
7. EVENTS FOLLOWING SETTLEMENT: MAY - OCTOBER 1995

[7.1] OVERVIEW

Settlement of The Conservatory purchase took place on 18 May 1995. This chapter focuses on the six month period between settlement and early November 1995, when an article appeared in the *Australian Financial Review* which brought the purchase into the public spotlight.

[7.2] TONY ROBERTS APPOINTED INTERIM PROPERTY MANAGER

On 2 June 1995, Mr Ragi wrote to Mr Tony Roberts, who had been responsible for preparing the first market appraisal of The Conservatory in September 1994. Mr Roberts had also been involved in management of the property on behalf of Mr Warren Anderson.

Mr Ragi said that "in accordance with PNG regulations governing our operations, we shall be inviting tender proposals for future management of the property". However, he said that, as an interim arrangement, Mr Roberts would be appointed to manage the property under the same terms and conditions that he had with Mr Anderson. It is not clear, however, what these terms and conditions were, nor that the POSFB knew what they were. Mr Ragi added that Mr Roberts' fee would be "5% of gross rentals receipted from time to time".

[7.3] FORMAL PROPERTY MANAGEMENT AGREEMENT SIGNED: 7 JULY 1995

On 7 July 1995, a written property management agreement was signed by Tony Roberts and Mark Basausau, from the Department of Finance. The agreement appointed Tony Roberts Real Estate to manage The Conservatory for a period of ten years, until July 2005. Mr Roberts was to be paid 5% of gross rentals.

The agreement was irregular for a number of reasons:

- No other quotes had been obtained, and no public tender had been called. It does not appear as though the processes of the *Public Finances*

(Management) Act had been complied with.

- The contract was purportedly between "the Office Allocation Committee" and Tony Roberts. However the OAC is not a legal entity, and therefore does not have the ability to enter into a contract.
- The contract was signed by Mark Basausau. It is not clear whether he had the authority of the OAC to sign the contract.
- The term of the contract, 10 years, was extraordinarily long.
- No legal advice had been taken regarding the agreement. The agreement had not been cleared by the Attorney-General or the State Solicitor.

The agreement was hasty and ill-considered. Mr Basausau agreed to bind the State for ten years without following proper procedures, without making sure that Mr Roberts represented value for money, and without obtaining legal advice.

[7.4] OPENING RENTAL FIGURES

On 4 September 1995, Maureen Roberts, of Tony Roberts Real Estate, wrote to Mr Mark Basausau of the Department of Finance. Mr Basausau was now handling matters concerning The Conservatory on behalf of the POSFB. She enclosed "financial figures" for The Conservatory for June, July and August 1995:

JUNE 1995

Rent	\$ 19,955.31	
Outgoings	3,949.06	
Electricity	<u>2,392.26</u>	
Total Collected	26,296.73	
Less Expenditure	<u>17,740.63</u>	
	<u>\$ 8,556.10</u>	\$ 8,556.10

JULY 1995

Rent	\$ 18,981.72
Outgoings	3,560.70
Electricity	<u>3,752.97</u>
Total Collected	26,295.39
Less Expenditure	<u>15,623.35</u>

	<u>\$ 10,672.04</u>	<u>\$ 10,672.04</u>
AUGUST 1995		
Rent	\$ 21,353.30	
Outgoings	3,495.23	
Electricity	<u>3,091.25</u>	
Total Collected	27,939.78	
Less Expenditure	29,480.50	
	<u>-\$ 1,540.72</u>	<u>-\$ 1,540.72</u>
AMOUNT HELD IN CREDIT		<u>\$17,687.42</u>

These figures were disappointing. They indicated that during the three month period from June to August 1995, The Conservatory generated a net monthly income of less than \$6,000.00. This meant, if these figures were repeated over a twelve month period, the net income from The Conservatory would be less than \$70,000.00. This compared to the projected income, used as the basis for both the Roberts and Crockford reports, of \$2.1 million.

In his response to our preliminary report, Mr Roberts gave an explanation for this drop in rental income.

The difference is explained by:-

- (a) the failure to deliver PNG tenancies of 1691 sqm at \$865 per sqm;
- (b) the "bail out" by Sarich associated tenancies of approximately 1300 sqm on or about 28 November, 1994;
- (c) the ongoing failure of the owner of the property to provide title by way of registered owner or registered lessee to enable new leases to be negotiated or given,

amongst others.

[7.5] REPAIRS AND MAINTENANCE REQUIRED AT THE CONSERVATORY

The poor rental income obtained from The Conservatory during the first few months of its ownership by the POSFB was a reflection of the very low occupation levels achieved in the period just prior to its purchase. Not only had The Conservatory lost tenants, the remaining tenants were becoming concerned about the condition of the building and the low level of pedestrian traffic. Some tenants were requesting a

reduction in their rentals.

For example, in February 1995, a letter had been sent to the PNG Consulate from the tenants of Shop 7:

Dear Mr Lemeki,

We are making inquiries, with reference to the Conservatory Arcade. As a Small Australian Retail Business, in this area, with the option for our lease becoming due this year, we are concerned about the directive of the Arcade. Like the few remaining business's left in the Arcade, we have not been notified of and developments here. Out of 51 areas, there are only 13 areas working between 10 business's, this is a ¼ of the whole Arcade being used.

With no knowledge or direction being given to any one here. The closing of 7 businesses, loss of passing public, resulting in "No Sales" it is within reason to ask for a 50% decrease in Rent and Outgoings, for at least 6 months or until the Arcade has more Retail areas operating.

It would be with great appreciation, that some acknowledgment, of this concern be granted to us.

In August-September 1995, the POSFB was advised by Tony Roberts Real Estate that there was an urgent need for "capital works" to be undertaken, especially to change the shopfront for the proposed Air Niugini office. A quote was obtained from a local builder in the range of \$150,000.00.

However, despite a number of requests by Mr Roberts, no authority was given to undertake any capital works. As a consequence, the condition of the building did not improve and it was difficult to attract new tenants.

**[7.6] FURTHER CONFUSION OVER LEASE TO THE STATE:
SEPTEMBER 1995**

As we reported earlier, at the time of settlement on 18 May 1995, there was still no lease in place between the State and Moki N° 10 Pty Ltd.

Mr Mark Basausau, of the Department of Finance, assumed an important role in the negotiations.

In his response to our preliminary report, Mr Basausau explained his role in the following terms:

It is therefore my responsibilities to ensure that revenue are collected from all revenue activities into the Government Consolidated Revenue Accounts. These are Department of Finance and Planning Function and Responsibilities and mine as Deputy Secretary. ... As Deputy Secretary it was official duties to ensure that revenue are collected and accounted for. I represented the Department of Finance and Planning and Office Allocation Secretariat in the negotiation.

Confusion as to the nature and extent of the State's commitment to lease the building continued in the months following settlement. At one stage, on 19 July 1995, a Cairns-based legal firm, Miller Harris, wrote to Barker Gosling, advising that they had been "retained to attend to the legal work for the Papua New Guinea Government in its role as head lessee of the Conservatory Shopping Village". However, they did not indicate who had given them instructions; and it is not clear that whoever it was, had authority to do so.

On 13 September 1995, Mr Ragi wrote to the Secretary for Finance, attention Mr Basausau, enclosing eight invoices for rental on The Conservatory from 1 May to 31 December 1995. The invoices were directed to "Allocation Unit Department of Finance and Planning". They claimed K192,488.51 per month, as follows:

3,018 square metres (the entire building)
 x \$700.00 per square metre
 = \$2,112,600 annual rental
 ÷ 12 (months in a year)
 = \$176,050.00
 ÷ 0.9146 (the exchange rate on 8 September 1995)
 = K192,488.51
 x 8 months
 = K1,539,908.08.

This was an irregular claim for a number of reasons:

- There was no lease executed between the State and the POSFB.
- The invoices were in the name of the POSFB, rather than the owner of The Conservatory, Moki N° 10 Pty Ltd.
- The invoices were sent in September 1995, yet claimed rent until the end of December 1995.

Not surprisingly, the claim was not met.

[7.7] **DELAY IN REGISTRATION OF TRANSFER**

After settlement of the purchase on 18 May 1995, there was a substantial delay in lodging appropriate documents with the Queensland Land Registry to transfer ownership of The Conservatory from Katingo Pty Ltd to Moki N° 10 Pty Ltd.

The POSFB was reminded on several occasions by Pato Lawyers of the extreme importance of providing funds to enable the transfer to take place. For instance, on 27 July 1995, Pato Lawyers sent a fax to the attention of Messrs Ragi and Wingia:

REGISTRATION OF TRANSFER

We can only repeat and emphasise Barker Gosling's advice. Failing to register a transfer is like leaving a building uninsured, it exposes Moki to unnecessary and unacceptable risks. We respectfully urge you to provide the balance of funds previously requested as a matter of extreme importance and urgency.

The amount required for the transfer was \$37,187.00. There was at the time a credit balance held in trust by Pato Lawyers for the POSFB, so the amount required to be paid turned out to be only K6,016.60.

Eventually, the money was made available on 13 September 1995 and the transfer was lodged for registration by Barker Gosling in early October 1995.

The delay in registering the transfer led to further problems in attracting tenants to the property. Prospective tenants were apparently unwilling to enter into a lease with Moki N° 10 Pty Ltd, as the company was yet to be registered as the owner.

[7.8] **NEGOTIATIONS WITH INDOSUEZ AUSTRALIA TO RE-FINANCE THE PURCHASE**

As reported earlier, the POSFB's attempts in November 1994 to find a financial institution willing to finance the purchase of The Conservatory had been unsuccessful. Nevertheless, the POSFB had gone ahead and approved the purchase.

After that, the POSFB made no further attempt to find finance until June 1995, when Mr Ragi commenced negotiations through Mr John Hickey of Accor Asia Pacific Corporation of Sydney.

On 17 August 1995, Mr Ragi wrote to the Minister for Finance, Mr Haiveta, advising that the "search for an Australian bank or banks to finance the POSFB loan for the proposed PNG Centre in Cairns is continuing" and that Indosuez Australia had indicated interest in the project. Mr Ragi advised the Minister that preliminary discussions had taken place and negotiations were scheduled for 24 and 25 August

1995 in Sydney. He then added:

Please endorse my travel to Sydney for these negotiations.

We can find no evidence of the Minister responding to Mr Ragi's request. We find it unusual that as the permanent head of a statutory authority, Mr Ragi would be seeking the Minister's endorsement in this way for his overseas travel.

In any event, it transpired that Mr Ragi did not go to Sydney. Instead, he sent Mr Wingia, who was accompanied by Mr Vele Iamo of the Department of Finance. They, together with Mr Hickey, met with Messrs Bruce Porter and Stephen Mair of Indosuez Australia Limited.

Following that meeting, Indosuez wrote to Mr Wingia, on 30 August 1995, proposing a mandate under which to arrange finance for The Conservatory.

The main terms of the proposed finance structure were as follows:

Borrower	Moki No 10 Pty Ltd, 100% owned by the Public Officers Superannuation Fund Board of Papua New Guinea (POSFB)
Term	3 year (<u>Note</u> - It is acknowledged that the POSFB would ideally prefer a longer term, however until the leasing profile of the project is established and proven, a longer term is not considered appropriate)
Facility Limit	AUD 12.0m
Purpose	To finance a property known as the Conservatory Retail Centre in Cairns, which was recently acquired by the POSFB at a cost of AUD 18.0m
Security	<ul style="list-style-type: none"> > Registered first ranking all monies mortgage over the Conservatory Retail Shopping Centre, Cairns. > First charge over Moki No 10 Pty Ltd. > First charge over any leases. > First charge over any collateral security provided from time to time by POSFB ("the Identifiers") to support the advancing ratio requirements. > an Head Lease from the PNG Government by which to support a net rental guarantee of A\$2.1 million per annum. > an Indemnity by the POSFB to top up any shortfall in net rental income during the course of the facility on a six monthly basis. > a Charge over the rental deposit account held by the Centre Manager.
Facility Type	Cash Advance Facility

Fees & Margins	<u>Establishment Fee</u>
	1.5% flat.
	<u>Margin</u>
	2.5% per annum.
	<u>Interest (Floating)</u>
	Floating interest will be charged at the Bank Bill Bid rate on the BBSY Page of the Reuters screen for the term of the drawing.
	<u>Interest (Fixed)</u>
	Fixed interest will be charged at the then prevailing Market Swap Rate for the term and amount of the drawing.

One of the conditions precedent to the loan was an independent valuation of The Conservatory, commissioned by Indosuez and paid by for the POSFB. This was not an unusual condition.

The fact it was proposed brings into stark relief Mr Ragi's claim, when he gave evidence to the Ombudsman Commission, that an independent valuation was not obtained before deciding to purchase The Conservatory because of the cost involved. We believe that before any reputable financial institution would have lent money on this building, they would have *insisted* on an independent valuation, paid for by the borrower.

Indosuez concluded its letter of 30 August 1995 by advising that acceptance of the mandate would cost the POSFB a commitment fee of \$40,000.00, which would have to be paid by 14 September 1995.

While the POSFB was considering the Indosuez offer, the bank made approaches to various specialists in retail centre management, including the Byvan Management Company and Jones Lang Wootton, with a view to engaging them to manage The Conservatory.

On 7 September 1995, Mr Ragi wrote to the Controller of Foreign Exchange, Bank of Papua New Guinea, Mr Benny Popoitai. Prior to this, Mr Ragi had been in contact with the Governor of the Bank of Papua New Guinea, Mr Koiari Tarata, to advise generally about proposals to refinance The Conservatory. Mr Ragi stated, amongst other things, that Indosuez had "insisted on a long term commitment from the PNG Government of not less than ten years ...". But this statement was false, as there was no indication in the offer made by Indosuez that they were insisting on such a commitment.

On 14 September 1995, in response to approaches made by Mr Hickey on behalf of the POSFB, Indosuez adjusted their offer by extending the term of the proposed loan from three to five years. However, the following qualification was added:

An extension beyond year 3 would be at the sole option of Indosuez Australia Limited, and would only be considered if The Conservatory retail centre is showing sufficient net revenue to cover interest and an acceptable principal reduction programme, without the need for support by the Head Lessor or the Indemnifier.

On 25 September 1995, another meeting was held in Sydney between representatives of Indosuez, and Messrs Wingia, Iamo and Hickey. This resulted in a further adjustment to the mandate offered by Indosuez. However, the POSFB was still dissatisfied with the proposed finance structure.

On 16 October 1995, Mr Ragi wrote to Indosuez. He said he had discussed the proposed loan facility with the Bank of Papua New Guinea, who were "still insisting that the establishment fee of 1.5% flat to be paid upfront is on the high side and will not be acceptable to them". Mr Ragi also said the POSFB was not in a position to provide an indemnity to top up shortfalls in net rental income:

This is because such an indemnity amounts to guarantee which is against one of the Board's fundamental operating policies. One of our essential requirements, is that the loan must be a stand alone facility to be provided on the strength of the Conservatory Centre itself without any further recourse to the POSFB Board. Therefore, the terms and conditions of the loan will not be acceptable to our Board should indemnity by POSF Board is still required by your bank.

Mr Ragi said that Indosuez's original position regarding the proposed term of the loan had changed very little. As the head lease would be for seven years, he could not see why the term of the loan could not be extended to five years without conditions.

Mr Ragi concluded by saying that the POSFB could not sign the mandate offered by Indosuez at that stage.

There was no immediate response from Indosuez. The next correspondence appears to have been on the day of publication of the article in the *Australian Financial Review*, when Indosuez indicated, through Mr Hickey, that no further negotiations would take place.

8. AUSTRALIAN FINANCIAL REVIEW ARTICLE AND ITS AFTERMATH: NOVEMBER 1995

[8.1] OVERVIEW

On Friday 3 November 1995, an article appeared in *The Australian Financial Review*. It was headed: "Anderson succeeds in \$9m coup". It was followed by a similar one later that day in the early edition of *The Saturday Independent*. That story was headed: "POSF pension funds at risk in Cairns deal".

These articles had the immediate effect of bringing the purchase of The Conservatory into the public spotlight. A considerable controversy ensued. Indosuez Australia withdrew its offer to provide finance. The Minister for Finance was briefed. A series of public notices, letters to the editor and press releases were issued by the Minister, the Chairman of the POSFB, its Managing Director and a Board member. All of these were aimed at defending the purchase of The Conservatory. The matter was also raised in Parliament.

In this chapter we focus on these events, which occurred in November 1995.

[8.2] INFORMATION REQUESTED BY AUSTRALIAN FINANCIAL REVIEW: 2 NOVEMBER 1995

On Thursday 2 November 1995, the Victorian Bureau Chief of *The Australian Financial Review*, Mr Rowan Callick, sent faxes to both the Minister for Finance, Mr Haiveta, and the POSFB's Executive Manager Investments, Mr Wingia, seeking their comments on the purchase of The Conservatory.

Both faxes stated:

I am writing an article for tomorrow's edition of *The Australian Financial Review* on the sale of a building in central Cairns, the Conservatory, a year ago, to Moki N° 10 Pty Ltd, a company owned by the POSB.

I am inquiring about the process of the sale: how it came to the POSB's attention, how it was valued, how the sale price was decided, and how the purchase came to be approved at a time - just after the devaluation and float - when foreign exchange was at its tightest.

The reason for our interest, is the extraordinarily steep boost in value between the building's purchase by Mr Warren Anderson, through his Katingo Pty Ltd, and POSFB's own purchase. In just four weeks the building's price doubled, from \$9.75 million to \$18.72 million. Current valuations place it at \$9-10 million.

Mr Callick said he would be grateful for any response, which he would need by late afternoon that day.

However, neither Mr Haiveta nor Mr Wingia responded.

[8.3]

AUSTRALIAN FINANCIAL REVIEW ARTICLE: 3 NOVEMBER 1995

On Friday 3 November 1995, the following article appeared in *The Australian Financial Review*, at pages 1 and 4:

Anderson succeeds in \$9m coup

By ROWAN CALLOCK
and KATHY MacDERMOTT

PROPERTY developer Mr Warren Anderson scored one of his greatest coups in Cairns a year ago: he bought a building from Mr Ralph Sarich for \$9.75 million and sold it within a month to Papua New Guinea's Public Service pension fund for \$18.72 million.

The building, only partially occupied, is valued today at between \$9 million and \$10 million.

Mr Napoleon Liosi, president of PNG's Public Employees Association, which has 22,000 members, said

yesterday on being told of the property purchase that the association was "disgusted". He called for a public inquiry into the "wasteful deal" organised by the fund, which is administered by the Public Officers Superannuation Board.

The purchase, made at the height of PNG's foreign exchange crisis following a 12 per cent devaluation and the ensuing floating of the kina, required the written approval of the Minister for Finance, Mr Chris Haiveta, who is also Deputy Prime Minister.

The Prime Minister, Sir Julius Chan, said at the time of the float that it was made necessary in part because of the depletion of reserves through the activities of speculators.

The board is PNG's biggest non-bank financial institution, which paid out K12.9 million (then worth \$1.9 million) in benefits to its 60,000 contributors in 1993, when its investment portfolio comprised K265

Continued page 4

4

Anderson's \$9m coup

From page 1

million — 19 per cent of it in property. The Government matches its employees' contributions.

A spokesman for Mr Haiveta said yesterday that the minister was in Cairns and could not be contacted.

Mr Anderson's office declined to comment.

The building that PNG bought, the Conservatory, is a two-storey property originally developed by Mr Sarich, through his company Cape Bouvard Investments, and opened in 1988. It is located opposite the new Cairns casino, and has frontages to Abbott and Lake Streets.

Eight of 18 tenancies at the time of purchase by the POSB were occupied by outlets operated by Mr Sarich, which were immediately

shifted elsewhere. Mr Anderson bought the Conservatory through his Katingo Pty Ltd in November 1994, and sold it to Moki No. 10 Pty Ltd, a PNG-registered shelf company bought in October 1994 by the POSB, whose most recent annual report — for 1993 — says: "We at the POSB are proud of our track record in investment, which shows excellent returns and benefits — not only for our members but also for the economy of PNG."

The POSB's managing director, Mr Eremam Ragi, was also away from his Port Moresby office yesterday. And his deputy, Mr Joseph Wingia, like Mr Ragi a director of Moki No. 10, said he was not authorised to talk to the media.

It is understood that the Papua New Guinea Government has instructed that, Air Niugini and



SEE-SAWING VALUES: The Conservatory building in Cairns

PNG's tourism and consulate offices in Cairns must be moved to the Conservatory.

And it is also understood that Mr Anderson, a regular visitor to PNG, has held discussions with senior officials there about the development of new government offices. Two major administration buildings have been declared unfit for

occupation because of lack of maintenance.

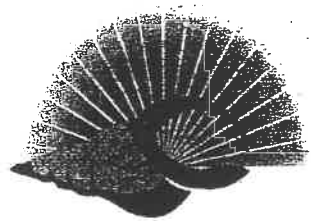
The POSB was re-shaped in 1993, with guidelines issued by the Minister for Finance — then Sir Julius Chan — directing that it and similar institutions "were to give full consideration to the Government's economic policies and priorities which stress economic and

employment growth in non-mining sectors of the economy, including agriculture, fisheries, forestry, manufacturing and housing."

The POSB bought \$10 million worth of shares in the Lihir gold project. The stock was trading yesterday at \$1.46. It floated on October 9, with institutional shares costing \$1.57.

Picture: JOHN CARR

Later that day, a similar article appeared in the early edition of *The Saturday Independent*:



THE SATURDAY Independent EARLY EDITION

POSF pension funds at risk in Cairns deal

Board pays \$A18.72m for \$A9.75m property

AUSTRALIAN property developer Warren Anderson scored one of his greatest coups in Cairns a year ago: he bought a building for \$9.75 million, and on-sold it within a month to Papua New Guinea's public service pension fund for \$18.72 million.

The building, only partially occupied, is today valued at \$9-10 million. Napoleon Liosi, president of the Public Employees Association, with 22,000 members, said this week on being informed of the property purchase, that the association was very annoyed and disgusted.

And he called for a public inquiry into the wasteful deal "for the public servants who contribute every fortnight five per cent of their earnings" to the fund, which is administered by the Public Officers Superannuation Fund Board (POSFB).

The board is PNG's biggest non-bank financial institution, which paid out K12.9 million benefits to its 60,000 contributors in 1993, when its investment portfolio comprised K265 million, 19 per cent of it in property. The government matches its employees' contributions to the fund.

The purchase of the Cairns building, made at the height of PNG's foreign exchange crisis, following a 12 per cent devaluation, and the ensuing floating of the kina, required the written approval of the Minister for Finance, Chris Haiveta.

Prime Minister Sir Julius Chan said at the time of the float that it was made necessary

by DOMINIC KAKAS and ROWAN CALICK

in part because of the depletion of reserves due to the activities of speculators.

A spokesman for Mr Haiveta said on Thursday the minister was in Cairns, and was unable to be contacted.

And Mr Anderson's office declined to comment.

The building that PNG bought, the Conservatory, is a two storey property that was opened in 1988. It is located opposite the new Cairns casino, and has frontages to Abbott and Lake Streets.

Eight of 18 tenancies at the time of purchase by the POSFB were occupied by outlets operated by the former owner, and immediately shifted elsewhere.

Mr Anderson bought the Conservatory through his Katingo Pty Ltd in November 1994, and sold it to Moki No. 10 Pty Ltd, a PNG registered shelf company bought in October 1994 by the POSFB, whose most recent annual report - for 1993 said "We at the POSFB are proud of our track record in investment, which shows excellent returns and benefits, not only for our members but also for the economy of PNG."

The POSFB's managing director, Ereman Ragi, was also away from his Port Moresby office this week, on leave at his home village in West New Britain. And his deputy, Joseph Wingia, like Mr Ragi a director of Moki No.

10, said he was not authorised to talk to the media.

It is understood that the government has instructed that Air Niugini, and PNG's tourism and consulate officers in Cairns, be re-located to the Conservatory.

And it is also understood that Mr Anderson, a regular visitor to PNG, has held discussions with senior officials about the development of new government offices in Port Moresby, where two major administration buildings have been declared unfit for occupation due to lack of maintenance.

In the 1980s, Mr Anderson was charged in Townsville with importing a loaded revolver in his private jet following a visit to PNG's highlands. He said he needed it for protection against the "natives." His conviction was overturned by the Queensland Supreme Court.

The POSFB was re-shaped in 1993, with guidelines issued by the Minister for Finance - then Sir Julius Chan - directing that it and similar institutions "were to give full consideration to the government's economic policies and priorities which stress economic and employment growth in non-mining sectors of the economy, including agriculture, fisheries, forestry, manufacturing and housing."



□ Mr Chris Haiveta ... the minister to whom the POSFB is responsible.

The POSFB bought \$10 million shares in the Lihir Gold project before the float, placing it as the 15th top investor in Lihir with 3.3 million shares.

The stock was trading on Thursday at \$1.46. It floated on October 9, with institutional shares costing \$1.57.

**[8.4] INDOSUEZ AUSTRALIA WITHDRAWS REFINANCING
OFFER: 3 NOVEMBER 1995**

At 11.40 am on Friday 3 November 1995, Mr John Hickey of Accor Asia Pacific sent a fax to Mr Ragi drawing his attention to *The Australian Financial Review* article:

Dear Ereman,

I attach copy of an article in today's Australian Financial Review which you may have already seen.

I had a call from Bruce Porter who said that in light of the article there is now no way he could obtain his Board's approval to the loan. Rather than have him communicate this to you it may be best if you write to him and say that POSFB has decided not to accept the indicative terms offered by Indosuez.

I am sorry about this but clearly the article is damaging. I tried to call you but understand you are away from the office.

Regards,

[SIGNED]
JOHN HICKEY

cc: Sol Benn

The immediate consequence of the article therefore was that the POSFB's attempt to arrange refinancing the purchase of The Conservatory collapsed.

