

THE PUBLIC ACCOUNTS COMMITTEE

INQUIRY INTO DEPARTMENT OF LANDS & PHYSICAL PLANNING

REPORT TO THE NATIONAL PARLIAMENT

1. INTRODUCTION

- 1.1. On the 28th day of February 2006 the Permanent Parliamentary Public Accounts Committee concluded a long running inquiry into the Department of Lands & Physical Planning.
- 1.2. As a result of evidence taken in the Inquiry, the Public Accounts Committee made certain findings which were highly critical of performance of the Department of Lands & Physical Planning and, in particular, the performance and competence of the Head of Department and Senior Officers.
- 1.3. As a result of evidence and documents tendered to the Inquiry, the Public Accounts Committee made certain referrals of the Secretary of the Department of Lands and Physical Planning for inquiry and possible prosecution for breaches of his statutory obligations.
- 1.4. As a result of evidence and documents tendered to the inquiry, the Public Accounts Committee unanimously resolved to make a full and complete report of its Inquiry and findings to the National Parliament in accordance with Section 86 (1) (c) of the *Public Finances (Management) Act 1994*.
- 1.5. The Public Accounts Committee now tables the report with its strongest recommendation that remedial action be immediately taken by the National Parliament in accordance with findings and resolutions of the Public Accounts Committee.

2. EXECUTIVE SUMMARY

- 2.1 The Department of Lands and Physical Planning is incompetent and ineffective in carrying out its statutory obligations to manage land and fails to protect and further the fiscal interests of the State.
- 2.2 The Department of Lands and Physical Planning has failed to collect revenue in a timely manner or at all.

32. PART TWO - PERFORMANCE OF THE DEPARTMENT OF LANDS AND PHYSICAL PLANNING 1999 – 2002.

- 32.1. The Committee chose, at random, five portions of alienated State Land which were granted into private hands prior to 2002.
- 32.2. Of these five parcels of land, four were previously unallocated Reserved Land, National Park or public land and one parcel was the subject of an Agricultural Lease.
- 32.3. The first purpose of this phase of the Inquiry was to ascertain if this land was lawfully granted into private hands.
- 32.4. The second and principal purpose was to assess such issues as revenue collection, whether the Department carried out its duties to apply the law when granting and registering the Leases, the state of Rental arrears, tender prices collected, compliance by Leaseholders with Lease covenants, the protection of State assets and documentation, the keeping of accounts and action taken by the Department and its officers to protect the State and preserve national assets at any time since 1999.
- 32.5. The third purpose of this phase of the Inquiry was to consider what steps, if any, the current Management Team of the Department had taken to recover illegally issued land or land in respect of which Land Rental was outstanding or other Lease Covenants had been breached.
- 32.6. The Committee now reports in respect of each of those grants of State Lease:

33. PORTION 1597 MILINCH GRANVILLE, FOURMIL MORESBY AT PAGA HILL – GRANT TO PAGA HILL DEVELOPMENT COMPANY LTD.

BACKGROUND:

- 33.1. On the 18th December 1997 **Paga Hill Land Holding Company (PNG) Pty. Ltd.** was granted an **Urban Development Lease (“UDL”)** over Portion 1597 Granville Port Moresby. This land comprises 13.7 hectares of Paga Hill in Port Moresby – virtually all the hill. This Committee concludes that the Grantee was **Paga Hill Development Co. (PNG) Ltd.**
- 33.2. A large number of onerous conditions attached to the UDL – none of which, the Committee concludes, have been complied with by the Lessee.

