration of land.
- 5.14 Importantly it *"allocated funding of K50 million to facilitate the relocation of the PNGDF landing craft base and Murray Barracks including the purchase of land and some initial construction works on roads and other engineer services."*
- 5.15 The NEC also directed the Minister for Treasury and Minister for Planning and Monitoring to appropriate K50 million in the 2013 development budget to Defence for the purpose of relocating the PNGDF land craft base and Murray Barracks.
- 5.16 It gave approval to the Defence Council to sell the existing PNG Defence Force land craft base and other non-core assets and negotiate concessional loans to fund the new military base outside Port Moresby.
- 5.17 It approved the entry by the Defence Council and the Department of Lands and Physical Planning into financial negotiation with parties interested in acquiring the existing landing craft base and acquiring or leasing Murray Barracks properties, with all proceeds of sale to be used for the purpose of developing the new site for relocation.
- 5.18 It stated that PNG Ports would have the first call to purchase the block of land at Lancron Naval Base at a price to be discussed and agreed by all parties.
- 5.19 The NEC Decision number 70 of 2012 is Annexure 5(2).

- 5.20 By NEC Decision number 46/2013, on 21 February 2013, the NEC directed the PNG Department of Defence and PNG Ports Corporation to urgently convene and negotiate a sale contract for the Lancron Naval wharf, and directed the IPBC Board and management to issue all statutory and legislative approvals to facilitate the transaction.
- 5.21 NEC Decision number 46/2013 is Annexure 5(3).
- 5.22 By its Decision number 168/2014 made on 12 June 2014, the NEC noted that it had approved the relocation of Murray Barracks and Lancron Naval Base in Decision 70/2012.
- 5.23 By that same Decision number 168/2014, the NEC added Taurama Barracks to the relocation arrangements. The Decision is Annexure 5(4).
- 5.24 By Decision number 95/2015 made on 29 April 2015, the NEC approved the transfer of title to the existing Port Moresby precinct from PNG Ports to the Independent Public Business Corporation (IPBC). The Decision stated that the NEC approved IPBC's plans to purchase the Lancron Naval base site and develop it. It also stated that *"IPBC will lease the land back to PNG Ports so that they can continue operation at Motukea for a fee of KI per annum."* NEC Decision number 95/2015 is Annexure 5(5).
- 5.25 By Decision number 6/2016 made on 4 February 2016, the NEC noted the existence of a Memorandum of Understanding between Kumul Consolidated Holdings and the PNG Defence Force, for the relocation of HMPNGS Basilisk (Lancron Naval Base).
- 5.26 Kumul Consolidated Holdings (KCH) was the successor to IPBC. Both were State entities.
- 5.27 The meeting also *"directed KCH to factor the PNGDF Basilisk relocation site, planning, funding, and construction requirements as part and partial (sic) of KCH funding for the whole Port Moresby Port Redevelopment"*. NEC Decision 6/2016 is Annexure 5(6).
- 5.28 By Decision number 360 of 2015 made on 10 December 2015, the NEC approved the 2016 Annual Business Trust (GBT) and Kumul Consolidated Holdings Operating and Expenditure Budget as part of the 2016 Annual Plans pursuant to Section 34 of the *Kumul Consolidated (Amendment) Act 2015* and by its Decision 208 of 2016, it approved the transfer of the Lae Development Port Project funds to the general business trust which constituted a variation of S34(5) of the *KCH Act (as amended)*. The NEC Decision 360/2015 is Annexure 5(7).
- 5.29 Two decisions of the Defence Council should also be mentioned at this point.

5.30 By Defence Council Order number 28 of 2014 made on 4 June 2014, the Defence Council referred to the construction of a new Military Barracks and approved the following minimum requirements for military barracks:

1. *the land must be within 50km out of Port Moresby City;*
2. *the total land area must be not less than 150 hectares and not more than 300 hectares either in parts or as a whole. The minimum for a parcel of land is 100 hectares and preferably within close proximity to each other.*
3. *the land must be accessible by road;*
4. *the land must be near water source for water supply;*
5. *the land must have terrain and jungle for warfare training and shooting range;*
6. *the land must not be under disputes and preferably have a defined ownership by way of registration and Title.*

5.31 It also resolved that the land ownership be transferred to the Defence Force. The Defence Council Order number 28 of 2014 is Annexure 5(8).

5.32 By its Decision number 1 of 2016 made on 22 January 2016, the Defence Council approved the Memorandum of Understanding between PNGDF and Kumul Consolidated Holdings (KCH) for the relocation of the Basilisk Maritime base. The Defence Council Order 1/2016 is Annexure 5(9).

Public announcement and outcry

5.33 On 1 February 2017, the *Post Courier* reported that Prime Minister O'Neill had ordered an investigation into two senior ministers over an alleged land fraud contract worth K46.6 million. The Ministers were Dr Fabian Pok, Minister for Defence, and Mr William Duma, Minister for Public Enterprises and State Investments. It was reported that the Prime Minister had referred the matter to Police for criminal investigations.

5.34 Allegations were made to the effect that the property was acquired for the Defence relocation for K46.6 million. The Prime Minister spoke in terms of seeking to recover the amounts paid to the company from which the land was acquired. The property was Portion 406 Manumanu.

5.35 The Prime Minister was also reported as stating the Chief Secretary (Isaac Lupari) was to investigate the matter.

5.36 The Opposition Leader, Hon. Don Polye, was reported as describing the deal, purchase, payment and the involvement of State institutions and various Ministers as fraudulent.

- 5.37 There was the outcry from persons claiming to be customary landowners, who were contending that their interests had been adversely affected.
- 5.38 The Prime Minister assured the traditional landowners, however, that no customary interests had been affected.
- 5.39 On Friday, 3 February 2017, the Opposition Leader was reported as having lodged a complaint with the Ombudsman Commission regarding the decision of Kumul Consolidated Holdings to pay the K46.6 million for Portion 406.
- 5.40 The leader of the Peoples Progress Party, Hon Ben Micah, was ordered to be ejected from Parliament by the Acting Speaker after he raised questions implicating Dr Pok and Mr Duma.
- 5.41 Hon. Kerenga Kua was quoted as saying that *"there were multiple issues, multiple layers of fraud, multiple layers of non-compliance of all the requisite procedures that one has to follow."*
- 5.42 On 7 February 2017, it was reported that the Prime Minister had recommended that the NEC suspend Defence Secretary, Mr Vali Asi, Lands and Physical Planning Secretary, Mr Luther Sipison, Valuer General, Mr Gabriel Michael, Kumul Consolidated Holdings Managing Director, Garry Hersey, and MVIL Managing Director, Jerry Wemin.
- 5.43 On 8 February 2017, the NEC directed the suspension of all the above-named persons as well as the Land Titles Commissioner, Mr Benedict Betata [Annexure 5(10)].
- 5.44 The Chairman of the Central Supply and Tenders Board, Philip Eludeme, was also suspended.
- 5.45 The Prime Minister was quoted as saying that *"he had decided to establish a Commission of Inquiry to examine the allegations that have been levelled against senior ministers and senior members of departments."*
- 5.46 He reiterated that he had referred the matter to the Police Commissioner to enable the Fraud Squad to carry out its own investigations and he also said that he had referred the matter to the Ombudsman Commission.
- 5.47 The *Post Courier* reported on 10 February 2017 that a march of Manumanu, Megabaira and Pinu landowners of the Kairuku-Hiri District had not eventuated the previous day due to heavy police presence. The protest march was said to be a protest against illegal land grabbing in Central Province, particularly the Manumanu area.

- 5.48 It was, on 8 March 2017, that the Prime Minister announced the establishment of an "Administrative Inquiry". The *Post Courier* is reported as saying that the Prime Minister was not able to set up a Commission of Inquiry because of the questioning of the validity of the *Commissions of Inquiry Act*. He said the appointment would not prevent the ongoing investigations by the Police Fraud Squad, the Ombudsman Commission, and the Department of Personnel Management.
- 5.49 There were also allegations raised about the Portion 406 transaction in PNG Blogs.
- 5.50 Both Dr Fabian Pok and Mr William Duma were reported as denying the allegations of fraud.
- 5.51 Mr Duma was given considerable press in the *Post Courier* on 2 February 2017. He was reported as saying that there was nothing fraudulent in the process of acquiring the land for relocation of the Defence Force facilities. He said that the Government started the process through the NEC Decisions to relocate the military facilities. This had occurred before he became Minister for Public Enterprises and State Investments. He said the transactions were in line with the NEC Decisions, and that the Department of Lands and Physical Planning, Department of Defence and KCH were merely implementing the Government's decisions.
- 5.52 He said the NEC had already given approval to KCH for the purchase of the Naval Base before he became the Minister for Public Enterprises and State Investments. He identified Portion 406 as being suitable for the relocation of the military barracks and associated facilities. He said the PNGDF had requested the compulsory acquisition of Portion 406 and that the PNGDF requested KCH to assist in the payment of the K46.6 million to the former owner. Mr Duma said he did not at any stage direct or influence any of the directors of KCH to make the decision to take over the prime land on which the naval base was located. Mr Duma contended no one had specified which of the transactions had appeared illegal and fraudulent.
- 5.53 On Wednesday 7 February 2017, KCH is said to have provided a brief to the Police Commissioner, and on 8 February 2017 KCH provided a brief to the Ombudsman Commission.
- 5.54 On 13 February 2017, the Police Commissioner said that the matter had been raised with the Director of Fraud and Anti-Corruption.

6. Executive Summary

- 61 The Administrative Inquiry centred on five parcels of land, especially three parcels of land located at Manumanu said to be required by the Department of Defence for relocation of naval and military bases then located in Port Moresby.
- 62 The occupancy of a fourth parcel of land at Manumanu mentioned in the Terms of Reference (Portion 154) was at all relevant times already in the ownership of the State. It was unaffected by an existing State Lease as the former State Lease over the land had expired in 2006 and had not been renewed. The State gave that occupancy to the Defence Department on 9 December 2015. The issues raised in this Inquiry do not therefore directly arise in relation to that land.
- 63 The Terms of Reference also identified a parcel of land near the airport in Port Moresby which was purchased by the Department of Defence. The Administrative Inquiry considered that the purchase of that land did require investigation. However, that land was not purchased for the purpose of the relocation of the naval base or barracks away from Port Moresby, and the transaction relating to it was outside the central theme of the Statement of Case and Terms of Reference.
- 64 There was a public outcry which centred at that time on the compulsory acquisition of Portion 406, which had been compulsorily acquired for the sum of K46.6 million. It was alleged to be a corrupt transaction and that the Government had paid an excessive amount to purchase the land. In statements made subsequently to suspended heads of departments, it was alleged that there had been corrupt conduct on the part of officers of the Defence Department and other departments, in particular the Lands Department. The heads of relevant departments were suspended, as were two ministers, Messrs Pok (Defence) and Duma (Public Enterprises and State Investments).
- 6.5 Shortly after the Administrative Inquiry was set up, Ms Sheila Sukwianomb, Director Policy & Legal Branch, of the Lands Department, advised the Inquiry that the relevant files relating to the properties the subject of the Inquiry had disappeared.
- 66 The Administrative Inquiry took the view that that fact alone demonstrated that there had been considerable impropriety which almost certainly included financial inducements to public servants.
- 67 The Administrative Inquiry also considered that there were other features that pointed to a similar conclusion. These features are dealt with in the body of the Report.

- 68 At the time the Administrative Inquiry was appointed, the validity of the *Commissions of Inquiry Act* was under challenge in the Supreme Court. The argument had been heard, but the Court had reserved its judgment. The judgment was handed down recently, upholding the legislation.
- 6.9 The Government appointed this Inquiry as an "Administrative Inquiry". The issues had already been referred to the Police, and the Ombudsman Commission, for investigation, and those investigations are understood to be continuing.
- 6.10 It must be understood that the Administrative Inquiry did not have the powers of investigation of a Commission of Inquiry. As a result, the Inquiry could not subpoena witnesses or documents, and it could not examine persons on oath. In essence, the only material put before the Inquiry were official documents and such departmental documents as the departments chose to give to the Inquiry. Some members of the public gave information and documents as well.
- 6.11 The Administrative Inquiry reached the conclusion that the amount paid by the State for Portion 406 was plainly excessive. It considered that the most plausible explanation was financial inducement causing manipulation of the valuation process.
- 6.12 The Portion 406 transaction was the one which involved by far the highest amount of compensation. It was acquired by way of compulsory acquisition from Kurkuramb Estates Ltd, whose sole director and shareholder was one Christopher Polos. Examination of the Portion 406 transaction showed unusual features other than the amount paid for the land, a notable one being that the interest in the State Lease was acquired less than three months after it had been granted to Kurkuramb Estates Ltd. Kurkuramb Estates Ltd paid valuation fees only to acquire the land, and within three months a compulsory acquisition process was initiated which resulted in it being awarded K46.6 million by way of compensation for its acquisition at the instance of the Department of Defence.
- 6.13 The lawyers for Mr Polos, Bradshaw Lawyers, forwarded to the Inquiry a letter which advised the Inquiry that Mr Polos would not assist the Inquiry. Mr Polos was within his rights in taking that stance because, as stated above, the Administrative Inquiry had no power to compel attendance or cooperation. The non-cooperation of Mr Polos, as well as the lack of its powers to inquire into the affairs of Kurkuramb Estates Ltd were severely limiting features in the investigative capacity of the Administrative Inquiry in this matter.
- 6.14 The Inquiry also related to the earlier compulsory acquisition of two properties that were adjacent to Portion 406, namely Portion 422 and Portion 423. They had been acquired slightly earlier, and the Administrative Inquiry reached the conclusion that the amount paid for those allotments was also excessive. In those cases, the land had been purchased in 2011 for an amount which represented

K488 per hectare, whereas the amount of compensation awarded in 2015 represented approximately K55,000 per hectare.

- 6.15 Insofar as the information provided to the Inquiry constituted potential evidence, it was all of a circumstantial nature. It saw no actual instance of information as to payments made to other persons. This perhaps is not surprising since most of the information given to the Inquiry was from the Departments. However, the Inquiry thought that the most plausible explanation for the size of the government valuation of the properties was financial inducement.
- 6.16 At the time the Inquiry was appointed, the matters that are the subject of the Inquiry had already been referred to the Police and the Ombudsman Commission. As distinct from the Administrative Inquiry, the Police and the Ombudsman Commission have substantial investigative powers. The Administrative Inquiry was of the view that, in the circumstances, findings of impropriety ought only be made after full investigations have been made by bodies with coercive powers. Full investigation was required to establish the extent of the wrongdoing and the persons involved.
- 6.17 Despite the limitations it operated under, the Administrative Inquiry was however able to establish a large number of facts relating to the transactions, and has been able to indicate areas in which, in its view, further investigation is plainly required.
- 6.18 The actions of the Government in obtaining the properties brought about a number of claims by persons who were asserting customary interests in the land. The full text of the claims are annexures to the Report. The Administrative Inquiry concluded, however, that all of the land in question had been acquired by the Colonial Administration, and in all instances at some stage the properties had become subject of State leaseholds. State leases were current in four of the five properties at the time of their acquisition at the instance of the Defence Department, and as a result, the Administrative Inquiry reached the conclusion that none of these claims are viable.
- 6.19 For reasons that will be apparent from the Report, the Administrative Inquiry considered that there would plainly be a case of corruption against Mr Duma if it were the case that he controlled the affairs of Kurkuramb Estates Ltd.
- 6.20 For reasons that will also be evident from the Report, the Administrative Inquiry found it very strange that the direction to the Lands Department to compulsorily acquire Portion 406 came from Minister Pok, especially as there was no Defence Council recommendation for the acquisition of Portion 406 and there had been no feasibility study. The Administrative Inquiry thought the allegation of corruption against Dr Pok would be strengthened if Mr Duma were shown to have been in control of the affairs of Kurkuramb Estates Ltd. The reasons for this conclusion appear in Section 11.

6.21 The position of the heads of departments involved in the matter is considered in Section 13 of the Report.

7. Lack of Cooperation by Kurkuramb Estates Ltd

- 7.1 On 18 May 2017 the Inquiry received a letter from Messrs Bradshaw Lawyers. The letter indicated that Bradshaw Lawyers were acting on behalf of Kurkuramb Estates Ltd. The letter made reference to the establishment of the Inquiry, and noted that the term, "g", of the Terms of Reference for the Inquiry stated: *"Inquire into whether there was any impropriety in the transactions and as to who benefitted from the transactions"*.
- 7.2 Bradshaw Lawyers stated that their client was concerned about the above term, particularly the requirement that the Administrative Inquiry should inquire *"as to who benefitted from the transactions"*.
- 7.3 Part of the letter pointed out that the client of Bradshaw Lawyers was a company, and the client's shareholder was a private individual.
- 7.4 The letter proceeded to state that *"our client therefore cannot be subject to"* an Administrative Inquiry. The letter concluded: *"We are instructed that our client won't agree to or participate in any investigation or inquiry into or concerning terms (0 above)"*.
- 7.5 The analysis of the transactions made by the Administrative Inquiry shows that the most significant transaction, especially in money terms, was the transaction involving Kurkuramb Estates Ltd, namely the compulsory acquisition of Portion 406 at Manumanu. Also, Item (8) in the Terms of Reference is an aspect of the company's affairs with which the Inquiry was particularly concerned.
- 7.6 Not having the powers of a Commission of Inquiry, the Administrative Inquiry was not in a position to dispute the content of the letter from Bradshaw Lawyers. The consequence was that no information, or documentation, could be obtained from either Kurkuramb Estates Ltd or its principal, Christopher Polos. The Administrative Inquiry was not able to require Mr Polos to attend and give evidence on oath.
- 7.7 It will be evident however from the analysis of the Portion 406 transaction in this Report that the inquiry into Kurkuramb Estates Ltd, its registered principal and its documentation would be an essential part of any proper investigation into the compulsory acquisition of Portion 406.
- 7.8 The Administrative Inquiry wishes to make it clear that Mr Polos was perfectly entitled to take the stance indicated above. In circumstances in which the Administrative Inquiry was not entitled to require Mr Polos to cooperate, Mr Polos was not bound to assist the Administrative Inquiry.
- 7.9 The letter of 18 May 2017 from Bradshaw Lawyers is Annexure 7(1).

8. Portion 154

- 81 One of the areas of land which the Department of Defence proposed to utilise for the relocation of the military installations is described as Portion 154. That land is proximate to Portions 406, 422 and 423, Manumanu. Unlike the other parcels of land at Manumanu referred to in the Terms of Reference, Portion 154 was not acquired for the purpose of relocation of military installations. Instead, as a previous State Lease over the property had expired in 2006 with no further subsequent grant of lease the land, it was capable of being applied to Defence use by means of the usual procedure followed in such instances, namely grant of a Certificate of Occupancy by the State in favour of the Department of Defence. That is what occurred in this case. A Notice of Reservation was signed by Mr Sipison, the Secretary for Lands and Physical Planning, on 9 December 2015 [Annexure 8(1)], and advertised in the *National Gazette* on 10 December 2015 [Annexure 8(2)].
- 82 A submission was made to the Administrative Inquiry by Mr Java Beraro. Mr Beraro stated he was the representative of "Magabaira Village — Kabadi" customary landowners.
- 83 The accompanying statement disputed the State title to the "Southern portion of Portion 154, Land in Kabadi, Central Province". [Annexure 8(3)]
- 84 As previously stated, the Administrative Inquiry was advised on 20 June 2017, that the Lands Department files relating to Portion 154 were among the missing files at the Department. That information was part of broader information given to the Administrative Inquiry by Ms Sheila Sukwianomb, Director — Policy & Legal Services, Department of Lands, as to the "files missing" in the department.
- 85 Accompanying documentation to Mr Beraro's statement included a letter from Central Provincial Administration Lands & Planning dated 24 January 2011. The letter was signed by Gelu Raga, Lands Officer [Annexure 8(4)].
- 86 Mr Raga stated that Portion 154 was acquired State land. He stated that the nature of the title was as documented in a document marked "DA213". He stated that the area was 2023.43 hectares, as shown by registered Survey Plan 48-19.
- 87 He stated that *"the status of land under such acquisition is usually fully purchased land"*.
- 88 Mr Raga further stated that *"a registered manual lease"* for 99 years had issued in favour of Kanosea Estate in 1907. The term of the lease was from 19 April 1907 to 19 April 2006.
- 89 Mr Raga concluded that the land was *"State land with an expired registered lease"*.

8.10 The Department of Lands has stated that the document "DA213" is a missing document. Despite the fact that that document cannot be produced for examination, the Administrative Inquiry sees no reason for going behind the content of Mr Raga's letter.