**[8.5] SECRETARY FOR FINANCE BRIEFS MINISTER:
3 NOVEMBER 1995**

On the same day that *The Australian Financial Review* article appeared, the newly appointed Secretary for Finance, Mr Rupa Mulina, presented a brief to the Minister for Finance, Mr Haiveta.

Mr Mulina stated:

We refer to the newspaper article in the Australian Financial Review today regarding the purchase of the Conservatory Shopping Centre in Cairns by the Public Officers Superannuation Fund Board.

The property is located on Lot 32, County of Nares City of Cairns along 9 Abbott Street. The property comprises mixed commercial and office spaces totalling 3091 square meters. The POSB Fund Board purchased the property from Katingo Pty Ltd through its wholly owned subsidiary Moki N° 10 Pty Ltd. The settlement of the property was concluded towards the end of March 1995. The total purchase price was A\$18.72 million dollars.

Prior to the purchase, detailed market valuation was carried out which assessed the market value at A\$21 million dollars. Based on the present large commercial developments within the vicinity of this property, the market value will have appreciated quite substantially.

We attach copy of the relevant valuation by Crockford Property Consultants, who are highly recognised by the Building Owners and Managers of Australia (BOMA).

The Independent State of PNG has decided to lease the property from Moki N° 10 Pty Ltd (POSB) to facilitate the promotion of PNG by way of treating the building as a one stop shop for PNG. This is in light of the potential growth and boom of the city of Cairns. The government of PNG is currently finalising the lease of the property with POSB, the ultimate owner. The building is intended to house the PNG Consulate, Air Niugini, other trade promotion activities. It should be noted that the lease of the property is currently awaiting clearance from the State Solicitor's Office prior to submission to Cabinet for final endorsement.

It is therefore important to note that the property is deemed a viable investment for POSB and its shareholders in that the government will be taking the head lease over the property. Expected returns on investment to POSB and its members is estimated at K2.2 million a year (i.e., over and above the 10% return on investment criteria for the Fund).

The investment by the POSB is a positive move to enhance the growing trade relations between Queensland and the rest of Australia and PNG, which is fully supported by the government of PNG.

Although we have not sighted the reports in the Financial Review of Australia dated 3 November 1995, Minister should be assured that if the report is claimed to be correct, POSB is in a position to make a substantial capital gain on the investment. Otherwise the final confirmation of the government to entering into the head lease arrangement with POSB on the basis of promoting PNG will continue to be pursued.

RUPA MULINA
Secretary

In our opinion, Mr Mulina's advice to the Minister for Finance was seriously flawed. Mr Mulina was not involved in the decision to purchase The Conservatory. He obviously did not appreciate and was not fully acquainted with the facts before he gave his advice to the Minister.

In his response to our preliminary report, Mr Mulina explained:

I had no part in the purchase of the conservatory and must admit in "hindsight" that I was totally foolish to sign the public advertisement and the brief to the Minister for finance. All these briefs were prepared by the Public Officer's Superannuation Fund.

[8.6]

**PRESS RELEASE BY MINISTER FOR FINANCE:
3 NOVEMBER 1995**

On the evening of Friday 3 November 1995, Mr Haiveta issued a press release defending the actions of the POSFB. It was published in full in the final edition of *The Saturday Independent*, the following day, together with other articles on the purchase of The Conservatory:

The Conservatory Shopping centre (Cairns)

THE following statement was issued on behalf of the Minister for Finance, Chris Haiveta, at 9.08 pm Friday evening. It is published in full. For other reports see page 1.

The Deputy Prime Minister and Minister for Finance, Chris Haiveta responded today that the newspaper article which appeared in the *Australian Financial Review* on November 3 1995, regarding the purchase of the Conservatory Shopping Centre in Cairns by the Public Officers Superannuation Fund Board needs to be clarified for the benefit of the members.

"The property is located on Lot 32, Country of Nares City of Cairns along 9 Abbot Street. The property comprises mixed commercial and office spaces totalling 3091 square meters. The POSB Fund Board purchased the property from Katingo Pty Ltd through its wholly owned subsidiary Moki No. 10 Pty Ltd. The settlement of the property was concluded towards the end of March 1995.

The total purchase price was \$18.72 million," Mr Haiveta said.

"Prior to the purchase, detailed market valuation was carried out which assessed the market value at \$21m. Based on the present large commercial developments within the vicinity of this property, the market value will have appreciated quite substantially.

"Prior to the purchase, independent valuation by Crockford Property Consultants, who are highly recognised by the Building Owners and Managers of Australia (BOMA) valued the property on behalf of the POSFB.

Mr Haiveta said the Independent State of PNG has decided to lease the property from Moki No. 10 Pty Ltd (POSB) to facilitate the promotion of PNG by way of treating the building as a one stop shop for PNG. This is in light of the potential growth and boom of the city of Cairns. The government of PNG is currently finalising the lease of the property with POSB, the ultimate owner. The building is intended to house the PNG Consulate, Air Niugini, other trade promotion activities. It could be noted that the lease of the

property is currently awaiting clearance from the State Solicitors Office prior to submission to Cabinet for final endorsement.

"It is therefore important to note that the property is deemed a viable investment for POSB and its shareholders in that the government will be taking the head lease over the property. Expected returns on investment to POSFB and its members is estimated at K2.2m a years (ie, over and above the 10% return on investment criteria for the Fund).

"The investment by the POSFB is a positive move to enhance the growing trade relations between Queensland and the rest of Australia and PNG, which is fully supported by the government of PNG.

"I assure the shareholders of POSFB that even if the property was purchased as claimed by the *Financial Times*, POSB is in a position to make a substantial capital gain on the investment. Otherwise, the final confirmation of the government to entering into the head lease arrangement with POSB on the basis of promoting PNG will continue to be pursued," he added.

It's all misleading, says Haiveta

from page 1

The property had been bought less than a month before for \$9.75 million by an Australian property developer, Warren Anderson.

The *Saturday Independent* reported in the early edition that Mr Haiveta was in Cairns on Thursday and could not be contacted for comment.

But Mr Haiveta said he went to Cairns on an unrelated matter.

The article seemed to be insinuating that he was in Cairns for the property in question, which he was not, he said.

Disputing *The Saturday Independent's* report that the building was valued about \$A10 million, he said, "The evaluation of the building

before it was bought was over \$20 million."

Referring to the report that the purchase of the Cairns building was made at the height of PNG's foreign exchange crisis, following a 12 per cent devaluation and the subsequent floating of the kina and that it required the written approval of the Minister for Finance, Mr Haiveta said, "When I came in as Minister all these things were done. Approvals were made, decisions were done.

"The board decisions and evaluations were done prior to my appointment as Minister. The recommendations came from the board, the evaluations were there, it looked all right.

"The recommendations came from the board to the

department and I had no reason not to approve it. As far as I am concerned it's quite an open thing.

"I welcome any investigation into the deal, whether it is the Ombudsman Commission.

"But those who criticise it have got to know where this deal is coming from."

The POSFB makes many investments both within the country and overseas."

The president of the Public Employees Association, Napoleon Liosi, has come out strongly against the purchase and has called for an investigation into the matter but Mr Haiveta countered, saying, "Mr Napoleon Liosi has got a conflict of interest. He has got his own super fund."

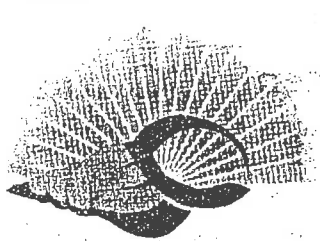
The *Saturday Independent* report was jointly done with

Rowan Callick of the *Australian Financial Review*. Noting this, Mr Haiveta said that it is reported that Warren Anderson is a friend of Australian Prime Minister Keating and he claims that a number of Australian media interests are "picking on Warren to get to the Labour party".

"The way I see it, it's just a witch hunt," he said.

When asked why the funds were sent overseas at a time when the country needed all its money within, Mr Haiveta said, "It was shifted out for a purpose.

"It was for investment, not for other purposes. In any case I do not give approval for this. It's the Governor of the Bank of Papua New Guinea, the foreign exchange controller."



THE SATURDAY Independent FINAL EDITION

Ombudsman to probe POSF Cairns deal

Summons issued for documents

THE OMBUDSMAN Commission has instigated a full-scale investigation into the purchase by the Public Officers' Superannuation Fund Board of an \$A18.72 million building in Cairns, Australia.

The *Saturday Independent* believes that the Ombudsman Commission's office has issued a series of summons for documents to be brought forward.

None of the senior officers of the POSFB were available for comment. However Deputy Prime Minister and Minister for Finance and Planning Chris Haiveta.

approval of the purchase of the property.

He said the Board of the POSF had made the decision to purchase the property well before he became finance minister.

He said the evaluations had been done and he approved the proposal when it came before him.

His defence of the action is reprinted on this page.

The building, called the Conservatory, was previously brought by Australian property developer Warren Anderson for \$A9.75 million.

He sold it to the POSFB for \$A18.72 million within a

month of having bought the building.

Reliably informed sources say that at the time the building was being purchased, during the devaluation crisis towards the end of last year, the national government had received advice not to remit the money overseas as this would place considerable pressure on the kina.

The sources said the government ignored the advice and made the purchase through a shelf company, Moki No. 10 Pty Limited, Pty Limited could be contacted for comment. They were either out of Port Moresby or in meeting.

Niugini, has been under pressure to move into the building.

The airline was offered three years rent-free as an incentive.

However, it refused to move into the building because it has a commercially viable situation at present.

The sources said the airline did not consider the Conservatory to be in an equally attractive commercial area.

None of the officers of the POSFB who were nominated to the board of Moki No. 10 Pty Limited could be contacted for comment. They were either out of Port Moresby or in meeting.



Mr Chris Haiveta ... phoned from Singapore to defend his action.

Haiveta defends action

"IT'S ALL misleading. What you should have done was check your facts first," Deputy Prime Minister and Minister for Finance and Planning Chris Haiveta said from Singapore last night when he phoned to discuss *The Saturday Independent's* early edition lead story yesterday.

The article reported the purchase by the Public Officers Superannuation Fund Board of a property late last year for \$A18.72 million.

Cont to page 2.

[8.7] MR RAGI BRIEFS MINISTER: 6 NOVEMBER 1995

On Monday 6 November 1995, Mr Ragi formally briefed Mr Haiveta on The Conservatory.

Mr Ragi stated:

Below is a brief order of events relating to the purchase of the property in Cairns, Australia.

- 05/10/94 - Received proposal from Dept. of Foreign Affairs concerning possible purchase of a property in Cairns and other centres to house the overseas mission offices.
 - 07/10/94 - Received confirmation from Mr. Tau Peruka, Chairman of Office Allocation Committee to lease the building subject to negotiating acceptable terms of the lease.
 - 10/10/94 - Board of POSF met and considered the proposal and having satisfied themselves approved the purchase subject to negotiating long term head lease with the State. The Board also approved the injection of equity funds and overseas borrowing to finance the property.
 - 17/10/94 - Ministerial Approval was sought from Sir Julius Chan who at that time was Acting Finance Minister.
 - 26/10/94 - Ministerial Approval from Sir Julius Chan was received which approved an investment of K15.5 million for the purchase and approved off-shore borrowing totalling K13.5 million.
- Expressions of interest for off-shore funding were invited from several potential financiers. None responded positively to the invitation as timing was bad as it coupled with the devaluation and flotation of the Kina. Bad publicity on PNG by the Australian Media was also ripe at that time which did not help our efforts to secure funds.
- 14/11/94 - Part payment of K0.5 million was made as deposit.
 - 06/12/94 - Further sum of K1,204,545.45 was made to satisfy the 10% deposit requirement by the vendors.
 - 28/12/94 - Received advice from lawyers that approval from Foreign Investment Review Board of Australia (FIRB) had been granted on 23/12/94 and that settlement must be done within seven days from receipt of approval by FIRB.
-

-
- 30/12/94 - POSF Board has to put delay tactics into place to stall the purchase as it did not have the ability to settle at that point. This was conveyed to the lawyers.
- 16/01/95 - Received advice from lawyers that the settlement must necessarily take place on or before 24 January, 1995.
- This was coupled with directives from Minister for Finance for POSF Board to refrain from drawing on funds held on IBDs due to the then prevailing liquidity squeeze. Hence the Fund was not in a position to settle the purchase within seven (7) days.
- 23/01/95 - Special Meeting of the Board of POSF was called at which the Board agreed to finance the purchase from internal sources given difficulty in securing off-shore loan. Minister's approval was immediately sought thereafter.
- 24/01/95 - Deputy Prime Minister Chris Haiveta approved the proposal including the terms and conditions for the loan.
- 25/01/95 - POSF Board and Vendor signed Variation Contract agreeing to delay full settlement and instead pay the purchase price in several stages and pay interest on the outstanding amount at the rate of 9% from 10 January until the last payment date on 28 February, 1995.

The purchase has been completed as per above agreed date and the application to register the title deed on the property in the name of Moki N° 10 Pty Ltd has been made and confirmation is awaited. At this stage I am advised that the lease agreement with the State is still with the State Solicitor for his clearance before cabinet can consider.

[8.8] PUBLIC NOTICE BY POSFB CHAIRMAN: 7 NOVEMBER 1995

On Tuesday 7 November 1995, the Chairman of the POSFB, Mr Rupa Mulina, published an open letter to the members of the POSF in both *The National* and *The Post-Courier*.

Mr Mulina's letter is set out below:

42/The National

Tuesday, November 7, 1995



PUBLIC OFFICERS
SUPERANNUATION
FUND BOARD

PUBLIC NOTICE

This is an open letter to the members of the POSF in relation to an article in the Saturday Independent on 4 November 1995 regarding the purchase of a property in Cairns, Australia by the Public Officers Superannuation Fund.

Dear Members,

Yet again, the Board is forced to spend some funds to place this Notice in the media to correct certain misrepresentations in that article.

Firstly, the title of the article is not only misleading but also totally false. It is completely false for Kakas and Callick to claim that "POSF pension funds (are) at risk in Cairns deal". Kakas and Callick did not know that:

- i) the National Government will take the Head Lease over the property for a long period of time (longer than the pay back period) with option to review thereafter;
- ii) the National Government will pay commercial rent which ensures a commercial rate of return to the Fund;
- iii) Rent will be back dated to early this year when the title of the property was formally transferred to Moki No. 10 Pty Ltd, the vehicle company which is wholly owned by POSF. Thus, it is not correct to imply that the investment is losing money.

Secondly, it is not correct that POSF paid \$A 18.72 million for a property worth \$A 9.75 million. When negotiation began about mid last year, an independent valuation put the value of the property at \$A 21.0 million. This value of the building would have definitely improved by now given current substantial commercial developments surrounding this property.

It is completely wrong that ... "The government matches its employees contributions to the fund". As you all are aware, the Fund does not receive the employers' contributions unless and until the member ceases to be a member of the Fund for various reasons.

For a while, the Board and Management had wanted to move into the property markets outside of PNG. This was to improve the diversity and liquidity of the Fund's property portfolio. Up to the point of purchase of the Cairns property, the Fund's property portfolio was made up of PNG properties only. This is risky and poses liquidity problems. When the opportunity arose, the property was pursued as soon as an understanding was reached with the Government for the Government to become the Head Lease for the property. Furthermore, the property's location is superb and stands to capture the growing tourism trade in Cairns. Cairns was the fastest growing city in North Queensland.

The price which the vendors paid to the previous owners of the property was a private issue for the vendors and the previous owners. It was never divulged to the Board and Management. Thus the Fund must not be accused of deliberately paying an inflated price.

Having received a valuation exceeding the agreed price, plus a commitment from the Government to take the Head Lease over the property, the Board only had to negotiate an acceptable rental rate with the Government that ensures an optimal return on the investment. The latter was agreed and now the Fund has an investment that is not only commercially viable but meets other objectives which are just as important as the rate of return consideration.

It is planned that the property will be renamed PNG Centre. It will become "one stop shopping" centre for PNG. Being such, it makes every sense for the various agencies of the Independent State of PNG to re-locate to the Centre. That way, we the members of the POSF, stand to benefit from the funds that these agencies would have otherwise paid to others. Surely, this must be acceptable to all of us as members of POSF.

It was most unfortunate for the President of PEA, Mr Napoleon Losi, to jump on the bandwagon yet again without analysing the other side of the equation. Any investment has two sides, the cost and return. Whilst the cost directly impacts on the return, it fades into oblivion if and when adequate income is being generated. This is the case with this investment when one takes into account the long term lease by the State and other attractive terms.

In conclusion, you are rest assured that the Board and Management will at all times continue to strive for the best for you. You are assured once again that the Cairns property is a good and safe investment. We all should be proud that each and everyone of us owns a piece of Cairns and a piece of Australia. Cairns is the fastest growing city in Australia whilst Australia is set to consolidate its position as one of the leading countries in the Asia-Pacific region.

Yours sincerely,

RUPA MULINA
Chairman - POSF

On Wednesday 8 November 1995, a letter to the editor from Mr Ragi was published in *The National*. It was in response to a letter from Sir Paulias Matane, published on 6 November 1995. These letters are reproduced below:

Probe POSF's Cairns deal

IF the media reports that POSF paid A\$18.72 million for a Cairns property worth only A\$9.75m are correct, then contributors and pensioners should strongly demand several things.

■ A thorough investigation must be instituted right away. PNG and

Australian police should take the lead.

■ Contributors and pensioners should know where and how their investments/contributions have gone to.

■ They should know, preferably every six months, receipts and expenses.

■ Pensioners should be informed why their pensions were discontinued in June last year.

■ Pensioners should know why their pensions have not increased with CPI movements.

■ Pensioners should be informed why their pensions have not in-

creased to the value before the devaluation and float of the kina.

Pensioners are worse off now than before the devaluation. Is that the price for their service to the nation?

Sir Paulias Matane
Boroko, NCD

Cairns property worth much more

I REFER to a letter from Sir Paulias Matane ("Probe POSF's Cairns deal", *The National*, Nov 6) regarding Public Officers Superannuation Fund's investment in a property in Cairns, Australia.

My response to the points he raised is in the order he raised them:

■ It is utter nonsense and false that the said property was worth A\$9.75 million. The market value of the property at that time was A\$21 million which was still conservative. The valuation was done by a reputable real estate company which had considerable local knowledge of the Cairns property market.

■ What was he suggesting or implying when he proposed a thorough investigation, led by PNG and Australian police? If he is suggesting corruption among those of us involved in putting the deal together, he is completely wrong as far as I am concerned. Let me remind Sir Paulias, and anybody else for that matter, that it is wrong and unethical of him to pre-judge or judge anybody under any circumstance, unless there are hard facts to substantiate their assertions.

■ Pensioners, including Sir Paulias, own nothing whatsoever in the fund. The fund is owned exclusively by those of us who are still contributing to the fund. The board pays the pension on behalf of the State. In other words, the State is entirely responsible for the pension. It is, therefore, wrong for Sir Paulias to suggest that pensioners should know where and how their investments/contributions have gone to. This point

has been relayed to Sir Paulias previously but, unfortunately, it does not seem to have sunk in.

■ There is no logic whatsoever for his suggestion that records or statements of receipts and expenses be furnished to members every six months. However, if such a system ever comes into play at all, Sir Paulias is not entitled to receive them because he is not a member of the fund.

■ Sir Paulias is well aware of the reason for a temporary suspension of pensions in June last year. It is, therefore, unfair for him to raise the question.

■ Sir Paulias has been told in no uncertain terms before that the question of linking pensions to CPI is entirely for the Government to address. There is, therefore, no logic in him raising this point again, particularly when the issue is not related to the issue at point.

■ Sir Paulias has also been told before in no uncertain terms that any adjustment of pension to take account of the impact of devaluation is a matter for the Government. Yet he has seen fit to raise the point again.

All in all, Sir Paulias has attempted to use the opportunity to advance certain desires which are completely irrelevant to the issue at point.

Finally, may I humbly advise the learned knight not to confuse issues or point fingers at anybody unless and until he has understood the other side of the equation. After all, there are always two sides to every story.

Ereman K Ragi
Managing Director
Public Officers
Superannuation Fund

POSF must be accountable

THE weekend revelation that POSF paid A\$18 million for a Cairns property valued at around K10 mil-

lion must be fully investigated by the Ombudsman. Whether the deal involved corruption or was

just naive is irrelevant.

As custodians of the public servants' compulsory superannuation,

POSF must be responsible and accountable.

Fund managers must not be permitted to gamble with the retirement benefits of grassroots employees.

Finance Minister Chris Haiveta's explanation that it was a good deal in that rentals from Air Niugini and other PNG companies will result in a K2 million return annually is economic gobbledey-gook.

[8.10]

FOLLOW-UP ARTICLES: NOVEMBER - DECEMBER 1995

The *Australian Financial Review* published follow-up articles on Tuesday 7 and Wednesday 8 November 1995. These reported on the circumstances in which the Crockford report had been prepared and the manner in which the deal had been put together by Mr Warren Anderson and other individuals.

These articles, as well as some others appearing in the PNG press around the same time, are set out below.

Haiveta says reports of PNG deal a 'witch-hunt'

PAPUA New Guinea's Finance Minister and Deputy Prime Minister, Mr Chris Haiveta, has said that PNG's evaluation of a Cairns property deal with Perth-based developer Mr Warren Anderson — now the subject of an investigation by the PNG Ombudsman Commission — was made before he became a minister, on August 30 last year.

Mr Anderson, however, did not buy the building, the Conservatory, until two months later, for \$9.75 million, before on-selling it to PNG's Public Service pension fund, the Public Officers Superannuation Board, a month later for \$18.72 million.

The Ombudsman Commission launched its investigation following the publication of details of the deal in *The Australian Financial Review* last Friday.

Mr Haiveta, whose written approval was required for the investment, told *The Saturday Independent* in PNG: "When I came in as Minister all these things were done. I had no reason not to approve it... It looked all right... I welcome any investigation into the deal."

He said that the Australian media were "picking on Warren to get at the Labor Party. The way I see it, it's just a witch-hunt".

He added in a statement: "Prior to the purchase, independent valua-

By ROWAN CALICK
and KATHY Mac DERMOTT

tion by Crockford Property Consultants, who are highly regarded by the Building Owners and Managers Association (BOMA), valued the property on behalf of the POSB."

But Mr Ted Crockford, a director of Cairns-based Crockford Property Consultants Pty Ltd, said yesterday that no valuation was carried out on the Conservatory by his company on behalf of POSB.

"We are property agents, not valuers," he said.

"A market appraisal was undertaken for Tipperary Land Development Corp (a company associated with Mr Anderson) where rents of similar properties were assessed."

"This report contained a very big disclaimer clearly stating that it was not a valuation — just an opinion."

A copy of the market appraisal was sent to the POSB on October 25, 1994.

Mr Haiveta said: "Detailed market valuation assessed the value at \$21 million. Based on the present large commercial developments within the vicinity of this property, the market value will have appreciated quite substantially."

The POSB is letting it to the PNG Government's own agencies, including Air Niugini and the Tourism Promotion Authority, which are being

required to lease space at full rents. Mr Haiveta said the building would thus provide an annual return of \$2.2 million, better than the 10 per cent required under the POSB's investment criteria.

"At the time Crockford's report was prepared, however, the Conservatory was earning about \$430,000 per year. This income would have reflected a yield of 22 per cent on the POSB's \$18.72 million acquisition price."

But based on recent leasings in similar Cairns complexes, the report gave the opinion that gross rentals of \$900 per sq m for the 1,675 sq m of ground floor tenancies and \$500 per sq m for the 1,343 sq m of first-floor outlets were achievable, capitalising the potential rentals at 10 per cent to estimate a value of \$21.79 million, providing the building was fully leased.

Crockford Properties has not been a member of BOMA for two years. And BOMA's Queensland president, Mr Angus Harvey Ross, said it was not the organisation's role "to recommend a valuer in these circumstances".

Mr Gerea Aopi, who as Secretary for Finance at the time of the Cairns transaction, was also then chairman of the POSB, has been appointed managing director of PNG's largest government agency, the telecommunications monopoly Post & Telekom.

New call to probe Anderson Cairns deal

By ROWAN CALLOCK
and KATHY Mac DERMOTT

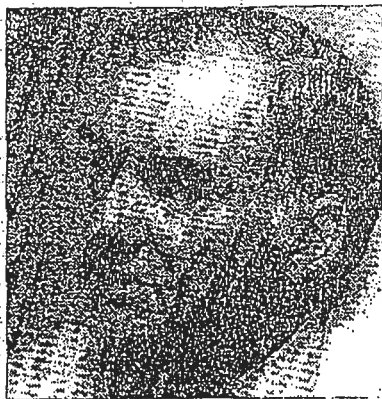
PAPUA New Guinea's Opposition Leader, Mr Roy Yaki, yesterday called on the Government to set up an inquiry into the Public Service pension fund's purchase of a Cairns building for \$18.72 million from Australian developer Mr Warren Anderson.

Mr Anderson had bought the property, the Conservatory, for \$9.75 million a month earlier.

PNG's Ombudsman Commission has already begun its own investigation into the purchase by the Public Officers Superannuation Board (POSB), following publication of details of the deal in *The Australian Financial Review*.

Mr Yaki said: "Papua New Guinea must be weary of its own elites exploiting it... The inquiry must tell us under whose instructions the property was purchased, who negotiated the purchase, why there was a big jump in the purchase price, and the names of all those who are involved both in PNG and in Australia with the property."

He said: "Those who are found to be breaking the law for their own gain must be dealt with accordingly. People looking after the workers' contributions (to their pensions) must be seen to be making decisions that will bring the best benefit."



Mr WYLLIE

The building was acquired by Mr Anderson's Kalingo Pty Ltd from Mr Ralph Sarich's Cape Bouvard Investments, through a 10 per cent option - for \$975,000 - that Kalingo had borrowed from Asia Securities Pty Ltd.