- 33.3. This land was a Gazetted National Park and could not be granted away to private hands.
- 33.4. The Committee finds that this land was of great National importance and a prime piece of recreational land for the residents of Port Moresby.
- 33.5. How the land came to be given to private speculators is a good illustration of the failings and corrupt conduct of the Department of Lands and Physical Planning.
- 33.6. The continuing refusal of the Department to recover the land for the State well illustrates the continued acquiescence of the Department in corrupt dealings and clearly shows the extent to which private interests control the Department at the expense of the State and the citizens of Papua New Guinea.
- 33.7. This Inquiry was seriously impeded by the Departmental failure to produce any records or documents at all concerning the issue of the original UDL or a subsequent Lease – despite a Notice and Summons to do so.
- 33.8. The Committee concludes that there should have been many pages of feasibility reports, assessments, surveys and plans produced to and maintained by the Department before the UDL could be converted to another form of State Lease. The Secretary for Lands produced only nine pages of material – much of which was irrelevant.
- 33.9. In light of the evident illegality which attended the grant of this Lease, the Committee concludes that the Department of Lands and Physical Planning deliberately refused to comply with legitimate directives and a Summons from this Committee to protect either or both the recipients of the Lease Grant and/or Departmental Officers involved in the grant process.
- 33.10. The only excuse proffered by the Secretary for this failure, was a suggestion that the files “may possibly” be with the Ombudsman Commission. The Committee questioned the Secretary on this suggestion, but neither the Secretary nor other Departmental officers had any interest in establishing the true whereabouts of the relevant files and documents.
- 33.11. The Committee concludes that Mr. Kimas would rather be prosecuted for failure to produce documents, than reveal that the documents either never existed or be prosecuted as a result of their contents becoming known.
- 33.12. The Committee treats this failure as a very serious breach of the Law.

33.13. The following analysis of how this National Park came to be in private hands is therefore made with no assistance at all from the Department or its officers.

34. THE LAND

- 34.1. Portion 1597 Milinch Granville, Fourmil Moresby comprising two parts containing a total area of 13.1198 hectares was reserved from Lease by a Declaration in the National Gazette G59 dated the 10th September 1987 for the purposes of “Open Space” to be managed by the National Parks Board. In other words the land was preserved for future generations as a National Park.
- 34.2. There were good reasons for this to occur. The Land is of considerable historical importance to the nation, containing as it does, Wartime Bunkers, Gun Emplacements, tunnels and, apparently, significant pre-historical sites.
- 34.3. Further, the situation of the land in the centre of a growing city offers superior recreational facilities to the occupants of Port Moresby. It is now and will increasingly be a vital recreational area for central Port Moresby.
- 34.4. Part of the land was occupied by a Police Mess Hall and Police Hall apparently owned and operated for the benefit of Police Legacy. In recognition of this, the Police were granted a “**Certificate Authorising Occupancy of Land**” over part of the land – issued on the 11th September 1987.
- 34.5. There is no apparent Gazettal of Revocation of the Reservation of Lease or the Certificate Authorising Occupancy of Land until the National Capital District Physical Planning Board by Meeting 2a/2000 rezoned the land from Open Space to Commercial, Part Residential, Part Public Institutional and Part Utilities by Gazette Notice dated 22nd May 2000.
- 34.6. Precisely how, why and at whose request this was done remains totally unclear in the absence of documents or records from the Department.
- 34.7. The Committee cannot conclude on the reasoning behind the Revocation of the Land as a National Park.
- 34.8. In or about 1995, the National Parks Board ceased to exist. There was no management of the Park and it is fair to assume that speculators saw the land as ripe for acquisition.
- 34.9. The State, in general, and the Department of Lands and Physical Planning in particular allowed and co-operated in the taking of this National Park

from the citizens of Papua New Guinea by profiteers who, subsequent events showed, had no capacity to develop the land at all.