8.11 Accordingly, the Administrative Inquiry concluded that the claim described by Mr Beraro is not a viable claim.

8.12 Other customary rights claims are dealt with in Section 14.

9. Portions 422 and 423

- 9.1 Portions 422 and 423 may be dealt with together.
- 9.2 The recent history of Portions 422 and 423 Manumanu is that, prior to 2011, there was an allotment of land in Manumanu which was owned by Seromu Investments Ltd. Its property description was Portion 389, Milinch of Manu, Fourmil Aroa. That land had been the subject of State Leases commencing in 1968. It was proximate to Portion 154, the area referred to in the previous section of this Report, and also proximate to Portion 406, which will be dealt with in Section 10.
- 9.3 In 2011, companies associated with Mr Philip Eludeme agreed to purchase part of Portion 489, for the sum of K200,000. The land was then subdivided. Three portions were created, Portion 422, Portion 423, and Portion 2724.
- 9.4 As a result of these arrangements, Portion 422 became the subject of a new State Lease issued in favour of Flystone Amusements Ltd, and Portion 423 became subject to a lease to Kosi Investments Ltd. Those companies were the companies associated with Mr Eludeme.
- 9.5 The land purchased by Flystone Amusements Ltd contains 138.45 hectares. It was initially called Portion 2722, but it became Portion 422. The portion acquired by Kosi Investments Ltd was initially Portion 2723, and it became Portion 423. It contained 170.5 hectares.
- 9.6 The third portion, being the portion that was not subsequently compulsorily acquired, contained 100 hectares. It appears to have retained its portion number of 2724.
- 9.7 The total area of the land purchased by the Eludeme interests was therefore 409 hectares. The purchase represented a per hectare purchase price of K488. Mr Eludeme said he had incurred survey fees of K60,000 following the purchase and also that he had fenced the land.
- 9.8 The two portions of land the subject of the Inquiry were advertised for sale in November 2014 through Mr Eludeme's agent, Belden Memi & Associate Valuers, Auctioneers and Real Estate Agents.
- 9.9 Belden Memi & Associate Valuers, Auctioneers and Real Estate Agents advertised Portions 422 and 423 for sale in November 2014. The advertisements were published on 18 November 2014 and 20 November 2014. The advertisements were identical and one of the advertisements is Annexure 9(1). Portion 422 was advertised in the following terms:

"138.45 Hectares, boundary fence, access roads, 1 x cow paddock under construction, 2 water ponds, adjacent to Hiritano Highway, fairly flat all through."

- 9.10 Portion 423 was advertised as follows:

"170.85 Hectares, boundary fence, access roads, leads to sea, adjacent to Hiritano Highway, and Portion 2722."

- 9.11 A written submission was prepared in relation to this matter on behalf of the Eludeme interests by Messrs Sirae and Co. Lawyers dated 11 May 2017.
- 9.12 In the submission, it is stated that, on 5 March 2015, Belden Memi & Associate Valuers, Auctioneers and Real Estate Agents rejected an offer by the Department of Defence to purchase the properties [Annexure 9(2)]. It is said that the Department of Defence offered K7.2 million for Portion 422 and K9.2 million for Portion 423 [Annexure 9(3)].
- 9.13 That was followed by the issue of a Notice of Compulsory Acquisition in respect of each of the pieces of land. That notice, which also embraced other properties not relevant to this matter, was signed by Romilly Kila Pat as delegate of the Minister for Lands and Physical Planning. The Notice, which is annexed [Annexure 9(4)], declared that the land was being *"compulsorily acquired for public purposes and purposes connected with the defence or public safety of the Papua New Guinea being for the relocation of the Defence Force Murray Barracks"*.
- 9.14 The Notice of Compulsory Acquisition was issued on 22 April 2015, following which Belden Memi and Associates indicated, by letter dated 27 April 2015 to the Defence Council, that the owners would agree to sell the land. The Defence Council had approved the purchase of the two Portions on 27 February 2015 [Annexure 9(5)].
- 9.15 The Lands Department issued Notices to Treat dated 22 November 2015 to Flystone Investments Ltd [Annexure 9(6)] and Kosi Investments Ltd [Annexure 9(7)]. These notices were signed by Mr Luther Sipison, the then Secretary of Lands and Physical Planning in his capacity as delegate of the Lands Minister. Presumably this step was taken because Notices to Treat had not been served earlier in the year, notwithstanding the issue of Notices of Compulsory Acquisition at that time.
- 9.16 A Notice of Compulsory Acquisition of Portion 422 and Portion 423 was reissued on 30 November 2015 [Annexure 9(8)], after the Ombudsman had, on 9 October 2015, issued a clearance for the transaction to proceed on a compulsory acquisition basis. The transactions were finalised on 3 December 2015 by way of instruments entitled Sale and Transfer of Land [Annexure 9(9)] and Deed of Release [Annexure 9(10)]. Subsequently, a Certificate under Section 13(6) of the *Land Act* 1996 was published in the *National Gazette* on 24 December 2015 dispensing with the notice to treat process [Annexure 9(11)].
- 9.17 As stated above, Mr Eludeme was, until his suspension on 8 February 2017, Chairman of the Central Supply and Tenders Board. The Central Supply and Tenders Board had a prior involvement with the matter in that, at an earlier stage, the Board advertised publicly for procurement of land for the Department of Defence's intended purposes, and a tender process was put into place.

9.18 Mr Eludeme' s lawyers dealt with this issue in the written submissions. They stated:

"As far as our client is aware, in respect of CSTB tender process, CSTB advertised publicly sometime back for procurement of land for the Department of Defence 's intended purpose, however, there were no bids for the tender. There being no bids for the tender, the Department of Defence was advised of the same and that there was nothing else the CSTB can do under its tender process. That it was now up to the Department to acquire land on its own."

9.19 Mr Eludeme also disclosed a letter he wrote to the Ombudsman Commission dated 10 July 2015. In that letter Mr Eludeme disclosed as *"major transactions"* the compulsory acquisition of Portion 422 for K7.2 million from Flystone Amusements Ltd by the Defence Force of Papua New Guinea, and the compulsory acquisition of Portion 423 from Kosi Investments Ltd by the Defence Force for the sum of K9.2 million. He disclosed that the two companies were owned by him and his family members, and he stated that the interest in those companies had also been disclosed in his annual returns to the Chief Ombudsman. He further stated that he disclosed the transactions under section 4 of the *Organic Law on Duties and Responsibilities of Leaders and Public Officers*.

9.20 He asked the office to inform him urgently should it wish to inquire, or require further information, or did not agree with the transactions going through.

9.21 The letter concluded:

"Please be advised that should I not have any word from you within the next 14 days, I will assume [the Ombudsman Commission] has no issues and will allow the transactions to proceed."

9.22 Copies of the letter were sent to various people, including Mr Romilly Kila Pat, the then Secretary of the Department of Lands and Physical Planning.

9.23 Mr Eludeme also disclosed to the Inquiry the reply of the Acting Chief Ombudsman. The reply letter referred to the fact that the Ombudsman Commission had, on 1 October 2015, granted Mr Eludeme approval to go ahead with the major transactions he declared to the Commission his letter of 10 July 2015. The letter had permitted Mr Eludeme to proceed with his arrangements with the relevant government entities and the relevant banks *"in finalising those business transactions"*.

9.24 The Commission proceeded to advise Mr Eludeme that if, in the course of conducting his leadership duties and responsibilities in the future, a conflict of interest situation arose, he should notify the Ombudsman Commission as soon as possible.

- 9.25 The letter thanked Mr Eludeme for notifying the Commission of the *"major transactions involving you and your companies"*.
- 9.26 Mr Gabriel Du Karap of GDK Valuers and Property Consultants, who is a private registered valuer, valued Portion 422, as at 1 March 2015, at K7.2million. He valued Portion 423 at K9.2 million as at 1 March 2015.
- 9.27 Mr Du Karap's valuations are Annexures 9(12) and 9(13) respectively.
- 9.28 These valuations represented K52,004.33 per hectare for Portion 422, and K53,848.41 per hectare for Portion 423.
- 9.29 The wording on the Du Karap valuations would suggest that Mr Du Karap made his valuations on behalf of the Department of Defence, but apparently he was instructed by Mr Eludeme's agent, Belden Memi and Associates. Mr Moses Kila, the Assistant Valuer General, signed valuations at slightly higher figures than Mr Du Karap's figures. Mr Kila's valuations are Annexures 9(14) and 9(15) respectively.
- 9.30 What the Panel finds strange about the transactions with respect to Portions 422 and 423 is the valuation evidence.
- 9.31 Mr Eludeme's agent put forward to the Lands Department the valuations prepared by Mr Du Karap, a former Lands Department employee who had become a private valuer. His valuations reflected a value in excess of K50,000 per hectare. For reasons advanced elsewhere in this Report, the Panel considers that that value is vastly excessive.
- 9.32 It is not unusual in valuation for the owner's valuer to put forward a high valuation. As has often been said, valuation is not an exact science, and the owner's valuer can legitimately put forward a valuation which is as high as he can genuinely support by way of argument.
- 9.33 One then expects the acquiring authority's valuer to produce a valuation which at least exposes the fact that the owner's valuation is or may be excessive.
- 9.34 In this case, Mr Kila's valuation did not achieve that effect because Mr Kila's valuation, in the case of both properties, was even higher than the owner's valuation. One would expect Mr Kila's valuation to place emphasis on the fact that the same land had been purchased by Mr Eludeme's interests in 2011 for a price which reflected K488 per hectare, particularly as Mr du Karap's valuation must have placed little if any emphasis on that.
- 9.35 The earlier transaction reflecting K488 per hectare was said by Mr Eludeme to be a forced sale. However, it was also a sale in the market place, and it was the sale of the same land only a few years earlier. Ordinarily, it would have to be viewed as an extremely significant indicator of value, if not the most significant indicator.
- 9.36 The Administrative Inquiry was of the view that the most plausible explanation for Mr Kila's valuation and behaviour was financial inducement. On Mr Gabriel's

account, Mr Kila had no right to carry out valuations for amounts over K500,000 at all. The valuations he produced on their face appeared to be stamped and signed in such a way as to convey the impression that they were prepared by the Valuer General. They give no indication that they were prepared by Mr Kila. In the case of Portion 422 and 423, he produced valuations which could not have taken into account the previous sale of Manumanu land, of which the land being valued was a part. He claims to have relied, for comparable sales, on land in, and in the vicinity of, Port Moresby, whereas this land was 80 kilometres away.

9.37 When first interviewed by the Administrative Inquiry he did not mention his valuation of Portions 422 and 423, but only his valuation of Portion 406.

9.38 Mr Kila stated that he had received no financial benefit from his valuations.

9.39 For his part, Mr Eludeme claimed that he had nothing to do with the valuation exercise.

9.40 The valuation issue is further addressed in Section 12. The Administrative Inquiry questioned both Mr Kila and Mr Eludeme. Significantly, however, the Administrative Inquiry was not entitled to cross-examine either Mr Eludeme or Mr Kila on oath. That was a restrictive feature of the limited investigative powers which applied to the Administrative Inquiry and which was of special relevance in this instance.

9.41 The Portion 422 and 423 transactions, therefore, must be placed alongside other items which require further investigation.

Mr Eludeme — Panel's Conclusions

9.42 As stated above, Mr Eludeme informed the Administrative Inquiry that he had nothing to do with the valuation of Portions 422 and 423. He also said that the Du Karap valuations were obtained by his agent.

9.43 It would appear surprising that Mr Eludeme would have taken no interest in the valuations, particularly as he was the Chairman of the Central Supply and Tenders Board.

9.44 In the compulsory acquisition of Portion 422 and Portion 423 it was plainly a highly desirable factor, from the point of view of the owner of the land, that Mr Kila should produce valuations which were in higher sums than the amounts contained in the valuations of the private valuer, Mr Du Karap. That factor in real terms rendered the situation one in which it could not be successfully argued by the State that the compensation should be any less than Mr Du Karap's figures.

9.45 Neither of those factors however proves that Mr Eludeme provided Mr Kila with financial inducement to produce unduly favourable government valuations of Portions 422 and 423.

9.46 As the principal of the corporate owners of Portions 422 and 423, Mr Eludeme would have benefited from any action directed at inflating the assessment of the value of Portions 422 and 423 for the purpose of the compulsory acquisition of those properties. Accordingly, further investigation of these transactions should entail further investigation of the circumstances surrounding the compulsory acquisitions of Portions 422 and 423, including the relationship (if any) between these transactions and the Portion 406 transaction. That is not to say that it is likely that further investigation will establish a case against Mr Eludeme. Further investigations may in fact establish the reverse, namely that there is no case against Mr Eludeme. But, for the reasons advanced, further investigation is necessary.

10. The Portion 406 Transaction

(1) Former State Lease

10.1 In 2009 a State Lease was granted over Portion 406 in favour of M&M Investments Pty Ltd. The commencement date was 6 August 2009.

10.2 The lease was made subject to the following conditions:

- (a) The lease shall be used bona fide for Agriculture (Mix Farming) purpose.*
- (b) Rent shall be a One Thousand Five Hundred (1,500.00) Kina per annum for the first ten (10) years of the lease at which time the annual rental will be reassessed at five per centum (5%) of a reappraised valuation of the subject land or at whatever other rate that maybe decided as being appropriate at the time and such reappraisals shall be made every ten (10) years thereafter.*
- (c) Of the land suitable for cultivation the following proportions shall be planted in a good and husbandlike manner with a crop or crops of economic value which shall be harvested regularly in accordance with sound commercial practice.*
 - i. One-fifth in the first period of five (5) years of the term;*
 - ii. Two-fifths in the first period of ten (10) years of the term; and*
 - iii. Three fifths in the first period of fifteen (15) years of the term.*
- (d) Provided always that at any time during the first period of two (2) years it appears to the Land Board that reasonable efforts are not made to fulfil the improvements conditions, it may recommend the Minister for Lands, may if he thinks fit by Notice in the National Gazette in accordance with the provisions of the Land Act No. 45 of 1996 forfeit the lease accordingly.*
- (e) The lessee or his agent shall take up residence or occupancy of his/her block within six (6) months from the date of grant.*

10.3 A map attached to the State Lease showed the area of Portion 406 to be 847.25 hectares.

10.4 A Notice issued by the Secretary for Lands set out the application fees payable by M&M Investments Pty Ltd as follows:

| | |
|-------------------------|-------------|
| • Survey fee | K600 |
| ■ Lease preparation fee | <u>K 50</u> |
| Total | K650 |

10.5 There was an accompanying document prepared by Mr Chris Kabaru, the then Valuer General. That document stated that the land was located outside the

physical planning development area and was classified as Rural and suitable for agricultural development. It stated that no services were connected to the property and all amenities like shops, schools, banks, general hospital, post office and local market were provided from Port Moresby.

- 10.6 The document stated that the land is located approximately 75 kilometres west of Port Moresby along the Hiritano Highway.
- 10.7 The Valuer General noted that the land was "*generally level throughout*", a feature which the Panel observed on inspection of the property.
- 10.8 The unimproved value of the land upon which the annual rental was based, was assessed at K30,000 as at 25 February 2009. This assessment of the unimproved value of the land amounted to a per hectare value of slightly more than K35 per hectare.
- 10.9 An accompanying Inspection Report stated that there were no improvements on the land. It stated there once existed improvements consisting of a house, sheds, gates, fencing and windmill. These items were all removed by people living nearby after a cattle ranch had ceased its operation on the land in the early 1990s. The Inspection Report states that the previous cattle ranch was known as the Rorona Cattle Ranch. The report also stated that the Portion was mostly flat, unoccupied and undeveloped.
- 10.10 M&M Investments Pty Ltd was said to be a 100% national owned company of which the principal owners were from the Kenosi area.
- 10.11 The Inspection Report revealed that the company had lodged an expression of interest letter which contained its proposals for the development of the area plus a business plan. The business plan revealed that the company wished to establish a cattle project.
- 10.12 The company had indicated it would secure funding of about K2 million through the Livestock Development Corporation, a State-owned entity. In addition, it was indicated that the applicant would like to procure stock and rebuild the ranch on the property.
- 10.13 Mr George Michael Sariman was a director of M&M Investments Pty Ltd. Mr Sariman provided the Administrative Inquiry with a number of development and business proposals which had been prepared for Portion 406, one of which was for the prospective cattle ranch development. Another development proposal was a Poultry development including a feed mill. Another proposal was a cocoa development and the fourth was a subdivision proposal.
- 10.14 It is a reasonable inference that none of the proposals was put into place before the Lands Department took action to forfeit the M&M Investments Pty Ltd lease in 2014.
- 10.15 Mr Sariman says that title was granted to his company on 13 October 2009, following which he undertook a number of development plans and feasibility

studies, and that the company consulted various financiers, potential development partners and other potential stakeholders.

10.16 He says that, in 2011, his company commenced the "Rorona Redevelopment Project" as planned, and was in dialogue with the Livestock Development Corporation. He says that the project did not materialise when there was a change in the hierarchy in that entity.

10.17 He states that the company then went into planning and researching other agriculture options. He says the company was approached by a number of potential development partners and financiers. Whilst those negotiations were still pending the company undertook a chicken farming and poultry processing operation, and cocoa development. He says the company also engaged the services of a surveyor to do a ground re-survey of the land providing for subdivision into 5 portions.

(2) *Forfeiture of M&M Investments' State Lease*

10.18 Mr Sariman states that M&M's surveyor was attending to the matter of the registration of the prospective subdivision when he saw a Notice to Show Cause dated 28 February 2014, a forfeiture notice dated 14 April 2014, and a gazettal of the forfeiture notice G151 of 24 April 2014.

10.19 Mr Sariman said his company had not received or seen a notice of any kind in relation to the forfeiture.

10.20 He subsequently saw a further notice, namely a "Notice of Compulsory Acquisition", which was published in *The National* newspaper.

10.21 Mr Sariman states he was shocked to learn that the company's land had come into the ownership of Kurkuramb Estates Ltd.

10.22 On 23 February 2016, the company engaged Wariniki Lawyers to act on its behalf.

10.23 M&M Investments Pty Ltd instituted proceedings in the National Court challenging the forfeiture of the land by the Department of Lands, and the subsequent compulsory acquisition. The defendants named in the proceedings include the Independent State of Papua New Guinea, Kurkuramb Estates Ltd and Kumul Consolidated Holdings.

10.24 The Administrative Inquiry does not propose to address the entitlement of the State to effect the forfeiture of the interests of M&M Investments Pty Ltd partly in view of the fact that that issue is before the National Court. Furthermore, the unavailability of the Lands Department file would render any attempted resolution of that issue difficult, as would the fact that the Administrative Inquiry is not in a position to resolve factual issues that appear to be involved, in particular as to whether a notice of forfeiture was served on M&M Investments Pty Ltd in accordance with the requirements of s. 122 of the *Land Act* 1996.

- 10.25 The Administrative Inquiry does however propose to comment on the separate issue of the motive behind the forfeiture action taken by the Lands Department. The issue in that regard is whether the forfeiture action was genuine forfeiture action on the basis that M&M Investments Pty Ltd had not carried out the improvement conditions or whether, on the other hand, officers of the Lands Department effected the forfeiture for an ulterior motive or motives.
- 10.26 In support of the view that the forfeiture was a bona fide forfeiture procedure is the fact that an inspection of the land at about the time of the forfeiture would probably have revealed non-compliance with the improvement covenants. As indicated above, the companies planned enterprises had not come to fruition as planned. Furthermore, Mr Sariman has not suggested that he kept the Lands Department informed of the progress he was making in his endeavour to establish a commercial enterprise.
- 10.27 On the other hand, there was no evidence that the Lands Department made any comprehensive inquiry to ascertain how the company was progressing. The action of the Lands Department is also inconsistent with the Panel's belief that there were and are many cases in Papua New Guinea of landowners who have not complied with improvement conditions but whose land has not been forfeited.
- 10.28 The forfeiture may have occurred because the Lands Department officers had knowledge of the prospect that Portion 406 might become of interest to investors, and may even have had advance warning of potential interest in the area by the Defence Department. They may have wished to clear M&M Investments Pty Ltd off the title for that reason. An illicit motive behind the forfeiture is more consistent with the removal of the file relating to the forfeiture action. If the forfeiture had been a genuine forfeiture based on non-compliance with covenants, there would appear to be no reason why there would be any interest in causing the removal of the file relating to that transaction.
- 10.29 An associated possibility is that Portion 406 was actually identified by Lands Department officers as a property that could be recommended to Defence for relocation purposes, and that the forfeiture action was taken for that reason. Of course, another possibility is that the forfeiture was genuine, but an astute observer of State Lease forfeitures observed that the forfeited land was land which was or might become of interest to the Defence Department.
- 10.30 The file relating to the advertising of the land and its grant to Kurkuramb is missing, although it is known that a State Lease was granted to Kurkuramb of Portion 406 on 30 July 2015 [Annexure 10(1)]. It is also a very unusual feature that Portion 406 was advertised for tender in circumstances in which adjacent land (i.e. Portions 422 and 423) was being sought by the Department for defence purposes. If the forfeiture of Portion 406 was genuine, one would have thought the inquiries would have been made of the Defence Department at that point in time. The Lands Department and its valuers were involved in the acquisition of 422 and 423. Those acquisitions took place over almost the whole of 2015, the very period in which the grant of Portion 406, and the subsequent compulsory acquisition of Portion 406, occurred.

(³) The Defence Decision in Favour of Manumanu

10.31 On 27 February 2015 the Defence Council, by decision number DCO 05/2015 had approved Portions 2722 and 2723, Milinch of Manu, and Fourmil Aroa, for the new Defence Force site. The Defence Council noted that Portion 2722 comprised 138.45 hectares and its sale value was K9million. It also noted that Portion 2723 comprised 170.85 hectares and its sale value was K 13million. As indicated previously Portion 2722 subsequently became Portion 422, and Portion 2723 became Portion 423, and those Portions were acquired later in 2015 from Flystone Amusements Ltd and Kosi Investments Ltd. As previously stated, these Portions are adjacent to Portion 406. The detail of the purchase of those portions was set out in section 8.

10.32 In relation to the relocation of the Lancron Naval Base the Defence Council noted:

"... that the relocation of the Lancron Naval Base, HMPNGS Basilisk has recommended investigation under the same program and may have a bearing on the budget however discussions is ongoing with PNG Ports to provide upfront payment for the sale of the Lancron which can be used to acquire land for the new site."

10.33 On 25 August 2015 a meeting occurred between Mr Hersey, the Managing Director to Kumul Consolidated Holdings, a State Enterprise, the Commander of the PNGDF, the Defence Secretary and the Defence Project Director, to discuss the relocation of the Lancron Naval Base. Apparently further meetings occurred over the next 12 months, but the records of any such meetings have not been made available. Kumul Consolidated Holdings is a statutory corporation established under the *Independent Public Business Corporation of Papua New Guinea (Kumul Consolidated Holdings (Amendment Act) 2015*.