The deed on the loan notes: "Time is of the essence of this deed in respect of an obligation of the borrower to pay money." The deed was

made on October 11, 1994, and the repayment deadline was December 30, 1994.

PNG's Minister for Finance and Deputy Prime Minister, Mr Chris Haiveta, has said "the board decisions and evaluations [on the acquisition of the Conservatory by the POSB] were done prior to my appointment as minister". He was appointed on August 30, 1994.

Asia Securities is a company controlled by Mr Bill Wyllie, who has transacted a number of other deals with Mr Anderson. Both are based in Perth.

Mr Wyllie, who is known as the "smiling tiger" in Hong Kong, where he rescued trading firm Hutchison International in 1975, two years ago bought Murray River Farm, the rural holding of Mr Anderson, for \$5.55 million.

In 1978, Mr Wyllie had been chief executive of Hutchison when Hutchison provided the key backing for Mr Anderson's New World Developments Pty Ltd in its \$30 million development of the Northgate shopping centre at Hornsby in Sydney.

Early in 1994, Mr Wyllie's Asia Securities bought out the security held by the Bank of New York against loans of an undisclosed amount taken out by Mr Anderson.

Mr Wyllie's fortune is estimated in the most recent Business Review Weekly Rich List at \$200 million.

The recently appointed chairman of the

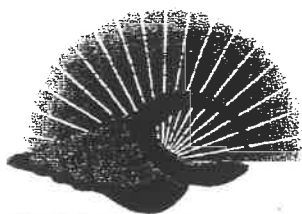
POSB, Secretary for Finance Mr Rupa Mulina, yesterday paid for full-page advertisements in PNG's national daily newspapers, in which he said: "Yet again, the board is forced to spend some funds to place this notice in the media to correct misrepresentations..."

"It's not correct that the POSB paid \$18.72 million for a property worth \$9.75 million. When negotiation began about mid last year, an independent valuation put the value of the property at \$21 million. The value of the building would have definitely improved by now given current substantial commercial developments surrounding this property."

Mr Mulina was referring to a market appraisal undertaken for Tipperary Land Development Corp, a company associated with Mr Anderson, by Mr Ted Crookford, who told the AFR: "This report contained a very big disclaimer clearly stating that it was not a valuation - just an opinion."

The appraisal was based on full leasing. The Conservatory is at present about 20 per cent leased.

But Mr Mulina also said the PNG Government would take the head lease over the property "for a long period" and would pay "commercial rent" back-dated to its formal transfer to the POSB. It would be renamed PNG Centre, and would become a "one-stop shopping centre" for the country.



THE SATURDAY Independent EARLY EDITION

\$A18.72 million Cairns building worth \$A5.5m

A CAIRNS building bought by the Public Officers Superannuation Fund Board for \$A18.72 million was valued by its previous owner at \$A5.5 million. *The Australian Financial Review* reported that the

...former owner says \$A7.5 million expected on open market

former owner, Ralph Sarich, sold the mostly vacant building called the Conservatory to Warren Anderson a year ago for \$A9.75

by DOMINIC KAKAS

million, which was \$A4.25 million above the property's book value.

The Australian Financial Review reported that according to a spokeswoman from Mr Sarich's private company Cape Bouvard Investments, an opinion by a leading Australian real estate agency in the second half of last year valued the complex at \$A5.5 million. This figure was supported by advice from an independent firm of valuers.

The spokeswoman was further reported to have said, "We had hoped to get a price around \$A7.5 million if we went to the open market with the property."

The Australian Financial Review reported that Deputy Prime Minister and Minister for Finance and Planning Chris Haiveta, who approved the purchase of the property, said the building would provide an annual return of \$A2.2 million following leases by government agencies based on the ground level achieving annual rentals of \$900 per square metre and the first floor leasing at \$500 per square metre.

However, the Cape Bouvard spokeswoman described such rates as "absolutely ridiculous". The company had previously been renting the ground floor space with street frontage for \$A350 per square metre per annum and the

first floor at a rate of \$150 per square metre. She said even with those rates the property had suffered major vacancies since it was developed in 1988.

The Saturday Independent revealed last week that the POSFB had bought the Cairns property for double what Mr Anderson paid for the property. Since then the Ombudsman Commission as well as the Auditor General's offices have instigated full-scale investigations into the deal.

Finance Secretary and chairman of the POSFB Rupa Mulina has taken out full page advertisements in the press defending the decision to purchase the property. He said the property was a sound commercial investment and would be profitable for the pensioners. Both he and Mr Haiveta claimed the property was valued by Crockford Property Consultants. However, the company told *The Australian Financial Review* that it had only offered an opinion of the value of the property based on full occupancy and then not for the POSFB but for a company associated with Mr Anderson.

The POSFB is PNG's biggest non-bank financial institution, which paid out K12.9 million benefits to its 60,000 contributors in 1993, when its investment portfolio comprised K265 million, 19 per cent of it in property. The government matches its employees' contributions to the fund.

The Saturday Independent reported last week that the purchase of the Cairns building, made at the height of PNG's foreign exchange crisis, following a 12 per cent devaluation and the ensuing floating of the kina, required the written approval of Mr Haiveta. Prime Minister Sir Julius Chan said at the time of the float that it was made necessary in part because of the depletion of reserves due to the activities of speculators.

The Conservatory is a two storey property that was opened in 1988. It is located opposite the new Cairns casino, and has frontages to Abbott and Lake Streets.

Eight of 18 tenancies at the time of purchase by the POSFB were occupied by outlets operated by the former owner, and these immediately shifted elsewhere.

Mr Anderson bought the Conservatory through his company Katingo Pty Ltd in November 1994, and sold it to Moki No. 10 Pty Ltd, a PNG registered shelf company bought in October 1994 by the POSFB.

The POSFB in its 1993 annual report said that it was proud of its track record in investment, which shows excellent returns and benefits, not only for its members but also for the economy of PNG.

It is understood that the government has instructed that Air Niugini, and PNG's tourism and consulate officers in Cairns, be relocated to the Conservatory.

- Cont to page 2



Our reputation is at stake

PAPUA NEW GUINEA's name is once again in the international limelight, in two cases for negative reasons.

And we cannot pass it off as just the nasty overseas media badmouthing PNG.

One of the occasions for attention was the gun play in Port Moresby's Cathay Club and the generally keen response given by people in the capital to the baddies getting rough but immediate justice.

The arguments for and against citizens or residents protecting themselves from criminals have been played out in this and other venues in the past. Basically, if you go to a public venue armed with a gun and the intention to use it in the aim of stealing, you have fewer rights to protest if you are on the receiving end of violence from a potential victim.

Who is to know the full story of the Cathay incident, until perhaps a coronial inquest is held.

The other cause for international glare, the Public Officers Superannuation Fund Board spending \$A18.72 million on an Australian building, deserves detailed scrutiny.

Did we spend too much? How was the decision made? Did prominent people benefit grossly from underhanded deals? We would like well-researched answers, Mr Ombudsman.

The Cairns property

by ROWAN CALLICK and
KATHY MACDERMOTT

FASCINATING new facets of the fast-growing "invisible" business links between Papua New Guinea and Australia, which run parallel to the \$2 billion per year formal trade relationship, are being brought to light through the unravelling of the Cairns Conservatory deal.

In this transaction revealed by the Australian Financial Review a week ago property developer Warren Anderson a year ago bought the building for \$9.75 million, then sold it to PNG's Public Officers' Superannuation Board a month later for \$18.72 million.

The deal also raises concerns about the governance of PNG Inc, which is financially dominated by government institutions that appear minutely guided by the political establishment.

Such concerns are already being pursued through inquiries that have been established into the Conservatory deal over the last few days in PNG by the Ombudsman Commission and the Auditor-General.

The deal has also been questioned by the Opposition Leader, Roy Yald, and by the president of the Public Employees Association, Napoleon Liosi whose union's earlier concern about the administration of the pension fund led it to establish an alternative fund.

Port Moresby has been awash for a decade with rumours about properties bought and sold in Brisbane, the Gold Coast and Cairns by and for PNG politicians and business contacts, many of whom commute between Queensland and Port

Moresby. But rarely have such transactions come to light; the Conservatory deal was not made public until revealed by the AFR.

The new chairman of the POSB, Secretary for Finance, Rupa Mulina, said that the PNG government would take the head lease over the Conservatory, to be renamed PNG Centre, and would provide an annual return of \$2.2 million. When bought by the POSB, it was returning \$430,000.

However, the PNG agencies would pay more for inferior accommodation, to ensure such a return, and are demonstrating resistance. Air Niugini would be forced to increase its monthly rent from \$257 per square metres to \$900 per square metre.

And while Mr Mulina claimed the POSB had the Conservatory valued at \$21 million, this was a market appraisal undertaken for a company associated with Mr Anderson, by Ted Crockford, who said: "This report contained a very big disclaimer clearly stating that it was not a valuation just an opinion."

The POSB, which bought the property through Moki No. 10 Pty Ltd, a PNG shelf company, had in 1993, according to its most recent annual report, an investment portfolio of K265 million (then worth \$371 million), 19 per cent of it in property. The government matches its employees' five per cent contributions when they retire.

The POSB, with the National Provident Fund that holds the compulsory pensions savings of private sector workers, the Defence Force Retirement Benefits Fund and the Motor Vehicles Insurance Trust that invests the compulsory third party cover, form the core of

PNG's non-bank finance sector.

Their terms of reference were reshaped in 1993, when Sir Julius Chan, now Prime Minister, was minister for finance. He directed that they "were to give full consideration to the government's economic policies and priorities which stress economic and employment growth in non-mining sectors of the economy, including agriculture, fisheries, forestry, manufacturing and housing."

The institutions have tended to do the former following political priorities more than the latter investing in sustainable development.

Most recently, during the economic crisis earlier this year, they were directed to buy substantial amounts of low-yielding government paper.

Typical of the growing concern about the deal is a letter to the PNG Post-Courier this week, which said: "Fund managers must not be permitted to gamble, particularly with K2 shelf companies, the retirement benefits of grass-roots employees. And pity Air Niugini's passengers who will have to subsidise that rental."

The purchase of the Conservatory, at the height of PNG's foreign exchange crisis, required the written approval of the Minister for Finance, Chris Haiveta, who is also Deputy Prime Minister.

He said that "the board decisions and evaluations were done prior to my appointment as minister." Yet he was appointed as minister on August 30 1994, two months before Mr Anderson acquired the building.

The deal points to a lack of transparency in PNG's government business dealings.

**\$A18.72m
Cairns
building
worth
\$A5.5m**

from page 1

However, Air Niugini is reported to be reluctant to move into the building while the consulate has a binding contract with current landlords.

Last week, Mr Haiveta described the media reports as speculative.

He said, "The board decisions and evaluations were done prior to my appointment as minister."

The recommendations came from the board, the valuations were there, it looked all right...and I had no reason not to approve it.

As far as I am concerned it's quite an open thing.

The POSB makes many investments both within the country and overseas."

Public servants threaten mass POSFB withdrawal

... and nationwide sit-in strike if recommendations are not followed

PUBLIC servants in Madang are threatening a mass withdrawal from the Public Officers Superannuation Fund Board if the government fails to implement a number of recommendations, one of which includes the immediate suspension of the current POSFB board and the appointment of a caretaker board.

The public servants on Tuesday petitioned the government to establish an independent commission of inquiry to look into the operations of the POSFB. The public servants have taken this stand over the recent controversy surrounding the POSFB's purchase of a Cairns property for \$A18.72 million was bought for \$A9.75 million.

by DOMINIC KAKAS

The public servants have also threatened a nationwide sit-in strike.

The Madang branch of the Public Employees Association has also recommended that:

- The funds involved in the Cairns property purchase be recouped;
- The government review the POSFB act to make it voluntary for working class citizens to contribute to the fund;
- The government seriously consider decentralising the POSFB;
- Members of the POSFB board be

elected by the contributors instead of being appointed by the government;

- The POSFB immediately pay out outstanding monies owing to the contributors; and
- The long-standing housing advance applications must be approved and paid out immediately.

The association stated in the petition that the national government and the POSFB have in the past completely neglected the welfare of the ordinary working public servants throughout the country.

The petition read, "Recently the government and the POSFB failed to respect and have any regard for the contributors of the POSFB in relation to decision making and the use of investment of the funds. Some major projects that have eventuated with the use of POSFB funds are: the

lease-purchase of an Airbus aircraft; the Aopi Centre in Waigani; the Poreporena Freeway; and the recent purchase of the property in Cairns, Australia."

The petition stated that the contributors were never consulted in all these projects. The POSFB had failed its former contributors by not paying them in full their entitlements over the years.

Some of them are dead and more are still waiting for their payout. "Yet there is money for the POSFB to invest in projects both on-shore and off-shore."

This is completely illogical ... Furthermore we view the government and the board's actions as dictatorial and negligent.

To page 2.

from page 1

And we cannot tolerate such and strongly condemn the actions of the government and the board," the petition read.

Last week *The Saturday Independent* reported that the building bought by the POSFB for \$A18.72 million was worth \$5.5 million by its former owner, Cape Boulevard.

The building, called the Conservatory, was mostly vacant building at the time Australian property developer Warren Anderson bought it for \$A9.75 million, \$A4.25 million above the property's book value.

According to a spokeswoman from the former owner, an opinion by a leading Australian real estate agency in the second half of last year valued the complex at \$A5.5 million.

This figure was supported by advice from an independent firm of valuers. The spokeswoman was further reported to have said, "We had hoped to get a price around \$A7.5 million if we went on the open market with the property."

The Deputy Prime Minister and Minister for Finance, Chris Haiveta, who approved the purchase of the property, is reported to have said the building would provide an annual return of \$A2.2 million following leases by government agencies based on the ground level achieving annual rentals of \$900 per square metre and the first floor leasing at \$500 per square metre.

The Cape Boulevard spokeswoman described such rates as "absolutely ridiculous".

The company had previously been renting the ground floor space with street frontage for \$A350 per square metre per annum and the first floor at a rate of \$150 per square metre.

News

November 11, 1995

Teachers demand answer to POSFB buy

THE PAPUA New Guinea Teachers Association which represents 14,000 members throughout the country is demanding answers from the board of the Public Officers Superannuation Fund.

The teachers who all contribute to the fund are responding to a public notice Rupa Mulina, the PSFB chairman, made recently regarding the recent purchase.

The PNGEA strongly believes that it will only be a matter of time before the members know whether the business in Cairns is risky or not. The association said as its members are owners of the fund it is in their interest to question the purchase of the property and the manner in which the decision was made for the property. "In fact, we want to know who is the ultimate beneficiary of this purchase," said Moses Taian, general secretary of the PNGTA.

He said, "public servants funds have been used to purchase the property. Who is going to pay the rent? Are we now asking the people of Papua New Guinea to pay commercial rates for rent? Is Air Niugini and the PNG consul going to be forced to pay commercial rents? Given the rental to be collected, what rate of return will POSFB receive based on this investment?"

Mr Taian also asked whether an independent valuation was done in a professional manner particularly when there is wide gap between local valuation of \$A9 -

10 million dollars and the property itself was bought a month earlier for \$A9.75 million dollars.

He said in the chairman's open letter to members, he points out that the government does not contribute to the fund, thus, Kakas and Callick were wrong in this respect. The point confirms that the contributions to the fund belong entirely to the public servants and it is for that reason that they have every right to seek the explanation of the investment of the fund.

"We also note from the chairman's open letter to the members of POSFB that there is the need to broaden the fund's property investment portfolio, and especially to a place like Cairns. Whilst PNGTA recognises that need, the decision made to invest in that property leaves a lot to be desired.

"It is not good enough for the board of POSFB to say that it did not know the previous valuation of the property. It is amazing that two journalists, who are not investment managers, were able to establish the previous valuation.

"In the chairman's open letter, the PNG Teachers Association noted comments made towards the president of the Public Employees Association (PEA). The PNG Teachers' Association puts to the POSFB board chairman that the PEA president has every right in representing public servants to question the investment deal in Cairns. The PNG Teachers' Association on

behalf of its members also has the right to question the POSFB board and the management for it to be informed whether the investment is a safe one or not. If there is anybody who has jumped on the bandwagon, it is the chairman himself who only joined the board two or three weeks ago. The PNG Teachers' Association strongly reiterates the question of, who is the ultimate beneficiary in the \$A18.72 million dollars deal?

"The PNG Teachers' Association having analysed the explanation given by the chairman of the POSFB board in "POSFB/Cairns property deal" investment strongly suggests that the board must answer a lot more questions from the membership of the fund.

"The PNG Teachers Association will be pursuing this matter further, as we believe there is something seriously wrong somewhere and concerned contributors and pensioners must now raise this demand for a very thorough and detailed explanation from the board of POSFB.

"We believe the workers again have been given a raw deal. The PNG Teachers' Association has sought assistance from its Australian affiliates to provide more details about the Cairns deal. We will also be seeking a united cooperation with other public sector unions to pursue this matter until satisfactory answers are obtained," Mr Taian concluded.

Warren paid \$2m in fee to acquire building

by KATHY MACDERMOTT and ROWAN CALLICK

MORE developments on the POSFB's purchase of a building in Cairns for \$A18.72 million. The building has been valued at \$A5.5 million.

PERTH developer Warren Anderson paid a \$2 million fee to acquire the option to buy the Cairns' Conservatory from Asia Securities Pty Ltd which had paid only \$100,000 to secure the property.

Mr Anderson proceeded to purchase the retail and office complex at a further outlay of \$9.75 million and onsold the property to the Papua New Guinea Public Officers Superannuation Board a month later for \$18.72 million.

Details that have emerged on the transaction reveal Bill Wyllie's Asia Securities commenced negotiations with Ralph Sarich's private company Cape Bouvard Investments to buy the retail and office complex in early June last year.

Asia Securities was interested in buying the Conservatory because of its prime

location in relation to the casino and convention centre developments, Mr Wyllie said this week.

Another key factor was that the property's plot ratio allows more than four times the existing lettable area to be developed on the site.

Asia Securities entered into a contract with Cape Bouvard on September 13, 1994 paying an option fee of \$100,000.

When exercised the fee was to form part of the \$9.75 million purchase price. On October 13 a further \$875,000 was due with the balance payable 45 days later.

In the second half of July Mr Anderson's office and Asia Securities commenced discussions, Mr Wyllie explained.

At this time Mr Anderson was seeking a property for the PNG government which was largely vacant to allow its agencies to be quickly accommodated. The Conservatory fitted the bill and Asia Securities on-sold its option for a \$2 million fee in mid-October.

Asia Securities also financed Mr Anderson's acquisition of the property. No substantial repayments were made by Mr Anderson's Katingo Pty Ltd until February 1995 and at that stage Asia

Securities held the mortgage over the entire property. The loan was paid out at the end of April 1995.

Mr Wyllie said Katingo's total acquisition costs totalled \$12.97 million - comprising the \$9.75 million purchase price, the \$2 million option fee as well as stamp duty and legal fees.

Mr Anderson has been a close friend and business associate of Mr Wyllie since the early 1970s.

Last year Asia Securities bought out the security held by the Bank of New York against loans taken out by Mr Anderson.

"The relationship I think is mutually very advantageous and I personally find Warren Anderson an exceptionally good person to deal with," Mr Wyllie said.

He stressed that any deals struck with Mr Anderson are conducted at arm's length with the Conservatory sale negotiated between Katingo and Asia Securities managing director Ian Hoad.

A series of investigations have been launched in PNG since the details of the acquisition of the Conservatory were revealed in The Australian Financial Review including an inquiry by the PNG Auditor-General and the Ombudsman Commission.

Anderson, PNG fund plan \$100m Govt development

PROPERTY developer Warren Anderson has proposed to the Papua New Guinea government a \$100 million complex to rehouse most of its public servants.

Ironically, his partners in the proposal included the Public Service pension fund from which he made a profit of about \$6 million from on-selling a Cairns building he had bought only a month earlier, a year ago.

The proposal incorporated the use of land, near the present centre of government activities in the Port Moresby suburb of Waigani, owned by the People's Progress Party (PPP) of Prime Minister Sir Julius Chan.

It was put to then Finance Minister Masket Iangallo, who discussed the project - for which a scale model had been made - with Mr Anderson in Port Moresby. It was to be a Boot - Build, Own, Operate and Transfer - arrangement.

Mr Iangallo, now

Opposition spokesman on finance, said this week that both Sir Julius, then Deputy Prime Minister, and then Prime Minister Paias Wingti, were aware of the project.

He said: "The concept seemed good to me. 'It was a well laid out building, and there remains a requirement for new government offices.' The present central government building, and the nearby 'Pineapple Building' that formerly housed the prime minister, have been condemned as unfit, due to lack of maintenance."

The developers - Mr Anderson and the Public Officers Superannuation Board - saw Mr Iangallo because such a project would require the written approval of the finance minister. But while supporting its aims, he asked them to redraft the structure, so that the POSB bought the land first from the PPP - so it might be developed in stages.

Meanwhile, more details have emerged about the Cairns property, the Conservatory, whose \$18.72 million cost would be recouped, PNG Finance Minister Chris Haiveta said, through an annual rental return of \$2.2 million.

This figure is based on the Conservatory's ground and first floors being fully leased at yearly rentals of \$900 and \$500 per sq m respectively. When the POSB acquired the property it was returning \$430,000.

But the two existing tenants on the first floor are paying rentals of less than half those levels.

Senator Bill O'Chee leases 40 sq m at an annual rate of \$210 per sq m and is midway through his second, three-year term. He has another three-year option commencing August 1996.

The only other tenant on the 1,343 sq m floor, is stockbroker Wilson HTM Ltd, paying \$205

per sq m for the 58 sq m it occupies. The firm has two years remaining on its original three-year term.

The bulk of the first floor lies vacant.

A spokeswoman for the Conservatory's developer, Ralph Sarich's Cape Bouvard Investments, has branded the expected future rentals as "absolutely ridiculous", Cape Bouvard sold the complex to Mr Anderson for \$9.75 million - \$4.25 million above the property's book value - and he on-sold it to the POSB for \$18.72 million.

The PNG Teachers' Association, who contribute to the pension fund, has joined in criticism of the deal within PNG. National Secretary Moses Talan said: "We believe there is something seriously wrong somewhere... and concerned pension contributors must now demand a very thorough and detailed explanation from the board of the POSB."

Haiveta orders probe on POSB's purchase

By OSEAH PHILEMON

ACTING Prime Minister Chris Haiveta is setting up a Finance Department probe into the controversial \$19 million purchase of a Cairns property by the Public Officers Superannuation Board.

Mr Haiveta, who is Finance Minister, said yesterday he was "fed up" with being accused of being involved in a "shonky deal".

"I want to get to the bottom of the whole thing and get it over and done with," he said after Opposition Leader Roy Yaki attacked Mr Haiveta and his "mental head, Mulina."

Mr Yaki said it was "totally incorrect" for Mr Haiveta to claim that when he became Minister, everything was completed and he had no reason not to approve the deal.

Mr Yaki said both men had misinformed the people, especially POSB contributors.

Mr Haiveta said yesterday that the deal had gone through two Finance Ministers before him and he had no reason not to believe that the deal was not the best investment deal for the fund.

Finance Ministers before Mr Haiveta were Masket Iangallo and Sir Julius Chan, who is now Prime Minister.

Mr Haiveta said he will make a detailed statement to Parliament about the deal and setting up the Finance Department investigation into the purchase to confirm that everything was done correctly.

But he believed the deal to be a sound investment for the POSB.

"I have nothing to hide... I am just fed up with accusations and smear tactics," Mr Haiveta said.

Yaki: Suspend POSF board

Call for judicial probe into Cairns property deal

PORT MORESBY: Opposition Leader Roy Yaki yesterday maintained pressure on the Government by calling for the entire board of the Public Officers Superannuation Fund (POSF) to be suspended pending an investigation.

Mr Yaki, who in recent days has placed advertisements highlighting alleged discrepancies and anomalies in the K18 million purchase of a Cairns property by the POSF, welcomed the investigation ordered by Acting Prime Minister Chris Haiveta into the affair and said the Government was admitting liability for the deal.

Mr Haiveta announced

over the weekend that he would authorise an internal probe to clarify the questions surrounding the deal but washed his own hands clean of the matter, a claim that Mr Yaki vigorously opposes on grounds that the property was bought only after Mr Haiveta took office.

While welcoming the announcement by Mr Haiveta, the Opposition Leader pressed for a public inquiry rather than an internal investigation by the Government.

The furor is over a Cairns property - reportedly valued at K6 million - sold to a cer-

tain Warren Anderson for K9 million and which was sold to the POSF for K19 million.

Said Mr Yaki: "Let us not kid ourselves, the issue has escalated and aroused considerable public interest and concern which warrant a public inquiry into the issue."

He said: "Only by instituting a public inquiry would we clearly see how the K19 million Cairns deal was handled and this would be directly consistent with Mr Haiveta's willingness to get to the bottom of this matter."

A meeting of statutory authority unions, whose mem-

bers contribute to the POSF, yesterday formed a working committee to look into the affair.

The meeting later released a statement which also called for a public inquiry and that the management board of the POSF be suspended pending investigation.

Mr Masket Iangalio, Opposition economic affairs spokesman and Mr Haiveta's predecessor as minister for finance, slammed implications that the deal may have been concluded in his time.

"Contrary to what Mr Haiveta is saying, when I was

finance minister I blocked a similar proposal put forward to me for the Brisbane consulate building.

"The only way to get to the bottom of this is to have a full, independent judicial inquiry."

Mr Iangalio said he would be happy to give evidence publicly about the roles of the Prime Minister Sir Julius Chan and Mr Haiveta in both the Cairns and the proposed Brisbane transaction.

A PNG-based timber company was at that time trying to sell the Brisbane property to the PNG Government. The



Mr Yaki

deal fell through.