35. THE URBAN DEVELOPMENT LEASE.

- 35.1. Four applications for grant of this Land were referred to Papua New Guinea Land Board No. 1991 (Item 2) each seeking a grant of a Business (Commercial) Lease over the land – one of which was **Paga Hill Land Holding (PNG)** (sic). The Land was still a National Park.
- 35.2. The Committee can establish that Land Board No.1991 purported to convene on Friday 22nd August 1997. The Board was chaired by Mr. Ralph Guise.
- 35.3. The Land Board apparently completely ignored the fact that the land was a National Park and could not be the subject of such tenders or of a Grant of Lease.
- 35.4. Police Legacy advised the Land Board in writing of its interest in and development plans for part of the land. Representatives of Police Legacy apparently attended the Land Board.
- 35.5. It seems that the Land Board No 1991 recommended that **“Paga Hill Land Holding PNG”** (sic) be granted a Lease over Portion 1597 Milinch Granville Fourmil Moresby – with an orally imposed condition that the land area the subject of Police Legacy’s interest was to be excised from Portion 1597 by the “Developer” and that Police Legacy would be granted appropriate title thereafter.
- 35.6. Thus far, the only record of such a condition is a hand written memo or record apparently signed by the Chairman of the Land Board Mr. Ralph Guise. That memo records:

“Recommendations:

Of Papua New Guinea Land Board go in favour of Paga Hill Land Holding Co. Ltd. to develop and improve portion 1597 Granville over (sic) five year period to a value of K M 300.

Foot Note:

Company appears to have access to sufficient funds to fulfill requirements.

- 1. Annexation of Police Mess to be undertaken by developer in favour of RPNGC***

2. Dept. and developer maintain a close liaison to accommodate requirements as highlighted by Department.”

- 35.7. There would appear to be no real protection at all for the property of Police Legacy. The Committee concludes that this charitable Police asset – and therefore State or public asset - has simply disappeared with no protection given by the Department.
- 35.8. An Improvement Covenant is clearly set out in that UDL. It requires improvements to a value of K 300 million to be undertaken in the first five years of occupation.
- 35.9. Such a covenant would be onerous to a large well resourced company. As of March 2006, there is no development on the land at all. How the Land Board concluded that the Grantee could meet the Improvement Covenant, is unknown in the absence of any documentation.
- 35.10. That Lease contained strict covenants requiring detailed reports on all aspects of the proposed development before the UDL could be surrendered and a Business Lease issued – none of which have apparently been met by the Lessee. If they have been met, the Department has failed or refused to produce any documents at all which show this compliance.
- 35.11. The Committee concludes that, in order to comply with the UDL Covenants, at least the following documents had to exist:
- Records of Land Board meeting No. 1991
 - Minutes of Land Board No. 1991
 - Recommendations of Land Board 1991
 - Advertisement or call for tenders or
 - Exemption from advertisement
 - Applications for Grant of Lease
 - Supporting documents to those applications
 - Internal working papers relating to the issue of the UDL
 - Approvals for the Grant of UDL by Departmental Officers
 - Ministerial paperwork on the issue of the UDL

- Copies of the UDL
- Land Rent records
- Records of improvement expenditure by the Lessee
- Records of Planning or Surveying
- Any Gazette Notices at all
- Instructions to the Government Printer
- Submissions or proposals for Capital expenditure on Public Open Space
- Submissions or proposals for upgrading or rehabilitation of war Relics or plans therefore
- Compliance with any one of the Covenants in the UDL
- Records of arrangement, discussion or payment to the National Housing Corporation in respect of National Infrastructure
- Proposals or actual steps taken to protect Police Legacy
- Revocation as Open Space in 2000
- Records of legal advice and action taken in respect thereof
- Reserve of tender price levied or paid
- Proof of Land Rental paid
- Any submissions of reports, Plans, Zoning Reports, development plans, infrastructural and utility service details, cadastral boundary survey plans, area survey for conservation purpose, demarcated areas for NCDC Parks and Open Space and waterfront development details to your Office for approval
- Approvals by Physical Planning Board, Eda Ranu, NCDC engineers, Surveyor General, Department of the Environment, Harbours Board, IPA and Tourism Promotion Authority

- Proof of compliance with Improvement Covenant or capacity to do so.

This list is not exhaustive.