10.34 On or about 21 October 2015, presumably as a result of the above meetings, a non-binding Memorandum of Understanding ("MOU") was entered into between KCH and the PNGDF to facilitate the relocation of the Lancron Naval Base. The MOU was to operate for a period of 12 months. The relevant terms were as follows:

"Article 4 The KCH to draft a Project Plan and Project Budget in relation to the efficient relocation of HMPNGS BASILISK from Lancron to a location to be nominated and selected by the Defence in accordance with the mechanisms set out in the said Project Plan and Project Budget. KCH will submit the Project Plan and Project Budget for review within 3 (three) months from the execution of this MOU

Article 5 The Defence will provide all the necessary information such as the facility requirements, concept plans, cost estimates etc. if

available, upon request by KCH to assist KCH in the preparation of the project plan and budget.

Article 6 The KCH and Defence are to jointly prepare a Business Case for review and adoption by the Parties within 3 (three) months from the execution of this MOU.

Article 7 Both parties to work together in implementing a Business Case for the sale of the navy base (Section 53 Allotment 9, Granville, and NCD) and to relocate to a new site."

10.35 It seems that no Project Plan and/or Project Budget was ever prepared as envisaged by the MOU.

10.36 Further, the Inquiry has sighted no "Business Case".

10.37 In a draft and unsigned submission to the Defence Council dated January 2016, the following was noted in relation to *"possible sites for the relocation of HMPNGS Basilisk"*:

"Possible sites

15. Since the agenda for the relocation of BASILISK was first mooted a number of persons and entities who have varying degree of interest in the relocation have proposed potential sites for the relocation of HMPNGS BASILISK These sites include:

15.1 Arutu Land, 226 hectares (Next to PNG Dockyard-Motukea)

15.2 Avenel Engineering Services, 10 hectares (Fairfax Harbour)

15.3 Rigo

15.4 Bootless Bay

15.5 Gaba-Gaba

15.6 Gavuone

15.7 Gabadi

16. The suitability of the sites however have been subject to normal military considerations such as strategic, tactical, logistic, base support and security etc. Initial Plans Branch analysis reveals the follows:

16.1 Gabadi — no detail available

16.2 Gavuone — Identified as not suitable

16.3 Gaba-Gaba — Details not available

16.4 Bootless Bay — Details not available

16.5 Rigo — Details not available

16.6 Avenel Engineering Services, 10 hectares (Fairfax Harbour) far too small; and

16.7 Arutu Land, 226 hectares (on offer to PNGDF)

17. Initial analysis reveals that the best option among all the possible sites being suggested is the Arutu Land comprising 226 hectares next to PNG dockyard — Motukea. Land ownership has been confirmed by three (3) Land Court cases, ILG registration and Landowners sponsored survey of the customary land

18. Arutu Land is on offer to PNGDF for the relocation of HMPNGS BASILISK Ownership issues of the other sites have not been established, and if required to do so may take a lengthy period of time."

10.38 The document is an example of the lack of mention of Portion 406 in Defence documentation. As will be apparent from the discussion below, the Defence Force was actively seeking to obtain land at Manumanu during 2015, and had in fact recommended the purchase of Portions 422 and 423 for that purpose on 27 February 2015. Yet Manumanu is not mentioned on the list.

10.39 By letter dated 15 October 2015 the Minister for Defence, Hon. Dr Fabian Pok MP, wrote to the Acting Secretary of the DLPP in the following terms:

"My Ministry and PNGDF have identified Portion 406 and 154, Milinch Manu, Aroa, Central Province as suitable locations for the construction of a new military barracks and associated facilities.

As Portions 406 and 154 are currently Agricultural Leases held by private interests I request the Department of Lands to compulsorily acquire these portions for the State (PNGDF) for military purposes under the compulsory acquisition process provided in the Land Act."

10.40 That statement was incorrect inasmuch as Portion 154 was always the property of the State, having reverted to the State when the earlier State Lease expired in 1907.

10.41 The Minister's response on 15 October 2015 appears to be the first time Portion 406 had been officially mentioned as a site. However, it will be recalled that on

27 February 2015 the Defence Council appears to have approved Portions 2722 and 2723 for the new Defence Force site. As stated above, those portions (now Portions 422 and 423 respectively) are adjacent to Portion 406 at Manumanu. Of course, it may well be that Defence had shown interest in the Manumanu area prior to 27 February 2015 and, as 27 February 2015 was the date of the approval of Portions 422 and 423 for that purpose, it would be surprising if that had not been the case. A review of facts given to the Prime Minister in this matter stated that it was in 2014 that the Defence Ministry and Organisation had identified the two portions of land that became Portion 422 and Portion 423 [See Annexure 10(2)].

10.42 The basis for the selection of Portion 406 is not clear. Its acquisition does not appear to have been endorsed by the Defence Council, and there is no information to suggest that its acquisition was ever supported by a feasibility study. Further, at Manumanu the Defence already had 2331 hectares available, namely 2023 hectares on Portion 154, 138 hectares on Portion 422, and 170 hectares on Portion 423. Further, Portion 406 was well away from the sea.

10.43 As indicated below, KCH appointed an Independent Committee to investigate allegations of misconduct by its Managing Director, Mr Hersey.

10.44 The Independent Committee appointed by KCH referred to the fact that Mr Hersey was advised that the PNGDF had acquired land adjacent to Portions 422 and 423, namely Portion 154, Milinch of Manu, Fourmil Aroa, Central Province. Such advice was given in February 2016.

10.45 Such advice was incorrect if only because, as stated above, Portion 154 was at all material times owned by the State, the earlier State Lease having expired in 2006. However, the advice demonstrated that Defence had realised for some time that it would be in order for it to use the vacant Portion 154 for Defence purposes.

10.46 The advice to Mr Hersey was in the following terms:

"... [the PNGDF] has also identified another portion of land located adjacent to those three (3) already acquired, that backs onto the sea there that would be very conducive for our new naval base to be relocated there.

That land is described as Portion 406, Milinch of Manu, Fourmil Aroa, Central Province which has been valued by the Valuer General for a sum of K46,600,000.00, and it has a total land area of 2000 hectares.

We have done all the process required by the Department of Lands to transfer the title of that agricultural State lease over to our organization already and now have it reserved for PNGDF purposes awaiting payment to be made to the former leaseholder so that it can give vacant possession of it [to] us.

There has been ongoing negotiations with PNG Ports Limited as your agent to purchase our Naval base at Port Moresby harbour since that NEC decision to

relocate it, and in that regard we propose that your organization purchase the new location (Portion 406, Milinch of Manu, Fourmil of Aroa, Central Province) for us to relocate our naval base there and we will liaise with the Department of Lands to transfer our title over Lancron Naval Base over to our organization to facilitate your redevelopment plan there to build Lakatoi city as you endeavour.

We leave this proposal unto your good self to bring before your board to deliberation and approval if all is in order."

10.47 The relevant letter is dated 26 February 2016 and co-authored by Mr Vali Asi, Secretary for Defence and Brigadier General Gilbert Toropo [See Annexure 10(3)].

10.48 The terms of the proposal from the Secretary of Defence and PNGDF Commander therefore provided that:

- (a) the PNGDF (through the State via the DLPP) had compulsorily acquired Portion 406 in accordance with the *Land Act* 1996;
- (b) compensation would be payable to the landowner for the compulsory acquisition, which would be paid by KCH on behalf of the PNGDF; and
- (c) in exchange for the payment of such compensation on its behalf, the PNGDF would arrange the transfer of ownership of the Lancron Naval Base to KCH.

10.49 As the Independent Committee appointed by KCH pointed out, the proposal was "*problematic for several reasons*":

- (a) The PNGDF did not own the Lancron Naval Base and had no right to sell it. The land was owned by the State and was reserved for the purpose of public defence. The PNGDF only had rights of occupation;
- (b) The restrictions applicable to the Lancron Naval Base would equally have applied to Portion 406;
- (c) The Secretary for Defence had no power to bind the State unless expressly so authorised. Without such express authorisation, any purported power of sale exercised by the Secretary for Defence as regards the Lancron Naval Base would be *ultra vires* or outside the scope of the Secretary's powers.

(4) ***Grant of Portion 406 to Kurkuramb Estates Ltd***

10.50 As stated above Portion 406 was the subject of the issue of a State Lease issued on 30 July 2015. The State Lease was expressed to be for agricultural purposes. It was issued to Kurkuramb Estates Ltd (KEL) in respect of the whole of Portion 406.

- 10.51 It has not been possible to examine the chain of title for Portion 406 because the file in the Lands Department cannot be found. Accordingly, it is not known precisely how the land came to be in the hands of KEL. It is one of the files that has "*disappeared*". It is said that there were three applicants for the land, and the Land Board recommended KEL as being the successful applicant. Precise details of the dealings that preceded the issue of the title are also not known although, as stated elsewhere, it is known that Portion 406 had earlier been the subject of forfeiture when owned by Mr Sariman's company, M&M Investments Pty Ltd, such forfeiture being based on alleged non-compliance with development conditions to which the State Lease was subject.
- 10.52 An examination of the State Lease reveals that the unimproved value of Portion 406 as at 30 July 2015 was said to be K84,420. The area comprised 847.25 hectares. This represented K99 per hectare.
- 10.53 Following receipt of Dr Pok's letter, on 21 October 2015 a Notice to Treat for the compulsory acquisition of Portion 406 had issued by the Department of Lands to KEL, seeking to acquire Portion 406 for the declared public purpose of defence [Annexure 10(4)]. The notice was thus given less than three months from the grant. That notice commenced a compulsory acquisition process pursuant to the *Land Act* 1996. In response to the Notice to Treat, KEL advised the Secretary for Lands that:
- (a) It was the registered owner of Portion 406;
 - (b) The land comprising Portion 406 was "very big" and was "located near the Hiritano Highway" and was "suitable for large scale commercial farming"; and
 - (c) KEL would accept K55 million as compensation for the State's acquisition.
- 10.54 On 28 October 2015, the predecessor of Kumul Consolidated Holdings (KCH), namely Independent Public Business Corporation (IPBC), and the Department of Lands, conducted a joint inspection of the Lancron Naval Base and prepared a detailed report regarding the nature of the tenure underlying the lease. It also made clear what had to be done to issue a lease to KCH. What would have been required was a valuation, revocation of the reservation, reallocation and an application to the Land Board for the issuance of a new State Lease.
- 10.55 On 3 November 2015, for the purposes of the compulsory acquisition the Valuer General issued a Certificate of Valuation over Portion 406 valuing the land at K46.6 million. The valuation was prepared by Moses Kila, the Assistant Valuer-General. The valuation again represented approximately K55,000 per hectare. The content of the valuation document is considered later. The valuation is Annexure 10(5). The valuation is considered more fully in Section 12. The Administrative Inquiry considered that the factors applicable to Mr Kila's valuation of Portion 406 were the same as those applicable to the valuation of Portions 422 and 423 (above). Again, the Administrative Inquiry considered that

the most plausible reason for Mr Kila's behaviour and valuation was financial inducement. Another possibility would be fear of retribution.

10.56 On 3 December 2015 a Notice of Compulsory Acquisition in respect of Portion 406 was published in the *National Gazette No. G793* by the Secretary for the Department of Lands as a delegate of the Minister for Lands [Annexure 10(6)]. Upon publication of the Notice, KEL's interest in Portion 406 was converted to a right of compensation under the *Land Act 1996* which then enlivened the principles under Part 4 Division 3 by which "*just compensation*" (as envisaged under section 53 of the *PNG Constitution*) for compulsory acquisition should be assessed.

10.57 Notice of the compulsory acquisition of Portion 406 was also published in *The National Newspaper* on 7 December 2015 [Annexure 10(7)].

10.58 At that point, KEL and the State made an agreement dated 11 December 2015 entitled "*Sale and Transfer of Land*" [Annexure 10(8)]. By that agreement, KEL agreed to sell and transfer Portion 406 to the State for K46.6 million. The agreement was signed by Mr Luther Sipison, Acting Secretary for Lands, as the delegate of the Minister for Lands on behalf of the State, and Mr Christopher Polos on behalf of KEL. In the Panel's experience, this step is often taken by parties when compulsory acquisition has occurred and the parties, recognising that the State is entitled to complete compulsory acquisition, make a contract for the sale and purchase of the land. In this instance, the Panel is of the view that the making of the contract of sale did not appear to have converted the compulsory acquisition to a consensual purchase and sale arrangement. It was merely an effective way of completing the acquisition. However, why the State did not then simply pay the amount of K46.6 million directly to KEL is not made clear.

10.59 On 11 December 2015, Kurkuramb Estates Ltd and the State entered into a "*Deed of Release*" [Annexure 10(9)] which in part provided:

"A THAT [the State] hereby pays to [KEL] a total sum of FORTY SIX MILLION AND SIX HUNDRED THOUSAND (K 46,600,000.00) and

[KEL] accepts the payment as full and final Purchase Price of [Portion 406]."

10.60 The Deed of Release between KEL and the State also provided a break-up of the consideration for Portion 406, which purports to have been based upon "*the Valuation Certificate*" issued by the Valuer General. The break-up was as follows:

"Payment details of K46,600,000.00 as per the *Valuation Certificate*

| | | |
|----------------------|---|-----------------------|
| <i>Land value</i> | = | <i>K46,600,000.00</i> |
| <i>Improvement</i> | = | <i>NIL</i> |
| <i>Total payable</i> | = | <i>K46,600,000.00</i> |

- 10.61 Thus, the entire purchase price for Portion 406 was attributed to land value only. The Inquiry is not aware of any improvements to the land having been made.
- 10.62 On 4 February 2016 the NEC Decision No. 06/2016 had approved the PNGDF Basilisk relocation site requirements as being *"part and partial [sic] of KCH's funding for the whole of the proposed Port Moresby Port Redevelopment"*.
- 10.63 On 8 February 2016, the Department of Lands issued a Notice of Reservation for the PNGDF over the whole of Portion 406. Pursuant to that Notice, Portion 406 was reserved by the State for the purpose of public defence [Annexure 10(10)].
- 10.64 By letter dated 26 February 2016 from the PNGDF to Mr Hersey, KCH was notified of the compulsory acquisition of Portion 406 for the amount of K46.6 million and was asked to finance the relocation on behalf of PNGDF in exchange for title to the Lancron Naval Base.
- 10.65 The letter from the PNGDF also enclosed a copy of the Deed of Release between the State and KEL wherein KEL agreed to release the State in exchange for K46.6 million *"as per a Valuation Certificate"*. The letter was signed by Mr Vali Asi, Secretary for the Department of Defence, and Brigadier General Gilbert Toropo, Commander of the PNGDF. It was copied to the Minister for Defence and the Minister for PEST.
- 10.66 The letter of 26 February 2016 gave an incorrect description of Portion 406:
- "... we have also identified another portion of land located adjacent to those three (3) already acquired, that backs onto the sea there that would be very conducive for our new naval base to be relocated there.*
- That land is described as Portion 406 Milinch, Fourmil Aroa, Central Province which has been valued by the Valuer General for a sum of K 46, 600,000.00 and it has a total land area of 2000 hectares"*.
- 10.67 The view of the Inquiry is that Portion 406 does not *"back onto the sea"* as claimed. The entire area of Portion 406 is in fact landlocked. It is several kilometres further from the sea than Portion 154, which itself is several kilometres away from any navigable water. Further, Portion 406 is not 2000 hectares in size, but 847.25 hectares.
- 10.68 On 20 January 2017, KCH appointed an Independent Committee to investigate allegations made against Mr Hersey. The Independent Committee was critical of Mr Hersey accepting these misrepresentations at face value. The Committee apparently thought he should have instituted searches, or made an inspection of the land, to ascertain exactly where the land was, its title, root or validity, its size and its true value. The Independent Committee thought that such inquiry should have been the subject of basic due diligence investigations.
- 10.69 The Independent Committee thought that the failure on the part of Mr Hersey to ascertain basic facts or to apply any form of reasonable due diligence and

competent analysis to the PNGDF's proposal resulted in the Board ultimately being misled.

- 10.70 Following some other correspondence, by letter dated 24 May 2016 Mr Hersey wrote to the State Solicitor seeking clearance of a proposed NEC submission for approval to transfer the Lae Port Development Project Trust funds and GST refunds for the purpose of, among other things, "*funding the purchase of land (K25 million of the K47 million purchase price) to enable the relocation of the PNG Defence Force to commence*". The letter was copied to the Minister for PESI and the Chief Secretary [Annexure 10(11)].
- 10.71 The Independent Committee pointed out that this letter did not mention Portion 406 or any details of the proposal from the PNGDF despite the fact that Mr Hersey knew that the PNGDF intended to relocate to that land and that Kumul Holdings were asked to provide funds for payment to pay for compensation to KEL. The Independent Committee thought that basic and prudent due diligence would have demanded that Mr Hersey would also have sought clearance from the State Solicitor on the entire PNGDF proposal, yet this was never done until January 2017, much later and after the payment of K46.6 million to KEL had already been made.

(c) ***Payment of K46.6 million to Kurkuramb Estates Ltd***

- 10.72 By letter dated 18 July 2016, Harvey Nii Lawyers on behalf of KEL served a notice pursuant to section 5 of the *Claims By and Against the State Act* upon the Attorney-General, Ano Pala MP, making known KEL's intention to make a claim against the State for payment of the outstanding purchase price of K46.6 million for Portion 406. That letter was copied to the Acting Secretary for Lands, the Secretary for the Department of Defence, and the Solicitor General.
- 10.73 By letter dated 10 August 2016, the Secretary for Defence wrote to Mr Hersey and stated that "*it has now come to my attention that KEL has given notice of its intention to sue the State*" for non-payment of compensation. The Secretary for Defence further stated:

"My department and the PNGDF do not want to see such legal proceedings complicate and delay our relocation programs any further ..."

- 10.74 On or about 15 August 2016, Harvey Nii Lawyers, on behalf of KEL, issued a Writ of Summons against the Secretary for the Department of Lands, as First Defendant, and the State, as Second Defendant, seeking payment, among other things, of the then outstanding K46.6 million compensation amount that had been agreed for Portion 406. KCH was not initially named as a party to the court proceedings although its subsequent joinder, upon its application, is the subject of pending Supreme Court proceedings.
- 10.75 In August 2016 a report on the proposed Lancron Naval Base Relocation had been tabled before the KCH Investment Committee for consideration. The Investment Committee report noted, relevantly, as follows:

"KCH COMMENTS

At this stage there is substantial work to be done. The project scope and budget on the development of the new site is yet to be defined, which requires funding to investigate. The PNGDF appears to have neither the funding nor the resources to develop a set of requirements for the new base. The Lancron Navy Base does not yet have a State title which allows it to be dealt with. It will be required for the further redevelopment for the Port Moresby Port precinct so these issues will have to be dealt with.

- 10.76 The Independent Committee thought that there should have been a properly vetted Business Case, a Budget and Risk Analysis, together with expert advice on the exact state of the Lancron Naval Base and how KCH should structure the proposed transaction to project this position and the public monies of which it was obliged to protect as trustee. However, no such documentation was sought or tabled.
- 10.77 In the circumstances, the Independent Committee did not think that the payment of K46.6 million for Portion 406 should have been made.
- 10.78 The Independent Committee thought that the evidence strongly suggested that there was a deliberate and calculated attempt on the part of Mr Hersey and certain senior KCH staff members to not only deceive and mislead the Board, including by failure to tender the Investment Committee Report to the Board, and failing to give full, frank and material disclosure of relevant facts and circumstances that were within Mr Hersey' s direct knowledge. Instead, information was submitted to the Board in a rushed, piecemeal and selective way that effectively concealed the true nature of the entire Portion 406 transaction and did not disclose the unacceptable risks it posed to KCH's interests.
- 10.79 By an email dated 6 September 2016, Ms Tabari prepared and forwarded a draft Board Paper to Ms Taunao for "review and comments". The draft Board Paper had the following specific and relevant comment in it under item 5:

"5 RISKS AND ISSUES

There have been months of internal division within PNGDF about where the new site for relocation. Whilst all of their planning team have been working on Arutu land (Portions 33270 — 3329C) near Motukea it appears that this have been recently superseded by a new decision to purchase Portion 406 Milinch of Manu, Fourmil of Aroa, Hiritano in Central Province. Furthermore, KCH staff have been informed by the PNGDF Project team that another submission in support of yet another alternate site is currently being developed and is expected to be submitted to the Defence Committee soon. This uncertainty could mean that KCH end up paying for land which is never used by PNGDF.

By proceeding to purchase land before completion of the Masterplan and Budget, it will be very difficult to gauge the degree of difficulty to implement the ultimate goal of relocation Lancron Naval Base. It could mean that KCH will have spent a considerable amount of money on a project that may never be implemented.

Relocation of Lancron Navy Base might be of commercial interest to KCH if the site can be redeveloped into high value waterfront land. However, given the uncertainties mentioned above, the timing of moving PNGDF may mean any commercial return on this land might be delayed an indefinite period into the future."

10.80 The Independent Committee concluded that this email was not shown to the Board.

10.81 The Board Paper dated 7 September 2016, signed by Mr Hersey, contained the following item 5:

"5.1 RISKS AND ISSUES

It is worth noting that there appears to be some differences of opinion within PNGDF about where the new site for relocation. Whilst all of their planning team have been working on Arutu land (Portions 3327C-3329C) near Motukea it appears that this have been recently superseded by a new decision to purchase Portion 406 Milinch of Manu, Fourmil of Aroa, Hiritano in Central Province. However, it should also be noted that there is political will for this process to proceed as it is supported by the Government and responsible Ministers.

Relocation of Lancron Navy Base might be of commercial interest to KCH if the site can be redeveloped into high value waterfront land. However given the uncertainties mentioned above, the timing of moving PNGDF may mean any commercial return on this land might be delayed an indefinite period into the future."