It is expected the Opposition will be preparing questions to grill Government on the deal when Parliament sits for the Budget session this week.

Opposition asks for POSF probe

By HENZY YAKHAM

PORT MORESBY: The Opposition yesterday asked for an inquiry into the Public Officers Superannuation Fund (POSF) board purchase of the Cairns Conservatory at a cost of K19 million.

Opposition Leader Roy Yaki said he will pursue the matter through available legal avenues to "get down to the bottom" of the deal in the interest of POSF shareholders.

Mr Yaki, who moved the motion, said the inquiry should focus on allegations that:

- The purchase of the Cairns Conservatory amounted to a serious financial scandal, and that the actual purchase price of K19 million was far in excess of the property's real value;

- In the process of the sale and purchase of the property, someone has gained financially;

- The projected value of the property at K21.42 million was basically taken out of the rental market estimates contained in a market appraisal study which was conducted by a company associated with the vendor for the



Mr Yaki

Cairns Conservatory;

- The anticipated annual return of K2.24 million in the Cairns investment is believed to be an inflated rate of return which cannot be substantiated; and

- The Cairns property was purchased at the height of PNG's

IN PARLIAMENT

foreign exchange crisis following a 12 percent devaluation and the ensuing floating of the kina.

Thus, the amount of K19 million was sent out of the country at a time when the Government had instructed for a total freeze on repatriation of monies out of the country.

Mr Yaki also wanted a probe on the nature and extent of any ministerial involvement and the role (if any) played by Finance Department or any authority or person in Australia in the property deal.

He also said the probe should determine if the guidelines under the POSF Act and Public Finance Management Act were followed.

Mr Yaki said Prime Minister Sir Julius Chan was duty-bound to initiate an inquiry under the Commission of Inquiry Act to look into the alleged anomaly.

"The Prime Minister cannot just shrug off his responsibilities and cover up the possible breach of the Public Finance Management Act," he said.



Probing the Cairns deal

DEPUTY Prime Minister Chris Haiveta has made known his intentions to set up a Finance Department investigation into the K19 million purchase of a property in Cairns by the Public Officers Superannuation Fund Board.

But the Opposition, while welcoming Mr Haiveta's announcement, wants to see an independent investigation that will reveal the truth behind the deal and whether anyone has received sly benefits from it.

Mr Haiveta said he has nothing to hide and wants to get to the bottom of the deal to show he is innocent of any wrongdoing.

He believes it is a sound investment for the POSF and that the investigation will prove this.

Any Opposition would like to take advantage of a possible scandal like this one to discredit their political enemies - and Opposition Leader Roy Yaki is enjoying every bit of this controversy.

But, political point scoring aside, members of the POSF are naturally concerned about such a large investment of their funds and would want to be reassured that it is indeed a sound investment for their future.

It is a genuine concern and the only way they can get that reassurance is through an independent investigation.

[8.11] **LETTERS TO THE EDITOR BY BOARD MEMBER:
28 NOVEMBER 1995**

On Tuesday 28 November 1995, identical letters to the editors were published in *The National* and *The Post-Courier* from a member of the Board of the POSF, Mr Michael Malabag.

The letter was published in *The National* as follows:

POSF's Cairns deal totally above board

AS a director of the Public Officers Superannuation Fund (POSF) board, and one representing contributors who are members of a union, the Public Employees Association, I am forced to clarify my position in relation to negative Press coverage on the board's decision to purchase a property in Cairns, especially in view of innuendoes that the deal was suspicious and made to benefit persons other than the contributors.

I assure those that I represent on the board, particularly the contributors, that I supported the decision to purchase the property in Cairns purely on a commercial basis after having been convinced of significant beneficial returns to contributors from such investment.

I believe it was a good and safe buy and the board, under the chairmanship of former fi-

nance secretary Gerea Aapi, decided on this particular purchase based on merit and with the full backing of the Government.

This is also the first time that POSF has gone offshore to broaden the base of its investment portfolio and with the ever-growing popularity of Cairns as a potential investment area, it was an ideal opportunity for POSF to tap this market.

There are also other union representatives on the POSF board apart from the PEA - from the teachers and police associations - who are serving their second term in office with the full backing of their respective associations. Over the past few years, there have been many positive factors which the board has not taken any credit for, preferring to maintain a low profile.

The underlying factor remains that every possible consideration has always been taken into account during board deliberations to ensure that our members earn maximum interest on their investments.

This has been proven by continued better-than-expected financial results despite the state of the PNG economy which is now recovering. Our contributors received a 9 per cent interest on their contributions in 1994 which was a 2 per cent increase over 1993, better than any other financial institution.

There have been many insinuations by people not well-versed in the subject which may suggest that certain people have benefited from this purchase. As one of the union representatives on the board, I totally deny any such move as the board only made its decision which was approved by the Fi-

nance Minister at that time and all other specifics were handled by the management.

Naturally, our respective unions have expressed genuine concern on behalf of our members. However, their representatives on the board would have offered sufficient explanation before they turned to the Press. Being a board director is not an easy task and if every major decision has to be made in consultation with our own union political leadership, then why serve on the board?

The Cairns property purchase was done above board and following all necessary financial procedures which will prove critics wrong as it has been a sound investment.

Michael Malabag
Vice Deputy President
Public Employees
Association

In his response to our preliminary report, Mr Malabag stated:

I was convinced that I acted in the best interest of contributors, as the Government was to be the head Lessee of the Property & Investment and that the money will be fully recovered with interest. That is why I came out in the newspaper to explain the situation to contributors whom I represent on behalf of the Board.

The Ombudsman Commission notes that Mr Malabag was able to set aside those doubts and concerns which he raised when the proposal was first suggested. Mr Malabag was not acting in the best interest of contributors when he voted in favour of the purchase.

[8.12] QUESTIONS RAISED IN PARLIAMENT: 30 NOVEMBER 1995

On Thursday 30 November 1995, the purchase of The Conservatory was debated in the National Parliament. The Leader of the Opposition, Mr Roy Yaki, moved a motion calling upon the Prime Minister to immediately appoint a commission of inquiry. Only one member of the Parliament, the member for Lae Mr Bart Philemon, spoke in support of the motion. Those speaking against it were the member for Maprik, Sir Pita Lus; the Deputy Prime Minister and Minister for Finance, Mr Haiveta; and the member for Eastern Highlands, Mr Aita Ivarato. The motion was defeated 42 votes to 20.

The full text of Mr Yaki's motion was as follows:

-
- (1) That in light of the recent widespread interest and concern by the public at large and the high degree of discontentment and concern amongst the members of the Public Officers Superannuation Fund (POSF), due to the K19.09 million purchase of the Cairns Conservatory by the POSF, this Parliament calls upon the Prime Minister to immediately appoint a Commission of Inquiry in accordance with the *Commission of Inquiry Act* (Chapter 31) to inquire into the following allegations that:-
- (i) the purchase of the Cairns Conservatory amounted to a serious financial scandal, in that the actual purchase price of K19.09 million was far in excess of the property's real value;
 - (ii) in the process of the sale and purchase of the property, someone has gained monetarily something to the tune of approximately K9 million;
-

-
- (iii) the project value of the property at K21.42 million was basically taken out of the rental market estimates contained in a market appraisal study which was conducted by a company associated with the vendor for the Cairns Conservatory;
 - (iv) the anticipated annual return of K2.24 million in the Cairns investment is believed to be an inflated rate of return which cannot be substantiated; and
 - (v) the Cairns property was purchased at the height of Papua New Guinea's foreign exchange crisis following a 12 per cent devaluation and the ensuing floating of the kina - thus the purchase price of K19.09 million was sent out of the country at a time when the government had instructed for a total freeze on repatriation of monies out of the country.
- (2) That, in an effort to establish the truth surrounding the allegations, this Parliament calls on the Prime Minister to endorse the following as the Terms of Reference of the Commission of Inquiry:-
- (i) To ascertain whether the allegation that the real value of the Cairns property is K19.09 million was far in excess of its real value is true;
 - (ii) To ascertain whether the allegation that the purchase of the Cairns property at a purchase price of K19.09 million was far in excess of its real value is true;
 - (iii) To ascertain whether any persons associated with the sale and purchase of the Cairns Conservatory received any direct or indirect benefits, whether financial or otherwise, as a result of the purchase of the Cairns Conservatory by the POSF;
 - (iv) To ascertain the nature and extent of any ministerial involvement and the role (if any) played by the Department of Finance or any authority or person in Australia in the sale and purchase of the Cairns Conservatory by the POSF;
 - (v) To ascertain whether the allegation that the projected value of the property at K21.42 million was taken out of a rental market estimate contained in a market appraisal study which was conducted by a Company associated with the vendor for the Cairns Conservatory is true;
 - (vi) To ascertain whether the allegation that the anticipated annual return K2.24 million on the Cairns investment is believed to be an inflated rate of return which cannot be substantiated is true;
-

-
- (vii) To ascertain whether the allegations that the Cairns property was purchased at the height of PNG's foreign crisis following a 12 per cent devaluation and the ensuing floating of the kina, thus, allowing K19.09 million to be sent out of the country at a crucial time when the Government had instructed for a total freeze on repatriation of moneys out of the country, is true and what were the compelling reasons for the ministerial approval of such repatriation;
 - (viii) To ascertain whether or not the proper guidelines under the *POSF Act* and the *Public (Finance) Management Act* were followed;
 - (ix) To ascertain whether or not the deal was approved by the Public Officers Superannuation Fund Board, and if so, what were the reasons for the approval; and
 - (x) To determine whether there had been breach of any law of Papua New Guinea and to recommend referral of such matters to the appropriate authorities.
-

The ensuing debate was recorded in *Hansard* as follows:

Mr JUDAH AKESIM - Point of Order! The Opposition Leader is talking about the use of public money at a very crucial time. When he was the Minister for Transport, was there an inquiry carried out into the burning down of the department headquarters in Konedobu? Will the Member inform us on the results of the inquiry?

Mr SPEAKER [Mr Rabbie Namaliu]- Honourable Member, that is not a point of order.

Mr ROY YAKI - I expected this. I am not surprised at what most of you are saying, just to cover up-

Sir PITA LUS - Point of Order! There is a report by the Parliamentary Public Works Committee which we have not finalised.

Mr SPEAKER - Honourable Member, the Parliament concluded the debate before you walked into the Chamber.

Mr ROY YAKI - We do not need the brains of an accountant to know about this deal. The price of that house was about K5 to K6 million but the POSF bought it for K19 million. You do not have to be an accountant to see that difference. This is the main reason so many people are asking about this deal.

I want to talk briefly to help members of the Parliament clearly understand this matter. This property at Cairns is owned by a company called Cape Bouvard Pty Ltd. One other company called Asia Securities had an interest in this property and bought it for K100,000.

dollars option.

Between that time, a friend of the Prime Minister, Warren Anderson who is a businessman in Western Australia, bought the K100,000 dollars option property. Asia Securities then sold this option for K2.2 million. Mr Anderson must have known some members of the Board of POSF and other big shots.

From newspaper readings, Mr Anderson, has a very substantial outstanding loan with the Bank of New York.

Two things can be picked up from there. Firstly, POSF bought the option Anderson has of K8.9 million and on top of that POSF bought the price of that property and it all adds up to K19 million.

Under the *Public Finances (Management) Act* and the charter of the Public Superannuation Fund, there are guidelines and criteria to be followed. Money invested in that one year should not be more than the contributions of a one particular year.

The *Public Finances (Management) Act* also states that to dispose of such properties, there must be three valuations done to that property. I do not know whether they complied with the legislative requirements when they purchased the property.

The Finance Minister had to retract his statement that the deal was made when he was not in office.

The deal was struck in a very short period of time. The K19 million purchase took place quickly. The Public Officer's Superannuation Board concluded the deal this month.

This deal occurred when our country was facing an acute financial crisis. The National Government and the Minister had previously, said that for such transactions that involve a lot of money leaving the country, the green light must be given by the Finance Minister.

Why did the Minister authorise the transfer of K19 million out of the country? This is a big question that should be put to him.

This money spent on the property was the contributions from public servants in the country, from tea boys, drivers and cleaners to the departmental secretaries, who pay a certain percentage of the salaries to the POSF.

It is true that Warren Anderson is a big player but why should money belonging to a little teaboy in Papua New Guinea be given to a rich man in Western Australia. You make your own judgement. Is that justice?

When this little teaboy goes to POSF to withdraw K400 or a retrenched public servant wants to get his retrenchment money, he waits for ages and continues to check everyday in vain; and told by officers at the counter to come back tomorrow or next week or next month only to get small K400 of his own contribution.

I reiterate, is it right to get our small people's money and give it to a rich person because he is a big player? I ask the Board whether their action was justice to the contributors of the fund.

We must be told of how many Papua New Guineans are employed as a result of that direct K19 million investment. Contributors could be waiting for their dividends from that investment for a long time. They may end up not even seeing their K300 they have been waiting for.

In the meantime someone is making K6 million. Some of them do not contribute to the Fund but just because they happen to know some bug guys so that they can make K6 million overnight out of small mens contribution. Maybe that is why there is more greater reason why for a public inquiry.

I am told the Government was granted the head lease of the property. Therefore, the Government must inform all government agencies to move into that property.

There is a problem arising in this case which we must be aware of it. If it is Air Niugini that has to move into that building, we know it will pay high rental fees. As far as I know, Air Niugini is occupying a rental space which is cheaper. Just to satisfy some decisions of the POSF Board, the Minister and the Government, Air Niugini must sacrifice. In the end, air travellers in Papua New Guinea must subsidise this rent. An ordinary traveller of Papua New Guinea has to pay for an excessive rent in Cairns. That is the big question.

Therefore, we need to know whether the deal was correct or not. There is no question of the speed in which the real estate companies operate. But the crucial factor in this deal is the involvement of Warren Anderson. It appears that he has never had the title at the time he sold the property, all he had was an option. That sort of option, and if anything went wrong in the deal after the POSF had brought the property for K19 million, what would happen? The POSF will not be given the title because that was only an option.

The deal was very risky. To strike such a deal, there must be a crucial fact. All players must know each other and have trust in each other. In this case, the crucial player is Warren Anderson. Who does he know in Papua New Guinea and in the POSB. There are many unanswered questions.

For that reason, in the best interest of the country, there must be a public inquiry. Another related issue is that there were a lot of deals as such which have taken place in Cairns, Gold Coast and Brisbane.

We know that a lot of politicians have purchased properties in Cairns and they deal with the high profile citizens in Australia. Some of the deals are genuine but to say all politicians own properties in Cairns is not correct because the public might think we are thieves.

That is the reason why I am calling for an inquiry into the Cairns property deal. I believe this is the only way for us all to clear our names. The inquiry is not aimed at blaming a particular person who initiated with the deal which saw the Cairns property being bought, but to clear doubts. Whether this deal was rushed within two months, so that money be transferred out of the country whilst Papua New Guinea was facing financial difficulties or not.

I ask all members of Parliament and in the interest of Government to realise that there is a need for an inquiry to be conducted.

The inquiry by the Department of Finance is an internal investigation. The Chairman of POSF Board is the Secretary of Finance Department and the Minister who was dominant in the deal negotiations is the Minister for Finance. Whom are they trying to fool? How can we expect a fair report?

It is only fair for those persons involved. In the case of the deal, the Deputy Chairman of PEA or the Finance Secretary responding in the newspaper, no right minded [person] is going to conclude that it is not a cover-up.

I do not think we want this sort of thing. That is why I submit to Parliament that there are overwhelming reasons for a public inquiry into the Cairns deal.

Sir PITA LUS (Maprik) - I have spent 32 years in this Parliament.

A commission of inquiry is a very costly exercise. A lot of public money have been spent on inquiries, especially, Poreporena Freeway. The purchase of the building in Cairns is proper because we were searching for a place to accommodate our offices.

The Leader of Opposition was in Government when Mr Paias Wingti was the Prime Minister.

I must stress that all these deals are initiated by man and meant for them. What about the women? Don't they deserve something? Women are the backbone of the family.

They are always at home, giving most of their time and talents to rearing of children and attending to family matters. We are men and supposed to be smart in our decision making.

Now, we are discussing the business activities of POSF. It is a good idea that POSF decided to invest in real estate and whatever returns anticipated, it will assist our people pay off their debts.

This motion is an example of petty politics, ruining the country and the Shadow Minister for Finance declared in his speech that this country was facing a critical financial crisis. Who created the crisis? The members on the Opposition benches should be blamed.

Some ministers score political points at the expense of the honest members. Ministers can fool the young members but not the Member for Maprik. I pray that God will punish those leaders who we have created the financial mess and I will not support those current and former ministers, whether in the Opposition or the Government. When this Government came into office, the country was at the point of bankruptcy.

I want the Prime Minister and Minister for Finance to tell us where the K42 million in reserves went.

Mr ANDREW BAING - Can the Honourable Member be asked to refrain from using the word "bugger." There is no "bugger" in Parliament.

Mr SPEAKER - Your Point of Order is accepted. Honourable Member, can you withdraw the unparliamentary word.

Sir PITA LUS - I withdraw it. I hate to see political infighting over POSF Cairns deal because as far as I am concerned, it is good for the country. This issue is a classic example of cheap political point scoring.

If the Opposition is serious about the inquiry into the Cairns deal, I will also move that an inquiry be launched into transport appropriations for 1992, 1993 and 1994. Why request for an inquiry into a beneficial deal when an inquiry should have been set up to look into the burning down of the Transport Department Headquarters.

I know that all the members of Parliament got their Transport Sectoral Programme Fund and the amounts given differed from each member. I was given only K70,000 while others got K100,000, K200,000, K300,000 and one or two members got K500,000.

That is why I warn the Leader of the Opposition that he is only trying to hang himself by asking for a Public Inquiry because I will ask to extend the term of reference of this inquiry to also include the distribution of the Transport Sectoral Programme Fund from 1992 to 1994.

Mr THOMAS PELIKA - Point of Order! I have respect for the most senior Member of Parliament. However, the Member is not debating the motion. I served as Minister under Sir Julius Chan and I have not made any decision to benefit myself.

Mr SPEAKER - Honourable Member for Maprik restrict your debate to the motion.

Sir PITA LUS - As far as I am concerned, many members in this Chamber will not return after the next elections. Many of them will face the Ombudsman Commission and others will be prosecuted. I will continue to serve my people in this Parliament because God is with me.

Mr MICHAEL OGIO - Point of Order! The Member for Maprik claims that he is a Christian and under the Christian principle he should not call God's name in vain.

Mr SPEAKER - The point of order is in order.

Sir PITA LUS - I did not say anything bad about our creator. Going back to the Cairns deal, I believe it is good because we should have a building of our own to house some of our overseas. We will not waste money renting properties in Australia and the beneficiaries of that rent are foreigners.

I believe the deal is a good one because we will make money out of that property.

I do not want us to waste our time on insignificant matters because we have the 1996 Budget debate to complete.

Mr BART PHILEMON (Lae) - On the surface, this particular deal would appear to be a very serious matter. It is not one that we should take lightly. I applaud the Opposition through its leader, Mr Yaki, for persisting with this particular issue.

Sir PITA LUS - Point of Order! I want to state that I am not a 10 per cent man.

Mr SPEAKER - I did not hear your point of order. Go ahead, Member for Lae.

Mr BART PHILEMON - I commend the Opposition Leader on his persistence in pursuing this particular matter and I would advise him to continue until all facts are revealed.

Mr Speaker, during my brief stint as the Minister for Public Service, the Secretary of my department then, Mr Tau Peruka who was also a member of the Public Officers Superannuation Board briefed me on this particular proposal.

At that time the figure that I was briefed on was only K14 million. My immediate reaction and advice was that he should do everything possible not to permit this amount of money being transferred from Papua New Guinea.

At that point in time, the country was in a real serious financial crisis. It was at the point of bankruptcy. No person in his right mind would allow, whether it be POSF or Coffee Industry Board, or any organisation, to transfer such an amount of money when the country was on the brink of bankruptcy.

I did not realise the financial details of the particular property. Subsequently, some facts have come to life and if I did know of those facts then when I was Minister, I would have doubly instructed my Secretary that if he supported that particular deal, it would have been at the risk of his job as the Secretary of the Department.

So much rumours abound about the dealings of politicians. There are smokescreens everywhere. We have yet to see where the fire is. This is one such smokescreen which is probably closer to the fire if the truth is known.

Mr Speaker, certainly the commercial figures that are made available does not at all add up to a prudent decision on this particular transaction. Unless the Prime Minister comes out with his figures on this particular deal, I can only go by the figures that I have access to. I was appalled that he had the nerve to defend such a deal. I stand to think differently if during the course of this issue, both the Prime Minister and his Deputy come up with facts and figures and table them in Parliament. They both have a duty to this Parliament and the small people who contribute to the Fund.

One can only assume that either the POSB, or management is completely incompetent or there is foul play. This will be our assumption unless the Prime Minister and his Deputy assist the Opposition Leader and table the facts of the whole deal. I hope they will do this during the course of this Budget meeting.

Mr Speaker, figures just do not seem to add up. Currently, Air Niugini is paying about \$350 per square metre for its rented premises in Cairns. Airlines, like the banks tend to want to be in the proximity of each other. They pick the best location because the competition between the airlines and the banks are such that they have to in prime locations.

Sometimes, the choices of the Government on its location may not commensurate with the

commercial consideration of a commercial statutory organisation. Where the Government would like to be is not necessarily, the location commercially suitable for Air Niugini.

It is a government policy that for its rented premises in Papua New Guinea, the rent is between K350 and K400 per square metre on whatever calculation they do on this particular property that rent per square metre. The Prime Minister and the Deputy Prime Minister have to demonstrate on whatever calculation they do on this particular property that rent per square metre will commensurate with the level that is here because the rental rate in Brisbane generally is cheaper than Port Moresby.

Port Moresby is one of the highest in terms of rental. The Prime Minister and Deputy Prime Minister must demonstrate to this country and the Parliament that at the end of the day on whatever figures they care to produce that rents based on the commercial range both in Cairns and Papua New Guinea commensurate with one and other.

I do not believe that the rental level in Cairns should be any higher per square metre than in Moresby. That is the bottom line that both leaders have to demonstrate to the Parliament that if Air Niugini or if a government department is renting that property, the rent level equates and not doubles the rent charged either here or generally at the market in Cairns.

The Prime Minister or the Deputy Prime Minister can say the contributors to the Fund will get their return because the Government will take the head lease. Who is going to pay in the end? It will be the tax payers of this country including the small person that contributes. Many contributors visit my office in Lae asking for help. They try to withdraw their contribution from POSF but it takes them a long time and they cannot get their cash.

Justice has to prevail in this particular deal. At the moment, everybody is entitled to suspect that the Board of POSF is incompetent, management is incompetent or someone else has the piece of the cake out of this deal. Everybody is entitled to that suspicion.

The ball game is in the court of the Prime Minister and the Deputy Prime Minister to explain very carefully in every detail to the Parliament that the deal is above board.

Mr CHRIS HAIVETA (Gulf - Deputy Prime Minister and Minister for Finance) - I rise to speak on the motion of the Honourable Leader of the Opposition in relation to the POSF purchase of the Conservatory property in Cairns.

A number of innuendoes have been made, number of smokes have been created, that have produced doubts in the minds of members of Parliament.

Mr Speaker, the first question that we have to ask ourselves regarding this so-called controversy is who started it and where did the reports come from? I have to say that if the events in this country are to be determined, let us determine them here. Let us not use the media and the agenda of other governments to determine the future of this country.

I refer to a series of articles, rubbing the image of this country and members of Parliament by foreigners.

You do not want your Electoral Development Fund changed, is that true? Well, you had bad publicity about the Fund written by the same author who dwells again to raise another

issue that he cares to raise, and you want to jump into that political bandwagon. Before you go point scoring, you have to get facts and I will give you the facts.

What I am referring to here is that before you go out accusing other ministers or any of your colleagues, you must have your own facts straight.

I want to inform Parliament that those series of allegation against me and I consider them serious enough, that today, there was another article written by the same author. And, I have instituted legal proceedings in Australia against the author and his newspaper for defamation. I want to clear my name.

I want to take the motion point by point. And in doing so, I want to address some issues raised by three previous speakers.

Sir PITA LUS - Aye, aye, no worries!

Mr CHRIS HAIVETA - In motion one, under the general heading K19 million, I want the Leader of the Opposition to check his facts if he has any. Because the facts was quoted by the Member for Lae.

For *Hansard* purpose, the purchase price of that building is approximately K15 million and not K19 million as stated. If you understand what exchange rate is, that figure of K19 million was converted to \$15 Australian dollars. The motion says that the purchase of the Cairns Conservatory amounted to a serious financial scandal. You have asked for facts to be provided and when I replied, I said that I would be commissioning an independent inquiry.

I want to inform the members of Parliament that, that inquiry will be carried out [by] my own inspections branch.

They can look into the dealings of the Ombudsman Commission, the Leader of the Opposition and my Department. They have wide range of powers and they will report to me and the Secretary. I want to assure the members that when that report is ready I will table it on the Floor of Parliament and I will make a statement on that report. The Member will have a chance to debate that report.

There will be two reports compiled independently on this matter, one will be conducted by the Ombudsman Commission.

When that report is completed, the Minister responsible, the Member for Manus and Minister assisting the Prime Minister, Mr Arnold Marsipal, will also table it in Parliament. The other report is being compiled by the Auditor-General. He will also produce his report and it will be tabled in Parliament.

My commitment to Parliament, Mr Speaker, is that when my report is ready, I will table it and members will consider it.

The motion states that in the process of sale and purchase of the property, someone has

gained monetarily. I want the Leader of the Opposition to repeat that statement in the Parliament.

Mr Speaker, point 1,3 of the motion, says that the projected value of the property is K21.42 million. If we take K21.42 million at the time of the devaluation, he would be completely wrong. He is putting the value of the property at over K40 - 50 million. That is not true, as I said, he has made a mistake and has his facts wrong.