- 35.12. Not a single sheet of paper was produced in respect of any of these matters and no explanation as to that failure was made.
- 35.13. Further, due to the non-production of documents, this Committee cannot know the identity of the other supposed applicants for State Lease or the nature of the successful tender and can make no findings on the legality and transparency of the tender process.
- 35.14. The failure to comply with the UDL covenants, particularly the Improvement Covenant, should have resulted in the Department forfeiting the Lease – or at the least, not issuing a Business Lease.
- 35.15. More properly, the Department of Lands should have cancelled the Lease years ago on the basis that it was unlawfully issued.
- 35.16. The Committee finds that the grant of the UDL was and is now unlawful for a number of reasons. They are at least:
- i) There was no quorum at the original Land Board. The Solicitor General advised the Department of Lands that the Grant of the Lease was illegal for this reason, but the Department ignored the advice.
 - ii) The Land Board could not have been reasonably satisfied that the applicant could raise K.300 million in five years. Indeed, the Committee finds that the Lessee cannot pay the Land Rental and has sought relief from that obligation, much less fund a development of the magnitude required.
 - iii) The land was a National Park zoned Open Space. The land should have been zoned as sub-divisional land in order that a UDL could issue, but was not and could not have been so zoned.
- 35.17. The Committee finds a complete and inexplicable failure of the Department to ensure that even the most basic legal requirements were either imposed or met and this resulted in a total failure to protect State Land and public assets.

36. THE BUSINESS LEASE

- 36.1. In 2000, a company called **Paga Hill Development Co. (PNG) Ltd** was formed.

- 36.2. On the 01/09/2000, a **Business Lease over Portion 1597 Granville** was granted to **Paga Hill Development (PNG) Ltd.** This Lease was registered as **State Volume No. 24 Folio 159**. How and why this new Company, rather than the original Grantee, was able to obtain this Lease is unknown.
- 36.3. The Lease should have been issued to the same company that held the **Urban Development Lease**.
- 36.4. This Business Lease issued out of the UDL granted to **Paga Hill Land Holding Company (PNG) Ltd.** in 1997. It should have been issued to that company.
- 36.5. The Department itself states that the UDL has not been surrendered – so two Leases appear to exist over the same land. In a memo to the Secretary for Lands, dated the 18th March 2003, the issue of the Business Lease is described as “dubious”.
- 36.6. Further, the Business Lease related to the entire area and assumed that all the land was zoned “Commercial”. This was not the case. There were varied zonings and the Lease was illegally issued.
- 36.7. This Lease contained only very basic covenants requiring payment of Land Rent and an Improvement Covenant requiring improvements to a minimum of K 10 million within five years of issue of the Lease – on the 1/09/2000. Neither covenant has been complied with. No attempt has been made to forfeit the Lease by the Department for this failure.
- 36.8. This Business Lease could not have lawfully issued. The reasons are at least:
- i) The UDL was unlawfully granted and issued (see above Para 25.16).
 - ii) None of the stringent conditions in the UDL had been met. In particular the Department has produced no evidence that:
 - a) the 10% dedicated as Open Space has been excised; or
 - b) the historical relics have been returned to the Department of Heritage; or
 - c) the Lessee could or did meet the capital cost of establishing Open Space and renovation of the heritage sites or that they have been handed back to the respective authorities; or