10.82 The funding resolution had been amended to read:

"... it is recommended that the Board: ...

approve for KCH to provide funding of K46.6 million to the PNG Defence Force to finance the settlement of the compulsory acquisition process for Portion 406, Milinch of Aroa, Manu, Central Province of which finalisation is subject to:

- *Conclusion of Contract of Sale*
- *Consideration of novation of Deed of Settlement on land from PNG Defence Force to KCH"*

10.83 At its meeting on 12 September 2016, the Board resolved in accordance with the Investment Committee's recommendations as set out in the final Board Paper. A contentious issue has arisen as to whether this constituted a resolution to pay Kurkuramb Estates Ltd the K46.6 million, or whether it was only a conditional authorisation to do so.

10.84 In an email dated 19 September 2016, Mr Massa of Dentons Lawyers set forth his preliminary advice as follows:

"This is where we are at, which is probably where we will end up assuming we get the answers from Lands Department that we are expecting in the next day or so:

- *Rather than the State either (a) assigning/novating the Deed of Sale and Transfer of Land to KCH, or (b) the State on-selling the land to KCH, the most appropriate course of action would be for the State to grant a 99 year lease to KCH.*
- *The land rental payable by KCP to the State for the 99 year State Lease would be K46.6m (i.e. the amount which the State owes Kurkuramb Estates Ltd (KEL) as compensation for the compulsory acquisition of land).*
- *The K46.6m land rental would be paid upfront in a single lump sum payment at the direction of the State to KEL.*
- *The State Lease would include a covenant that the Department of Defence be granted exclusive occupancy of the land for the duration of the lease unless earlier surrendered by Defence.*
- *KCH would need NEC approval (in accordance with the KCH Act) to enter into the lease and make the upfront lump sum rental payment to the State.*
- *The State uses the K46.6m received from KCH to settle its outstanding liability to KEL.*
- *KEL then has no further claim against the State for compensation having already discharged all prior interest in the land which vested in the State when notice for the compulsory acquisition was published in the National Gazette and National newspaper.*
- *A 99 year State Lease (rather than a sale or assignment) avoids any concerns as to whether public procurement/CSTB is necessary for the State to sell the land to KCH. It also avoids any consideration as to whether stamp duty or Ministerial approval is necessary, although neither should be in any event.*
- *Based on the information supplied to us, it appears that all necessary steps in the State's compulsory acquisition of the land from KEL were complied with in accordance with the relevant provisions of the Land Act.*
- *We make no comment on whether KEL was the lawful owner of the land in the sense that there is a clean chain of title to KEL and now the State. However, we have no reason to suspect that there has been any fraud or that KCH has constructive notice to the contrary such that the State's title*

as recorded on title (and KCH's leasehold interest once granted) is prima facie infeasible."

- 10.85 By an email dated 22 September 2016 from Ms Taunao to Mr Hersey, Mr Hersey received an unsigned copy of a further advice from Dentons Lawyers in relation to the proposed acquisition of Portion 406. In essence, the advice was that, to protect its interests, KCH should acquire title to Portion 406 by paying K46.6 million to the State, and then leasing it back to the PNGDF. The advice specifically noted that KCH needed NEC approval for this arrangement and that it needed to be specifically included in KCH's annual plan.
- 10.86 The Independent Committee took the view that Mr Hersey thus knew that NEC approval was required after receiving the advice from Dentons. However, that advice was never acted upon or tabled before the Board for consideration.
- 10.87 In the meantime, by letter dated 23 September 2016, KEL had written to the Secretary for the Department of Defence requesting that "*K46 million*" be paid to KEL's account as consideration for the compulsory acquisition of Portion 406. Effectively the advice was that, to protect its interests, KCH should acquire title to Portion 406 by paying K46.6 million to the State and then leasing it back to the PNGDF. Among other things, the advice specifically noted that KCH needed NEC approval for this arrangement and that it needed to be specifically included in KCH's Annual Plan.
- 10.88 The Independent Committee concluded that Mr Hersey certainly knew that NEC approval was required after receiving the advice from Dentons. However, the Independent Committee inferentially criticised the managing director because that advice was never acted upon or tabled before the Board for consideration.
- 10.89 By letter dated 5 October 2016 Mr Hersey wrote to the Commander of the PNGDF and noted that the MOU between KCH and the PNGDF dated 21 September 2015 had expired on 21 September 2016. The letter also specifically noted that the "*obligations under the MOU are incomplete and the KCH Board would like, with your concurrence, to extend the MOU for another 12 months*".
- 10.90 The letter attached a variation to the MOU which purported to extend it for a further 24 months. The letter was copied to the Secretary for Defence.
- 10.91 The Independent Committee thought that this communication by the managing director was significant because it implied that he was cognisant of the need for a proper "*Project Plan*", "*Project Budget*" and "*Business Case*" to support the proposed PNGDF relocation.
- 10.92 Pursuant to the variation agreement the MOU was in fact extended for a further 24 months. The variation agreement was signed on 5 October 2016 under the common seal of KCH by Mr Jayaraj (Acting Corporate Secretary) and Mr Hersey, and by the Secretary for Defence and the Commander of the PNGDF on behalf of the PNGDF. However, despite the extension, the relevant documents envisaged by the MOU were never completed. It appears they were ignored or disregarded.

(6) *Lancron Naval Base*

10.93 On 5 October 2016 under an instrument entitled "*Revocation of Certificate Authorising Occupancy*", the Secretary for the Department of Lands, as delegate for the Minister for Lands, revoked the reservation for the Lancron Naval Base. As a result, the land ceased to be reserved for defence purposes. Notice of the revocation was published in the *National Gazette* on Friday, 7 October 2016. The Lancron Naval Base is also referred to as *HMPNGS Basilisk*.

10.94 The Independent Committee found it difficult to understand why the reservation status of Lancron Naval Base was revoked when defence personnel and naval assets were still stationed at the base. This was further complicated by the letter of the Secretary for Lands dated 29 September 2016 which stated his understanding that "*feasibility studies are underway at the relocation site and the PNGDF is yet to move*". The Independent Committee drew attention to the lack of tenure and potential national security issues this presented to defence assets.

10.95 On 11 October 2016 the Secretary for Defence wrote to Mr Hersey as follows:

"Our valuers have valued the Naval Base (Basilisk) at K50 million and we have already provided KCH with copies of the valuation. As we have now surrendered our Certificate of Occupancy in favour of KCH, KCH owes us K50 million.

In accordance with NEC Decisions Nos 70/2016, 168/2014 and 06/2016, we now request that you pay K46 million on behalf of the State to the former owners of land (on which the new military base will be located) and K4 million to the PNGDF Trust Account to enable us to start preliminary works to relocate to the new military barracks."

10.96 By email dated 12 October 2016, Ms Bala advised what remained to be done to "*obtain (the) title deed*" to the Lancron Naval Base including that:

"KCH should compile concept plans, development proposals and a detailed survey plan;

KCH should obtain NCDC Physical Planning approval for the development and a rezoning of the Lancron Naval Base to commercial use; and

After Planning permission is obtained, KCH should apply for a direct grant of a State Lease from the Minister for Lands rather than making application to the PNG Land Board"

10.97 The Independent Committee thought that this email from Ms Bala was the first time that KCH senior management had been informed of the extent of the tasks

remaining to be performed and the considerable delays that were inevitable. The Independent Committee's report states that *"before this date, the Board and presumably those in management had understood that the issue of the State Lease over the Lancron Naval Base required only Land Board approval. However, basic due diligence would have revealed the true state of affairs and the extent of the requirements that needed to be complied with"*. The Independent Committee stated that the Board was induced to the belief that a State Lease for Lancron Naval Base had been issued and was available for transfer to KCH, which was not the case at all.

10.98 An application was then made by KCH for a Special Purpose Lease to be issued to KCH. The application was lodged on 13 October 2016.

10.99 It is understood that that application remained pending at the time the payments to KEL were made.

(7) KCH agrees to Pay K46.6 million to KEL

10.100 On 14 October 2016 KCH entered a Memorandum of Agreement with KEL and PNGDF under which it agreed to pay K46.6 million to KEL. The Independent Committee stated that this agreement was never tabled before the Board for approval.

10.101 Mrs Kari Taviri, the Manager — Legal Services of Kumul, told the Independent Committee that the document was not brought to the KCH legal team's attention until the morning of execution on 14 October 2016. She said that she was adamant that the MOA was drafted without any legal due diligence or proper Board approval.

10.102 Mrs Taviri also told the Independent Committee that Mr Hersey told her to take out the anti-corruption clause in the document.

10.103 The Independent Committee thought that Mr Hersey's decision to omit the clause and depart from standard KCH practice was very disturbing.

10.104 The MOA was signed that day in the boardroom of KCH. It provided, amongst other things, that KCH would pay (on behalf of the State) to KEL the unpaid compensation amount of K46.6 million in two instalments, the first instalment being K20 million and the second instalment of K26 million three months from the date of the payment of the first instalment.

10.105 The MOA was signed under KCH's common seal by Mr Jayapal Jayaraj, the acting corporate secretary, Mr Hersey on behalf of KCH, the Secretary for Defence on behalf of the Department of Defence, and Mr Christopher Polos on behalf of KEL.

10.106 The common seal of KEL was not affixed to the document until later because Mr Polos did not bring it to the signing venue.

- 10.107 The NEC decision No. 95/2015 dated 29 April 2015 required all contracts relating to the Lancron Naval Base relocation to be signed by the Managing Director and the KCH Chairman, or two directors of KCH. In apparent breach of this directive that did not occur, and it has been alleged that the Board was left in the dark about the substantial liability that KCH had assumed under the MOA.
- 10.108 The Committee concluded that Mr Hersey embarked on an unauthorised and intentional course of conduct to pay the K46.6 million to KEL.
- 10.109 Mr Hersey is alleged to have given instructions to release the K20 million immediately, notwithstanding that the MOA had not been properly executed by KEL.
- 10.110 The funds were transferred, on 14 October 2016, to KEL.
- 10.111 An email from Mr Jayaraj informed Mr Hersey that the K20 million had been transferred to KEL notwithstanding that the Kurkuramb seal had not been placed on the document to complete the MOA execution.
- 10.112 That email from Mr Jayaraj was forwarded by Mr Hersey to Mr Duma:

"Further to text William

Funds gone but could they come on with the seal tomorrow please. Are you going to Hagen this weekend per chance?"

10.113 Mr Duma responded:

"Garry,

I am in back in Porn now, and will wait for you to return before I leave for Hagen over this weekend.

Please call me as soon as you can. [...]

William"

- 10.114 This is one of the matters which caused the Independent Committee to conclude that it appeared that Mr Duma was in a position of influence over Mr Hersey.
- 10.115 It appears that the MOA was finally sealed by KEL and signed by its director, Christopher Polos, on 18 October 2016.
- 10.116 There was a delay in the receipt of the K20 million into the KCH account. Apparently the bank initially rejected the payment on the ground that KEL's bank account was inactive. That caused the bank to return the funds to KEL. However, the problem was rectified, and on 19 October 2016 Mr Jayaraj was advised that the payment of K20 million had been made to KEL's account.

10.117 As stated above, the prospective State Lease for the Lancron Naval Base in favour of KCH had still not been issued.

10.118 With respect to the second tranche payment of K26.6 million Mr Jayaraj told the Independent Committee that Mr Hersey called and instructed him to arrange the payment for KEL that day. Mr Jayaraj advised Mr Hersey that there were insufficient funds in the general business trust account to allow that to occur. Mr Hersey then instructed that Mr Duma had a dividend cheque from MVIL, and to send someone to collect and bank the cheque and have it cleared that same day.

10.119 In a statement dated 31 February 2017, Mr Jayaraj stated, in relation to the second tranche payment:

"(a) Garry Hersey was saying he was under pressure from the Minister and wants the payment done at the earliest. He never mentioned the name of the minister. I guessed he might be referring to Minister William Duma.

I was not involved in the matters leading up-to the signing of the MOA on this land deal, hence and I am not aware of any Ministerial involvement during the process. This process was managed by a separate transaction team working closely with Garry Hersey.

Because Garry Hersey kept on calling and mentioning pressure from the Minister, I responded in the email to tell the Minister the payment could be done next week"

10.120 At the direction of Mr Hersey, a payment instruction dated 23 December 2016 was forwarded to Bank of South Pacific authorising payment of K26.6 million from the general business trust account to KEL's account at Kina Bank. The Bank of South Pacific advised that the payment of K26.6 million was processed and cleared on that date.

10.121 It is evident that a strange feature of the transaction is that no concern appears to have been demonstrated about the prospect that Kumul was not at that time to receive any form of title over the Lancron Naval Base notwithstanding that substantial amounts of public money were being paid.

10.122 The Independent Committee received evidence to the effect that Mr Hersey issued a direction to relevant personnel for all electronic files relating to the Lancron Naval Base and Portion 406 to be deleted, and for all physical files in the possession of those parties to be handed to him. Some of the electronic files were saved by Ms Taunao onto an external hard drive. The Independent Committee considered that that suggested a deliberate attempt to destroy and conceal evidence.

10.123 In a supplementary statement to the Committee dated 9 March 2017, Mr Jayaraj attached a copy of the State Lease over Portion 406. The Independent Committee

stated that this was the first time that the lease document had appeared in any of the material provided to the Committee by KCH despite several prior requests. In a supplementary statement to the Committee dated 9 March 2017, Mr Jayaraj stated that he had received it from the Minister himself in addition to other documents. Among the documents provided by the Minister to Mr Jayaraj was a copy of "the Owner's Copy" of the State Lease for Portion 406.

- 10.124 On or about 23 January 2017, Mr Jayaraj wrote to Dentons Lawyers and O'Brien's Lawyers purporting to withdraw the Board's instructions to Dentons Lawyers and O'Brien's Lawyers, advising that they were to cease acting on the matter. Upon learning of this, the Committee requested Mr Jayaraj to clarify why the instruction to recover the monies had been terminated and at whose direction.
- 10.125 Mr Jayaraj responded in a supplementary statement dated 28 February 2017, that he had been summoned to the Office of the Minister, along with the CFO, Mr Apaitia Veigo, and the Board Secretary, Ms Lucy Sabo-Kelis.
- 10.126 At the meeting, Mr Jayaraj said that the Minister said the Board had no authority to engage lawyers on the matter and should withdraw instructions.
- 10.127 Mr Jayaraj says that, on that basis, he wrote to Dentons Lawyers and O'Brien's Lawyers and withdrew instructions. The Independent Committee thought this was an extraordinary intervention by the Minister into KCH's internal affairs.
- 10.128 The Independent Committee pointed out that, under the KCH Act, the affairs of KCH are to be conducted free of political influence or direction.
- 10.129 The Independent Committee considered that this was an extraordinary intervention by the Minister into the internal affairs of Kumul, particularly when there was standing resolution by the Board which was intended to recover the monies.
- 10.130 By email dated 25 January 2017, Mr Duma wrote directly to Mr Erik Andersen of Dentons Lawyers in the following terms:

"Dear Mr Andersen,

I do not normally as a Minister intervene in routine matters involving the boards and the management of entities I have Ministerial responsibilities over but I am forced to communicate with you directly as a result of a sensationalised article in the PNG Blog yesterday.

The matter which you are familiar with starts with a decision of the KCH Board to approve a transaction, which started even before I became Minister responsible for KCH.

The management of KCH have in their Brief to both myself and the KCH Board advised that the transaction in question is in order, and this supports

the decision of the KCH Board. I am aware that the Board of KCH have not yet resolved to engage the services your firm.

In the absence of a Board resolution to engage your services, no Director (including the Chairman and Deputy Chairman) of KCH acting unilaterally on his own, has the authority to engage our services, and KCH will not be responsible for your fees. If the Board does not resolve to engage your services in due course, then there should not be any issue.

As of today, you have no instructions to act on behalf of KCH, the Board and the management of KCH.

*Sincerely,
William Duma."*

- 10.131 The Independent Committee noted that, in his email to Mr Andersen, the Minister referred to the "Brief" that had been submitted to the Board and himself apparently as proof that "the transaction in question is in order". However, the Independent Committee noted that the Minister had personal input on those briefs before they were signed and submitted. It considered that the reliance that the Minister placed on those documents was therefore improper.
- 10.132 The Independent Committee report refers to the fact that the Committee was informed by Mr Jayaraj that the naval base land had previously been exempted from public tender in favour of KCH by the Department of Lands.
- 10.133 Mr Jayaraj had also informed the Committee that it was only a formality for the PNG Lands Board to grant a State Lease for the Lancron Naval Base in favour of KCH, once the Land Board met and considered the matter.

⑧ *Mr Duma's Account of Events to the Administrative Inquiry*

- 10.134 Mr William Duma was Minister for Public Enterprises and State Investments. It was reported in the *Post Courier* on 8 February 2017 that Mr Duma had been suspended. Mr Duma states that he voluntarily stepped aside.
- 10.135 Mr Duma attended at the Administrative Inquiry's Office at the Government Printing Office, Waigani, on Tuesday, 30 August 2017 and Friday, 29 September 2017.
- 10.136 Mr Duma also held a discussion with the Chairman of the Administrative Inquiry in Brisbane on 5 August 2017.
- 10.137 Following the recent election, Mr Duma was re-elected and was re-appointed Minister for Public Enterprises and State Investments. Mr Duma stated that he regarded his suspension as no longer applicable in circumstances in which there had been an election, and he had been appointed as Minister following that election.

10.138 Mr Duma provided the Administrative Inquiry with a lever arch folder containing 22 documents. On 22 August 2017 he provided some further documents in relation to Kurkuramb Estates Limited. His letter of 3 February 2017 to the Ombudsman Commission [Annexure 10(12)] succinctly set out his position. He also produced further documents later, and the documents he produced formed part of the record of the Inquiry.

(⁹) *Kurkuramb Estates Ltd — Companies Register documents*

10.139 Mr Duma agreed that the registered office address for Kurkuramb Estates Limited was previously shown as Section 30, Allotment 6, Port Moresby, National Capital District, and that that address was his home address. He made the point that the current details in the Companies Register do not include his home address.

10.140 The previously registered company extract for Kurkuramb Estates Limited as at 24 October 2016 is Annexure 10(13).

10.141 The registration has since been changed ¹.

10.142 Mr Duma also agreed that the registered company extract of his company, Kopana Investments Limited, showed him as a director and gave his residential address as the address referred to above, namely Section 30, Allotment 6, Port Moresby. The Company Extract details of Kopana Investments Ltd as at 31 January 2017 show the residential address of Mr Duma as Section 30, Allotment 6, Granville, Port Moresby [Annexure 10(14)].

10.143 He said he was not aware until January of this year, when he met Mr Paul Nerau, that his home address had even been registered as the address of the company, Kurkuramb Estates Limited. He said it was a mistake and that it did not make sense to provide a home address as the address of a company.

10.144 Mr Duma said he thought the Registrar should explain how it came about that his private address had become the registered office of Kurkuramb Estates Limited.

10.145 He said he had nothing to do with the registration of the documents filed at the company's office in connection with Kurkuramb Estates Limited.

10.146 On 29 September 2017, Mr Duma said to the Inquiry: *"I have got nothing to do with Kurkuramb Estates"*.

10.147 Mr Duma agreed that PO Box 556 Port Moresby had been his postal address for many years. When it was put to him that that postal address was given to the Registrar of Companies in connection with Kurkuramb Estates, he stated that he did not provide that. Annexure 10(13), being the previous Company Extract for Kurkuramb Estates Ltd, gives the registered postal address for Christopher Polos as PO Box 556, Port Moresby, as well.

¹The change was part of changes registered on 15 January 2017.

10.148 In his session with the Chairman on 5 August 2017 Mr Duma stated that he did not dispute that he was related to Christopher Polos. On 30 August 2017, he was asked whether it was the case that Christopher Polos was the biological brother of his wife. Mr Duma answered: *"Absolutely"*.

10.149 The Chairman asked Mr Duma: *"So Christopher Polos is your brother-in-law?"* and Mr Duma answered *"Yes"*.

10.150 In the course of his attendance on the Inquiry on 29 September, Mr Duma stated that he had just found out that Christopher Polos was not his brother-in-law.

10.151 He stated:

"I have just found out that Christopher Polos — that is why I wanted to — I will be writing to you. I found out after my meeting with you, the last time I appeared before this tribunal, I found out that Christopher Polos is not my wife's younger brother. He is someone who is from North Solomons Province, who was educated at the Hutjena High School. He uses the name Christopher Polos. He was adopted by one of my wife's aunties. My wife's younger brother's name is Kayboy — Kayboy Polos. After my meeting with you, I went and — there was something that did not sound right to me so I had to check. So I will be writing to you in this regard."

10.152 He said that this meant that there is no biological connection between Christopher Polos and his wife.

10.153 He reiterated that his wife's younger brother is Kayboy Polos, not Christopher Polos.

10.154 Mr Duma was asked whether Christopher Polos lived with his family, to which he replied in the negative. He said: *"No, I have got no connection with him. Kayboy also does not live with me. He is a married man, he lives on his own"*.

10.155 Mr Duma was asked: *"So Christopher Polos does not live with your family and has not ever lived with your family?"*

10.156 Mr Duma responded: *"No, none whatsoever. In fact none of my wife's relatives live with me. I have got too many people from my electorate who live with me"*.

10.157 One of the allegations in PNG Blogs was that Christopher Polos performed a wide variety of functions, including personal aide, gardener, housekeeping, repairs and maintenance for Mr Duma. When that was put to Mr Duma he said it was *"absolutely not true"*. Mr Duma said he did not have any gardeners or cleaners in his house, he did those things himself. He did have helpers who were actually on the payroll, and Parliament paid them, but they were all in his electorate.