I want to inform honourable members that there were two market valuations done and those two valuations will also be tabled on the Floor of Parliament.

Point 4 is on the anticipated annual return at K2.24 million. In Cairns, it is believed to be an inflated rate of return. That is a point of view that cannot be argued nor do I think it is necessary.

Point 5 says the Cairns property was purchased at the height of Papua New Guinea's foreign exchange crisis following the 12 per cent devaluation. The figures here are incorrect. I want to tell the members of Parliament and inform the public that we still have yet to understand that back in 1992, following the instalment of the new Government after the general elections, we deregulated the foreign exchange control. You can send K500,000 or more out of this country.

When I was the Shadow Finance Minister, I did raise that point and that law has not changed. It still exists and you cannot tamper with foreign exchange controls. Once you place it at the mark, you have to leave it there. Businesses have to plan beyond one year in order to prepare for the rates of return.

Public debt and private debt are two totally different things. The Leader of the Opposition has confused himself with public debt and private debt. The foreign exchange crisis that we had refers only to the Government's ability to service its debts; to repay its overseas loans and has got nothing whatsoever to do with liquidity in the banking system and the amount of foreign exchange that is available to the banks to service the needs of the clients.

Public Officers Superannuation Fund is a private fund. Its accounts are not included in the Budget books. The Leader of Opposition should check his Budget books and see if you have POSF contributors and funds are included. They are not.

Those funds are managed on a commercial basis and any exchange and approvals that were given, were given to the company as a private sector business, conducting its business both in Papua New Guinea and abroad.

Those, Mr Speaker, are facts. These are the facts that I want the honourable members to understand.

In point 2, the Honourable Leader of the Opposition is calling upon the Prime Minister to endorse the following as a terms of reference for the Commission of Inquiry. Here, I have noticed some funny things.

I do not know whether the typewriter was playing up but I have said that we would table all those reports. And if you think there is something wrong, you can go ahead and deal with it.

Mr Speaker, from points and terms of reference, one down to three have been answered. Next is 2(4), to ascertain the nature and extent of any ministerial involvement and the role if any, played by the Department of Finance, any authority or personnel in Australia in the sale and purchase of the Cairns Conservatory by the POSF.

I want to place on record that the decision to buy the place was not mine. The decision was made, as the Prime Minister, rightly put it, during the Honourable Leader's time when they were in government.

Mr PAIAS WINGTI - Point of Order! I want the Deputy Prime Minister to get the facts right. When we were in government there was no decision made to purchase that property. The policy decision that was made was that we would rationalise all activities in terms of our postings overseas, and bring them under one umbrella.

My Government at that time, did not make a decision or directed POSF to go and negotiate to purchase that property.

Mr CHRIS HAIVETA - But the point must be registered. It was not the decision of this Government to bring every department, and government agencies under one roof. It was that initial policy decision that led to the purchase of this property.

Letters dating as far back as August 16 will prove to that effect before this Government came into power.

The Department of Finance has has [sic] representatives on the Board of POSF, and of course they were involved in the discussions. But if you asked me, I was not involved.

I have already covered and repeat the points 5, 6, and 7.

Point 8 is to ascertain whether or not proper guidelines under *POSF Act* and the Public Finance (Management) Act were followed. I want to say that they were followed but I want to leave it to the investigations branch to finish its audit and report so that I can table it, and ministers and members can have the chance to have a look at it and debate the issue.

Mr Speaker, that also applies to points 9 and 10. I have four minutes of speech time left and I want to summarise by saying that, there is in fact, no need for an inquiry. We have had the inquiries and where have they taken us to?

The Leader of Opposition, as Transport Minister in the last Government commissioned an inquiry into the Poreporena Freeway. It produced nothing and I am still paying of [sic] the debts. It cost us K14 million. He cost the State K14 million. The cost of the lalibu road has inflated to K30 million. Ask the Minister for Works, he will confirm it. Now, where did that K27 million extra million go to? Commissions of inquiry do not prove anything.

Let us try and do things at the least cost more effectively and get them out of the way.

Mr NAPPOTTI BURU - Point of Order! Can the Leader of Opposition initiate a Commission of Inquiry to investigate activities from 1992 to 1995 such as Poreporena Freeway and the burning down of the Transport Department Headquarters at Konedobu and other projects.

Mr SPEAKER - Honourable Member, that is not a point of order.

Mr CHRIS HAIVETA - Thank you, Mr Speaker, I got only two minutes left. I will conclude by asking the Leader of Opposition to support me and allow me to finish my investigations as well as the Auditor-General, and the Ombudsman Commission. We will table those reports.

I have given my commitment and there is no need for us to waste public money on having a Commission of Inquiry.

Mr AITA IVARATO - (Eastern Highlands) - the Opposition Leader's motion is good but if we look at the various Commissions of Inquiry on various activities in Papua New Guinea, they were just a waste of time and money.

I support the motion but I believe we have jumped into the bandwagon too quickly. We, politicians are talking too much about this issue. The POSF issue is bad and as leaders of our people, we are concerned that our people's contributions have left the country.

I do not think the Government has too much control over POSF because they have people on the Boards to make decisions. If there is something wrong and the Board thinks that minister concerned has erred then the Board should also make an independent report to be tabled in Parliament.

We, members of Parliament have been very vocal on the issue and the POSF Board Members and Director have been silent. Mr Napoleon Liosi, the President of PEA also did not make any noise about it. He is a very fiery person when there is something wrong with public servants' lives and welfare.

And if that is a commercial deal and is profitable and the Board Members are happy with it, then why are we making a lot of noise and arguing about it? We have other pressing issues concerning to talk about.

We leave this matter and as the Prime Minister has said, investigations will be carried and reports will be tabled in Parliament.

This issue does not need an inquiry because it does not involve government money. It is public servants' money and they have their own appointed representatives to speak for them.

Their silence means the contributors are happy with the deal.

Mr DAVID UNAGI - Point of Order! With due respect to the Governor of Eastern Highlands, in fact, the public service representative on the POSF Board, Mr Malabag has freely expressed his total support for the purchase of the property in Cairns. So, the workers of this country who are contributing to the POSF Fund, their representative, has indeed supported this particular purchase.

Mr AITA IVARATO - If that is true, then all of us are wasting our time. We will be spending money if we keep on arguing on the same issue. When the investigations are completed if we are not satisfied with their reports, then we can have another inquiry.

Motion (by Mr Michael Nali) agreed to -

That the question be now put.

Motion - That the motion be agreed to - put.

The Motion, requiring an absolute majority, Mr Speaker ordered that the bells be rung.

The Parliament voted (the Speaker, Mr Rabbie Namaliu, in the Chair) -

AYES - 20

NOES - 42

Motion so negatived.

The debate and decision of the Parliament were reported and commented on in the daily press as follows:

Govt beats back POSF buy probe

By JONATHAN TANNOS

THE GOVERNMENT yesterday defeated an Opposition move to set up a commission of inquiry into the \$A18.72 million purchase of an Australian office building with public servants' funds.

Opposition Leader Roy Yaki's motion was soundly beaten when the Government voted 42 for 20 against when the question was put following debate from 2pm.

A disappointed Mr Yaki later said: "The motion was defeated because the Government chose to cover up and gag debate."

Mr Yaki said he would not rest until the matter was properly concluded, saying the small contributors to the Public Officers Superannuation Fund (POSF) should now know who held their interest.

Mr Yaki said the inquiry was necessary due to the widespread concern by the public and the high degree of discontentment and concern among POSF members over the property purchase.

Mr Yaki said an inquiry should be held because of current allegations that the Calms Conservatory purchase "amounted to a serious financial scandal" in that the price was way over the actual value of the property. Earlier reports claimed the property was sold a month earlier for about \$A9.75 million.

He said the allegation that "someone has gained monetarily to the tune of approximately K9 million" should be looked at.

"The purchase was made at the height of PNG's foreign exchange crisis following the 12 per cent devaluation of the kina and the ensuing float-of-the-currency."

He said the purchase money was

sent out at a time when the Government had ordered a total freeze on repatriation of monies out of the country.

Outspoken Lae MP Bart Philemon said when he was Public Service Minister he was briefed that the property would cost K14 million.

However, he said if he had been told of the full extent of the purchase, he would have put a stop to it.

He said nobody in his right mind would have been so insensitive as to allow such a purchase at the time of the country's economic difficulties. He said the commercial figures did not add up to a prudent transaction.

He was appalled that the Prime Minister Sir Julius Chan had the nerve early this week to defend such a deal.

Mr Philemon said Sir Julius and his deputy, Chris Haiveta, had a duty to Parliament and the "small people who are contributors to this fund".

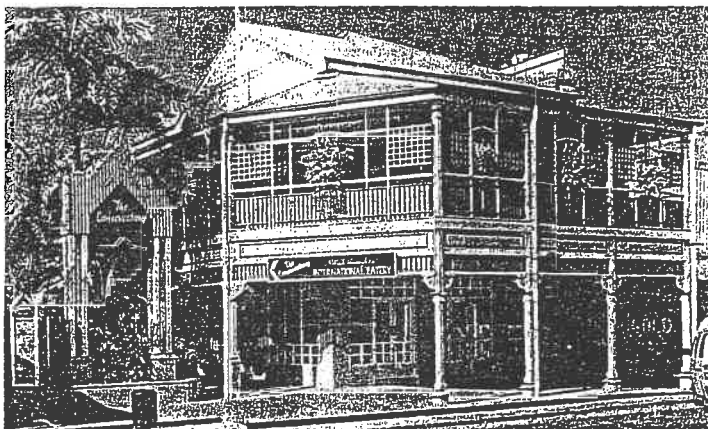
Mr Philemon said either the POSF

board or management were "incompetent or there is foul play."

Mr Yaki said later: "I will not give up the fight until we get the truth."

Mr Yaki said the Deputy Prime Minister when debating the motion failed to refute a lot of the questions raised. "I am quite convinced that what the Government is doing is an act of covering up," he said.

Mr Yaki said it took only a matter of five weeks to strike a deal. He said organisations like the Public Employees Association had not lifted a finger of concern.



CONSERVATIVE or a rash buy? The Calms Conservatory, cause of three inquiries into the purchase.

Haiveta sues paper over POSF claims

PORT MORESBY: Deputy Prime Minister and Finance Minister Chris Haiveta said yesterday he had launched defamation proceedings against The Australian Financial Review (AFR), one of its senior journalists.

Mr Haiveta told Parliament he had begun legal action in Australia, in relation to a series of newspaper reports about the so-called Cairns Conservatory Affair, which the Opposition has described as a "serious financial scandal".

The newspaper's Melbourne Bureau Chief, Rowan Callick, has alleged that Australian property developer Warren Anderson bought a building in Cairns for A\$9.75 million (K9.7 million), which the Public Officers Superannuation Board (POSB) bought a month later for A\$18.72 million.

"The building, only partially occupied, is today valued at A\$9 million to A\$10 million," the newspaper alleged.

The AFR ran another article about the deal yesterday, with additional allegations that Mr Haiveta has been linked to an illegal reptile smuggling ring, uncovered earlier this month.

"A number of innuendoes have been made ... that have produced doubt in the minds of members of parliament,



Mr Haiveta ... has sued the Australian Financial Review.

allegations that raise doubt about my own integrity ... and doubts about the integrity of the dealings of this government," Mr Haiveta told Parliament. He said the media and the "agenda of

other governments should not be used to determine the future of this country".

"I refer here to a series of articles rubbishing the image of this country and members of parliament by foreign signers," he said.

Mr Haiveta said he considered the series of allegations being made against him were very serious.

"Today, there's another article written by the same gentleman, and I have referred the gentleman and his newspaper, I've instituted proceedings today for defamation, I'm suing him for defamation in Australia to clear our name," Mr Haiveta said.

The Ombudsman Commission, the Auditor-General and Mr Haiveta's own Department of Finance have all launched inquiries into the allegations.

Mr Callick said yesterday that instituting legal action was Mr Haiveta's prerogative, but that he had heard nothing about it so far.

"I've heard nothing from him since we spoke last week," Mr Callick said.

"Our research was thorough and we spoke to all the parties."

Mr Callick worked for several years in PNG as the editor of The Times, now called the Saturday Independent. - AAP

Commission of inquiry rejected

PORT MORESBY: The Government yesterday used its numerical strength to throw an Opposition-sponsored motion calling on Prime Minister Sir Julius Chan to set up a commission of inquiry into the controversial K18 million POSF property deal in Cairns.

The Government gagged debate on the motion on voice vote and later when vote on the actual motion was taken, the Opposition was defeated 42-20.

Not to be deterred, Opposition Leader Roy Yaki said he would move another motion calling on Speaker Rabbie Namaliu to set up a bipartisan committee to investigate the deal.

East Sepik Governor Sir Michael Somare and Ambunti-Drekikir MP Judah Akosim were the only Government MPs who voted with the Opposition.

Mr Yaki said outside the chamber that the issue was still alive because many people, including thousands of POSF contributors, wanted an independent inquiry to get to the bottom of the controversy.

The motion urged Parliament to focus on allegations that:

- The purchase of the property amounted to a serious financial scandal and that the purchase price of K18 million

was far in excess of the property's real value;

- Someone gained financially in the process of the sale and purchase of the property;

- The projected value of the property at K21.4 million was taken from rental market estimates contained in a market appraisal study which was conducted by a company associated with the vendor for the property;

- The anticipated annual return of K2.4 million from the property is believed to be an inflated rate of return which cannot be substantiated; and

- The property was purchased at the height of PNG's

foreign exchange crisis following a 12 per cent devaluation and ensuing floating of the kina.

Debating on the motion, Deputy Prime Minister and Finance Minister Chris Haiveta said there was no need for a commission of inquiry because separate investigations were being conducted by the Ombudsman Commission, the Auditor-General and the Finance Department's Investigation Branch.

He said the findings of the investigation by the Finance Department would be tabled in Parliament when ready.

■ Case for Inquiry Into Cairns deal, Page 16

THE NATIONAL

PARLIAMENT'S decision to throw out Opposition Leader Roy Yaki's motion to set up a public inquiry into the purchase of the Cairns Conservatory now increases the suspicion in people's minds that the Government has something to hide.

There are far too many unanswered questions and instead of trying to enlighten the public and POSF contributors, the Government is running away from the issue.

At the same time yesterday, The Australian Financial Review's Rowan Callick reported of another alleged deal involving Finance Minister Chris Haiveta and the same Warren Anderson who sold the conservatory to POSF. Mr Anderson and Mr Haiveta have been

named in the article as having a part in the snake venom extraction and live-reptile exporting project which was halted by Environment and Conservation inspectors on Nov 16.

Mr Haiveta's legal action against the Financial Review and Mr Callick is not going to erase the suspicion from the minds of Papua New Guineans.

The anger of the POSF contributors and suspicions in the minds of people can only be erased by a properly conducted and independent public inquiry.

There are serious allegations in any of these tales which demand an explanation from the

Pangu Pati leader, Finance Minister and Deputy Prime Minister.

Such allegations and innuendoes taint each of these high offices of trust if not dealt with quickly and publicly.

Prime Minister Sir Julius Chan, in not naming a public inquiry, is inviting more suspicion upon his Government.

The reputation of Mr Haiveta himself, that of the Prime Minister and even the Government is being questioned. That should be sufficient reason on its own to warrant an independent inquiry.

Nothing the Prime Minister has said or the public statements of his deputy in defence

of the POSF board decision to invest K18 million in a Cairns property answers the fundamental questions or removes the nagging suspicion that something is not right in this deal.

Are the allegations correct about the property being worth only K5.5 million? If they are, then the POSF board, the Finance Minister and ultimately the Prime Minister have a big case to answer to the POSF contributors as to why they threw away about K13 million.

The contributors must also be told if the property was bought by the seller for only K9 million and sold to POSF for

double that amount a month later without much alteration. That is a right rip-off, if the stories are true.

What is the limit on the amount of contributors' money that the POSF board can decide to spend on any venture? As a wholly Government owned institution, does the board not need Cabinet approval for amounts as huge as K18 million? If the answer is in the affirmative, then the PNG Cabinet has something to answer for. If not, then the POSF board has something to answer for.

The strong defence of the deal by the Government would imply that the deal had Cabinet approval.

Is the rate of return on that property good and comparable with other investments?

The questions run on. There is no escaping. The Prime Minister and his deputy must meet this issue head on.

A word on Parliament's action yesterday. It is one more piece of evidence that PNG's parliamentarians are less discerning and more prone to acting as a pack without much forethought.

MPs appear unconcerned about matters that imply doubtful use of substantial amounts of ordinary workers' savings which has been approved or condoned at the highest level in Government.

The case for an inquiry into Cairns deal

[8.13] **OMBUDSMAN COMMISSION'S OPINION ON MINISTERIAL
BRIEFINGS, PRESS RELEASES, PUBLIC NOTICES AND
COMMENTS AND STATEMENTS IN PARLIAMENT**

Public comment on the purchase of The Conservatory was extensive during November 1995. In that period, various statements were made by the Minister for Finance, Mr Haiveta; the Chairman of the POSFB, Mr Mulina; the Managing Director of the POSFB, Mr Ragi; and a Board member, Mr Malabag. The matter was also debated in Parliament.

The Ombudsman Commission considers that many of the public statements made at that time were misleading or wrong and that most were based on misinformation.

Mr Mulina's brief to the Minister (3 November 1995)

Mr Mulina advised the Minister that a "detailed market valuation" had been carried out prior to purchase of The Conservatory and that this had assessed the market value at \$21 million. He also advised that "the market value will have appreciated quite substantially" and that Crockford Property Consultants were "highly recognised" in Australia. Clearly, Mr Mulina did not check his facts before advising his Minister.

All of this advice was wrong.

The appraisal given by Crockford could not be regarded as a valuation. Nor could it be described as detailed. Crockford was not a recognised or licensed valuer. The so-called market valuation of \$21 million was prepared by someone who had been paid by the vendor of the property. It was an artificial assessment based on the assumption that the entire building would be leased by the State at a rate considerably above the prevailing market rental.

In the opinion of the Ombudsman Commission, Mr Mulina's advice was negligent. His conclusion that the POSFB was "in a position to make a substantial capital gain on the investment" could not be justified on the facts available to him.

Press release by the Minister (3 November 1995)

When Mr Haiveta issued his press release on the evening of 3 November 1995, he relied exclusively, it appears, on the erroneous advice he had received from Mr Mulina.

Much of the information contained in Mr Haiveta's press release was therefore also

wrong.

Mr Ragi's brief to the Minister (6 November 1995)

This brief also contained incorrect information. Mr Ragi said that on 7 October 1994, the POSFB had received "confirmation" from the Chairman of the Office Allocation Committee that the State would lease the building subject to negotiating acceptable terms. This was not true. On the date referred to by Mr Ragi, the Chairman of the Committee, Mr Peruka, had actually expressed very serious concerns about the viability of purchasing The Conservatory and the feasibility of leasing it to the State.

Mr Ragi also advised the Minister that it had been difficult to get potential financiers interested in lending money for purchase of The Conservatory because of the devaluation and flotation of the kina and also because there was bad publicity about PNG in the Australian media at that time. This advice was very misleading. The real reasons it had been difficult to secure finance was the POSFB's own failure to indicate that it had the necessary 30% equity to finance the purchase and the POSFB's reluctance to subject itself to an independent valuation of the property.

Mr Ragi's brief also failed to alert the Minister about the circumstances in which the valuations of the property were obtained. He did not advise the Minister that the valuations had actually been arranged by the vendor and prepared by Cairns real estate agents who were connected with the vendor of the property. He failed to advise the Minister that the persons preparing the valuations were neither independent nor qualified.

Mr Mulina's public notice (7 November 1995)

Mr Mulina's open letter to the members of the POSF included the following statements: that the National Government would take the head lease over the property for a long time; that the Government would pay commercial rent; and that the rent would be back-dated to early 1995.

At the time Mr Mulina issued the notice, all of these statements were misleading or wrong.

At that time, there was still no lease in place between the State and the POSFB. It was not proposed that the Government would pay commercial rent - what was proposed was much *more* than commercial rent. And there was no agreement for rent to be back-dated.

Mr Mulina also made the statement that "an independent valuation put the value of the property at \$21 million dollars".

This statement was entirely false, as there was never an independent valuation of the property obtained by the POSFB.

Mr Mulina also stated that "the price which the vendors paid to the previous owners of the property was a private matter for the vendors and the previous owners", which was "never divulged to the Board and Management". Though he is correct in saying that the Board and Management did not know that Katingo had paid only \$9.75 million for the property just a few weeks before it was transferred to the POSFB for \$18.72 million, Mr Mulina's statement was misleading in that the information was readily obtainable if it had been sought by the POSFB.

Mr Ragi's letter to the editor (8 November 1995)

Mr Ragi stated in this letter that it was "utter nonsense and false to say that The Conservatory was worth only \$9.75 million". He said the "market value of the property at that time was A\$21 million which was still conservative".

Both of Mr Ragi's statements were false. Mr Ragi's assertion that the market value of The Conservatory was \$21 million was fanciful.

Mr Ragi also stated in his letter that the valuation was done by a "reputable real estate company". This was very misleading, as he did not point out that the company he was referring to was paid by the vendor; nor, more importantly, that it was not qualified to carry out a valuation.

Mr Ragi should have realised by this stage that the purchase of The Conservatory was a mistake. But instead of addressing the issues frankly, he continued to mislead the public and in particular the contributors to the POSF, about what had happened.

Mr Malabag's letter to the editor (28 November 1995)

Mr Malabag's letter included the assertion that the purchase of The Conservatory was "a good and safe buy".

From any objective point of view, that statement was wrong. At the time it was made, it had already been disclosed that the most recent transfer price of The Conservatory, just

a few weeks before it was purchased by the POSFB, was \$9.75 million.

Mr Malabag's statement lacked any logical foundation.

Mr Haiveta's statement to Parliament (30 November 1995)

In the course of responding to the motion that there be a commission of inquiry into the purchase of The Conservatory, the Minister for Finance, Mr Haiveta, misled the Parliament. He stated that "the purchase price of that building is approximately K15 million and not K19 million as stated".

Mr Haiveta was wrong, in that the purchase price actually paid for The Conservatory was in excess of K16.7 million.

There were many serious allegations contained in the motion put to the Parliament:

- That the actual purchase price was far in excess of The Conservatory's real value.
- That someone had gained monetarily to the tune of K9 million.
- That the projected value of the property was basically taken out of the rental market estimate.
- That the anticipated annual return was inflated in a way which could not substantiated.
- That the property was purchased at the height of PNG's foreign exchange crisis.

Mr Haiveta did not address any of these issues in a meaningful way.

In his response to our preliminary report, Mr Haiveta, through his lawyers, said he relied on Mr Mulina's advice:

Any comments, statements or publication of matters surrounding the purchase of the Property were made solely on the advice of the then Secretary of Finance, Mr Mulina. Our client is bemused by the assertions in the Report that, on the one hand, he is adversely criticised for not seeking his department's advice in respect of the Section 60 approval and in the later parts of the Report he is adversely criticised for accepting the advice of his department. It seems he is damned if he does and damned if he doesn't.

Mr Haiveta was not involved in a cover up. He relied at all times on the advice of his department and the POSF. If, as you have appeared to have found (which our client denies), there was a cover up then Mr Haiveta was not a participant in same.

The Ombudsman Commission's criticism of Mr Haiveta rests on the unquestioning way in which the advice was accepted. Mr Haiveta, despite being aware of concerns with the purchase, was content to be wilfully blind to any difficulties.

Quality of debate in Parliament

The Ombudsman Commission agrees with the opinions expressed in the editorial in *The National* on 1 December 1995. Mr Yaki's motion for a public inquiry into the purchase of The Conservatory demanded thorough and extensive debate. Instead, the debate was gagged by the government. This had the inevitable effect of increasing suspicion in people's minds that there was something to hide. The Parliament appeared unwilling to address the enormity of the issues involved. As *The National* pointed out:

The contributors must also be told if the property was bought by the seller for only K9 million and sold to POSF for double that amount a month later without much alteration. That is a right rip-off, if the stories are true.

Instead of addressing the issues head-on, most members of the Parliament who responded to Mr Yaki's motion were only willing to trivialise the issue. They included:

- Mr Judah Akesim;
- Mr Nappotti Buru;
- Mr Aita Ivarato;
- Sir Pita Lus;

- Mr David Unagi.

The National Parliament of Papua New Guinea failed miserably in its duty to properly address the many important issues raised over the purchase of The Conservatory.

[8.14] COVER-UP OF THE FACTS

As outlined above, the series of press releases, public notices and comments and the statement made in the Parliament by Mr Haiveta resulted in a great deal of misinformation being distributed to the People of Papua New Guinea during November 1995.

It is fair to say that what happened was a cover-up. Rather than making a frank reassessment of the situation, the people involved in the decision to purchase The Conservatory seemed intent on hiding the facts.

[8.15] FURTHER PUBLIC STATEMENT BY MR RAGI: 18 DECEMBER 1997

On 18 December 1997, Mr Ragi, as Managing Director of the POSFB, placed a full page open letter in both *The National* and the *Post-Courier* newspapers, addressed to "Dear POSF members". This letter was published after the Ombudsman Commission's preliminary report had been distributed in September and October 1997.

The purpose of the letter was to reassure POSF contributors that The Conservatory was an excellent investment for the POSFB.

In his letter, Mr Ragi continued to give out wrong and misleading information about the purchase of The Conservatory. Mr Ragi stated:

Apart from a sound rate of return, the value of the property continuously escalates due to its prime location and its enormous redevelopment potential. ... The property can be disposed of without significant discount should the need arise.

This was quite untrue. At no time has the POSFB been able to sell The Conservatory for anywhere near the \$18.72 million purchase price.