- d) any arrangement with National Housing Corporation for compensation by the Lessee for demolishing government Institutional improvements; or
 - e) the Lessee submitted a Master Plan to the Secretary for Lands within 12 months of the grant or that the Master Plan contained any of the matters prescribed; or
 - f) that any Master Plan had approval of the Physical Planning Board, Eda Ranu, NCDC Engineers, Surveyor General, Dept. of Environment and the Tourism Promotion Authority or the Harbours Board; or
 - g) that the Secretary for Lands approved (or even saw) any Master Plan (if it ever existed).
 - h) the improvement covenant in the UDL had not been met in whole or in part; and
 - i) rent was in arrears and remains in arrears; and
 - j) The Lessee had failed to meet all conditions and clearly had no capacity to do so; and
 - k) The works proposed and covenanted for in the UDL must be approved by the Physical Planning Board – there is no evidence that this ever occurred.
 - l) The Lease contravenes Section 67 of the Land Act as it contradicts the multi Zoning of the Land
- 36.9. The unimproved value of the Land was assessed at K 5,000,000 in which case the correct Land Rental, at 5% of that value, should be K 250,000 p.a. This is the Rental appropriate to a Business Lease.
- 36.10. On the 24/05/ 2001, the Lease was changed by handwritten notation which reduced the Land Rent from K 250,000 per annum to K 50,000.
- 36.11. The Committee finds that there is no power to correct the record in this fashion.
- 36.12. When questioned as to the identity of the Officer who changed the amount and the legal basis so to do, both the Secretary and Deputy Secretary of the Department could not tell the Committee.

- 36.13. There is no explanation for this reduction. This means that with the active collusion of the Department, the State has lost a minimum of approximately K 900,000 from 2000 until 2005.
- 36.14. Further, the Committee finds that the amended Land Rent of K 50,000 is 1% of the unimproved value – this is the Rent applicable to an Urban Development Lease which, apparently, was surrendered in 2000.
- 36.15. The Committee was advised that the Lessee could not pay even this reduced amount. A Departmental Officer then agreed to allow the Lessee to pay the Land Rent over a period. This Officer had no power to do so. Why then was the Department prepared to unlawfully allow such a Lessee time to pay?
- 36.16. The Committee sought to identify the Officer who entered the arrangement.
- 36.17. The transcript shows the following exchange:

HON. JOHN HICKEY MP:

“Mr Kila Pat did you make some arrangements with the Leaseholder to allow payment of Land Rent over a period?”

MR. ROMMILLY KILA PAT (Deputy Secretary of the Department of Lands and Physical Planning)

“Chairman I think I have done that in writing”.

And later

MR. KILA PAT:

“Considering the fact that ifany other Lessee if they have any difficulties in paying one up payment in front they can come to the Department to arrange for payments over a period of time within which they should be able to settle all or whatever the outstanding fees are”

HON JOHN HICKEY MP:

“That is quite difficult for us to accept when there are clearly statedcovenants you know, the covenant on the land for development was K 300 million in five years and here you have a Lessee who said they had K 300 million to spend on developing the land and they come along and say we cannot pay the K 250,000 rents per year which is nothing compared to K 300 million.

Who allowed this Leaseholder to pay less Rent.....Did you make arrangements with the Leaseholder?

MR. ROMILLY KILA PAT:

“The arrangements were basically based on the figures that were outstanding at the time, but in terms of paying out rental I do not have the authority to say you don’t pay this much”.

- 36.18. The reduction in rent was made by Mr. Pat, as was a time payment arrangement for the benefit of the Lessee. This was quite unlawful – as Mr. Pat acknowledged. The Committee was prevented from following this line of Inquiry as Mr. Pat departed Papua New Guinea for a study course in Australia whilst under Summons to this Committee – with no notification to the Committee.
- 36.19. Even at the reduced amount, Land Rent owing to the State was K 237,000 in arrears as at 28th February 2006. The Committee notes that as of the 28th February 2006, the last payment of Land Rental was made on the 30th March 2005.
- 36.20. As if these illegalities were not enough, on the 21st October 2002, the then Minister for Lands agreed to a request from the principal of Paga Hill Development Company limited, to waive all past and future rentals until January 2006.
- 36.21. The reason for the request by the Lessee was that the Land Rental could be better used in sourcing international investors to develop the land – a contention with which the Minister agreed.
- 36.22. The Minister further agreed to extend the Improvement Covenant from five to ten years – a decision made with no legal basis at all.
- 36.23. The Committee concludes that, for once in this transaction, the Department acted quite correctly in refusing to accept the Ministerial waiver of Land Rental.