10.158 Mr Duma reaffirmed that he did not know Christopher Polos who, he said, lives in North Solomons. He did not dispute that Christopher Polos was the sole

director and shareholder of Kurkuramb Estates, but he said he had no connection with Christopher Polos.

10.159 In a letter to the Administrative Inquiry dated 5 October 2017 [Annexure 10(15)], Mr Duma said:-

"There was a misunderstanding which I need to clarify after my last appearance at the Inquiry Office.

I have since made further inquiries and have realised that the correct name of my brother in law is Kayboy Palos, not Christopher Polos who is related to my spouse's aunty and who lives in Bougainville and who uses my spouse's family name."

10.160 It was put to Mr Duma that there is a creek called "*Kurkuramb*" which flows into the Rogen River at Mt. Hagen in close proximity to his village. Mr Duma disputed that. He contended that there is a creek called "*Rogen*", but that was further away from his village on the other side.

10.161 Mr Duma confirmed that he had previously stated that Kurkuramb Estates Limited is Mr Christopher Polos' company.

10.162 He denied receiving any payments from Kurkuramb Estates Limited in relation to the Portion 406 transaction.

10.163 He said he was not able to comment on the proposition that K20 million was transferred to Kurkuramb even prior to the Kurkuramb seal having been placed on the underlying document. He stated: "*These are matters which are not within my knowledge. I am not qualified to comment*".

10.164 Mr Duma agreed that he was asked whether he could find Mr Polos to bring along the seal for the execution of the Memorandum of Understanding. He said: "*That is a matter that Polos and Garry should know. That has got nothing to do with me*".

10.165 He agreed that he knew that the first tranche of K20 million was returned, initially, on account of the fact that it was rejected by the bank.

10.166 He denied that he knew that Mr Hersey had issued a direction to relevant personnel for all electronic files related to the Lancron Naval Base and Portion 406 to be deleted and for all physical files in the possession of those parties to be handed to him.

10.167 He had denied that he had said that he wanted any payment "*done at the earliest*".

10.168 He denied that he was the one who produced the owner's copy of the State Lease in favour of Kurkuramb.

- 10.169 On the allegation that he was involved in the payments, Mr Duma stated: *"I was not involved in the decision-making process"*. He also said *"I was not allowed to take part so I never had an opportunity to disclose the fact that Christopher was a relative"*.
- 10.170 He denied that there was any conflict of interest on the ground that he was not involved in the decision-making process to pay the money to Kurkuramb. He said that the fact that it was the chairman and the directors who approved the payments had been ignored.
- 10.171 He disagreed with the proposition that the Lancron Naval Base was a long way from obtaining a title. He said: *"From what I have seen, they formally applied for a State Lease, they paid the lease fees and it is registered and the exemption was granted. So under the Land Act, once you are given an exemption, no one else applies, only you. So it is only a matter of formality for you to appeal to the Land Board, to make a formal submission, formal application to access that land. So that is as good as having the title"*.
- 10.172 As to the value of the Lancron Naval Base, he said that there were inconsistent valuations, but he relied on the figure of K50 million that was used by the Secretary for Defence when he wrote to KCH and said *"This is the figure"*.
- 10.173 When it was put to him that there were serious and potentially irreconcilable differences within the PNG Defence Force as to the selection of Portion 406 for the purposes of defence relocation, he said: *"if that were the case, why did the Commander and the Secretary sign the [Memorandum] of Variation? There is an MOU that the Commander signed and I should point out that why was not the Commander asked to step aside?"* [Annexure 10(16) is the Memorandum of Understanding dated 21 September 2015; Annexure 10(17) is a KCH letter from Mr Hersey to Commander Defence Force dated 5 October 2016; and Annexure 10(18) is the undated executed Memorandum of Variation].
- 10.174 Mr Duma disagreed with the proposition that the Board's resolution in relation to the payment of the K46.6 million was a conditional approval of the payment.
- 10.175 He was of the view that it was necessary to look at the Memorandum of Understanding signed by KCH, Defence and Kurkuramb Estates Limited.
- 10.176 He was very definite that there was nothing inappropriate in him, in the circumstances, seeking to revoke the decision to brief Dentons Lawyers and O'Brien's Lawyers. The decision had been taken by KCH to make the payment, and, in the opinion of Mr Duma, the Board should defend the decision. It was really a case of the engagement of lawyers to investigate the Board's own decision. It was not appropriate, in his view, to have an investigation if the Board's conduct was not itself examined. He addressed the Chairman, Deputy Chairman and Directors to the effect that he had not at any stage directed or approached any of the members of the Committee to approve the transaction. He told the Directors that if the Board wished to engage a law firm to investigate the matter, it should be done in consultation with him as Minister because it was the Board decision that was being questioned, not his. The Terms of Reference had

to include their conduct as directors, given that they approved the transactions. His position was that the law firms or lawyers should only be engaged by the collective resolution of the Board.

- 10.177 Mr Duma was highly critical of the Independent Committee, including of the fact that the Committee did not ask him to give his account.
- 10.178 Mr Duma said that he could not believe that an allegation had been made that, in relation to the payment of the second tranche, namely the K26.6 million, the cheque was collected by him and provided to Kumul staff to bank. He said: *"I cannot believe that such an allegation has been made"*, and he proceeded to state that he denied it *"absolutely"*.
- 10.179 With respect to his reliance upon the 2012 NEC Decision he was asked whether it was the general practice of the NEC to make a decision in those terms, or whether it was ordinarily the case that any land involved would be specified.
- 10.180 Mr Duma said that *"depends"* on what the policy of the Government was at that particular time. It is the case that the State Solicitor, Mr Rolpagarea, had expressed the view that, whilst the Portion 406 transaction had not been expressly authorised by the NEC Decisions, it was broadly authorised by them. The State Solicitor also referred to the approval of the KCH accounts by the NEC. See the State Solicitor's letter of 27 January 2017 [Annexure 10(19)].
- 10.181 In relation to the assertion that he had exerted undue influence over Mr Hersey, Mr Duma stated: *"And for them to say I have placed undue influence, I take exception to that because honestly speaking, I did not. I have always been very honest and I am also honest in saying these gentlemen is related to me. There is nothing wrong with having relatives and as far as I know this fellow wanted to develop that land. He acquired that, he applied to the Board like anyone else. There were others too who applied for the same land and he comes from that area, despite what others are saying. Polos is watchdog and he has not said anything yet but he is from that area. He had his own plans to develop that area and when the State came for the land, and when he realised that the other land had been sold already, who would not — the process of acquiring title in the first place no one was alleged of fraudulent conduct and that evidence of Sipison confirmed that. Everything was above board, even the process of compulsory acquisition."*
- 10.182 It is correct that Mr Duma was not given the opportunity of responding to the matters the Independent Committee raised with respect to his conduct. That is no criticism of the Independent Committee because it was conducting an internal investigation into the conduct of an officer of Kumul. Nonetheless the fact remains that Mr Duma's responses were not sought or provided.
- 10.183 The Administrative Inquiry did put the significant parts of Mr Duma's alleged conduct to him, and he denied all allegations of impropriety.

(10) Mr Duma — Panel's Conclusions

- 10.184 Mr Duma's relevant conduct has been summarised above as were his responses to the serious allegations that have been raised in this case.
- 10.185 For reasons given already, on the facts presently known to the Administrative Inquiry, no conclusion ought to be reached about Mr Duma's role in any conspiracy or fraudulent misconduct. Mr Duma has denied any wrongdoing.
- 10.186 For reasons already given, the Administrative Inquiry is a very limited Inquiry with extremely limited powers for investigation. In Mr Duma's case, in particular, there are complete areas of investigation that could not be undertaken by the Administrative Inquiry, but which would need to be undertaken before any conclusions could be reached.
- 10.187 Mr Duma's true relationship with the company Kurkuramb Estates Limited is a crucial area of investigation because Kurkuramb Estates Limited was the entity which, on the face of the documentation, was entitled to the sum of K46.6 million compensation by reason of the compulsory acquisition of Portion 406, of which it held a State Lease. Investigation needs to include investigation as to whether, contrary to the Minister's claims, he controlled the affairs of Kurkuramb Estates Limited. The Administrative Inquiry was of the view that there would plainly be a case of corruption against Mr Duma, if contrary to his denials, he had control over the affairs of KEL. That would demonstrate a link between Mr Duma and the compulsory acquisition of Portion 406. As stated above, he said to the Inquiry: *"I have got nothing to do with Kurkuramb Estates."*
- 10.188 The Administrative Inquiry was not empowered to conduct such an investigation. Furthermore, Christopher Polos, who is shown in the Companies Register to be the sole director and shareholder of Kurkuramb Estates Limited, declined to cooperate with the Administrative Inquiry. As already pointed out, Mr Polos was perfectly within his rights in taking that stance since the Administrative Inquiry was not vested with any powers to summons witnesses to attend, or to examine them on oath.
- 10.189 As already stated, it cannot be assumed that further investigations will implicate, rather than exonerate, Mr Duma. Mr Duma as well as the other affected parties, and the public generally are entitled to have this matter fully investigated. The issues are in the hands of the police, and the investigations should continue until completion. The Administrative Inquiry expresses the hope that this Report will be of assistance to the police in their continuing investigations.
- 10.190 As to the conflict of interest issue with respect to Mr Duma, who did not disclose any relationship with Kurkuramb Estates Limited in circumstances in which he was instrumental in payments being made by KCH to that company, Mr Duma has put forward the contention that he was not obliged to make any disclosure in that regard because he was not party to the decision of Kumul Consolidated Holdings to pay the K46.6 million to Kurkuramb Estates Limited. This aspect of the matter, in relation to which the question of control of Kurkuramb Estates Ltd

is again highly significant, should be investigated and resolved by the Ombudsman Commission.

***(11) Independent Committee Appointed by Kuntul Consolidated Holdings
re Hersey***

- 10.191 It was on 20 January, 2017, that Kumul Consolidated Holdings appointed the Independent Committee to investigate allegations made against the then managing director of Kumul, Mr Garry Hersey.
- 10.192 The Independent Committee subsequently reported to Kumul the final version of the Independent Committee's report being dated 12 April 2017.
- 10.193 Part of the investigation conducted by the Independent Committee related to the Portion 406 transaction.
- 10.194 To assist in its examination of the matter, the Independent Committee obtained a report from an accounting firm, JAJ Associates. That report showed the financial details relating to the Portion 406 transaction.
- 10.195 The Inquiry was informed that Mr Hersey had been suspended on full pay, following which he had been refused entry to Papua New Guinea. The Independent Committee expressed the view that that initial suspension appeared to be in breach of Mr Hersey's employment agreement. However, as indicated below, Mr Hersey was eventually suspended and terminated by the NEC.
- 10.196 The Independent Committee proceeded upon the assumption that PNG Ports Limited had effected a lawful assignment of its rights in respect of the Lancron Naval Base to KCH. The Administrative Inquiry has proceeded upon the same assumption.
- 10.197 The Committee made the following recommendations:

"(a) the Board make a recommendation to the NEC for the immediate termination of Mr Hersey by the Head of State, acting on advice, in accordance with clause 21(D) of the Employment Agreement;

(b) further or in the alternative, the Board make a recommendation to the NEC for the immediate termination of Mr Hersey by the Head of State, acting on advice, in accordance with clause 19(c)(V) of the Employment Agreement;

(c) the Board consider instructing Ashurst lawyers to immediately commence legal proceedings against Mr Hersey for breach of contract and that, pending determination of such action, KCH pays the balance of Mr Hersey's entitlements into the National Court Trust Account as security for damages and applies for an immediate freeze

of any of Mr Hersey's assets in PNG that could potentially be used to satisfy judgement;

(d) the Board immediately refer the matter to appropriate law enforcement authorities for further investigation with a view to determining whether criminal charges, including fraud, should be laid against persons involved in the Portion 406 transaction as well as possible prosecution for breaches of the Leadership Code;

(e) a full, thorough and independent audit be undertaken on all KCH books, accounts and records during the period of Mr Hersey's tenure to ascertain the legality of all major expenditure and all major transactions entered into by KCH under Mr Hersey's direction,.

0 the Board consider introducing appropriate policies, controls and structures to ensure that future major commercial transactions are comprehensively evaluated and vetted by appropriately skilled staff within clearly established risk parameters, guided as necessary by independent professional advice, and that public monies held in trust are adequately and robustly protected from misuse; and

(g) clear and strict reporting lines and obligations are established within KCH's internal management structure to ensure that the Board maintains complete and regular oversight and approval over critical management decisions, including by requiring regular management reports showing progress against approved Annual Plans and Budgets."

10.198 At the time the Independent Committee was appointed, no actual allegations had been formulated.

10.199 Having read the material that had been prepared, the Independent Committee served Mr Hersey with a Notice of Allegations it had prepared.

10.200 The Independent Committee saw its primary function as establishing, on a prima facie basis, whether or not the conduct alleged of Mr Hersey constituted serious misconduct within the meaning of clause 19(c)(iv) of Mr Hersey's employment agreement, and that it was to report accordingly.

(12) *Allegations against Mr Hersey in relation to the Portion 406 transaction*

10.201 The Independent Committee particularised the allegations against Mr Hersey as follows:

"(a) That Mr Hersey failed to give full, frank and material disclosure to the Board on key legal and commercial risk issues that impacted the Portion 406 transaction including the basis for payments that were

made to KEL and the basis for valuations that had been obtained and represented to the Board.

- (b) That Mr Hersey failed in his duties as a director to ensure that KCH's interests were properly and adequately protected, including by not:
 - (i) disclosing any conflict of interest or bias as regard any aspect of the transaction;*
 - (ii) obtaining NEC and Board approvals before entering into binding contractual arrangements;*
 - (iii) obtaining and, where necessary, acting upon external professional advice;*
 - (iv) obtaining legal clearance from the State Solicitor before entering into binding contractual arrangements;*
 - (v) ensuring proper legal and financial due diligence was conducted before monies were paid,.*
 - (vi) ensuring that there was an adequate arms' length agreement in place between the parties before monies were paid;*
 - (vii) ensuring that the Portion 406 transaction satisfied all necessary legal requirements; and*
 - (viii) ensuring that the transaction was structured in a way that KCH's interests were adequately protected including by registering an appropriate security to protect its interests;**
- (c) That Mr Hersey failed in his duty as a director to ensure that the relevant Board Paper was properly vetted by the Investment Committee, and contained all information material to a reasonable and prudent investor, before it was tabled before the Board for approval;*
- (d) That Mr Hersey 's conduct throughout the Portion 406 transaction demonstrated a complete breakdown of proper legal, internal management and accounting processes within KCH;*
- (e) That Mr Hersey failed to properly report and account to the Board in a prompt and timely manner (or at all) as to the proposed initiating of conduct of and execution of relevant transaction documentation including changes in transaction structures and finances;*

That Mr Hersey ignored or disobeyed Board resolutions or failed to implement them properly or fully;

- (g) *That Mr Hersey failed to properly and fully inform the Board of all relevant matters which he knew or ought to have known;*
- (h) *That Mr Hersey failed to perform any proper due diligence before seeking Board approval;*
- *That Mr Hersey presented to the Board an inadequate, selective and/or factually incorrect Board paper that did not accurately advise the Board of the state of the transaction, the relevant risks and issues and which recommended decisions which were either not required or impossible to implement;*
- *Mr Hersey failed to advise the Board that NEC approval was required for the transaction;*
- (k) *That Mr Hersey exposed KCH to unacceptable legal and commercial risk;*
- (l) *That Mr Hersey failed to bring to the attention of the Board changes in circumstances which impacted on or rendered unnecessary previous Board decisions or conditions imposed by the Board;*
- (m) *That Mr Hersey expended K46.6million without Board authority and without legal authority so to do;*
- (n) *That Mr Hersey failed to comply with internal KCH directive and guidelines; and*
- (o) *That Mr Hersey acted in breach of his financial authority or limits."*

10.202 It is to be noted that no direct allegation was made to the effect that Mr Hersey received any form of benefit from the Portion 406 transaction. The Independent Committee did however refer the Portion 406 transaction to law enforcement agencies for further investigations with a view to determining whether criminal charges, including fraud, should be laid against persons involved in the Portion 406 transaction. The Independent Committee was also critical of Mr Hersey for telling a staff member to remove the anti-corruption clause from Kumul's agreements.

10.203 It should be observed at this point that there were various allegations made against Mr Hersey which did not relate to the Portion 406 allegation, such as allegations relating to overseas travel, the appointment of consultants, overseas borrowings, the breakdown and hostility in Mr Hersey's relationship with State owned enterprises, lack of interpersonal skills, the termination and alleged intimidation of staff, exercise of scrutiny and vetting of Board powers, and in his conduct of internal legal, management and accounting processes.

- 10.204 The Independent Committee, having been requested to submit its report on 12 April 2017, did so prior to Mr Hersey being furnished with any detail of the allegations against him, or having received his responses to such allegations. This appears to have occurred because the Independent Committee was placed under considerable time pressure to produce its report.
- 10.205 One must obviously be very careful in assessing the view of the Independent Committee, having regard to the fact that the findings were made without hearing Mr Hersey's account of the events.
- 10.206 In relation to the Portion 406 transaction, the Committee was satisfied that there was *"more than sufficient evidence to substantiate each of the allegations raised above"* and that Mr Hersey had committed serious unlawful breaches of his statutory, contractual and/or common law duties as a director. The Committee was satisfied that such breaches amounted to fundamental breach and/or serious misconduct within the meaning of clause 19(c)(iv) and (v) of the employment agreement so as to warrant immediate termination by the Head of State acting on the advice of the NEC.
- 10.207 The Committee considered that Mr Hersey had acted wilfully and intentionally, and in concert with certain members of KCH management, to deliberately mislead the Board on a range of critical issues relating to the Portion 406 transaction.
- 10.208 The Independent Committee found that the payment of K46.6 million to KEL at the direction of Mr Hersey was both *"grossly irresponsible and improper"*. It said that it was also done without prior NEC or Board approval, in circumstances in which Mr Hersey knew this was a strict requirement.
- 10.209 The Independent Committee expressed the view that the Minister for PESI appeared to exercise undue influence over the Portion 406 transaction. It stated that the evidence suggested that the Minister was linked to KEL in some way at the time of the relevant transaction, and that Mr Hersey was well aware of this. It stated that the apparent conflict of interest on the part of the Minister was never disclosed by Mr Hersey to the Board. It should be mentioned at this point that the Independent Committee did not give Mr Duma the opportunity to appear before, or make submissions to, the Independent Committee.
- 10.210 It is unnecessary to relay in this report the findings of the Independent Committee in relation to the other allegations against Mr Hersey. In general, the Independent Committee concluded that there was insufficient evidence to make findings or recommendations in relation to those allegations. As a result, it would be correct to say that the Independent Committee's recommendations to the NEC to the effect that Mr Hersey should be suspended and terminated were based on Mr Hersey's conduct in relation to the Portion 406 transaction.
- 10.211 It should however be observed that part of the alleged misconduct of Mr Hersey was based on the term of his employment contract, and his duties as a director of Kumul.

(13) *Hersey Response to Allegations*

- 10.212 Mr Hersey has provided written responses to the allegations against him. That response evidently did not reach the Independent Committee before it reported on the matter.
- 10.213 He states that he did, at all times, ensure that the interests of KCH were properly protected, and he states that his actions, correspondence and interaction with KCH staff, including the legal team and the third parties involved in the Portion 406 transaction, were reflective of this position.
- 10.214 He says he did provide all information available to KCH to the Board. He says that the Board Paper sets out all information known to him and KCH to the Board in detail. The Board Paper had stated that the Valuer General provided the information in respect of the purchase of the land.
- 10.215 He maintains that there was no conflict or bias, and states that the committee did not give proper details or facts supporting the claim that there was. He stated that he obtained all NEC and Board approvals for the transaction.
- 10.216 He states that he obtained external legal advice from Gadens in regard to the structuring. He took advice from the Legal Manager.
- 10.217 He instructed the KCH legal team to undertake due diligence of the transaction. At no time did he act independently of that advice, nor did he enter into anything without advice from the Legal Manager.
- 10.218 He stated that the agreement in place for the monies to be paid was "*arm 's length agreement*". The KCH Legal Department was instructed to prepare the documentation for all aspects of the transaction, and he took advice from the Legal Manager. He at no stage acted independently of that advice.
- 10.219 With Gadens and the General Manager, he ensured that the transaction was structured in the most appropriate manner.
- 10.220 The transaction was properly vetted by the Investment Committee comprising of Moses Maladina, Michael Koisen and Richard Tengdui, and the Committee recommended the transaction to the Full Board. The Board Paper contained all the information it should have contained for a proper and informed decision to be made. The Paper was prepared by the relevant portfolio manager who was meticulous in the preparation of her board papers.
- 10.221 He denied that the transaction demonstrated a complete breakdown of the proper legal, internal management and accounting processes within KCH. The appropriate processes were followed.
- 10.222 He had reported to the Board as and when required. The Board approved the transaction and its implementation. He says he had never ignored or disobeyed a Board resolution, or failed to implement a Board resolution.

- 10.223 He conveyed to the Board all information known to him about the transaction.
- 10.224 There was considerable discussion between himself, the Portfolio Manager, the CFO and the Legal Manager regarding the structure and financing of the transaction, and consensus was reached and the transaction implemented.
- 10.225 Letters of Advice from the State Solicitor regarding the role of KCH and the transaction confirmed that further NEC approval was not required given the approval by NEC of the KCH Annual Plan.
- 10.226 He had NEC and Board approval to expend the K46.6million; he complied with Board directives and he did not breach his financial authority.