Mr Ragi also stated:

For purposes of due diligence, valuations were undertaken. Tony Robert Real Estate Pty Ltd put the market value at A\$19.0 million. Crockford Valuers established a value of A\$21.0 million. These valuations were arranged by highly placed and respected senior public servants utilizing industry standards, thus the credibility of these valuations was accepted.

Mr Ragi knew that neither valuation was independent or objective. Mr Ragi also knew that these valuations were arranged in both cases by the *vendor* of the property. The credibility of these valuations should never have been accepted.

Mr Ragi also continued to rely on the head lease from the State to assess the worth of The Conservatory.

From the POSF perspective, however, the real value of any asset is determined by the expected future earnings or not cash flows, not subjective valuations. The long-term legally binding lease with the State guaranteed acceptable returns and solidified the true value of the investment.

Mr Ragi continued to ignore the investment risk associated with relying on a single lease which generates rents approximately three times market value. More importantly, Mr Ragi failed to see any ethical problem in relying on the State to prop up the POSFB's decision to purchase a property for more than double what it was worth.



9. RECENT DEVELOPMENTS

[9.1] LEASE TO THE STATE EXECUTED: MAY 1996

NEC decision

On 10 May 1996, the National Executive Council approved the proposed "head lease" of The Conservatory from Moki N° 10 Pty Ltd to the State for a term of ten years. NEC also approved the re-location of the Papua New Guinea Consulate, Air Niugini and the Tourism Promotion Authority to The Conservatory.

The NEC decision was made on the basis of a submission by the Minister for Finance, Chris Haiveta. The submission set out the financial implications of the lease:

Rental payments by various offices to be housed in The Conservatory amounting to K2.1 million per year will go to the members of the POSF.

Rental payments by Australian tenants on the property will become a source of revenue for the Government. It is estimated that this rental revenue would be around K0.5 per year.

The above payments should also have a positive effect on Papua New Guinea's foreign exchange cash flows.

The submission also enclosed a letter from the State Solicitor, Zacchary Gelu, approving the terms and conditions of the lease.

The head lease

The head lease between the State and Moki N° 10 Pty Ltd was executed on 30 May 1996. The main terms of the lease, which is in a standard format used in Australia, are:

Lessor:	Moki N° 10 Pty Ltd
Lessee:	The Independent State of Papua New Guinea

Property leased:	The whole of the land on Lot 32 on RP 747595, Cairns [i.e. the whole of The Conservatory]
Term of lease:	10 years from 1 May 1995 to 30 April 2005
Rent:	First year:.....\$AUD 2,112,600.00
	Subsequent years:.....Increase or decrease from previous year according to the Consumer Price Index.

Signing of the lease

The lease was signed on behalf of the State by the Secretary of the Department of Lands, Mr John Painap, as delegate for the Minister for Lands. However, under Section 47 of the *Public Finances (Management) Act* 1995 the lease should have been signed by the Head of State, i.e. by the Governor-General, acting with and in accordance with the advice of the NEC. This was because the consideration under the lease exceeded K5 million. The lease was witnessed by the State Solicitor, Mr Zacchary Gelu, who advised the government on the legal implications of the lease.

In his oral response to our preliminary report, Mr Gelu stated the Secretary for Lands was authorised to sign the lease. Mr Gelu considered that the Papua New Guinea *Land Registration Act* (Chapter 191) permitted all instruments transferring interests in land to be signed by the Minister for Lands, and Mr Painap was a delegate of the Minister. Therefore it was unnecessary for the Governor-General to sign the lease.

The Ombudsman Commission notes that Section 175 of the *Land Registration Act* gives the Minister power to sign an instrument, which transfers or deals with land, on behalf of the State. Section 3 of the Act says that "land" means land which is, or is able to be, registered under the Act.

As land in Cairns clearly cannot be registered under the Papua New Guinea *Land Registration Act*, neither the Minister's nor the Secretary's power under the Act extended to signing this lease. This is so even though there was a NEC decision approving the lease.

Mr Gelu acted below the standard expected from the State Solicitor in advising Mr Painap to sign the lease as the Minister's delegate. The lease should have been signed by the Governor-General in accordance with the *Public Finances (Management) Act*.

[9.2] LEASE PAYMENTS MADE TO POSFB

At the time of this report, the State has paid rent from the start of the lease, 1 May 1995, to 31 October 1996. The following payment was made on 18 October 1996:

Rent for the period 1.5.1995 to 31.12.1995	\$AUD1,408,400
Rent for the period 1.1.1996 to 31.10.1996	<u>\$AUD1,760,500</u>
Total	<u>\$AUD3,168,900</u>
Converted at PGK 1.00 = AUD 0.975	<u>K3,250,153.80</u>

At the date of this report the State owes POSFB over three years outstanding rent. Under the lease, interest is calculated on outstanding payments at the rate of 2% *over* the rate given by the Landlord's bankers on unsecured overdraft accommodation.

This method of calculating the penalty interest rate is not unusual. However it means that the State is accruing a large debt in Australian currency, with the addition of penalty interest at Papua New Guinea interest rates.

[9.3] CONTINUING PROBLEMS FINDING TENANTS

1994 - 1998

The Conservatory has continued to be plagued by very low occupancy levels - even lower than the 25% level applying when it was purchased in November 1994.

The inability to attract tenants to the property has also caused a high level of dissatisfaction amongst the existing tenants, some of whom have requested a decrease in their rentals and expressed concern about the deteriorating condition of the property.

In his oral response to our preliminary report, Mr Roberts stated that during 1995, 1996 and 1997 he was continually frustrated in his attempts to lease out shops and offices in The Conservatory. One reason was the delay of the Papua New Guinea government in paying the stamp duty on the head lease. Until the stamp duty was paid, the lease could not be registered, and potential tenants would not sub-lease premises when the head lease was unregistered. Mr Roberts also said he had not had a clear line of authority

from the Department of Finance to make decisions. Nothing was being done.

Change of property management

On 20 February 1998, the board of Moki N° 10 Pty Ltd resolved that Tony Roberts Real Estate be terminated from the management of the property. The decision was made in light of the proposed lawsuit against the parties involved in the negotiation and sale of The Conservatory to POSFB. As Mr Roberts was perceived to be one of these parties, his continued management of the property was thought to be no longer appropriate.

There were some difficulties in terminating Mr Roberts's contract. Minutes of the board meeting of Moki N° 10 Pty Ltd on 27 May 1998 stated:

5.2 Appointment of Managing Agent

The Board was informed that the notice for the termination of Tony Roberts Real Estate has not been served as the company has been trying to resolve some outstanding issues with the current management. Most of the issues have been resolved and the company will now serve the notice to Tony Roberts.

As the termination notice was not served to the current Managing Agent, the newly appointed Interim Managing Agents, Omega Property Group cannot commence with the management of the property until such time the notice was served.

Omega Property Group, who specialise in turning around non-profitable buildings, began their management of The Conservatory on 1 July 1998. They have been renovating The Conservatory as funds allow, and are actively seeking out new tenants. However the building, although currently in good condition, remains on the periphery of the Cairns CBD with little pedestrian traffic.

At November 1999, The Conservatory was still less than 50% occupied.

[9.4] THE COST TO THE STATE

The rentals received for The Conservatory, by the State, for the month of July 1999 were just over \$13,000.00; which amounts to \$156,000.00 per annum. This is less than one tenth of the \$2,112,600.00 the State is supposed to be paying to the POSFB for the building.

At the rent levels being asked by Omega Management in July 1999, if the building were fully leased the total annual rents would be \$626,064.00, plus recoverable outgoings. This does not take into account any incentives offered to new tenants.

The State is therefore paying, as head lessee, *more than three times* the amount that it could expect to earn if the building were fully sub-let. This is a dramatic indication of the grossly inflated rentals the State has agreed to pay.

At the time of this report the National Government's one-stop shop policy had not been implemented in Cairns. The Papua New Guinea Consulate and Air Niugini remain in their previous accommodation.

The rent of this building by the State is therefore a complete waste of public money. The rent the State is paying is more than three times market value. The building remains largely unoccupied. The State is also leaving itself open to being charged penalty interest for late payments.

The rent that is supposed to be paid by the State to Moki N° 10 Pty Ltd, for 1999, is approximately K4.2 million. This is a significant sum in terms of the National Budget.

In effect, the people of Papua New Guinea are being asked to subsidise the poor decision of the POSFB to buy the building at a price greatly above its value.

[9.5] LEGAL PROCEEDINGS AGAINST THE STATE

At one point Moki N° 10 Pty Ltd lodged a claim against the State in Australia for \$6,285,926.12 in unpaid rents. At the date of this report, this converts to a claim of approximately K11.4 million.

The POSFB has given an undertaking to the State that it would discontinue these proceedings. At the date of this report the legal proceedings have not been further advanced.

A legal battle can only add to the costs of both the State and the POSFB. This is a further indication of the financial disaster that the purchase and subsequent lease of The Conservatory has become.

[9.6] THE COST TO POSFB

Because of the inflated rentals the POSFB has been able to obtain from the State, the view has been advanced by some people that the purchase of the building has not been a completely disastrous investment.

In his response to our preliminary report, Mr Pe Cho, Manager Investment Projects for the POSFB, explained the transaction as follows:

i.	The investment value (capital outlay) for the Company's property (namely, The Conservatory) as at 31 December 1995 was K17.7 million.
ii.	The value of the Company's investment property as at 31 December 1996 was K17.8 million.
iii.	The Company received rental revenue amounting to K1.44 million from its investment property (namely The Conservatory) for the year ended 31 December 1995.
iv.	The rental revenue for the year ended 31 December 1996 amounted to K2.18 million.
v.	The Company's profit before interest and tax for the years ended 31 December 1995 and 1996 were K1,426,652 and K1,836,199 respectively.
vi.	The Company's operating profit after interest and tax for the years ended 31 December 1995 and 1996 were K155,951 and K314,489 respectively.
The actual return on investment (before interest & tax) for the two years were as below:	
ROI (1995):	$K1,426,652 / K17,688,396 = 8.06\%$
ROI (1996):	$K1,836,199 / K17,797,124 = 10.32\%$

If the State continues to pay the agreed rents, Moki N° 10 Pty Ltd, and therefore POSFB, will have recouped its initial investment. As a result of the declining value of the kina, the POSFB may even be able to sell the building for the same amount, *in kina*, as it purchased it for.

However, as a comparison, if the POSFB had placed the purchase price of \$18.72 million (K16.7 million) with an Australian bank at 5% interest in November 1994, it would have accrued in November 1999 approximately \$24 million, or K44 million at current exchange rates. This difference is the real cost to the POSFB and its

contributors.

Loan to Moki N° 10 Pty Ltd

The POSFB and Moki N° 10 Pty Ltd entered into the original loan agreement on 25 January 1995. Moki N° 10 Pty Ltd borrowed K13.5 million for one year. The interest rate was 10%, and the whole of the principal sum, plus interest, was to be repaid on 25 January 1996.

The principal sum was not repaid on this date.

On 30 May 1997, the parties agreed to alter the loan agreement. The principal sum is now due to be repaid on 25 January 2000, or whenever refinancing was secured, whichever is the earlier. The loan term had been extended to a maximum of five years. The interest rate remained 10%, and interest payments were to be made every year on 25 January.

On 31 March 1998, Moki N° 10 Pty Ltd borrowed another K450,000.00 from the POSFB under a loan agreement. The loan term was to be for one year with an interest rate of 10%. Moki N° 10 Pty Ltd borrowed another K300,000.00 from the POSFB under a loan agreement dated "October 1998". Again, the loan term was to be for one year with an interest rate of 10%.

The security given by Moki N° 10 Pty Ltd for both these later agreements was a first mortgage over The Conservatory.

In total, Moki N° 10 Pty Ltd has borrowed K14.25 million from POSFB.

At the date of this report, Moki N° 10 Pty Ltd had made the following payments to the POSFB:

1995 interest on loan:	K1,182,978.59
1996 interest on loan:	<u>K1,344,811.10</u>
Total:	<u>K2,527,789.69</u>

These payments were a result of the State paying rent for the Conservatory in October 1996. In an internal office memorandum dated 14 January 1997, the Chief Accountant

of POSFB stated "there were no interest arrears on the loan at 31.12.1996".

However Moki N° 10 Pty Ltd has not made any repayments since 1996. The interest on the loan is therefore seriously in arrears. Consequently, the loan to Moki N° 10 has become a serious financial drain on the POSFB. Considerable interest income, which would have been earned if the money used to purchase The Conservatory had been invested elsewhere, has been foregone.

**[9.7] WHAT WAS THE CONSERVATORY WORTH AT
OCTOBER 1997?**

In Chapter 11 we report on the market value of The Conservatory at the time the property was purchased, in November 1994. This paragraph is concerned with the value of the property three years after that - in October 1997.

In September 1997 we instructed Richard Ellis, International Property Consultants, in Brisbane to provide an assessment of The Conservatory. Richard Ellis are a reputable international firm, and are licensed real estate agents and valuers.

We asked Richard Ellis to provide an assessment of changes in the value of the property since the JLW valuation was prepared in November 1995. The details of the JLW valuation are in Chapter 11.

The main points of the Richard Ellis assessment are set out below.

Property Description

Richard Ellis noted that the region immediately surrounding the property had changed very little since the JLW valuation. However, with the opening of Cairns Central Shopping Centre, retail shopping patterns in Cairns have been re-configured away from the location of The Conservatory.

Tenancy Overview

The annual gross lease income at October 1997 was \$177,466.00. This was approximately 23% of the total market lease income for the property, if all the building were leased. Approximately 74% of the lettable area of the building remained vacant.

At November 1995 the gross lease income in the JLW valuation was \$306,548.00. In

the two following years the lease income had nearly halved. Total outgoings however had increased by 20%, from \$94.00 per square metre to \$113.00 per square metre.

Financial Summary

As a result of the low level of occupancy and the limited gross lease income the complex was "providing a negative return" - i.e. making a loss.

Current Lease Income	\$177,466.00	
Budget Outgoings	<u>\$335,497.00</u>	(excluding recoverable outgoings of \$2,273.00)
Net Annual Loss:	\$158,031.00	

Richard Ellis estimated that the cashflow from The Conservatory will not be positive until the building is just under 50% leased.

Market Rental Analysis

Richard Ellis estimated that at October 1997 the average gross market rentals for The Conservatory were:

Ground floor	\$250 - \$270 per square metre
Upper floor	\$200 - \$220 per square metre.

The reasons for the lack of improvement in the market rentals from 1994 to 1997 were:

- The decline in occupancy in the building making it less attractive to potential tenants.
- The property's location in a fringe or peripheral CBD region.
- The decrease in tourist visitors to the Cairns region from June 1994.
- The recent opening of Cairns Central Shopping Centre has resulted in an excessive supply of retail space.

By way of conclusion, Richard Ellis stated:

As a result of the decline in income from the property, coupled with the introduction of new retail and commercial outlets in the city, demand by both tenants and prospective purchasers/investors for this type of investment has declined since the initial valuation undertaken by JLW Advisory in 1995. It is extremely difficult to foresee any dramatic increase in the rental value or the overall value of the property in the short term, and moreover, it is expected that without a significant marketing or leasing campaign and the introduction of incentives and inducements for potential tenants, together with the re-branding of the development, it is expected that limited demand will be shown by potential tenants for the property in the short to medium term.

Market Assessment

Richard Ellis conclude that a total re-configuration and re-examination of the property is essential in order to achieve a viable economic return. Because of the current negative income, it is extremely difficult to assess how much the building is worth.

Their conclusion as to the property's value is *not* a formal valuation but an indicative assessment, i.e. how much the owner could possibly expect to receive, if it were to sell.

The indicative assessment, at October 1997, was:

- \$3 million.

Ombudsman Commission comments

The Richard Ellis report makes it clear that the POSFB both paid far too much for the building, and have failed to achieve maximum return for the investment.

We note that very little has changed in the Cairns CBD since the date of that report. In the opinion of the Ombudsman Commission, the indicative assessment provided by Richard Ellis in October 1997 is still valid.

If the POSFB were to sell The Conservatory, it appears that they would only be able to realise a fraction of their investment. In our recommendations at the end of this report, we recommend that an expert is engaged to re-invigorate the building. It is essential that there is commitment and focus in the future attempt to recoup some of the financial loss.



10. HOW WAS THE DEAL PUT TOGETHER?

[10.1] OVERVIEW

The contract of sale for The Conservatory was between the POSFB's subsidiary, Moki N° 10 Pty Ltd, and Mr Warren Anderson's shelf company, Katingo Pty Ltd. However, neither Katingo Pty Ltd nor Mr Anderson actually owned the property for most of the time the negotiations took place with the POSFB.

In this chapter, we report on how the deal was put together, given that the people the POSFB was dealing with did not own the property that they were selling.

[10.2] COMPANIES AND INDIVIDUALS INVOLVED

There were in fact four companies involved in The Conservatory deal. Those companies and the individuals who controlled them (or, in the case of Moki N° 10, the body which controlled it) were:

Cape Bouvard Investments Pty Ltd	=	Ralph Sarich
Asia Securities Pty Ltd	=	Bill Wyllie
Katingo Pty Ltd	=	Warren Anderson
Moki N° 10 Pty Ltd	=	POSBF

[10.3] ACQUISITION OF KATINGO PTY LTD: OCTOBER 1994

Cape Bouvard Investments and Asia Securities were established companies. However, Katingo was only a shelf company. It was acquired specifically for the purpose of purchasing and on-selling The Conservatory. Mr Anderson acquired the company on Thursday 6 October 1994, four days before the POSFB decided to purchase The Conservatory.

On that date, the directors of Katingo became: Warren Perry Anderson, Sol Benn and Umberto Bruno Gianotti. The company's two \$1.00 shares were allotted to: Owston Nominees No. 2 Pty Ltd and Tipperary Developments Pty Ltd. Both of the shareholder companies are owned by Warren Anderson or members of his family.

[10.4] CHAIN OF TRANSACTIONS CULMINATING IN SALE TO MOKI N° 10 PTY LTD

As far as we can ascertain, there were four separate transactions culminating in the contract of sale between Katingo and Moki N° 10 on 24 November 1994.

Contract between Cape Bouvard Investments and Asia Securities

On 13 September 1994, Cape Bouvard, which was the owner of The Conservatory, entered into an option agreement with Asia Securities, under which it granted an option to Asia Securities to purchase The Conservatory for \$9.75 million.

In return, Asia Securities paid Cape Bouvard a non-refundable option fee of \$100,000.00. A further \$875,000.00 was payable on 13 October 1994, with the balance of the purchase price, \$8,775,000.00, payable 45 days later on 27 November 1994.

Thus, as a result of this agreement, Asia Securities acquired the right to purchase The Conservatory at a set price of \$9.75 million.

Contract between Asia Securities and Katingo

On 10 October 1994, the day the POSFB decided to purchase The Conservatory, Asia Securities entered into a contract with Katingo under which it assigned its option to purchase The Conservatory to Katingo, for the price of \$2 million. No money changed hands immediately. Instead, Katingo granted a fixed and floating charge (i.e. a mortgage) over all of its assets in favour of Asia Securities.

As a consequence of this contract, Katingo acquired the right to purchase The Conservatory from Cape Bouvard at the set price of \$9.75 million; and owed Asia Securities \$2 million.

Contract between Cape Bouvard Investments and Katingo

Katingo subsequently exercised its option and, it appears, entered into a contract of sale with Cape Bouvard Investments, purchasing The Conservatory for \$9.75 million.

The instrument of transfer, lodged in the Queensland Land Registry in November 1994, is reproduced below. The transfer was executed by Katingo on 14 November 1994. We note that this is the same day that the POSFB gave K500,000.00 to Pato Lawyers as a good faith deposit. It is also five weeks *after* the POSFB had decided to purchase the building. At the time of the POSFB decision, on 10 October 1994, Katingo did not own the building.

The instrument of transfer was executed by Cape Bouvard on 17 November 1994, just seven days before the contract between Katingo and Moki N° 10 Pty Ltd was signed.

On 23 January 1995, a copy of the instrument of transfer was faxed by Barker Gosling to Pato Lawyers, together with the covering note:

The purchase price paid by Katingo Pty Ltd may be of interest to your client.

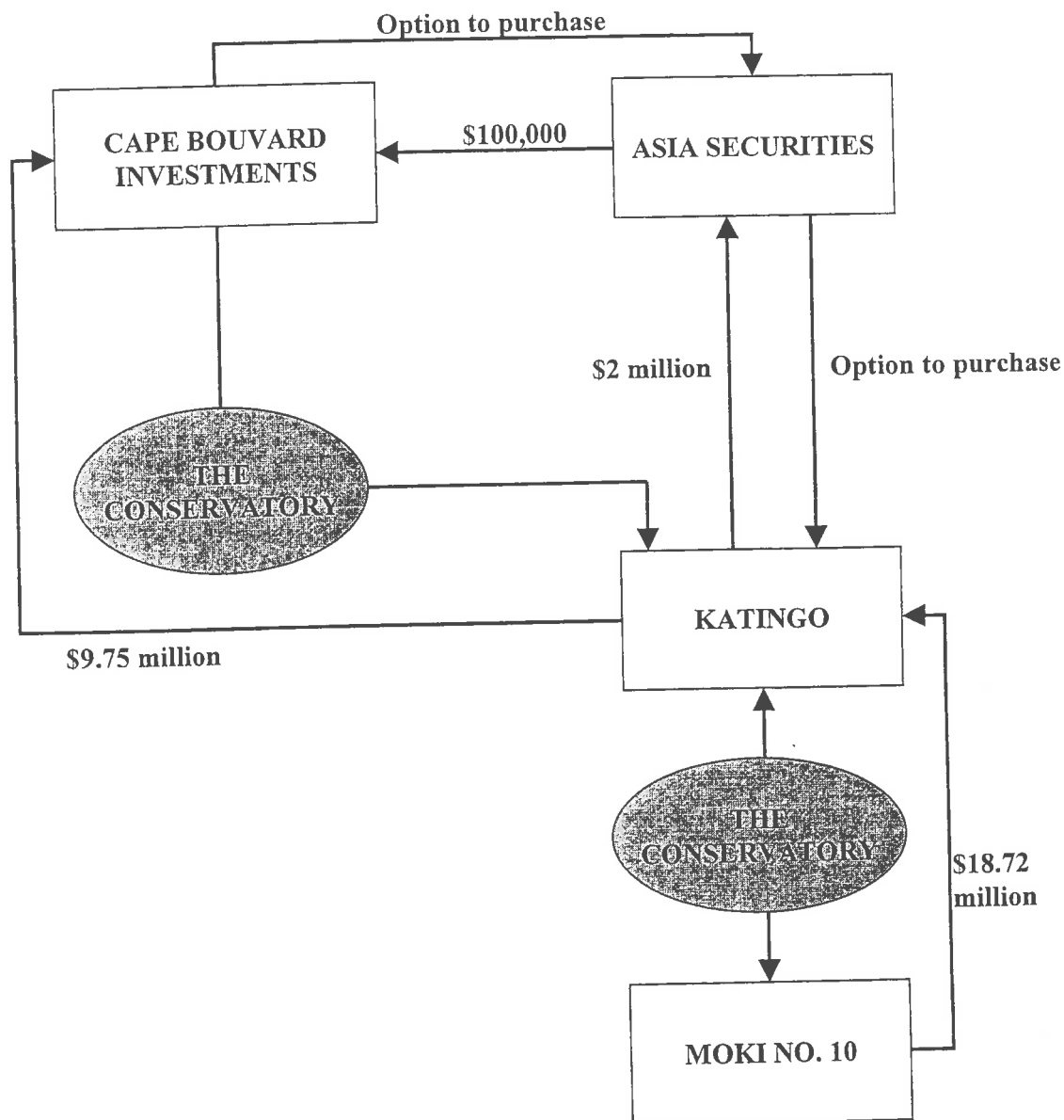
As we reported earlier, however, this information was not conveyed by Pato Lawyers to the POSFB.

Contract between Katingo and Moki N° 10

On 24 November 1994, Katingo entered in a contract of sale with Moki N° 10, under which The Conservatory was sold to Moki N° 10 for \$18.72 million.

These transactions are depicted in the diagram below.

CHAIN OF TRANSACTIONS CULMINATING
IN THE SALE OF THE CONSERVATORY TO
MOKI No. 10 PTY LIMITED



INSTRUMENT OF TRANSFER - FAXED BY BARKER GOSLING TO PATO LAWYERS ON 23 JANUARY 1995

SENT BY:

23- 1-95 ; 6:14PM ;

BARKER GOSLING-

213261:# 2/ 3



Version

Land Title Act 1994 and Land Act 1962
Dealing No

Queensland Land Registry

Stamp Duty Inprint

1. Interest being transferred

FEE SIMPLE

Lodger Name, address and phone number

MCNAMARA & SMITH
4TH LEVEL
379 CUFFEN STREET
BRISBANE QLD 4000 PH: 229 0238

2. Description of Land

County

Parish

Title Reference

LOT 32 ON RP 747595

NAVES

CAIRNS

21376224

3. Transferor

CAPE BOUVARD INVESTMENTS PTY LTD ACN 009 171 402

4. Consideration

\$9,750,000.00

5. Transferee

Given Names

Surname / Company Name

(Include tenancy, if more than one)

KATINGO PTY LTD ACN 066 213 581

Transfer / Execution

The transferor transfers to the transferee the estate and interest in the land for the consideration stated above and in the case of monetary consideration acknowledges receipt of the consideration.