37. FINANCIAL LOSS TO THE STATE

- 37.1. The Committee concludes that the State has been deprived of Rental payments by the illegal expedient of retrospectively changing the Lease condition and by the failure of the Department to recover the land either by forfeiture or by cancellation of the Lease.

- 37.2. In the absence of any evidence to the contrary from the Secretary for Lands and Physical Planning or his Officers, the Committee concludes that no Tender or Reserved Price has been applied.
- 37.3. This failure has cost the State at least K 3,000,000.00 – representing 60% of the unimproved value. The Department appears to have taken no steps at all to protect the position of the State in this regard.
- 37.4. Why the Lease has not been forfeited is unknown. Land Rent is in arrears and no development at all has taken place. Non-compliance with the Leasehold improvement covenant and/or non-payment of land rent for six months constitutes grounds for forfeiture.
- 37.5. Why the lease has not been cancelled for want of lawful issue is unknown. Moreover, the Lessee has attempted to sell shares in the Lessee Company with no apparent attempt to even start the development of the site. In 2005, 50% of the shares in the Company **Paga Hill Development Company Ltd** were offered to a Western Province Landowner Company for K 27,000,000.00.
- 37.6. If this is a true valuation of the Company (the only asset of which seems to be the Paga Hill Land) the loss to the State by under-calculated Land Rental and tender and Reserve Price is huge.
- 37.7. Further, the Committee concludes that **Paga Hill Development Company Ltd.** has done nothing to protect the interest of Police Legacy at all. Neither has the Department of Lands and Physical Planning. Both entities are in breach of their obligations in this regard and the State through Police Legacy has lost a significant asset.
- 37.8. Examination of the few documents produced to this Committee and the evidence given by witnesses show clearly that prime land and a National Park, has been illegally given to a private, foreign speculator with no ability to even pay the Land Rental, much less build anything on the site.

38. FAILURES BY THE DEPARTMENT

- 38.1. In this transaction, the Committee concludes that the Department of Lands and Physical Planning has failed in its obligation to ensure that:
- i) the offering of land for tender was lawfully carried out; and
 - ii) the land exposed to public tender was lawfully available; and
 - iii) the Papua New Guinea Land Board understood the basic legal requirements for the offering of land for tender; and

- iv) the Land Board and the Department understood and complied with Land Zoning and Reservation; and
- v) the Papua New Guinea Land Board understood the law under which it operates and the procedural requirements for its meetings; and
- vi) the Papua New Guinea Land Board be properly advised in its deliberations; and
- vii) any defects in the grant of Leases be identified and rectified, before Leases issued or that the Lease not issue at all; and
- viii) legal advice received be acted upon; and
- ix) Departmental officers understand the relevant law and act upon legal advice received; and
- x) Departmental officers understand their obligations to obey the law and their role and function in protecting the interests of the State over those of private enterprise; and
- xi) the forfeiture provisions of the Land Act be acted upon for breaches of covenants or legal obligations; and
- xii) the Lease was cancelled for illegal issue; and
- xiii) Departmental Officers not proceed in any transaction unless and until all legal obligations, conditions or covenants whatever are complied with by applicants; and
- xiv) Departmental Officers understand and obey their duty to properly calculate and collect monies owed to the State; and
- xv) the Departmental Officers understand and fulfil their statutory obligations in all respects – in particular that the Department competently and lawfully manage land, collect and account for monies owed to the State and that all Managers and Officers of his Department obey directions and implement legal requirements; and
- xvi) the Departmental Secretary promptly reply to letters from interested parties and not delay or ignore obviously relevant matters; and

- xvii) no person or company be given preferential or favoured treatment – particularly where that person or company is in breach of lawful obligations and in particular where the unlawful alienation of State Land is sought; and
- xviii) interests of the State and the citizens of Papua New Guinea prevail over those of a private foreign company; and
- xix) it protected the State and State assets from misappropriation or misuse.
- xx) the terms of the Land Act be applied; and
- xxi) transparency and honesty prevail in the processes of tender for and grant of State Leases.