(14) *Administrative Inquiry Conclusions re Hersey*

- 10.227 Mr Hersey's suspension is in a different category from the other suspensions. Going by the documentation made available to the Administrative Inquiry, he appears to have been suspended and terminated on the ground of breaches of his Employment Contract with Kumul. He has foreshadowed action for wrongful dismissal. The suspension and termination were effected by the NEC.
- 10.228 The Administrative Inquiry is of the view that breach of contract, as such, does not fall within its Terms of Reference. Accordingly, the Administrative Inquiry considers it to be outside its scope to deliberate on Mr Hersey's suspension or termination.
- 10.229 The Independent Committee does not appear to have put to Mr Hersey that he committed any breach of the criminal law, and Mr Hersey has denied all wrongdoing. In those circumstances in particular, it would be inappropriate for the Inquiry to deliberate on Mr Hersey's suspension or termination.
- 10.230 In summary, the Administrative Inquiry makes no determination about Mr Hersey's conduct. This is not intended to render issues relating to Mr Hersey immune from investigation by other investigative bodies should such bodies consider that issues involving Mr Hersey warrant further investigation.

11. Defence Accounts

- 11.1 It is necessary to examine the account given to the Inquiry by the Defence Force in relation to the selection of Portion 406 for compulsory acquisition.
- 11.2 Brigadier General Toropo, the Commander of the PNG Defence Force, attended at the Inquiry to give information on 9 September 2017.
- 11.3 The Brigadier General said he had been Commander for over 3 years. He referred to the fact that the relocation decision came to involve both Murray Barracks and Taurama Barracks.
- 11.4 The relocation of the Lancron Naval Base envisaged that Lancron would be given over to commercial activity, and the Naval Base would be transferred out of Port Moresby as well. Brigadier Toropo said the Lancron Naval Base was still being used by the Navy. He said that was because an alternative site had not been found. He agreed that, neither before nor after the acquisition of the Manumanu land had there been any expert analysis of the suitability of Manumanu for naval purposes. No written report had been prepared.
- 11.5 Although he had supported the decision to move the naval base to Manumanu, he stated that it was preferable for the maritime base to be within the vicinity of the Port Moresby area. He stated:
- If there is any site available, Motukea should be a suitable site.*
- 11.6 The Brigadier General appeared to be quite doubtful as to whether "*bigger boats*" could be accommodated at Manumanu.
- 11.7 The late Mr Vali Asi, Secretary for Defence, gave his account to the Administrative Inquiry on Thursday 20 July 2017. He said that, having been Secretary for Defence in 1986-1989 period, he was re-appointed on 14 October 2015.
- 11.8 His view was the Manumanu land was suitable for maritime purposes. He stated that his view was based on "the advice we got from our technical people" and that "the Commander will answer for that". He said he was never involved in any decision as to whether the land at Manumanu was suitable for naval purposes but his belief was that it was suitable.
- 11.9 He was under the impression that "*Portion 154 goes to the sea*". When it was put to him that the nearest water was the Galley Reach River which was almost 4 kilometres from Portion 154, Mr Asi appeared to have no real knowledge of the relationship between land and sea in the area.

Dr Fabian Pok

- 11.10 On 15 October 2015, Dr Pok sent a letter to Mr Luther Sipison, the Secretary for Department of Lands and Physical Planning.

11.11 The letter reads as follows: -

Re: Intention to shift Murray Barracks and Lancron Navy base to Portion 406

The National Executive Council in its Decision 168/2014 has authorised the PNGDF to relocate its current military establishments away from NCD.

My Ministry and PNGDF have identified Portions 406 and 154, Milinch Manu, Aroa, Central Province, as suitable locations for the construction of new military barracks and associated facilities.

As Portions 406 and 154 are currently Agricultural Leases held by private interests, I request the Department of Lands and Physical Planning to compulsorily acquire these portions for the State (PNGDF) for military purposes under the compulsory acquisition process provided under the Land Act. Please therefore initiate the necessary process under the Land Act to compulsorily acquire these portions for the PNGDF. "

- 11.12 As previously stated, the content of the letter was incorrect insofar as Portion 154 was at all material times the property of the State.
- 11.13 As also previously stated, the Defence Minister's letter of 15 October 2015 appears to be the first time Portion 406 had been officially mentioned as a site.
- 11.14 It is also highly significant that Dr Pok was a member of the Defence Council, and accordingly must have known that Portion 406 had not been approved by the Defence Council to be part of the new Defence site, although Portions 422 and 423 had been approved on 27 February 2015.
- 11.15 In his account of events to the Administrative Inquiry, Dr Pok acknowledged that the land was not approved by the Defence Council. He said that it was desirable land because it had no real problems in relation to customary ownership. That was "one point to consider".
- 11.16 He referred to the fact that a feasibility study and design had been carried out on how Murray Barracks would look in the future, but he did not suggest there was any feasibility study performed as to the suitability of Portion 406.
- 11.17 The significant feature of Dr Pok's account, therefore, is that it confirms that he gave Ministerial impetus on the compulsory acquisition of Portion 406 in circumstances in which there was no Defence Council approval of that purchase and no feasibility study.
- 11.18 In the absence of a Defence Council Decision and a feasibility study, it may be inferred that it was Dr Pok who gave the necessary direction that Portion 406 be compulsorily acquired, and thereby provided a cover for the lack of approval.

Inquiry Conclusions re Dr Pok

- 11.19 It is very strange that Dr Pok should have authorised the compulsory acquisition of Portion 406 at all, let alone that he should have done so in the absence of a Defence Council decision and a feasibility study. However, such action would not have been corrupt had Dr Pok been lending his support to the compulsory acquisition of Portion 406 solely for the purposes of what he considered to be in the best interests of the Defence Department.
- 11.20 But if he was acting in the interests of another or others, including Kurkuramb Estates and himself, his actions of course would have been corrupt. This therefore provides a further reason as to why the affairs of Kurkuramb Estates need to be properly investigated.
- 11.21 The allegation of corruption against Dr Pok would be strengthened if it did transpire that Mr Duma controlled the affairs of Kurkuramb Estates. Then it would have been a case of Dr Pok having authorised compulsory acquisition of a property owned by a company controlled by another minister, with that being a compulsory acquisition which turned out very favourably to the property owner. In that event, an inference of collusion between the two ministers could be drawn.
- 11.22 However, as stated above, Mr Duma has firmly denied that he controlled the affairs of KEL. As matters stand, there is no basis for thinking that Dr Pok should have realised that Mr Duma controlled the affairs of Kurkuramb Estates, because Mr Duma is very firm that he did not do so. Accordingly, no basis for drawing such an inference arises.

12. Valuation Considerations

- 121 Aspects of the valuations have already been referred to and considered in Sections 9 and 10 of this Report. The object of this Section is to add some additional matters.
- 122 Mr Gabriel Michael said that he had been with the Valuer General's Office for over 20 years, and had been Valuer General since 2014.
- 123 Mr Michael stated that all compulsory acquisitions have to come to him by means of a request from the Department responsible for organising the acquisition. The letter is normally written to the Secretary of the Department, that is to say the Secretary for Lands. The letter ordinarily asks for the Valuer General's Office to prepare a valuation.
- 124 Mr Michael says that, in this instance, in respect of Portions 406, 422 and 423, he was not informed of any such request, if there was one.
- 12.5 In his experience, "all compulsory acquisition is done by the State", and the State is liable for all compensation.
- 126 He said that the established procedure was that Mr Kila had to go through him to obtain approval to prepare a valuation report for a compulsory acquisition. He could sign for a compulsory acquisition valuation below K500,000, but not over K500,000. In 2014 Mr Michael had circulated a document dated 25 February 2014 containing this instruction: See Annexure 12(1).
- 127 He said that, when the three valuation reports relevant to the Inquiry were done in November 2015, he was not on leave. He conceded that he may have gone on duty travel, but he cannot recall doing so. When he went on duty travel, that would last for a week or a few days. The reports were not referred to him. He had not signed the reports.
- 128 This was the first time he was aware of any valuer in his office signing for a valuation above K500,000. Any such valuation should have been signed by him.
- 129 So far as the stamp is concerned, he said that one stamp is kept in his office. The other stamp was for Moses Kila to use when he signed off for valuations below K500,000.
- 12.10 Mr Moses Kila attended on the Inquiry on two separate occasions.
- 12.11 He said that there was no working file of documents pertaining to Portion 406. The reason was that he did the valuation in a hurry. When asked why he was in a hurry, he said he was pressured by officers of the Defence Department.
- 12.12 Although he did not refer to any comparable sales in his report, he identified a document as containing those sales he said he had examined. A copy of that documentation is Annexure 12(2). The notable feature of all of the sales is that they were properties in or on the fringe of Port Moresby.

- 12.13 He stated that he signed the valuation certificate because Mr Gabriel was not available. He claimed Mr Gabriel was away on duty travel.
- 12.14 On the second occasion he attended the Inquiry, which was on 30 August 2017, he was asked why he had not revealed, on the first occasion, that he had signed valuations for Portions 422 and 423.
- 12.15 The explanation that he gave was that Portions 422 and 423 had been valued by a private valuer. He said that "they said for us to cancel" since the valuations had already been done. He agreed that he had prepared the valuations, but said they were *"disregarded because it was said that a private valuer had already done it so we should not be doing it and so we only did 406"*. He said that he *"never gave"* the reports for 422 and 423.
- 12.16 He agreed that he stamped reports for Portion 422 and Portion 423 and applied his own signature to them, as he had for the Portion 406 report.
- 12.17 He said that subsequently the value for Portion 406 was set at K46 million because it *"was adopted from this private valuer"*, the valuer being Gabriel Du Karap of GDK, Valuers and Property Consultants.
- 12.18 It was put to him that the value that he placed on 422 and 423 was actually higher than the value placed by Mr Du Karap on those properties. Mr Du Karap had placed K7.2 million on Portion 422, whereas Mr Kila's value was K7.615 million. As to Portion 423, Mr Kila had placed a value of K9.397 million on the land, whereas Mr Du Karap had given a value of K9.2 million.
- 12.19 Mr Kila found it difficult to explain why he had put a higher value than Mr Du Karap on the 422 and 423 properties. He said:
- "It is reasonable because, like I said, valuation is not exactly what — if you put it on 9.7, it does not mean that I will put on it 9.7 as well. It depends on how you interpret the data and how you can reason to say that you use this rate or this, whatever; depending on the factors that may influence some things. Like I do not think the same way as you think, you see. It is a little bit like economics and psychology and all these kinds of things. So if you think differently, I may have a slightly different value because I think of it in a different way. So long as it does not differ, not a very big difference is in there."*
- 12.20 He said the private valuation had been given to *"people from Defence"*. He said that in this instance the requesting authority was the Secretary for the Department of Defence. He said that, in this instance, Defence was *"the client to this private valuer"*.
- 12.21 He said that the use made of the private valuer, and the adoption of the private valuer's figures, was done by *"Defence Department"*, the *"personnel from the Office of the Secretary of Defence"*. He was not able to say who those people were.

- 1222 Mr Kila claimed that he did not know what the purpose of ascertaining the market valuation of Portions 422 and 423 was. He did not know that those two allotments were being purchased by the Government. He said he did not know, in the case of 422 and 423, that the valuations were for the purpose of compulsory acquisition. He said that *"all they asked was for the market value"*.
- 1223 When pressed as to why he did valuation documents himself and signed them in relation to 422 and 423, he stated *"Well, we thought we were going to give it to them but then they said, 'no it was already being done, so we cannot do it again'. That is what they said."*
- 1224 He said he did not adopt the figure just because it was given by a private valuer. He claimed to have done his own analysis, including obtaining his own data. That was the same set of data as he used for Portion 406.
- 1225 He said there were not many sales in the area in relation to agricultural land. He was challenged as to whether his valuation for Portion 406 was a one-page valuation, and he said: *"No, there are several pages to it. There was not just the page with his signature on it. He claimed to have given over copies of the other pages, but said 'I do not know if you people have copies'"*.
- 1226 He produced the document which he said constituted the additional pages for his valuation of Portion 406. They were the pages that contained the details of sales in and close to Port Moresby. They are Annexure 12(2).
- 1227 He said that he did take into account comparable sales, he just did *"not put it in the report"*. This further material was *"in the office"*. He said he had given people copies of that.
- 1228 In relation to his valuation of Portion 406, he stated, referring to the valuations of Portions 422 and 423, *"we almost adopted the same rate"*. When asked why he did that he said: *"Because we are just around the same area, just adjacent"*.
- 1229 He was asked whether, when he valued Portion 406, he just took the per hectare rate that the private valuer had adopted for the other two properties, 422 and 423. He said: *"No, it is slightly different"*. He said his reason was the variable sales.
- 1230 He said he never obtained a copy of any minute sent by Mr Michael containing a direction to the effect that nobody in the office should do a valuation over K500,000, without that matter being referred to Mr Michael. Mr Kila said he was only verbally informed to that effect. He said: *"Verbally, he had mentioned that my limitations are K500, 000"*. That was around February 2014 that Mr Michael said that.
- 1231 He said he did not comply with the requirement that he should refer a valuation over K500,000 to Mr Michael. The reason he gave was: *"Because in his absence I was like pressured"*. The pressure that occurred was applied by Defence Force officers through Mr Moni.

- 12.32 He said he was never paid any money in connection with the valuations and received no benefits. He was not aware of anybody else in the Valuer General's office receiving any benefits.
- 12.33 When asked where Mr Michael was at the time he prepared his valuations, Mr Kila said *"he had some problems so he was away from the office"*. He was away *"a week or so"*.
- 12.34 Mr Michael sent a letter to the Administrative Inquiry dated 26 July 2017. He gave this description of the discussion between Mr Kila and himself concerning the valuation of the Manumanu land prepared by Mr Kila. Mr Michael stated:

"For this letter of request officially requesting the Office of Valuer General to carry out the Valuation, as I was not involved in this Valuations I called for Mr Moses Kila the Assistant Valuer General who actually did the valuation to explain as to how these valuations were done. He responded stating that the Defence Secretary's Office requested these valuations. An officer from the Defence Secretary's Office came to the Valuer General's Office requesting for the Valuation verbally and he was asked to fill in a Valuation Request Form and Valuation Instruction Numbers were issued for Portion 406 with an Instruction No. COR 2015144 and Portion 2722 with an Instruction Number COR 2015142 and Portion 2723 with an Instruction Number of COR 215/43; these Portions 2722 and 2723 were later changed to Portions 422 and 423 by the Office of the Surveyor General. Moses Kila also stated that the Valuation he did was for Portion 406 Milinch Manu Fourmil Aroa only and he did not do the Valuations for Portions 422 and 423 Milinch Manu Fourmil Aroa as the Defence Secretary's Office said they have engaged private valuers to carry out the reports. I therefore conclude here that Valuation Instruction Numbers were issued based on the Defence Secretary's Officer filling in an Official Valuation Request Form."

Value of Land

- 12.35 The assessment of compensation arising from the compulsory acquisition of land is to be determined in accordance with the provisions of the *Land Act* 1996, in particular sections 23 and 24.
- 12.36 Under those provisions, the value of the land is to be determined at the date of acquisition.
- 12.37 Under s. 23(2), *"in determining the value of land acquired under this Act, regard shall not be had to any increase in the value of the land arising from the carrying out of, or the proposal to carry out, the public purpose for which the land was acquired"*.
- 12.38 In other words, in the circumstances of the present case, the fact that the Department of Defence demonstrated interest in the acquisition of the land, and in conducting military operations on it, could not be relied upon to increase the value.

12.39 The value to be ascribed to the land is the "market value" which is defined as being *"the estimated amount which the lessee's interest in the State Lease might reasonably be expected to realise on the date of valuation in an exchange between a willing vendor and willing purchaser in an arm's length transaction after proper marketing wherein the parties had each acted knowledgeably, prudently and without compulsion"*.

Relevant Comparable Sale

12.40 The Administrative Inquiry has had regard to the State valuation in relation to land known as Portions 11 and 152, Milinch Granville, Fourmil Moresby, Central Province in assessing the compensation payable as a result of compulsory acquisition of agricultural leases. The property was situated on the north-western outskirts of Port Moresby and the southern part of the holding was approximately 16 kilometres north-west of the Port Moresby Central Business District. There was a bitumen road from Port Moresby which went past the property. It was a sealed two-lane carriageway with gravel shoulders. It was in good condition. Good access was available direct to the property from the road.

12.41 The lease was expressed to be a *"Pastoral Lease"* and, as such, the property could only be used for grazing or pastoral purposes.

12.42 Reticulated electricity and telephone services were available to the property. No town water or sewerage services were provided.

12.43 The compulsory acquisition of Portions 11 and 152 was effective on publication of the Notice of Acquisition in the *National Gazette* on 18 December 2007. The registered proprietor was Takoa Pastoral Co. Limited.

12.44 The property had formerly been a grazing property (it had been called Fairfax Cattle Station) and it had apparently been abandoned. The property was mostly cleared land with some regrowth areas and indications of previous improved pastures in selected areas. The property comprised extensive areas of gently sloping to gently undulating, fully cleared grazing paddocks with reasonable natural grasses. The soils were of moderate to low fertility and this, combined with the low rainfall, lack of permanent water and lack of water storage facilities restricted the carrying capacity at the time.

12.45 The area of property was large, namely 4,323.078 hectares. The lease term was for 99 years, and the commencement date had been 29 March 1955.

12.46 The unimproved value of the land at the time had been assessed at K39,900 for Portion 11, and K416,500 for Portion 152. The then current annual rental was K22,700 per annum.

12.47 The valuation had been conducted on behalf of the State by Mr John F. Purcell of Asia Pacific Valuations Pty Ltd. Mr Purcell was a certified practising valuer.

12.48 Mr Purcell valued the property at K565,000. This reflected a per hectare rate of K350 for Portion 11 and K300 per hectare for Portion 152.

- 12.49 The report is Annexure 12(3).
- 12.50 It will be seen that the report analyses several comparable sales.
- 12.51 Mr Purcell concluded that the sales evidence for pastoral/grazing properties indicated that the land rates ranged from around K300 to K600 per hectare. The range of values reflected the size, quality and location of the holding.
- 12.52 Mr Purcell considered that discount had to be allowed for:
- The lower than average carrying capacity;
 - A poorer (less fertile) soil quality;
 - Absence of improved pastures;
 - Low rainfall in the area;
 - Limited stock watering facilities;
 - Lack of any significant farm infrastructure;
 - Deterioration whilst operative as a cattle farm.
- 12.53 Conversely, some of the attributes of the subject property had to be recognised including:
- Close proximity to Port Moresby;
 - Good all weather access roads;
 - Some underlying capital appreciation to recognise the increasing development in the general locality.
- 12.54 Mr Purcell's valuation was prepared some eight years prior to the relevant valuations in the present case. However, the Administrative Inquiry is not aware of any major alterations in value of agricultural land within driving distance of a major city that would justify the huge difference between the per hectare value determined in that case, and that determined in relation to the Manumanu land.
- 12.55 From the description given in Mr Purcell's valuation, the quality of the land acquired from the Takoa Pastoral Co. Limited was probably slightly inferior to the Manumanu land. On the other hand it was 16 kilometres from Port Moresby, whereas the Manumanu land is 80 kilometres from Port Moresby. Like Portions 11 and 152, Portion 406 Manumanu was a failed cattle property.
- 12.56 It is beyond argument that the values attributed to Portions 406, 422 and 423 for the Manumanu land in the du Karap and Kila valuations, reflecting as they do a per hectare rate in the region of K55,000, cannot possibly be sustained. A more appropriate per hectare value is the rate per hectare paid by Mr Eludeme's interests to purchase Portions 422 and 423 in 2011, namely K488 per hectare.
- 12.57 The unimproved values applied by the Valuer General to State Leases of Portions 406, 422 and 423 were totally inconsistent with the Du Karap and Kila valuations. Whilst it is appreciated that such valuations are often assigned administratively without there being any requirement of detailed value assessment, the valuations are intended to reflect the unimproved value of the land. They form the basis for the

calculation of the annual rental. As previously stated, the values were generally consistent with the K488 per hectare figure paid by the Eludeme interests, and totally inconsistent with the K55,000 per hectare figure.

- 12.58 The valuation evidence therefore also requires further examination by an authority with full investigative powers. One reason for that is that it does involve conflicts in accounts. As has been seen, there is a conflict between the account given by the Valuer General, Mr Michael Gabriel, and that given by the Assistant Valuer General, Mr Moses Kila. For reasons given in relation to the Administrative Inquiry's general lack of powers, the Administrative Inquiry is not capable of resolving a conflict of that kind, not having the power to examine persons on oath or the power to require attendance of other persons to give evidence about particular matters.