Witnessing Officer

Execution Date

Transferor's Signature

X
X
X

signature

OSCAR GUGLIELMI

full name

COMMERCIAL MANAGER

occupation / office

17/11/94

WILLIAM TONY
BARRICK

SEAL

COMMON SEAL

DIRECTOR

KATINGO PTY LTD

DIRECTOR

WHO CERTIFY THAT THEY ARE THE PROPER OFFICERS TO AFFIX SUCH SEAL

Witnessing Officer

Execution Date

Transferee's Signature

signature

SARAH FRAYNE

full name

RECEPTIONIST / SECRETARY

occupation / office

14/11/94

DIRECTOR

SEAL

COMMON SEAL

DIRECTOR

KATINGO PTY LTD

DIRECTOR/SECRETARY

WHO CERTIFY THAT THEY ARE THE PROPER OFFICERS TO AFFIX SUCH SEAL

**CAVEAT LODGED BY ASIA SECURITIES - FAXED BY
BARKER GOSLING TO PATO LAWYERS ON 23 JANUARY 1995**

SENT BY:

23- 1-95 ; 6:14PM ;

BARKER GOSLING

213261;# 3/ 3

23 JAN 1995 16:12 FROM NEW BRISBANE

TO 2215454

PAGE 002/002

Page 1

FORM 11 - CAVEAT
Version 2
Land Title Act 1994

Queensland Land Registry

Stamp Duty Imprint

Dealing No

1. Caveator full name and address for service
Asia Securities Pty Ltd ACN 008 781 120
Scott House, 48-50 Kings Park Road,
West Perth, Western Australia 6005

Lodger Name, address & phone number, LODGER CODE
Mallacoon Stephen Vague, Level 30,
Waterfront Place, 1 Eagle Street,
Brisbane Qld 4000 Lodger code (MSV 169)

2. Description of lot	County	Parish	Title Reference
lot 32 on RP 747595	Nares	Cairns	21376224

3. Instrument being claimed
Mortgage as equitable mortgages of fee simple

4. Grounds of claim
Pursuant to a fixed and floating equitable charge over all of its assets and
undertaking given by Karinga Pty Ltd ACN 006 213 501 in favour of the Caveator
dated 11 October 1994

5. Registered owner full name and address
Karinga Pty Ltd ACN 006 213 501
14 Colin Street, West Perth, Western
Australia, 6005

6. Other parties full name and address
Not applicable

7. Request/execution
a) The Caveator claiming as per item 3 on the grounds detailed in item 4 and subject
to the Land Title Act 1994 forbids the registration of any instrument affecting the
land described in item 3 until -
*this Caveat is withdrawn by the Caveator
*the completion of the ~~instrument contract mentioned in item 4~~ only if Caveat is
pursuant to Section 74 of Property Law Act 1974
*this caveat does not apply to the following instruments

Insert dealing number of previously lodged documents or delete if inappropriate

OR

by the Caveator claiming as per item 3 on the grounds detailed in item 4 and subject
to the Land Title Act 1994 forbids -
*the entering of the application for transmission by death
*the issue of such Title or substitute instrument
*the bringing of the land under the provisions of the Land Title Act 1994

*delete statements not applicable

Execution Date

Caveator's or
Solicitor's Signature

ROBYN PATRICIA SANDERS

Note: A solicitor is required to print full name if
signing on behalf of the Caveator

[10.5] PROFITS MADE AS A RESULT OF THE VARIOUS TRANSACTIONS

Each of the parties in the chain of transactions - other than Moki N° 10 and the POSFB - benefited substantially. We estimate that the following gross profits were made.

Cape Bouvard Investments (Ralph Sarich)

Sale price to Katingo plus option price paid by Asia Securities minus notional market value

$$= \$9.75 \text{ million plus } 0.1 \text{ million minus } \$7 \text{ million}$$

$$= \$2.85 \text{ million.}$$

Asia Securities (Bill Wyllie)

Sale price of option to Katingo less option paid to Cape Bouvard

$$= \$2 \text{ million minus } \$0.1 \text{ million}$$

$$= \$1.9 \text{ million.}$$

Katingo (Warren Anderson/Solly Benn)

Sale price to Moki N° 10 minus the sum of the purchase price paid to Cape Bouvard and the purchase price of option.

$$= \$18.72 \text{ million minus } (\$9.75 \text{ million} + \$2 \text{ million})$$

$$= \$6.97 \text{ million.}$$

Moki N° 10's overpayment (the POSFB)

The above substantial gross profits were attributable to Moki N° 10's overpayment, i.e. the premium it paid on the market value of the property:

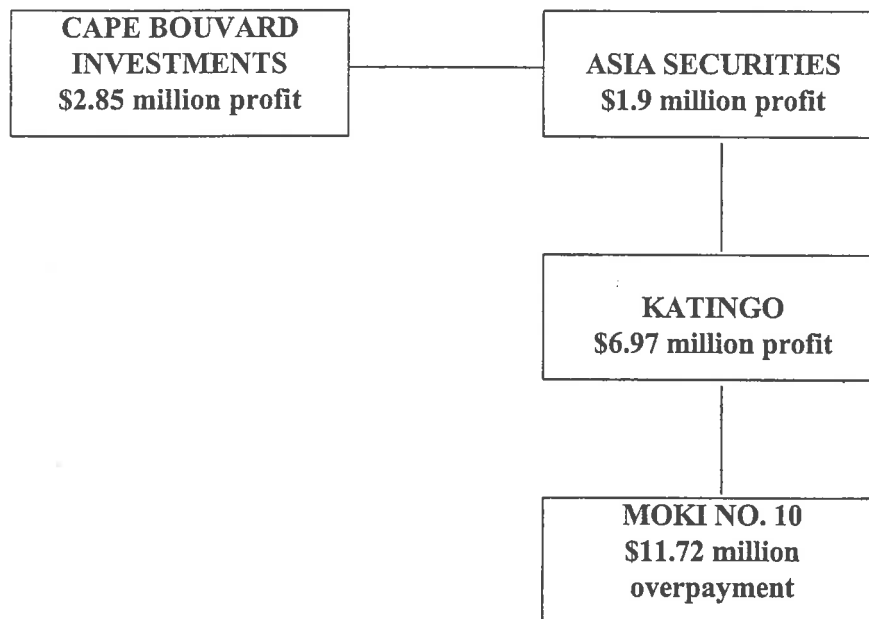
Purchase price minus notional market value

= \$18.72 million minus \$7 million

= \$11.72 million overpayment.

Profit flow

The profit flow is shown in the diagram below.



The profit flow gives rise to some obvious questions:

- Why did the POSFB go through the middlemen?
- Why didn't the POSFB purchase The Conservatory through the obvious alternative route: directly from Mr Sarich's Cape Bouvard Investments?

- Why were such profits able to be made in a real estate market which was, in late November 1994, in a depressed state?

We have been unable to identify any satisfactory answers to these questions.

[10.6] SIGNIFICANCE OF THE 13 OCTOBER 1994 DEADLINE

Under the option granted by Cape Bouvard Investments to Asia Securities, \$875,000.00 (in addition to the initial \$100,000.00) was payable on 13 October 1994. Mr Anderson (Katingo) had to decide before this date whether he wanted to purchase the option from Asia Securities.

Evidently, Mr Anderson needed an assurance that the POSFB would purchase the property from him, before he purchased the option. If that assurance were not obtained, Mr Anderson would run the risk of being obliged to purchase the property for \$9.75 million, a price which was well above its market value.

Viewed in this light, the following events, described in earlier chapters of this report, assume added significance:

- The political pressure put upon Mr Ragi to call the POSFB meeting in early October 1994, despite the absence overseas of the Chairman, Mr Aopi.
- The political pressure on Mr Peruka, also concerning the calling of the 10 October 1994 meeting. Mr Peruka told the Commission: "There was pressure at that time on the Board and there was some emergency with the vendors". Mr Peruka also said that Mr Ragi was "adamant this thing must be approved".
- The fax by Katingo's lawyers to Pato Lawyers, enclosing a "final draft" of the contract of sale some hours *before* the POSFB decision on the afternoon of 10 October 1994 to go ahead with the purchase.
- Mr Ragi's fax to Mr Anderson on 11 October 1994 to advise him that the POSFB had approved the purchase.
- Other unusual events of 11 October 1994:
 - > The POSFB's ill-directed submission to the Prime Minister, Sir Julius Chan, for ministerial approval.

Chapter 10 How was the deal put together?

- > The Acting Secretary for Finance Mr Kila Ai's briefing with the Prime Minister.
- > Mr Ragi's luncheon meeting with the Prime Minister.
- > The Prime Minister's instruction to Mr Ai that a recommendation be immediately prepared.

In light of the above, it is apparent that the POSFB's decision-making processes and the ministerial approval were being rushed to suit the needs of the vendor.

In his response to our preliminary report, Mr Ai emphasises that he did not consider Sir Julius's control of the transaction to be unusual.

I re-iterate, given his record and approach, Sir Julius's interest in the project - and that it should be implemented quickly - was the norm, not an exception. (Whether you think such active involvement by the Prime Minister is good or not is a separate question. Empirically, it was usual, not unusual.)

[10.7] WAS MR RAGI AWARE THAT MR ANDERSON DID NOT OWN THE PROPERTY?

One of the issues we have investigated is whether the POSFB, and Mr Ragi in particular, were aware that Katingo Pty Ltd (i.e. Mr Warren Anderson) did not own The Conservatory.

When Mr Ragi was summoned to give evidence before the Ombudsman Commission, this issue was raised with him, as follows:

OC	:	But in actual fact, as it transpired, did Anderson own the property or was it still held by Sarich, at that point in time [10 October 1994]?
<hr/>		
RAGI	:	I really don't know ... I never knew. We always went by the advice that they owned the property and we just didn't know that Sarich owned the property. ...

OC : Did you accept Sol Benn as being the vendor's agent?

RAGI : I had no reason not to.

We have great difficulty accepting Mr Ragi's oral testimony on this matter, as there is documentary evidence which shows he was aware the POSFB was not dealing with the owner of the property.

For example:

- On 24 September 1994, the POSFB received the Tony Roberts property report. This included a title search which showed that neither Mr Anderson nor any company associated with him was the registered owner of the property.
- On 7 October 1994 - three days before the POSFB decided to purchase The Conservatory - the Chairman of the Office Allocation Committee, Mr Peruka, and Mr Iamo of the Department of Finance, both wrote to Mr Ragi, raising concerns about the ownership of the property. They both said the information provided by Tony Roberts was inadequate in this regard and sought clarification of the role of Mr Anderson's company, Tipperary Developments Pty Ltd.
- Mr Ragi's response of 10 October 1994 was to say that he had been "advised that the property will be registered in the name of the subsidiary of Tipperary Developments Pty Ltd today or tomorrow after completion of formalities." (This turned out not to be the case, however, as the vendor, Katingo Pty Ltd, did not execute the instrument of transfer until 14 November 1994, just ten days before the contract of sale to Moki N° 10 Pty Ltd was signed.)
- On 12 October 1994, it was brought to Mr Ragi's attention by Pato Lawyers, in writing, that Katingo was not the registered owner. Mr Ragi made a notation on Pato Lawyers' letter which shows he read the letter.
- The contract of sale signed by Mr Ragi on 24 November 1994 included a special condition that "the vendor is entitled to become the registered owner of the land ... in pursuance of a contract made between the vendor and Cape Bouvard Investments Pty Ltd and dated 11th October 1994".

Chapter 10

How was the deal put together?

Our opinion is that the POSFB, and particularly Mr Ragi, *did in fact know* that Mr Anderson was *not the owner* of The Conservatory when the contract negotiations were conducted in October-November 1994.

In other words, Mr Ragi was aware they were dealing with a "middleman". So, again, this gives rise to obvious questions:

- Why didn't Mr Ragi negotiate with the owner of the property?
- Why did he allow himself to be pressured?
- Why didn't he take steps to stop the deal in its tracks?

Mr Ragi was aware that the deal was not transparent, but failed to do anything about it.

In his response to our preliminary report, Mr Anderson rejects the description of himself as a "middleman". Mr Anderson states that Tipperary and himself have built and sold over 70 shopping centres in Australia without a legal dispute about the price.

**[10.8] WAS THE POSFB AWARE OF THE AMOUNT MR
ANDERSON HAD PAID FOR THE CONSERVATORY?**

Another issue we investigated is whether the POSFB, and Mr Ragi in particular, knew that Katingo Pty Ltd (i.e. Mr Warren Anderson) had paid only \$9.75 million for The Conservatory.

When Mr Ragi was summoned to give evidence before the Ombudsman Commission, he stated that he first learnt how much Mr Anderson had paid for the property when he read it in the newspapers.

Mr Ragi also denied that the sale price to Mr Anderson was a matter of concern for the POSFB:

Well as far as I'm concerned, the price he [Mr Anderson] paid to them [Cape Bouvard Investments] is not relevant to me. All I'm worried about is what I'm going to get when I lease it. I still maintain the investment is proper and definitely enhances my property portfolio. I now have a liquid asset and I can sell it quite easily on the market if I had to, and I never had that before.

Having considered the documentary evidence, we consider that Mr Ragi's oral testimony was truthful on one point. The POSFB was *not aware* that Katingo Pty Ltd had paid only \$9.75 million, for a property it was selling almost immediately afterwards for \$18.72 million.

At one stage, in January 1995, the \$9.75 million figure was brought to the attention of Pato Lawyers by their Queensland agents, Barker Gosling. But Pato Lawyers failed to pass this information on to the POSFB.

Having said that, however, we consider that the POSFB, and Mr Ragi in particular, *should have inquired* about the price Katingo had paid, given the peculiar circumstances in which the transaction was taking place. The contract of sale should not have been signed by Mr Ragi in the absence of this vital information.

We are not persuaded by Mr Ragi's explanation that the price Katingo (Mr Anderson) paid for the property was irrelevant, in view of the proposed lease of the property to the State. This simply avoids the pressing issues:

- If Mr Anderson was able to negotiate to buy the property for \$9.75 million just a few weeks before selling it to the POSFB for almost double that amount, why didn't the POSFB deal directly with the owner in the first place?
- Why didn't the POSFB negotiate the purchase price, instead of sitting idle as it accelerated?

We have been unable to identify satisfactory explanations of these issues.

[10.9] POSSIBLE BREACH OF CONTRACT BY KATINGO PTY LTD

In the contract of sale for The Conservatory there was a special condition under which the vendor, Katingo Pty Ltd, warranted that it was entitled to become the registered owner of the land in pursuance of a contract between it and Cape Bouvard Investments Pty Ltd, dated 11 October 1994.

We are unable to say whether, in fact, such a contract existed.

The uncertainty arises in light of a response by Mr Solly Benn to a fax from Mr Joseph Wingia, who wrote in his capacity as Acting Managing Director of the POSFB on 11

January 1996, inquiring about the contract between Katingo and Cape Bouvard Investments referred to in the contract of sale.

Mr Benn stated:

We write in response to your letter of today's date. There is no contract between Katingo Pty Ltd and Cape Bouvard Investments. Katingo Pty Ltd purchased the above property from Asia Securities Pty Ltd, a property investment company, which has large investments throughout Australia.

We therefore do not have access to the purchase contract between Asia Securities Pty Ltd and Cape Bouvard Investments. To obtain the original purchase contract, we would need to contact Asia Securities, who we feel would not supply this detail as we understand the contract has confidentiality clauses. However, should you wish we can forward a copy of Mr Bill Wyllie's (Asia Securities) recently published press statement, then please feel free to contact our office at your convenience.

In his response to our preliminary report, Mr Benn again stated:

Cape Bouvard Investments and Asia Securities entered into a legal agreement relating to the sale of the Cairns Conservatory property. Katingo Pty Ltd took an assignment of the Asia Securities interest and then fulfilled the contract obligations.

We have not examined the agreement between Cape Bouvard and Asia Securities which provides for the option to purchase. However it is unlikely that such a document included the actual contract of sale. Normally, once an option has been exercised, the parties then enter into an additional contract of sale. After Asia Securities assigned its option to Katingo, and Katingo exercised that option, Katingo would then enter into a separate contract for sale with Cape Bouvard.

If a contract was not in existence, Katingo was in breach of the warranty it gave the POSFB in the contract of sale. The warranty clearly indicated that there was a contract between Katingo and Cape Bouvard Investments. The POSFB could have terminated the contract to purchase the Conservatory.

In any event, the POSFB and its lawyers should have taken steps to ensure that Katingo did comply with these warranty conditions.

[10.10] SUMMARY OF CONTRACTUAL ARRANGEMENTS

- There is some uncertainty surrounding the precise chain of transactions which resulted in The Conservatory being sold to Moki No 10 Pty Ltd.
- But it is clear there were at least two other companies involved, in addition to Katingo Pty Ltd.
- All of the companies, other than Moki No 10 Pty Ltd, made substantial profits from the transactions.
- Mr Warren Anderson's Katingo Pty Ltd appears to have made a gross profit of approximately \$7 million.
- Mr Ragi and the POSFB were aware they were dealing with a "middleman", who was not the owner of The Conservatory.
- But Mr Ragi and the POSFB made no attempt to find out what the middleman had paid for the property.
- In the contract of sale, there is a possibility that Katingo may have misrepresented the circumstances in which it was acquiring The Conservatory; and if that is established, the POSFB may be entitled to damages for breach of contract.



11. WHAT WAS THE MARKET VALUE OF THE CONSERVATORY?

[11.1] OVERVIEW

In order to investigate the purchase of The Conservatory, it was necessary to obtain an authoritative valuation of the building. For this purpose, the Ombudsman Commission engaged an independent and qualified valuer.

In this chapter, we summarise the valuation undertaken and compare its methodology with that used in the two reports obtained by the POSFB in 1994 to justify purchasing The Conservatory for \$18.72 million. We also refer to another independent valuation undertaken in 1996.

We conclude by giving our opinion of the market value of The Conservatory at the time it was purchased in late November 1994.

[11.2] ENGAGEMENT OF JONES LANG WOOTTON: NOVEMBER 1995

Valuation of properties is a technical skill. In Australia, valuers are registered with professional associations which regulate their conduct and maintain ethical standards. Banks and other financial institutions, before agreeing to finance the purchase of properties, almost invariably insist on having them assessed by licensed, qualified valuers.

After considering a list of organisations licensed to value properties in Queensland, the Ombudsman Commission decided to engage the services of Jones Lang Wootton Advisory Services Pty Ltd, Queensland, Australia (hereafter referred to as JLW), which is a well known and reputable valuer.

JLW was also engaged to prepare a valuation of Malagan House, Brisbane (the building which houses the Consulate-General of Papua New Guinea). The total cost to the Ombudsman Commission of these two reports was \$15,000.00.

JLW was instructed to pay particular attention to the level of prevailing market rentals and to provide an objective assessment of the market value of the property, subject to the existing tenancy agreements, as at late 1994-early 1995.

JLW appointed Mr Dennis Gowing to carry out the valuation. He is the holder of a certificate of valuation (No. 1442) issued by the Real Estate Valuers Registration Board of Queensland. To prepare the report, Mr Gowing travelled to Cairns, where he conducted a physical inspection of The Conservatory and its environs in late November 1995.

[11.3] THE JLW REPORT: DECEMBER 1995

In December 1995, the Ombudsman Commission received the valuation report by JLW. The report was 19 pages in length, plus annexures.

Description of property

The report began with a detailed description of the property (location, improvements, site details, tenancy, zoning, statutory information, title references and services).

The Conservatory's location was described as follows:

The property is currently located on the periphery of the CBD and appears to lack adequate pedestrian traffic flow. The heart of the CBD is located further along Abbott Street where a number of major retailers are located (including prominent duty free shops, retail arcades and supermarket).

It was added, however, that pedestrian traffic within this region of Cairns should increase dramatically with the completion of the casino.

The improvements to the property were said to be in a reasonably good state of repair.

Tenancy details

It was noted that all leases generally contain similar provisions requiring each tenant to pay a base rental, subject to annual review. Ground floor tenants are required to contribute to the outgoings for the property.

Financial analysis

- Total annual lease rental received from the complex is \$257,647.00. This was considerably lower than the figure assumed when the POSFB was deciding to purchase the building: \$430,000.00.
- Rental rates vary according to the location of the space within the building:
 - > Ground floor - \$213.00 - \$570.00 per square metre.
 - > 1st floor - \$200.00 - \$217.00 per square metre.
- Outgoings for the premises (cleaning, electricity, fire levy, insurance, pest control, repairs and maintenance etc) were approximately \$275,000.00 per annum, of which \$51,901.00 was estimated to be "recoverable" (i.e. the owner of the building can recover it from the tenants, as a top-up on their rent).
- Estimated gross income of The Conservatory at the time of sale, prior to deducting a vacancy provision and annual outgoings, was therefore:

base lease rental	\$254,647.00
recoverable outgoings	<u>51,901.00</u>
	\$306,548.00

- There is "enormous potential" to increase revenue over the next few years, due to the new casino and possible redevelopment of the adjoining property.
- But regard must be given to the features of the property at the time of sale:

The facts are clearly evident. The property is substantially vacant and we understand that the complex has had a vacancy problem for some time. Moreover, there has been little rental growth and even though it is acknowledged that discussions are currently under way with a number of potential tenants, there is an element of risk to any purchaser in endeavouring to achieve full occupancy in circumstances suggesting that in the short term this may not be possible. Therefore any risks associated with obtaining full occupancy or higher rental growth will be reflected in the price paid. A prudent purchaser will allow for an appropriate period to obtain full occupancy, together with all associated costs involved in achieving this goal. This will include any capital or tenancy costs, professional fees, leasing fees, advertising and so on.

Market analysis

The market analysis was undertaken from two perspectives: rental data and sales data.

Rental data

- The Conservatory's average rentals at the time of assessment (November 1995) were:
 - > 1st floor - \$209.00 square metre (gross).
 - > Ground floor - \$344.00 per square metre (net)
- \$434.00 per square metre (gross).
- For comparative purposes, JLW examined the levels of rental being received in similar retail/commercial properties:
 - > Village Lane, adjacent to Cairns International Hotel, considered to be "slightly superior to The Conservatory".
 - > Ground level of the National Mutual Building, opposite in Lake Street, described as "marginally inferior to The Conservatory, however, ground floor tenants have the advantage of high pedestrian flow due to the presence of other office tenants in the building".
 - > Palm Court, adjacent to the north on Lake Street, described as "slightly inferior overall, but appears to enjoy a better traffic flow".
- Based on a comparison with the above rental evidence and having regard to the existing rentals achieved within The Conservatory, JLW then arrived at "estimated average market rentals" applicable to The Conservatory:
 - > 1st floor - \$250.00 square metre (gross).
 - > Ground floor - \$380.00 per square metre (net; plus recoverable outgoings).

Sales data

- In assessing sales data, it was noted that there had been no *recent* comparable sales. However, the following sales were considered:
 - > Palm Court, two level retail/commercial complex, Lake Street - sold for \$6.35 million in December 1993.
 - > Old Cairns Post Office, Abbott Street - sold for \$5.5 million in January 1994.
 - > Two level, retail commercial building, 47 Abbott Street - sold for \$6.3 million in December 1993.
 - > Rydges Plaza, large hotel complex with retail uses on the ground floor, 32 Spence Street - sold (in "stressed circumstances") for \$9.8 million in August 1993.
- JLW concluded, having regard to the above data and their general knowledge of the investment market prevailing throughout Queensland, that a prudent purchaser would attempt to achieve a net yield of 10-11% for The Conservatory, assuming a fully leased development.

Valuation rationale

JLW's valuation was based on the capitalisation of income approach:

Our valuation of the property is based on the capitalisation of income approach which is believed to be the most appropriate method in this instance. The method entails the assessment of the achievable net income from the property (fully leased) after deducting all appropriate annual outgoings. The deduced income is capitalised at a rate determined from comparable market transactions to arrive at a value of the centre fully leased. All necessary costs to be incurred in securing full occupancy are deducted including leasing fees, letting-up allowances during the interim period when rental is not being received but outgoings must still be met, items of a capital nature and any other appropriate expenses.

In this instance we have adopted capitalisation rates of 10% and 11% as at the date of sale and have assumed that full occupancy may not be achieved for a period of two years. Rental rates of A\$380 (net) and A\$250 (gross) have been adopted for remaining vacant tenancies, with leasing fees included at a rate of 10% of annual

lease rental. Promotion expenses have also been deducted at an amount of A\$20,000 assuming a prudent owner would endeavour to secure tenants as soon as possible and would utilise media outlets and other means to assist in this aim. Annual outgoings have been assessed at a rate of A\$92 per square metre and we have assumed a rate of recovery for new tenants on the ground floor at A\$74 per square metre after deducting for Land Tax (non-recoverable). Provision for vacancies of 5% of income has been allowed to reflect the potential difficulties of sustaining full occupancy in perpetuity.

We have not allowed for any reversionary rental growth for existing tenancies given the high vacancy factor and the unlikely event that this can be achieved. Similarly, we have not prepared a discounted cash flow for the investment given the difficulties in accurately assessing future income levels and future rental growth without the assistance of a detailed market report including a supply/demand analysis, demographic survey, net effects from the Casino, etc.

We have deducted an amount of \$200,000 for capital works including rectification of damaged tenancies and partial contribution to incentives/fitout.

A summary of calculations was presented as follows:

Current Lease income

Ground Floor	\$225,823
First Floor	<u>28,824</u>

\$254,647

Potential additional income

Ground Floor 1,063 sq m @ \$380 (net)	\$403,940	
First Floor 1,165 sq m @ \$250 (gross)	<u>\$291,250</u>	\$695,190

Recoverable outgoings

(i) Current	\$ 51,901	
(ii) Additional recovery from new Ground Floor tenancies: 1,063 sq m @ \$74/m2	<u>\$ 78,662</u>	<u>\$130,563</u>

Estimated Total Gross Income

Fully leased:	\$1,080,400
---------------	-------------

Deduct Vacancy Provision @ 5%	<u>54,020</u>
	\$1,026,380
Deduct estimated annual outgoings:	<u>\$ 275,000</u>
Deducted estimated annual net income (fully leased)	<u>\$ 751,380</u>

Valuation and conclusion

JLW formed the opinion that the estimated market value of The Conservatory in November 1994 was:

- \$5.75 million - \$6.5 million.