39. FAILURES BY THE SECRETARY FOR LANDS

- 39.1. This Grant was made before the current Secretary for Lands, Mr. Pepi Kimas was appointed, but the Committee considered what, if any, steps the past or current Secretaries had taken to rectify this matter.
- 39.2. In the opinion it would have been proper for this Lease to have been cancelled or forfeited at any time.
- 39.3. Despite the fact that the Secretary for Lands and Physical Planning failed to produce relevant documents and files to the Public Accounts Committee, it is clear to the Committee that the Secretary is well aware of this transaction and of the illegalities attending the issue of the Lease over Paga Hill.
- 39.4. The Committee finds that Mr. Kimas has done nothing. He and his management team have failed to protect the position of the State, and he has thereby breached his statutory duties as Departmental Secretary and Head of Department.
- 39.5. The Committee questioned Mr. Kimas on this failure. The Committee also questioned Mr. Kimas on similar failures in respect of other State Leases illegally given into private hands.
- 39.6. The explanations proffered to the Committee for these failures were contradictory and without any force.
- 39.7. The Committee notes that on the 29th day of November 2005, the Secretary for Lands undertook to the Committee, while on oath, to serve Notices to Show Cause on the Lessee of the Paga Hill Land, as a precursor

to a forfeit of the land. He undertook to do so within 48 hours. The evidence was:

HON JOHN HICKEY MP

“There are a whole lot of illegalities attached to it (Paga Hil). Illegalities caused by greed. And if we do not do anything about it, it is in the hands of two foreigners who do not live in our country.As we speak this land is falling into the of two foreigners. Secretary please you and your officers’ action this immediately – get this land back to us before the February hearing.

MR PEPI KIMAS

“Chairman, I’ll give the copies of the Notice to Show Cause to the lawyers within 48 hours from now.”

Evidence given to the Committee 29/11/2005.

- 39.8. So far as the Committee can ascertain, despite this undertaking, nothing has been done.
- 39.9. Nowhere is the cavalier and contemptuous attitude of the Secretary toward a Parliamentary Committee better illustrated than by this hollow undertaking.
- 39.10. The Committee concludes that the Secretary for Lands completely failed in respect of this transaction alone:
- a) to produce any records at all relating to the cancellation of the UDL and grant of a Business Lease to Paga Hill Development Company (PNG) Ltd.. The Committee therefore concludes that the documents do not exist.
 - b) that the proper legal requirements for grant of a Lease were not met – and that the Secretary knows this, but has done nothing to rectify the situation; and
 - c) to meet his obligations imposed by the ***Public Finances (Management) Act***, in that he has failed to levy and collect State revenue in accordance with Law despite giving sworn evidence that he knew and understood those duties; and
 - d) to enforce the provisions of the Land Act and other statutory requirements; and

- e) to properly and adequately control his Department and officers; and
- f) to act in a prudent and competent manner to ensure that State assets and property are protected as soon as illegality or abuses became known to him; and
- g) to meet his obligations and duty under the ***Public Finances (Management) Act*** and in particular to obey Section 5 (a), (b), (c), (e), (g), (h), (i), (j) and (k) – and is thereby open to surcharge, penalty and disciplinary action for these failures – See Section 5 (3) ***Public Finances (Management) Act 1995***.
- h) to exercise his powers as Departmental Head to obtain full and free access to all accounts and records relating to collection, receipt disposal or custody of property or monies of the State.
- i) to exercise disciplinary powers over his staff; and
- j) to act in a professional, competent and lawful manner in the exercise of his duties and responsibilities; and
- k) understand the importance of his role in controlling or reversing this transaction and ensuring that the law is enforced; and
- l) to obey Section 112 of the ***Public Finances (Management) Act 1995*** and thereby committed an offence by failing to produce documents under his control when required to do so.
- m) to give candid and frank evidence to the Public Accounts Committee; and
- n) To take any or any adequate steps to serve the interests of the State over those of the Lessee.