13. Conspiracy Theory and Suspension

- 131 As has already been indicated, several heads of department were suspended pending investigation into matters the subject of this Administrative Inquiry.
- 132 As stated above, the departmental heads suspended on 8 February 2017 were the Defence Secretary, Mr Vali Asi, Lands and Physical Planning Secretary, Mr Luther Sipison, Valuer General, Mr Gabriel Michael, Kumul Consolidated Holdings Managing Director, Garry Hersey, MVIL Managing Director, Jerry Wemin, Central Supply and Tenders Board Chairman, Mr Philip Eludeme, Lands Titles Commission Chairman, Mr Benjamin Betata, and the State Solicitor, Mr Daniel Rolpagarea. The remarks in this section do not apply to Mr Eludeme or Mr Hersey, who are considered separately in this Report.
- 133 The very fact that those senior officers covering a number of departments and State entities were suspended demonstrate that there was an allegation of suspicion of conspiracy including corruption on a large scale.
- 134 That the allegation or suspicion was nothing short of large scale conspiracy is clear from the content of the allegations. This is exemplified by the "Show Cause" letter of 15 May 2017 which Mr Luther Sipison, the Secretary of the Department of Lands & Physical Planning received from his Minister, Mr Benny Allan.
- 135 The Show Cause notice given to Mr Sipison is Annexure 13(1). Looked at in conjunction with known facts, it shows that the central allegations were that the compulsory acquisition of Portion 406 was corruptly contrived, and that a high valuation was corruptly obtained, thereby enabling a corrupt party or parties to receive the high amount of compensation assessed in respect of the value of the land. The contriving included the prior obtaining of the grant of the land, which may never have been intended to be used for agricultural purposes, but, rather, was intended to be available to be compulsorily acquired at the instance of the Department of Defence. The letter began:

"In a letter to you dated 3 February 2017, the Prime Minister directed you to respond to allegations and to explain your involvement with others in the compulsory acquisition of land at Manumanu to facilitate the relocation of the Defence Force Lancron Naval Base, namely:

- a) compulsory acquisition of Land Portion 406, Milinch Aroa, Central Province;*
 - b) execution of the MOA between the Department of Defence, Kumul Consolidated Holdings Limited, and Kurkuramb Estates Limited;*
 - c) valuation of the said land through the Valuer General's Valuation Report,.*
 - d) Transfer of the Title to Kumul Consolidated Holding Limited of Lancron Naval Base (Section 53 Allotment 9 Granville);*
 - e) related acquisition of other land by the Department of Defence for the purpose of relocation of Lancron Naval Base; and*
- 0 availability of other information relevant to the said land acquisition."*

13.6 The paragraph setting out the allegations against Mr Sipison appears at the top of page 2 of the letter:

"The evidence in the possession of the State shows that you have used your position of power and influence as a senior officer of the national public service, in conspiracy with others, for the purpose of defrauding the State and defrauding customary land owners in that you participated in and/or facilitated the compulsory acquisition of the said Manumanu land' at Portion 406, Mil inch Aroa, Central Province."

13.7 These were extremely serious allegations. They were allegations of criminal conduct.

13.8 Of all the heads of department that were suspended, the allegations against Mr Sipison and Mr Vali Asi, the Secretary for Defence, might be thought to carry the most traction inasmuch as the facts point mostly to facilitative actions within the Lands Department and the Defence Department. In particular, substantial manipulation appears to have occurred in the Lands Department.

13.9 The Inquiry turns therefore to the responses by Mr Sipison and Mr Asi.

13.10 Mr Sipison's responses to the allegations are comprehensively set out in a letter he sent to the Administrative Inquiry dated 18 May 2017. That letter is Annexure 13(2).

13.11 In that letter Mr Sipison states it was not his intention to defraud the State in any way. He considered the relocation of the Force to be a matter of national interest, and officers were designated to administer specific functions within his department.

13.12 He did not in any way or manner exert pressure or threats to officers.

13.13 The valuation of Portion 406 was carried out in the Valuation Division which he says functions independently of the Lands Department.

13.14 He stated that the valuation of Portion 406 and other land of interest to the PNGDF was *"only an indicative figure to assist and guide the State Agency involved in this compulsory acquisition which will form the basis of them to negotiate with the lease holders"*

13.15 He continues:

"Therefore, it is not the intention of my Department to allow PNGDF and its stakeholders to fix their pricing of the private land solely on the valuations done by the Valuation Division. The same applies to all other valuations on any property to serve as the basis of owners and buyers to negotiate and agree within themselves."

13.16 He continued:

"It was a private and individual decision of the management of PNGDF and its leadership to agree on the final acquisition price, which they themselves will pay for and on behalf of the State. As such"

my Department and I had very little or no involvement in the negotiation of the final price of the Portion 406 and all other land that were of interest to PNGDF for their relocation exercise."

- 13.17 He said the Memorandum of Understanding signed between the Department of Defence and Kumul Consolidated Holdings and Kurkuramb Estates Ltd were private dealings to which neither he nor the Lands Department were parties.
- 13.18 Mr Sipison denied that he had conspired with others to defraud the State and customary landowners in facilitating the compulsory acquisition of the Manumanu land.
- 13.19 Further, he denied he had personally benefitted and enriched himself from the acquisition payment by Kumul Consolidated Holdings Limited to Kurkuramb Estates Ltd.
- 13.20 Before his unfortunate death of 6 August 2017, Mr Vali Asi had attended on the Administrative Inquiry on 28 July 2017 to give his account of relevant matters.
- 13.21 In his discussions with the Administrative Inquiry, he said that he had trusted the correctness of the valuation to the Valuer General.
- 13.22 He said he had seen no evidence of anyone in the Defence Department getting any money out of the Manumanu transaction. He said he had no dealings with Kumul Consolidated Holdings Ltd about the matter. He did not know Mr Christopher Palos and knew nothing about the company, Kurkuramb Estates Ltd.
- 13.23 The Government acted swiftly by suspending the heads of several departments. In most of the departments, some action had taken place which apparently facilitated the Portion 406 transaction.
- 13.24 The fact that the Government acted so swiftly was not surprising, because it was presented with a transaction which suggested that it had been caused to purchase land for K46.6million for a naval base when the land was landlocked and several kilometres from the sea. Features of the transaction appeared to show that at least two departments must have been manipulated to bring about that effect, and that many public servants could have been involved in the process. The manipulation included causing the Defence Department to make a seemingly irrational decision as to the purchase. On any basis, the amount paid appeared to evidence manipulation of the valuation process, and the result was nothing short of an expensive and operational disaster.
- 13.25 As to the heads of department, assuming that they were not knowing participants in the fraud, the fact that their departments became vehicles through which fraud was committed had to be seen as raising questions of the adequacy of the administration of their respective heads.
- 13.26 The Administrative Inquiry does not consider that it is to sit in judgment on the Government's suspensions. The Administrative Inquiry would not dispute that, in the

situation described above good governance required the Government to act promptly and decisively to express its concern at the lack of proper administration that was apparently involved.

- 13.27 The suspension of the heads of departments may have been made on an alternative or different basis from the "conspiracy" basis, namely that the departmental heads had not adequately administered their respective departments.
- 13.28 It will be recalled that the "Statement of Case" referred to the fact that *"the principles of accountability and transparency have been seriously questioned in the land transactions warranting the Prime Minister at the authority of the National Executive Council to take firm action"*.
- 13.29 However, the fundamental allegation in this matter is of criminal conduct, probably of a conspiratorial nature. Perpetrators of such conduct are likely to seek to ensure that others who are not part of any conspiracy or criminal conduct are not alerted to the true nature of the actions that are being taken. That being so, the disclosure of the alleged conduct can hardly indicate, in itself, that the heads of departments were at fault. Having regard to those considerations, the Panel takes the view, on the basis of the information supplied, that none of the heads of departments currently on suspension have been shown to have been derelict in their duty in this way.
- 13.30 In short, the expression of the Government's reasoning behind the suspensions it made of departmental heads was based on the proposition that those departmental heads were parties to a conspiracy to defraud the Government. In the limited investigation it was able to make, the Administrative Inquiry saw no direct evidence, and insufficient circumstantial evidence, to show that the departmental heads were party to a conspiracy to defraud the Government.
- 13.31 That was particularly the case with State entities such as the MVIL, Land Titles Commission and the State Solicitor's office.
- 13.32 The Panel sees no reason for declining at this stage to act upon the denials of misconduct made by Messrs Luther Sipison and Vele Asi, and sees no basis for thinking that the allegations against them would suffice to prove that they were parties to a conspiracy of a kind described in Mr Allan's Show Cause notice. Having reached that conclusion in relation to Mr Sipison and the late Mr Asi, the Panel does not consider it necessary to deal explicitly with each of the departmental heads. In short, on the material presently available, there would be no prospect of any conspiracy allegation being sustained against any of them either.
- 13.33 The State Solicitor, Mr Daniel Rolpagarea, was also suspended. Mr Rolpagarea gave some advices with respect to the Portion 406 transaction at the point at which it came to involve KCH. The Panel has considered the advices, and sees no reason why any allegations could be sustained against Mr Rolpagarea either. Mr Rolpagarea, for example, advised in a letter to Kumul Consolidated Holdings dated 27 January 2017 (copied to the Minister for Public Enterprises and State Investments, Mr Duma) that, taking a broad view, the acquisition of Portion 406 could be said to be authorised by the 2012 NEC Decision. The Administrative Inquiry considers that view to be fairly

open. The expression of that view certainly falls well short of evidence that Mr Rolpagarea was party to any criminal conduct.

- 13.34 The Administrative Inquiry sees no reason to doubt the account of events given by Mr Michael Gabriel, the Valuer General. It saw no irregularity in Mr Joe Wemin releasing an MVIL dividend to KCH simply because it partly funded the payment of K46.6 million to Kurkuramb Estates Ltd by KCH. The Administrative Inquiry failed to discern any relevant connection between Mr Betata and the assertions of fraud and illegality the subject of the Inquiry.
- 13.35 All that is not to say that there was no large conspiracy of the kind referred to in the letter to Mr Sipison. The prospect that there was such a conspiracy cannot be excluded. All that is being said is that the Administrative Inquiry did not see sufficient evidence to support the expressed allegation that the departmental heads were party to a conspiratorial agreement.
- 13.36 The Administrative Inquiry certainly does not intend to suggest that a considerable amount of manipulation and dishonesty was not involved. There are features of the transactions that make it obvious that manipulation and dishonesty were definitely involved. Features such as the fact that the Portion 406 purchase was not approved by the Defence Council and that there was no feasibility study supporting it, and that it appears to result in the Defence Department having far more land than it needs at Manumanu, strongly support the proposition that the compulsory acquisition of land recently granted to Kurkuramb Estates Ltd was contrived. The fact that the valuation was so far in excess of the true value suggests that the valuation was fraudulently high. The fact that the Lands Department files disappeared strongly supports the proposition that there was corruption involved.
- 13.37 It is to be recalled that, in June 2015, Kurkuramb was granted Portion 406 paying no more than application fees of K650. Approximately three months later, the State commenced the process of compulsorily acquiring the interest and agreed to pay the company K46.6 million by way of compensation. Any conclusion that that occurred as a result of mere luck strains credulity. Then one goes back to the further fact that a pre-requisite to the success of the transaction was apparent pressure on the government exerted by the Defence Department to acquire Portion 406 for the purposes of relocating military and naval installations in circumstances in which there was no qualified opinion to support the appropriateness of the land for that purpose.
- 13.38 As stated above, the action against the various senior officers of the State, and the allegations made against them, are plainly based on the theory that a large number of personnel across a number of departments, including the Heads of some departments, and in two cases Ministers, conspired together (and presumably with several others) to manipulate the compulsory acquisition of Portion 406 at an inflated price and to divert the proceeds of the acquisition of the property into their hands.
- 13.39 There is circumstantial evidence which supports the notion that there was a wide-ranging conspiracy, such as the lengths some personnel in the Lands Department have gone to in removing all the files containing evidence relating to the transactions. If there was a large and wide-ranging conspiracy of that kind, it could only be demonstrated to the requisite degree by an exercise of full investigative powers. As

has been indicated, the Administrative Inquiry does not have these powers. There are other possibilities. One such possibility is that one person, or a small number of persons, garnered sufficient cooperation from public servants across the relevant departments, particularly in Lands and Defence, to achieve the same ends. Once again, circumstantial evidence also supports that possibility. Again, however, that also could only be demonstrated by a full investigation.

13.40 The Panel is therefore strongly of the opinion that full investigations of this matter should be completed by the Police and the Ombudsman Commission, as appropriate.

13.41 Whether the suspensions were and are justified on a "good governance" basis, or on the footing that the departmental heads must take responsibility for such events when they occur, is a matter for the Government. The Panel simply makes it clear that, in its opinion on the facts presently known to it, the suspensions cannot be justified on the basis that the nominated departmental heads were parties to a conspiracy. Of course, that view would need to be altered if further investigations demonstrated otherwise.

13.42 It should be added that the Administrative Inquiry also seeks to make it clear that its analysis is in no way intended to bind others who are charged with the duty of investigating these serious matters.

14. Portion 698

- 14.1 The final property transaction the subject of the Administrative Inquiry relates to Portion 698, Milinch Granville, Fourmil, Moresby. This transaction is a stand-alone transaction in that the acquisition of the property had nothing to do with the relocation of the Naval Base or the Taurama or Murray Barracks.
- 14.2 It is also different from the Manumanu transactions because, whilst it attracted criticism by settlers living on the land, to the Panel's knowledge it has not been the subject of public criticism.
- 14.3 It is however another instance of an acquisition of land for the purposes of the Defence Force which deserves criticism. According to correspondence supplied to the Administrative Inquiry by the Department of Defence, the Defence needed a property in Port Moresby to house a long-range recon (reconnaissance) unit. Mr John Porti, in a letter dated 13 August 2014 to Mr Romilly Kila Pat [Annexure 14(1)] suggested the compulsory acquisition of Portion 698, a block of land adjacent to the airport containing 30.6 hectares. The owner of the land was Kitoro No 64 Ltd. The principal of Kitoro No 64 Ltd was Mr Tim Neville. His company had purchased the land in 2009. Mr Neville held a Valuer General valuation in the sum of K9 million as at 28 October 2011. The valuation report is Annexure 14(2). The valuation report recited that the term of the State Lease was for a period of 69 years commencing 7 May 1964.
- 14.4 The report recited that there were no improvements on the land, but that some areas of the land parcel were occupied by squatter settlers.
- 14.5 The valuation, which is under the hand of Mr Kwapena, stated that the valuation was based on sales of similar State Leases and land transactions within the vicinity of the subject property at 7/8 mile and neighbouring 9 mile in Bomana or Bomana/Laloki areas.
- 14.6 The land was actually situated in 8 mile.
- 14.7 On 12 August 2014, Mr Douglas Ure, Secretary of Kitoro No. 64 Ltd, wrote to the Secretary for Defence, Mr John Porti, in the following terms:

"Dear Secretary,

I am aware that the National Executive Council under the O'Neill/Dion Government made a decision some two years ago to relocate sections within the Papua New Guinea Defence Force unit to help alleviate the current congestion and also to facilitate the natural expansion of the forces units.

I believe that the PNGDF under its approved white paper is currently seeking expressions of interest for suitable and affordable land packages to be able to undertake such an exercise. Obviously as you are undoubtedly aware State lease with a current title is becoming in reality a critical issue;

1 Prohibitive in price; and

The Company can currently offer I believe an extremely suitable portion of land that could be highly beneficial for the PNGDF's requirements. The said land is currently located immediately adjacent to the existing Defence Force ATS Unit at the Jackson's International Airport, Port Moresby.

The Portion of land is under State Lease and is currently unencumbered and comprises of 75 acres 1 rod 20 perches or approximately 37 hectares. The land is under State Lease Portion 698 Granville Port Moresby. I believe that the proximity to the existing ATS plus the size of land would be extremely valuable to the PNGDF's relocation and urgently needed expansion programs.

The Company is therefore offering the said Portion of Land for sale at K14 million Kina to meet the PNGDF's requirements.

Should you be interested we await your favourable response at which time we would be happy to enter into further discussions to proceed to Contract and the conclusion of the sale to the benefit of both parties.

We have also attached a current copy of the same Titles for your perusal.

In the meantime, we await your response."

148 On 19 September 2014, Mr G J Sheppard of Messrs Young & Williams Lawyers wrote to Mr Dairi Vele, Secretary and departmental head of the Department of Treasury, as follows:

"Dear Mr Secretary,

ACQUISITION OF PORTION 698, MILINCH GRANVILLE, FOURMIL MORESBY

We act for and are instructed by Kitoro No.64 Limited ('Kitoro').

Kitoro is the leaseholder of Portion 698, Milinch Granville, Fourmil Moresby ('Portion 698').

We are instructed that our client had reached agreement with the respective Departments of Lands, Treasury and Defence that the State would acquire and purchase our client's Portion 698 at the agreed price of K14 (fourteen) million kina and that such payment would be made upon the acquisition of Portion 698.

Kitoro instructs that on 5 September 2014 the Minister for Lands acquired Portion 698 by issuance of a Notice under section 12(1) of the Land Act 1996. To date, our client has not been paid for the purchase of Portion 698.

By this letter we write to respectfully request that your Office issue payment to our client for Portion 698 at the earliest.

Failing a satisfactory and timely response, we are instructed to commence immediate Court proceedings against the State for breaching the terms and conditions for purchase of our client 's Portion 698.

Please let us have your response to this letter by and before 4.00pm on 23 September 2014.

We look forward to your positive and timely response. Our client reserves all of its rights."

- 14.9 It would seem that the Department of Defence then paid a sum of KI5.4 million for the purchase of the land. It would appear from a letter from Mr Vali Asi, then Secretary of the Department of Defence, to Messrs Young & Williams Lawyers, that the purchase price was paid over without any arrangements being made that would effect the transfer of title. This appears to follow from the letter dated 9 February 2016 from the Department of Defence to Messrs Young & Williams Lawyers:

"Dear Sir,

RE DEMAND TO TRANSFER THE TITLE FOR LAND PORTION 698, MILINCH GRANVILLE, FOURMIL MORESBY FROM KITORO NO 64 LTD TO DEPARTMENT OF DEFENCE

We understand that you acted for Kitoro No 64 Ltd to sell their aforementioned land to our organisation in around September 2014 when settlement was reached and we paid a sum of K15,400,000.00 to your client as full and final payment for the purchase of their land located at the back of the Jacksons Airport for our PNGDF Warrior Training depot to be relocated there.

We further note that only a Notice of Compulsory Acquisition was issued on the 05th of November 2014 and no Sale and Transfer of that land including a Deed of Release over that portion of land were executed.

Also, a Notice of Reservation of that land for our purposes so a Certificate Authorizing Occupancy (COA) or a title proper can be issued to our organisation has not been done to date.

Those necessary steps as required under the Land Act to formalize transfer of a State lease over to our organisation has not been completed by yourself on behalf of your client, with the concerned officers at the Department of Lands & Physical Planning to date.

You have failed to comply with your end of this land sale contract to have the title transferred to us and only pushed consistently for payment to be made with our previous management who made it to your client who has made off with that money without completing the sale properly.

It is also surprising that the State Solicitor was never involved in the whole process to guide you along in the process involved in compulsory acquisition of land and hence no legal clearance is on file to support that sale.

As such, we now demand that you liaise with your client to complete the compulsory acquisition process with the concerned Lands Department officers to have the title transferred and given to us within a month from the date of this correspondence.

Failing that we will have no option but to commence legal proceedings against your client and yourself for failing to hold up your contractual obligations and claim for associated damages as a result of that.

Please do not hesitate to contact our Principal Legal Officer, John Sebby who has carriage of this matter if need be to further discuss this or clarify any issues involved.

Your consideration and prompt action in this regard is highly appreciated."

- 14.10 A letter from Mr Sheppard to the Principal Legal Officer, Department of Defence dated 3 March 2016 appears to confirm that is the case. That letter [Annexure 14(3)] contained the following paragraphs:

"We confirm that we acted for Kitoro No. 64 Ltd in the conveyance transaction of the above portion of land. Our Mr. Kenneth Frank (now His Honour Justice Frank) had carriage of this matter and has since left the firm.

We note from your letter the transaction is yet to be completed for formalise transfer of a state lease over to your organisation. We will now liaise with our client to complete the compulsory acquisition process with the relevant Department Lands Officers.

We understand the severity of this transaction and will undertake to complete the conveyance process as timely and swiftly as possible. Please bear in mind that we will be dealing with the Lands Department and most lodgements can take a considerable amount of time to settle, in this instance the Registrar of Titles."

- 14.11 So far as the Administrative Inquiry is aware, there still has been no transfer of the title from Kitoro No 64 Ltd to the State. The transaction appears quite irregular, at least on the following bases:

- (a) There is no contract or other document specifying the terms on which the land was purchased and sold;
- (b) Insofar as the transaction was sometimes referred to as a compulsory acquisition, it did not appear to comply with the requirements of the *Land Act* 1996 relating to compulsory acquisition.

- (c) The consideration was paid over by the Defence Department to the lawyers for Kitoro No 64 Ltd without the usual exchange taking place which would have enabled the obtaining of title.
 - (d) There was no approval of any kind to authorise the transaction, whether by the Defence Council, the Minister or the NEC. As to the NEC, the Decision 70/2012 could not be relied on to support the transaction if only because the transaction was not a transfer of a base away from the city of Port Moresby.
- 14.12 The Administrative Inquiry was asked to identify whether there was statutory compliance in the transactions.
- 14.13 The documentation produced in relation to this transaction is somewhat ambiguous. Some of it speaks in terms of compulsory acquisition, and some of it speaks in terms of contract. The uncertainty emerges for example, in Mr Dairi Vele' s letter dated 10 September 2014 [Annexure 14(4)] .
- 14.14 Looked at in terms of compulsory acquisition, whilst Mr Romilly Kila Pat, the then Secretary for Lands executed on 5 September 2014 a Notice of Compulsory Acquisition, there is no evidence of a Notice to Treat under S13 of the *Land Act*, or the publication of a Notice for Compulsory Acquisition in the *National Gazette* in accordance with S 12(1) of the *Land Act 1996*.
- 14.15 Looked at in terms of contract, the Administrative Inquiry has not been provided with any contract of sale and believes there was no such contract brought into existence.
- 14.16 The failure to serve a notice to treat in accordance with Section 13 of the *Land Act 1996*, and the failure to publish the notice in the *National Gazette* appears to carry the consequence that any compulsory acquisition procedure was flawed.
- 14.17 Although there was no valid compulsory acquisition or a contract of sale, the Secretary for Defence, Mr John Porti, appears to have yielded to the demands for payment made by the lawyers for Kitoro No. 64 Ltd, and K15.4 million was evidently paid to Messrs Young and Williams Lawyers. The payment may have represented K14 million plus a further K1.4 million for GST. The payment was demanded in a letter from Young & Williams Lawyers dated 19 September 2014, but the actual date of payment is not specified in the material supplied to the Administrative Inquiry.
- 14.18 As indicated above, no appropriate arrangement appears to have been made for the State to obtain title to the land.
- 14.19 It seems the Department of Defence has never taken possession, and that the land remains occupied by settlers.
- 14.20 The Administrative Inquiry endeavoured to obtain the cooperation of Mr Tim Neville, the principal of Kitoro No. 64 Ltd, but despite the fact that he was given ample opportunity to cooperate with the Administrative Inquiry, he did not do so. He plainly also declined to instruct his lawyers to provide documentation in their file to the Administrative Inquiry. He was entitled to take that stance because the Administrative Inquiry had no power to compel the cooperation of informants.