39.11. The PAC has sound jurisdiction to inquire into this grant. That jurisdiction lies at least under Section 86 (1) (d) (iv) and (f) of the ***Public Finances (Management) Act 1995*** and Section 17 of the ***Permanent Parliamentary Committees Act 1994*** because:

- i) The State and the public has been deprived of a valuable asset; and
- ii) the UDL was apparently unlawfully granted; and
- iii) the subsequent State Lease has been unlawfully granted for a number of reasons; and

- iv) the true reserve price was possibly as much as K 3,000,000. The State has received nothing; and
- v) the true Land Rent is possibly as much as K 250,000 per annum **not** the K 50,000 now applying – which is significantly in arrears – the State has lost revenue thereby; and
- vi) the Royal Papua New Guinea Constabulary Legacy fund has lost a valuable asset which is a public asset and subject to the ***Public Finances (Management) Act 1995***; and
- vii) the Grantee has failed to comply with any undertaking or covenant in the UDL and the Department failed to enforce those covenants; and
- viii) detailed protection of a National historical assets on the land comprised in the UDL has completely disappeared in the State issued **Business Lease**. The State and public interest in preserving the considerable historical sites on the land (which was a major reason that the land was Gazetted a National Park) has been given away; and
- ix) the State and public interest in preserving the recreational value of the land (which no doubt was one reason for Gazetting the land as a National Park) has disappeared; and
- x) the means by which the land ceased to be a National Park (if it ever did cease) is entirely unclear. The State appears to have been deprived of the asset for no good reason; and
- xi) the Lessee had and has no ability to fulfil the Improvement Covenant, hence the State has lost revenue thereby; and
- xii) the Grantee has failed to pay rent, rates or comply with improvement covenants. The Department has failed to do anything to collect or forfeit the Lease; and
- xiii) the Grantee is clearly only intending to make profit at the expense of the State and the citizens of Papua New Guinea; and
- xiv) even if the land had been lawfully allocated into private hands, absolutely no development has occurred at all. Very significant development covenants have been ignored and/or not enforced by the Department. The State may be said to have lost revenue thereby; and

- xv) The original grant was invalid for want of a quorum at the Land Board and despite advice from the State Solicitor, no action to forfeit or cancel the Lease has occurred. The Department has failed to act in a lawful manner and has clearly chosen to ignore the Law in favour of the interests of the Grantee – at the expense of the State; and
- xvi) not only has the Department of Lands and Physical Planning failed to impose and collect appropriate rent, an Officer of the Department has apparently agreed to accept a reduced amount as land Rent payment – with no power so to do. The State has lost revenue thereby; and
- xvii) an Officer of the Department has, unlawfully, permitted the Lessee to pay Land Rent over a period – which agreement the Lessee has breached, with no action from the Department: and
- xviii) knowing some or all of these deficiencies, the Department and the Secretary in particular have failed to do anything to reverse the grant or to protect the interest of the State over that of individuals.

39.12. The Committee makes further recommendations and referrals later in this Report.

40. SECTION 122 HOHOLA.

- 40.1. This is a complicated matter, but well illustrates both inept decision making by the Land Board in the period 1999 – 2002 and the influence that certain entities have exercised over that Board.
- 40.2. The Land Board has Granted and the Department has issued, State Leases over land that was, and still is, zoned as Reserved open Space Land for the benefit of the public.
- 40.3. Consideration of the facts shows a clear pattern of conscious illegality in the Lands Board and (at best) cooperation by the Department of Lands and Physical Planning.
- 40.4. The dealings also well demonstrate the paralysis of action that attends the Department of Lands, even when the illegalities of Lease issue are known to the Department and have been publicly acknowledged by it.
- 40.5. The history of this parcel is complex. A précis is presented below, but the grants and issues of private title over all of Section 122 Hohola are unlawful and require immediate action from the National Government to rectify the defects and/or reinstate this valuable public asset – if indeed it is not too late to do so.