- 14.21 Some information relevant to this matter was provided by Dr Fabian Pok. Dr Pok stated that he had been called to a meeting at the Grand Papua Hotel. At the time he knew of the proposed transaction, because he knew that it had been the subject of discussion between the Secretary for Lands and the Secretary for Defence. The Secretary for Lands at the time was Mr John Porti. When he attended at the meeting, he met Messrs Tim Neville and Ben Micah.
- 14.22 Dr Pok says that they asked him to sign papers relating to the sale and purchase of the land. However, he declined to do so. He said words to the effect that the NEC Decision was very straight forward in referring to land outside the National Capital District.
- 14.23 Dr Pok said that the transaction proceeded despite his refusal to approve it. The Department of Defence had K25 million in its trust account. Dr Pok was aware of the fact that the purchase price was made available out of those funds by Mr Porti, acting along with the Secretary for Treasury, Mr Vele, and the Secretary for Lands, Mr Romilly Kila Pat.
- 14.24 Dr Pok confirmed to the Inquiry that Portion 698 had not been applied to any Defence Force purpose. He also said that he knew about the 28 October 2011 valuation by the Valuer General which valued Portion 698 at K9 million.
- 14.25 Dr Pok said he was very angry about the transaction.
- 14.26 Because of the nature of the transaction, Dr Pok demanded that the purchase price of K14 million be restored in the next budget.
- 14.27 The Administrative Inquiry endeavoured to have Mr Porti attend to give his version of this matter, as well as some other matters. However, Mr Porti no longer lives in Port Moresby, and the Administrative Inquiry did not succeed in its endeavours to have him attend.
- 14.28 The analysis of the transaction cannot be taken further in the absence of a right to exercise coercive powers. It should be among the matters investigated by the Police and the Ombudsman Commission.
- 14.29 The Administrative Inquiry is of the view that the investigation it has been able to carry out demonstrated a lack of discipline in the Department of Defence in relation to the acquisition of land for the Department's purposes. The purchase transactions displayed no due diligence on the part of relevant Defence parties, rendering the system liable to corruption. The major transaction, in monetary terms, namely the Portion 406 transaction, in which compensation was assessed at K46.6 million, had not been the subject of any feasibility study showing that the land was suitable for Defence purposes. The lack of discipline is further demonstrated by the Defence acquisition of Portion 698.
- 14.30 The Administrative Inquiry received documents from some of the settlers who reside on Portion 698. The Inquiry regards the claims by the settlers as being outside the Terms of Reference.

15. Claims by Customary Landowners of Magabairi and Pinu Villages, Kabadi, Hiri District, relating Claims to Portion 154, Milinch of Manu, Fourmil of Aroa, Central Province

- 15.1 In Section 8 the Panel expressed the view that the landowners represented by Mr Beraro have no viable claim to Portion 154 or any part thereof
- 15.2 The Panel has also examined documents submitted to the Administrative Inquiry by persons claiming customary interests in land the subject of the transactions, namely:
- (a) Adu Charlie, Deputy Chairman, representing landowners of Magabairi village, Kabadi, in submitted documents dated 11 April 2017 [Annexure 15(1)];
 - (b) Reverend John Gape Ovia of Oviakubuna Clan of Vanuapaka Tribe, representing Pinu landowners, in submitted documents dated 19 April 2017 [Annexure 15(2)];
 - (c) Mr Abel Ao Ovia, Secretary of the Abadi Pinu Pressure Group Committee representing Pinu village, in submitted documents dated 19 April 2017 [Annexure 15(3)];
 - (d) Mr George Ure, chief of Kerekubuna clan of Pinu Village, in submitted documents dated 23 April 2017 [Annexure 15(4)].
- 15.3 The customary landowners question the process followed in the alienation of their land in the early years of the twentieth century.
- 15.4 They also seek review of the proposed establishment of military facilities on Manumanu-Gabadi customary land.
- 15.5 They have asked for all the subject land to be returned to the legitimate landowners, and have asked that all the perpetrators be referred for criminal prosecution.
- 15.6 They asked that compensation be paid to the customary landowners for the unlawful deprivation of their land.
- 15.7 The Panel refers again to the letter of Mr Raga sent in connection with Portion 154. It is apparent that the land the subject of Portions 406, 422 and 423 was all acquired by the State about 100 years ago. That fact alone means that there are no viable customary claims to the land. Of course, in the case of Portions 406, 422 and 423, there is a difference in that, at the time of acquisition, registered State Leases existed on the land. This merely rendered customary claims even less viable, because of the indefeasibility conferred upon registered State Leases.
- 15.8 The Panel is of the opinion that in no instance can there exist any viable customary claim to any of the land the subject of the Inquiry.

16. Specific issues raised by the Terms of Reference

16.1 The following addresses the particular matters raised in the Terms of Reference. As in the rest of this Report, the answers provided assume the correctness of material that has been supplied to the Administrative Inquiry:

Term of Reference (a)

16.2 The National Government did not expressly authorize the Department of Defence to acquire the land at Manumanu, especially Portion 406. It is argued however that it did so inferentially in NEC Decision 70/2012 and later Decisions. This issue was addressed by Mr Rolpagarea, State Solicitor, in a letter dated 27 January 2017. Mr Rolpagarea was of the view that the wording was in the nature of a broad authorisation and that the proposition that the NEC had sufficiently authorised the acquisitions was broadly open. The Administrative Inquiry sees no reason to go behind that view of that aspect of the matter.

16.3 Portion 154 was at all relevant times owned by the National Government, and the land was unaffected by the existence of any State Lease. As it was entitled to do, the National Government authorised Defence to use the land pursuant to a Notice of Reservation dated 9 December 2015. The National Government did not authorise the acquisition of Portion 698.

Term of Reference (b)

16.4 Matters relating to the role played by the National Government and department heads are dealt with in the body of the Report. The position of the departmental heads is specifically addressed in Section 12.

Term of Reference (c)

16.5 There was apparent statutory compliance in the acquisition of Portions 422, 423 and 406. Portion 154 was not compulsorily acquired. Statutory compliance appears not to have occurred in the case of Portion 698. That issue is dealt with in Section 13.

Term of Reference (d)

16.6 The cost of acquisition in each case was: -

| | |
|-------------|--------------|
| Portion 422 | K7.2 m |
| Portion 423 | K9.2 m |
| Portion 406 | K46.6 m |
| Portion 154 | Inapplicable |
| Portion 698 | K15.4 m |

Term of Reference (e)

16.7 Conflict of interest issues arise in connection with Mr Philip Eludeme and Mr William Duma. They are dealt with in Sections 8 and 9 respectively.

Terms of Reference (f) and (g)

16.8 Issues of wrongdoing and impropriety, and the limitations the Administrative Inquiry laboured under in dealing with those issues, are dealt with in Sections 9, 10, 12 and 13 of the Report.

16.9 As to who benefitted from the transactions, it is apparent that Mr Eludeme and his associated companies benefitted from the Portions 422 and 423 transactions. The Administrative Inquiry's limited powers prevented it from establishing who benefitted from the Portion 406 transaction especially because it was unable to conduct a proper investigation into the affairs of Kurkuramb Estates Ltd. The Administrative Inquiry was likewise unable to establish who may have benefitted from the Portion 698 transaction. The former owner of Portion 698, Kitoro No 64 Ltd, was the entity that was entitled to benefit from that transaction.



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17. CHRONOLOGY

1. 25 February 2009
The Valuer General Mr Chris Kabaru, in an Inspection Report notes that Portion 406 is "generally level throughout", and assesses the unimproved value of the subject land at market value of K30,000
2. 6 August 2009
Issue of State Lease over Portion 406 in favour of M&M Investments Pty Ltd, commencement date of 6 August 2009
3. 23 March 2011
Eludeme interests purchase part of Portion 389 from Seromu Investments Ltd at selling price of K200, 000
4. 28 October 2011
Valuation Report as to Portion 698 done by Valuer General of the Department of Lands and Physical Planning and a Valuation Certificate of Portion 698 issued
5. 18 October 2012
NEC Decision number 70/2012
6. 21 February 2013
NEC Decision No 46/2013
7. 4 July 2013
Portion 389 surveyed and subdivided into several portions
8. 28 February 2014
Notice to Show Cause as to why M&M Investments' State Lease should not be forfeited
9. 14 April 2014
Mr Sariman states he became aware of the forfeiture notice when the M&M's surveyor was attending to the matter of the registration of the prospective subdivision, where he saw a Notice to Show Cause dated 28 February 2014 and other documents
10. 14 April 2014
Date of Forfeiture Notice directed to M&M Investments
11. 24 April 2014
Forfeiture Notice published in the National Gazette G151 of 24 April 2014
12. 4 June 2014
Defence Council Order No. DCO 28 of 2014
13. 12 June 2014
NEC Decision No. 168/2014
14. 6 August 2014
State Lease over Portion 422 granted to Flystone Amusement Ltd
15. 6 August 2014
State Lease over Portion 423 granted to Kosi Investments Limited

16. 6 August 2014 Seromu Investments Ltd granted State Lease over Portion 2721
17. 12 August 2014 Letter by Mr. Douglas Ure, Secretary of Kitoro No. 64 Limited, to Mr. John Porti, Secretary for Department of Defence, making an offer for the sale of Portion 698 to Department of Defence
18. 13 August 2014 Defence Secretary John Porti replies to Mr. Douglas Ure of Kitoro No. 64 Limited re acquisition of Portion 698 for Defence purposes
19. 13 August 2014 Defence Secretary John Porti writes to Mr. Romilly Kila Pat, Secretary for Department of Lands and Physical Planning re intention to acquire Portion 698, Milinch of Granville, Fourmil of Moresby
20. 18 November 2014
& 20 November 2014 Portions 422 and 423 advertised in the National and Post Courier for sale by the owners, through their agent, Belden Memi & Associates
21. 27 February 2015 Defence Council Decision number DCO 05/2015 approving Portion 422 and 423 as Defence site
22. 1 March 2015 Two Valuation Certificates issued by GDK Valuers and Property Consultants valuing Portion 422 at K7,200,000 and Portion 423 at K9,200,000
23. 5 March 2015 Offers to purchase Portions 422 and 423 by the Department of Defence were refused by way of a letter by Philip Eledume's agent, Belden Memi & Associates.
24. 22 April 2015 Lands Department issues Notices of Compulsory acquisition of land signed by Secretary Romily Kila Pat on the 22nd of April 2015, to acquire Portions 422 and 423 totalling and published the same in National Gazette No. G786 of 1st December 2015
25. 29 April 2015 NEC Decision No. 95/2015
26. 10 July 2015 Philip Eludeme, as Chairman of CSTB writes to Ombudsman Commission, disclosing dealings
27. 30 July 2015 State Lease issued to Kurkuramb Estates Ltd (KEL) in respect of the whole of Portion 406

28. 25 August 2015 Meeting between Mr Hersey, the Managing Director to Kumul Consolidated Holdings, the Commander of the PNGDF, the Defence Secretary and the Defence Project Director, to discuss the relocation of the Lancron Naval Base
29. 9 October 2015 Ombudsman Commission responds to Mr Eludeme's letter dated 10 July 2015, giving clearance to go ahead with the transactions relating to the two portions of Manumanu land
30. 15 October 2015 Dr Pok, Minister for Defence, forwards letter to Secretary of Lands Department informing him that Portion 406 has been identified for military purposes and seeking compulsory acquisition
31. 21 October 2015 Non-binding Memorandum of Understanding ("MOU") entered into between KCH and the PNGDF to facilitate the relocation of the Lancron Naval Base
32. 21 October 2015 Notice of Treat issued for Portion 406.
33. 28 October 2015 The predecessor of Kumul Consolidated Holdings (KCH), namely Independent Public Business Corporation (IPBC), and the Department of Lands and Physical Planning, conduct a joint inspection of the Lancron Naval Base and prepare detailed report
34. 3 November 2015 Mr. Moses Kila, Assistant Valuer General of Valuer General Office of the Department of Lands & Physical Planning signs Valuation Report for Portion 422 in the sum of K7,615,000
35. 3 November 2015 Mr. Moses Kila, Assistant Valuer General of Valuer General Office of the Department of Lands & Physical Planning signs Valuation Report of Portion 423 at K9,397,000
36. 22 November 2015 Lands Department issues Notices to Treat to Kosi Investments Ltd and Flystone Amusement Ltd.
37. 24 November 2015 Kosi Investments Ltd and Flystone Amusements Ltd respond to the Notice to Treat
38. 27 November 2015 Defence Council Order No. DCO 05/2015, notes NEC Decision 70/2012, approving relocation of Murray Barracks, Taurama Barracks and PNGDF Naval Landing Craft Base
39. 30 November 2015 Notice of Compulsory Acquisition of Portion 422 and 423 by the State reissued

40. 3 December 2015 Notice of Compulsory Acquisition in respect of Portion 406 published in the National Gazette No. G793 by the Secretary for the Department of Lands and Physical Planning as a delegate of the Minister for Lands
41. 3 December 2015 Purchase of both Portions 422 and 423 finalised
42. 7 December 2015 Notice of Compulsory Acquisition of Portion 406 referred to in The National Newspaper
43. 9 December 2015 Notice of Reservation of Portion 698 for military purposes and Certificate Authorising Occupancy issued by Department of Lands and Physical Planning to PNG Defence Force
44. 9 December 2015 Notice of Reservation under Section 49 of Land Act issued regarding Portion 154 by Mr. Luther Sipison, a delegate of the Minister
45. 10 December 2015 Notice of Reservation dated 9th December 2015, by Mr. Luther Sipison, a delegate of the Minister, published in the National Gazette No. G806
46. 10 December 2015 NEC Decision 360 of 2015
47. 11 December 2015 KEL and the State make an agreement entitled "Sale and Transfer of Land". By that agreement, KEL agreed to sell and transfer Portion 406 to the State for K46.6 million. The agreement was signed by Mr Luther Sipison, Acting Secretary for Lands, as the delegate of the Minister for Lands on behalf of the State, and Mr Christopher Polos on behalf of KEL.
48. 11 December 2015 Kurkuramb Estates Ltd and the State enter into a "Deed of Release"
49. 22 January 2016 Defence Council Decision number 1 of 2016
50. 4 February 2016 NEC Decision No. 6/2016
51. 08 February 2016 Notice of Reservation under Section 49 of Land Act 1996 issued by Mr. Luther Sipison, Secretary of Department of Lands & Physical Planning
52. 8 February 2016 The Department of Lands and Physical Planning issues Notice of Reservation for the PNGDF over the whole of Portion 406
53. 9 February 2016 Mr. Vali Asi, Secretary for Defence writes to Messrs Young and Williams Lawyers demanding transfer of Title for Portion 698 Milinch of Granville, Fourmil Moeresby from Kitoro No. 64 Ltd to Department of Defence

54. 23 February 2016 M&M Investments Ltd engages Wariniki Lawyers to act on its behalf to institute proceedings in the National Court challenging the forfeiture of Portion 406 by the Department of Lands and Physical Planning, and the subsequent compulsory acquisition
55. 26 February 2016 By letter from the PNGDF to Mr Hersey, KCH is notified of the compulsory acquisition of Portion 406 for the amount of K46.6 million and asked to finance the relocation on behalf of PNGDF in exchange for title to the Lancron Naval Base
56. 3 March 2016 Mr. Greg Sheppard of Messers Young & Williams Lawyers writes to Mr. John Sebby Principal Legal Officer of Department of Defence re completion of conveyance re Portion 698
57. 15 August 2016 Harvey Nii Lawyers, on behalf of KEL, issues a Writ against the Secretary for the Department of Lands and Physical Planning, as First Defendant, and the State, as Second Defendant, seeking payment, among other things, of the then outstanding K46.6 million compensation amount that had been agreed for Portion 406
58. 30 August 2016 Report on the proposed Lancron Naval Base relocation tabled before the KCH Investment Committee
59. 19 September 2016 Mr Massa of Dentons Lawyers sets forth preliminary Advice to KCH Board
60. 23 September 2016 KEL writes to the Secretary for the Department of Defence requesting that "K46 million" be paid to KEL's account as consideration for the compulsory acquisition of Portion 406
61. 5 October 2016 The Secretary for the Department of Lands and Physical Planning, as delegate for the Minister for Lands, revokes the reservation for the Lancron Naval Base
62. 7 October 2016 Notice of revocation published in the National Gazette
63. 11 October 2016 Letter Secretary for Defence to Mr Hersey seeking that KCH pay K46million on behalf of the State to the former owners of Portion 406
64. 14 October 2016 KCH enters Memorandum of Agreement with KEL and PNGDF under which it agrees to pay K46.6 million to KEL

65. 14 October 2016 Email from Mr Jayaraj informs Mr Hersey that K20 million has been transferred to KEL notwithstanding that the Kurkuramb seal had not been placed on the document to complete the MOA execution. That email from Mr Jayaraj was forwarded by Mr Hersey to Mr Duma
66. 18 October 2016 MOA finally sealed by KEL and signed by its director, Christopher Palos
67. 8th December 2016 Mr. Garry Hersey, Managing Director of KCH writes to Acting Chairman of Motor Vehicle Insurance Limited requesting MVIL to pay its interim and final dividends for years 2009, 2011, 2014 and 2016
68. 19 December 2016 Mr. Garry Hersey, Managing Director of KCH, sends letter to Mr. Eno Darea, Acting Chairman of MVIL
69. 22 December 2016 State Solicitor, Mr. Daniel Rolpagarea by letter to Mr. Sipison, Secretary for Department of Lands & Physical Planning gives legal clearance for settlement of Portions 422 and 423
70. 23 December 2016 Payment of K26.6million by KCH to KEL, funded by MVIL dividend paid to KCH
71. 20 January 2017 KCH appoints Independent Committee to investigate allegations made against Mr Hersey
72. 23 January 2017 Letter Mr Jayaraj to Dentons Lawyers and O'Brien's Lawyers
73. 25 January 2017 Email by Mr Duma to Mr Erik Andersen of Dentons Lawyers
74. 1 February 2017 The Post Courier reports that Prime Minister O'Neill has ordered an investigation into two senior ministers over an alleged land fraud contract worth K46.6 million
75. 2 February 2017 Press statement by Mr Duma
76. 3 February 2017 Opposition Leader reported as having lodged a complaint with the Ombudsman Commission regarding the decision of Kumul Consolidated Holdings to pay the K46.6 million for Portion 406
77. 7 February 2017 It was reported that the Prime Minister had recommended that the NEC suspend Defence Secretary, Mr Vali Asi, Lands and Physical Planning Secretary, Mr Luther Sipison, Valuer General, Mr Gabriel Michael, Kumul Consolidated Holdings Managing Director, Garry Hersey, and MVIL Managing Director, Jerry Wemin

78. 7 February 2017 KCH said to have provided a brief to Police Commissioner
79. 8 February 2017 KCH said to have provided a brief to the Ombudsman Commission
80. 10 February 2017 The Post Courier reports a cancelled march re Manumanu
81. 13 February 2017 Police Commissioner states the matter has been raised with the Director of Fraud and Anti-Corruption
82. 8 March 2017 The Prime Minister announces the establishment of "Administrative Inquiry"
83. 12 April 2017 Independent Committee makes recommendations re Hersey

18. ABBREVIATIONS

Administrative Inquiry means the administrative investigative body chaired by Mr John Griffin QC, as appointed by the Prime Minister and Chairman of the National Executive Council on 7 March 2017, to inquire into the land transactions involving five portions of land by the Ministry of Defence and Ministry of State Enterprises and Investments

Board means the Board of Directors of KCH

CSTB means Central Supply and Tenders Board established under the PFMA

DLPP means Department of Lands & Physical Planning

Independent Committee means the Committee appointed by the Board to investigate certain allegations of misconduct

IPBC means the Independent Public Business Corporation of PNG (now named KCH)

K means the Kina

KCH means Kumul Consolidated Holdings (formerly named IPBC) a statutory corporation established under the KCH Act

KCH Act means the *Independent Public Business Corporation of Papua New Guinea (Kumul Consolidated Holdings (Amendment Act) 2015* (as amended)

KEL means Kurkuramb Estates Limited

Kina means the currency of PNG

Land Act means the *Land Act 1996* (as amended)

Land Board means the Land Board established under the *Land Act 1996* (as amended)

MOA means the Memorandum of Agreement made on 14 October 2016 between KCH, KEL and PNGDF under which KCH agreed to pay K46.6 million to KEL.

MOU means the non-binding Memorandum of Understanding dated 21 October 2015 between KCH and PNGDF

MVIL means the Motor Vehicles Insurance Ltd established under the *Motor Vehicles (Third Party Insurance) Act* (Chapter 295), a State owned enterprise under the KCH Act

NEC means the National Executive Council of PNG established under section 149 of the *PNG Constitution*

Panel means the members of the Administrative Inquiry who conducted the inquiries constituted by Messrs John Griffin QC, Gibson Geroro, Herbert Wally and Jerry Fruanga.

PEST means Public Enterprises & State Investments

PFMA means the *Public Finance (Management) Act 1995* (as amended)

PNG means Papua New Guinea

PNGDF means the Papua New Guinea Defence Force **State** means the Independent State of **PNG**

Valuation Act means the *Valuation Act* (Chapter 327)