[11.4] RESPONSES TO THE JLW VALUATION

In his response to our preliminary report, Mr Tony Roberts disagreed with the JLW valuation.

As you might expect, I have great difficulty with JLW's estimate of market value at \$5.75m - \$6.5m, even considering that it was prepared with the benefit of hindsight. As previously advised I am prepared to debate the question of the respective valuations whenever required. At this stage, it will suffice to point out that the valuation by the Australian Valuation Office, traditionally conservative, put its value at \$8m. Query whether the Australian Valuation Office valuation included the building which has subsequently been estimated by a quantity surveyor to be worth \$7,385,000.00 not including escalators or air conditioning, on top of the value of the land. If the Australian Valuation Office's valuation is, an unimproved valuation, the land value is to be put on top of the quantity surveyor's figure.

Mr Benn, of Tipperary Developments Ltd, also disputed the JLW valuation in his response to our preliminary report.

We dispute your calculations concerning the valuation of the property. The value of the Cairns property can be calculated using varying methods. A simple property replacement calculation would be in excess of AUD \$16 Million Dollars. The land alone is worth more than AUD \$8 Million Dollars. There is no mention in your Report of a replacement cost. The Report seems to be based on newspaper inferences and innuendo and not the realistic commercial value of the property.

Mr Cho, Manager, Investment Projects at the POSFB stated:

Another concept which the Commission's investigators do not seem to understand correctly is the concept of value as understood in the investment industry.

"Valuation is not an exact science - it is an opinion expressed by the valuer which is based on analysis." (Securities Institution Education *Property Investment Analysis*, The Securities Institute of Australia, Sydney, 1996, pp. 3.)

Hence, JLW's estimated market value can only be subjective despite the instructions for an objective assessment of the market value.

Mr Cho claimed that JLW's estimated potential income from sub-tenants is irrelevant to the POSFB, because of the head lease to the State.

[11.5] AUSTRALIAN VALUATION OFFICE REPORT

In February 1996, the Auditor-General of Papua New Guinea obtained a valuation report on The Conservatory prepared by the Australian Valuation Office. The valuation was prepared in accordance with the following assumptions:

The ... market value is on the basis of the highest and best use, reflects the inherent potential of the property, and is the price at which an interest in the property might reasonably be expected to be sold at the date of valuation on that basis assuming:

- (a) a willing buyer and a willing but not anxious seller;
 - (b) a reasonable period within which to negotiate the sale, taking into account the nature of the property and the state of the market;
 - (c) that values will remain static during that period;
 - (d) that the property will be freely exposed to the open market; and
-

-
- (e) that no account will be taken of any higher price that might be paid by a purchaser with a special interest.
-

The Australian Valuation Office formed the opinion that the market value of The Conservatory in October/November 1994 was:

- \$8 million.

[11.6] STATUS OF THE TWO MARKET APPRAISALS OBTAINED BY THE POSFB

Before executing the contract of sale for The Conservatory, the POSFB obtained two "market appraisals":

- In September 1994, Tony Roberts Real Estate concluded that the market price of the building was **\$18.9 million**.
- In October 1994, Crockford Property consultants estimated the market value at **\$21 million**.

As we indicated previously, it was dangerous for the POSFB to rely on these appraisals as they were prepared by real estate agents who were not qualified or registered as valuers. Furthermore, both appraisals were arranged by Mr Solly Benn, representing the vendor of the property, Katingo Pty Ltd. Mr Crockford's report was paid for by the vendor. Mr Roberts' report was prepared in consideration for being later granted property management rights. The appraisals were not independent.

It must also be said, having regard to the detailed facts and accepted methodology used in the JLW Report, that the Roberts and Crockford reports were fundamentally flawed. For example:

- They gave descriptions of the location of the property (Roberts: "heart of the CBD"; Crockford "prime CBD area") the falsity of which would have been apparent to any reasonable, casual visitor to Cairns.
- They used unrealistic comparative rentals. This had the effect of:

- (a) artificially inflating the expected income of The Conservatory; and consequently
 - (b) artificially inflating its projected value.
- They assumed immediate realisation of maximum leasing capacity of the building, overlooking the fact that at the time their appraisals were prepared, The Conservatory had an occupancy level of only 25%.
 - They failed to have regard to any of the costs associated with achieving maximum leasing capacity.

Mr Roberts disagrees with the four dot points above. He claims the "CBD" is a matter of personal definition, and The Conservatory is located in the heart of the CBD. He also claims the comparative rentals were realistic, and based on the continuation of existing tenancies and the future tenancies by Papua New Guinea agencies. Mr Roberts states again that his report was based on the immediate realisation of maximum leasing capacity provided by the Papua New Guinea government. The government lease would result in 100% occupancy.

The Ombudsman Commission has carefully considered Mr Robert's contentions. However, in the opinion of the Ombudsman Commission, neither the Roberts report nor the Crockford report could be regarded as providing a legitimate value.

Both reports were based on incorrect data. The reports lacked substance.

[11.7] MARKET VALUE OF THE CONSERVATORY

In determining the market value of The Conservatory for the purposes of this investigation, we have disregarded the opinions provided in the Roberts report and the Crockford report, as we consider that neither was credible or acceptable to any reasonable person.

Two legitimate valuations have been prepared by qualified and independent valuers, who gave the following assessments:

- JLW Advisory - \$5.75 million to \$6.5 million.

- Australian Valuation Office - \$8 million.

The Ombudsman Commission considers, having regard to these legitimate valuations, that the approximate market value of The Conservatory in November 1994, was:

- **\$7 million.**

That the POSFB agreed to pay more than two-and-a-half times that amount - \$18.72 million, later increased because of exchange rate adjustments and other factors - is a matter of very serious concern.



12. ROLES OF INDIVIDUALS AND FIRMS

[12.1] INTRODUCTION

The contract of sale for The Conservatory was between two companies, Katingo Pty Ltd and Moki N° 10 Pty Ltd. However, in order to draw conclusions as to the conduct of the governmental bodies and officers involved, it is necessary to consider the roles played by particular individuals in the transaction. Not only public officials, but also private individuals.

In this chapter, we summarise the roles played by individuals who were involved in The Conservatory transaction and other arrangements and transactions referred to in this report. We consider not only those who actively promoted the purchase, but also those who were in a position to advise against it but failed to do so; or, as in some cases, changed their minds.

The inclusion of a person's name in this chapter is not intended to indicate, for that reason alone, that the person has done anything wrong. No adverse implication should be drawn simply by reason of the inclusion of a person's name. Where we consider it necessary, however, we do, for the purpose of reaching our findings as to wrong conduct and defective administration, comment adversely on the conduct of certain individuals.

Many of the individuals, mentioned in this Chapter, responded to comments we made in the equivalent chapter of the preliminary report. In the interests of fairness, we have quoted at length from an individual's response. We have noted where an individual did not respond to the preliminary report. Where appropriate, we give our deliberations and views on an individual's response.

The names are listed in alphabetical order.

[12.2] **WHAT ROLES DID VARIOUS INDIVIDUALS PLAY IN
THE CONSERVATORY DEAL AND OTHER ASSOCIATED
TRANSACTIONS AND ARRANGEMENTS?**

Kila Ai

Mr Ai was the Acting Secretary for Finance at various times when The Conservatory purchase was analysed by the Department of Finance. He is currently employed by the Central Provincial Government.

In October 1994, the Secretary for Finance and Chairman of the POSFB, Mr Aopi, was absent and Mr Ai was Acting Secretary and an acting member of the Board of the POSFB.

Mr Ai did not attend the POSFB meeting on 10 October 1994, when it was decided to purchase The Conservatory. On the following day, however, he briefed Prime Minister Sir Julius Chan on the purchase. On that day, he also received an instruction to prepare a recommendation for the Prime Minister's approval. Mr Ai did not question the nature or extent of the Prime Minister's involvement in the matter, which was irregular.

On 13 October 1994, Mr Ai sent a draft lease to Sir Julius for his "reference and approval". This assumed that the State would agree to enter into a lease purchase agreement covering the *entire* building for ten years. Mr Ai fell into error at this stage by simply giving the Prime Minister the advice he thought the Prime Minister wanted to receive - rather than giving his advice from an independent standpoint.

Soon after his initial advice to the Prime Minister, Mr Ai signed another document formally recommending that Sir Julius's approval as Acting Minister for Finance be given for purchase of The Conservatory. Mr Ai based his advice on a valuation of the property undertaken by Crockford Property Consultants of Cairns. That valuation, however, was neither legitimate nor independent - facts which should have been manifestly obvious to Mr Ai.

Mr Ai supported a very bad investment decision, due to political pressure.

In his response to our preliminary report, Mr Ai denied that he provided bad advice under political pressure.

The letter of 13 October 1994 in relation to which you appear to have difficulty is simply a letter to the Acting Minister for Finance. It accompanied a simple two page document which you have called a lease. The so called lease was a draft Heads of Agreement. It set out the terms of the proposed lease. These terms were previously referred to in correspondence from the POSFB. The Heads of Agreement were incomplete and did not even have provision for signatures on behalf of either party. In my letter of 13 October 1994 I stated that the Heads of Agreement could be used to pursue detailed discussions which would lead to formal agreements on the lease-purchase of The Conservatory, the option for the State to purchase the building, and the statutory approvals required by POSFB and the State.

I wish to emphasise that the draft document was to be used simply as the basis for negotiation only. Contrary to your statement at page 356 of your Preliminary Report, I did not fall into the error of providing to the Prime Minister the advice that I thought he wanted. I provided a basic tool for the purpose of further negotiation. It is my belief that you have read too much into a simple document.

I presume that it is my letter of 26 October 1994 which you have referred to as my letter of a week after "his initial advice to the Prime Minister". In that letter I referred to what was in fact a submission from the POSFB to the Minister for Finance seeking certain approvals in relation to the purchase of The Conservatory.

As Acting Secretary, a person who had no previous dealings with the proposed purchase, I would suggest that it was in fact the duty of the management of the POSFB to point out to me that the purported "valuation" was not in fact a valuation at all but rather only a 'market assessment' and that it was obtained from persons recommended by the vendor's associates.

The Ombudsman Commission has considered Mr Ai's comments. Our opinion, however, is that Mr Ai acted negligently by giving his advice to Sir Julius Chan. If Mr Ai had been more prudent, and been prepared to give independent advice, it is likely that the decision to purchase The Conservatory would have been forestalled. We do not consider Mr Ai is able to escape responsibility by arguing that it was the duty of the POSFB to point out the flaws in the valuation. Mr Ai should have brought his own assessment to bear on the proposal.

Warren Anderson

Mr Anderson was a director and major shareholder in the two companies directly involved in the sale of The Conservatory to the POSFB, Tipperary Developments Pty Ltd and Katingo Pty Ltd. Mr Anderson is based in Perth, Western Australia. He is a well-known property developer and businessman.

Mr Anderson's company, Tipperary Developments, was also the proponent of the proposal put forward in 1994 to build a series of office buildings at Somare Circuit Waigani on land owned by a company in which Sir Julius Chan had a controlling

interest.

We estimate that Mr Anderson's company Katingo Pty Ltd made a profit of approximately \$7 million from the sale of The Conservatory to the POSFB.

Mr Anderson made the following general comment about the preliminary report:

You have been focussed in the wrong direction in your report - you believe what the press have written and pick up that information and ran with it. This is obvious from the collection of newspaper articles in your report. You do not know the facts. You have collated your information on assumptions and what you think happened and not what you know happened.

I resent your inferences in your report. I refute them and suggest that you don't know what you are talking about.

Gerea Aopi

Mr Aopi was the Secretary for Finance, and Chairman of the POSFB, when the decision was made to purchase The Conservatory in October 1994. He is currently employed by Oil Search Limited, as Government and Corporate Affairs Manager.

Mr Aopi was absent overseas when the POSFB's crucial decision of 10 October 1994 to purchase The Conservatory was made. He was also absent when the Acting Minister for Finance, Sir Julius Chan, was advised in October 1994 to approve the purchase. He was also absent from the special meeting of the POSFB on 23 January 1995 when it was decided to change the finance package and provide a loan of K13.5 million to Moki N° 10 Pty Ltd.

Mr Aopi made no recorded objection to the purchase of The Conservatory. Nor did he express any concern about the price being paid or the procedures adopted before any of the above decisions were made.

As Chairman of the Board, he should have raised strong objections to the purchase, once he became aware of the matter.

In his response to our preliminary report, Mr Aopi emphasised that he was absent from the crucial meetings. He denied that he was responsible for the Board's decision.

The persons responsible for the decisions of the Board are those members of the Board who were present and participated in the decisions.

As Chairman of the Board I am not responsible for the day to day operations of the POSFB, that is for the Managing Director and his staff. I work on the basis that for the day to day operations of the POSFB the Management undertakes the necessary activities to ensure that the interests of the members are protected and that all of the necessary administrative procedures are followed. This includes the obtaining of valuations of properties...

In the light of the critical publicity in the Australian media in relation to investment in Papua New Guinea and the floating and devaluation of the Kina it was, in my judgement, not possible to rescind the contract to purchase The Conservatory without doing further damage to Papua New Guinea as an investment destination or as a country with whom people should do business. There was also the problem relating to the loss of the deposit that paid if the sale had been rescinded. The Acting Minister for Finance had given the required approval to the purchase as required by Section 60 of the *Public Finances (Management) Act 1986* and the Minister for Finance approved the revised financing plan and a variation of the contract to purchase had been entered into. It appeared to me that there was nothing further that I could do in relation to the purchase.

The Ombudsman Commission has considered Mr Aopi's comments. We accept his submission that he is not responsible for the day to day operations of the POSFB. However we remain of the view that, as Chairman of the Board, Mr Aopi had a responsibility to very carefully assess this major proposal. We do not consider Mr Aopi discharged this responsibility.

Mark Basausau

Mr Basausau was a senior officer of the Department of Finance and a member of the Office Allocation Committee. He no longer holds those positions, nor holds any other public office.

Mr Basausau acted improperly in March 1995 when he wrote on behalf of the Chairman of the Office Allocation Committee, Mr Peruka, to the POSFB, advising that the Committee would lease all office space within The Conservatory for a period of seven years at \$700.00 per square metre. This was an extraordinarily generous, and ill-conceived, commitment.

No such commitment should have been made without the authority of the Office Allocation Committee. Mr Basausau had no authority to write this letter and he acted without the knowledge of Mr Peruka or other members of the Office Allocation Committee.

Mr Basausau later represented the POSFB in negotiations regarding the lease of The Conservatory.

In his response to our preliminary report, Mr Basausau made the following general comments regarding his actions:

The actions taken as incumbent of Deputy Secretary Financial Operation in implementing the instructions from Secretary Peruka and Aopi was administrative and within the administrative procedures of Office Allocation secretariat and public services. As the manager and subordinate, it was my duties to implement their decisions and instructions provided that in my professional opinion and judgement that these were appropriate and within the Public Services (Management) Act and General Orders, Public Finance (Management) Act and Financial procedures. I believe they were and I acted on it.

I had nothing to gain nor were influenced in any way to implement the bosses decisions and instructions. As a Manager it were part of my official duties and I performed to the best of my ability within the frame work of the administrative process governed under the Public Services General Orders and Financial procedures.

It appears that Mr Basausau's role was poorly defined. He was obeying instructions without being clear on who had the ultimate authority and responsibility.

John Ban

Mr Ban is a senior officer of the POSFB. In December 1994 - January 1995, he was the Acting Managing Director when Mr Ragi took recreation leave. He is currently Acting Managing Director of the POSFB.

December 1994 - January 1995 was a critical time in The Conservatory transaction, as the contract of sale had been signed but finance was not available to complete the purchase. Mr Ban received legal advice that the POSFB could terminate the contract, but was left with no instructions by Mr Ragi and appeared to have little idea of the seriousness of the situation.

In his response to our preliminary report, Mr Ban denied that he had acted improperly.

Sir, I wish to point out that I have diligently exercised my responsibility under these circumstances and have taken the course of action in good faith in the interest of the Board.

Therefore the comments attributed to me in the Ombudsman report is out of context and does not give a true picture of what has actually transpired in relation to my involvement in the transaction. I totally deny that I was involved in any conspiracy in relation to the Cairns Conservatory. I find it to be grossly

unfair for my name to be listed under those who failed to discharge their duties. The problems that have emerged on the transaction are directly linked to the manner in which the terms and conditions of the contract are drawn up of the contract were drawn up and agreed to. I was not a party to the manner in which the contract was executed, and I am not responsible for the subsequent problems it caused.

The Ombudsman Commission has deliberated on Mr Ban's comments. We accept his submission that he was not responsible for the terms and conditions of the contract.

However Mr Ban did not take any action when he had three legitimate opportunities to terminate the contract. He failed to appreciate the consequences of being unable to provide the balance of the purchase price on the date set for settlement under the contract. We consider that Mr Ban, as Acting Managing Director of the POSFB, should have made a greater effort to firstly, understand the terms and conditions of the contract, and secondly, use those terms and conditions to the benefit of the POSFB.

Solly Benn

Mr Solly Benn was a principal of Tipperary Developments Pty Ltd and Katingo Pty Ltd, the companies involved in the Waigani Redevelopment proposal and the sale of The Conservatory to the POSFB. He appeared to be Mr Warren Anderson's "right-hand man".

Mr Benn applied pressure on Mr Ragi to convene the meeting of the Board of the POSF on 10 October 1994. It appears that Mr Benn was relying on political patronage to bring about a favourable situation for himself and his business associate, Mr Warren Anderson.

He was the chief negotiator on behalf of Mr Anderson. He was instrumental in arranging for the services of Messrs Tony Roberts and Ted Crockford to prepare market appraisals of The Conservatory. These appraisals gave false and misleading valuations of The Conservatory and enabled the POSFB to be duped into buying the property for a price approximately two-and-a-half times its market value.

Mr Benn denied the appraisals were false.

The Conservatory Centre market appraisals are correct and legitimate. I did not employ the services of Mr Tony Roberts or Mr Ted Crockford (Crockford Property Consultants). Mr Roberts was never contracted by Mr W Anderson or Mr S Benn, his services were arranged for by Mr Lemeki and I did not, repeat, did not inflate the value of the centre to underpin Mr Anderson's price...

The property purchased by POSFB met the guidelines/criteria as presented to our Company and provided POSFB with an excellent asset. Katingo Pty Ltd has at all times conducted the business relationship in accordance with the financial terms agreed by the parties and any penalties imposed were not of our making.

The Ombudsman Commission does not agree with Mr Benn that The Conservatory was "an excellent asset". The two market appraisals were instigated by Mr Benn, and enabled Katingo Pty Ltd to make an inordinate profit.

Anthony Boge

Mr Boge was the lawyer, based in Brisbane, who has handling the conveyance on behalf of Pato Lawyers Queenslands agents, Barker Gosling.

The advice he gave to the POSFB, through Pato Lawyers, was timely and professional.

Julius Chan

Sir Julius Chan was the Minister for Foreign Affairs and later Prime Minister when various decisions were made regarding The Conservatory. He was an unsuccessful candidate in the 1997 general election and no longer holds public office. He is no longer subject to the Leadership Code.

Sir Julius was involved, both directly and indirectly, in the purchase of The Conservatory. He was also responsible for the appointment of Mr Jacob Lemeki as PNG's Consul in Cairns. Sir Julius gave instructions to both Mr Lemeki and the Secretary for Foreign Affairs, Mr Dusava, regarding the purchase.

Sir Julius gave approval for the purchase of The Conservatory under the *Public Finances (Management) Act*, as the Acting Minister for Finance. He took an unusually active interest in the purchase.

At the same time that The Conservatory purchase was being put forward, a company associated with Sir Julius, Kalang Pty Ltd, stood to gain substantially from the Waigani Redevelopment proposal. The proponents of both the Waigani proposal and The Conservatory were Warren Anderson and Solly Benn. A personal friend and political ally, Mr Violaris, also stood to gain if the Waigani project went

ahead.

This connection placed Sir Julius in a conflict of interests. The impartiality required of his public office was conflicting with the potential benefit to himself and his associates. Sir Julius was in a position where he could be perceived to be breaching the public trust.

In his written response to our preliminary report, Sir Julius denied vigorously that he was ever in a conflict of interests.

There is no association with Mr Anderson demonstrated. There is no conflict of interest established. It is a dreadful finding considering that it is made on the basis of no probative evidence.

In his oral response to our preliminary report, Sir Julius further explained his relationship with Mr Anderson.

The report mentioned Warren Anderson. Yes, I know Warren Anderson. I know him as a big successful developer in Australia and I have known him since 1985. He was up here at the invitation of the then Prime Minister or Minister for Agriculture to do, or to try to encourage him to do, investment in agriculture and I admired him. I admire this man.

The Ombudsman Commission has carefully considered Sir Julius's statements. Accordingly, we note the following:

- Kalang Pty Ltd and Mr Violaris stood to gain financially if the Waigani Redevelopment went ahead.
- Sir Julius had legal ownership of 75% of Kalang Pty Ltd. Sir Julius held these shares in trust for his political party, the People's Progress Party.
- Mr Violaris was a personal friend and political associate of Sir Julius.
- The proponents of the Waigani Redevelopment scheme stood to make a significant financial gain if The Conservatory purchase went ahead.
- Sir Julius took an active role in The Conservatory purchase and gave the final approval.

As Prime Minister, Sir Julius had an obligation to be beyond reproach in all aspects of his public decision-making. The public are entitled to expect fair, honest, open

and transparent decisions in all situations, and especially where tens of millions of public kina are to be spent.

As we state in our findings, we do not consider Sir Julius lived up to this obligation.

Pe Cho

Mr Cho was the POSFB's Manager of Investments at the time The Conservatory was purchased. He still holds that position.

Mr Cho prepared the business paper considered by the POSFB for the purpose of making its decision on 10 October 1994 to purchase The Conservatory. The business paper contained serious flaws and was unprofessionally prepared.

We believe that, like many other public officials involved in the decision to purchase The Conservatory, Mr Cho made the mistake of giving advice that he thought his superiors wanted to hear, rather than giving advice objectively and independently. It is apparent from the correspondence he had with financial institutions when the POSFB was trying to obtain a loan for Moki N° 10 Pty Ltd, that Mr Cho realised that the valuations being relied on by the POSFB were bogus. Nevertheless, he did not take the opportunity to raise this as a matter of serious concern, as he should have.

As we noted earlier, Mr Cho maintains that the investment was a good one for the POSFB. He states that in preparing the business paper he was following the instructions of his employer.

I was given the necessary information by my employer, the Managing Director of POSF, and I was instructed to prepare the business paper. I complied with those instructions diligently and professionally.

I had no other information from my employers to evaluate the commercial viability of the proposed investment. Besides, pursuant to my contract of employment, I was bound to comply with the lawful instructions of my employer. I did not consider the instructions given by my employer to prepare the business paper unlawful, and to this day, I maintain that view.

My business paper took into account the economic viability of the investment, through its projected returns. I was instructed to assume that the Papua New Guinea Government would take out a head-lease over the entire building. My cash flow projections were based on that assumption.

The Ombudsman Commission accepts Mr Cho's contention that he was instructed to prepare the business paper on the basis of the State leasing the entire building. However, we are of the opinion that Mr Cho, as the POSFB's Manager,

Investments, should have at least raised the question of market rentals and market value for the building. If, as proved to be the case, the State defaulted on rent payments, the POSFB needed to know the ordinary income potential of The Conservatory, and the corresponding investment risk.

In our view Mr Cho failed to discharge his responsibility to his employer, the POSFB.

David Coyle

Mr Coyle was the lawyer for Pato Lawyers handling the conveyance of The Conservatory. On numerous occasions, he brought matters to the POSFB's attention when decisions needed to be made; for example, alerting the POSFB to its rights to terminate the contract, even after it was signed.

Mr Coyle's advice was often ignored or not appreciated.

Ted Crockford

Mr Crockford was the second Cairns-based real estate agent to give a market appraisal of The Conservatory. He estimated its market value to be an incredible \$21 million.

Mr Crockford was interviewed by officers of the Ombudsman Commission in the course of this investigation. We are satisfied that he was paid by Katingo Pty Ltd, the vendors, for his market appraisal of The Conservatory. The document he prepared was a sham. Any reasonable person viewing the document objectively would have realised this.

Mr Crockford did not respond to our preliminary report.

Gabriel Dusava

Mr Dusava was the Secretary of the Department of Foreign Affairs & Trade when The Conservatory was purchased. In 1996, a leadership tribunal was established to inquire into allegations of misconduct in office against him, following an investigation by the Ombudsman Commission. He resigned as Secretary in October 1996. In the July 1997 general election, he was elected as the member for Yangoru-Saussia in the National Parliament. Mr Dusava was referred again to a leadership tribunal by the Public Prosecutor. He has since been found guilty of misconduct and dismissed from office.

Mr Dusava played a key role in the initial discussions regarding The Conservatory.

However, his advice was ill-informed and naive. He was willing to commit the State to pay outlandish rentals on The Conservatory to the POSFB.

Mr Dusava responded to our preliminary report in brief.

I wish to advise therefore that so far as your findings represent actions I had taken to carry out political directions both through formal and informal contacts in my previous capacity as head of Department of Foreign Affairs and Trade, I have taken good note of those findings as presented.

Aloysius Eviaisa

Mr Eviaisa was a member of the Board of the POSF when The Conservatory was purchased. He still holds that position. He participated in the decision of the Board on 10 October 1994 to purchase The Conservatory. The decision was unanimously made, so he must share responsibility for it.

Mr Eviaisa was appointed to the Board to be one of the contributors' representatives, but failed to protect their interests.

In his response to our preliminary report, Mr Eviaisa admits that as the decision was unanimously made, he must share some responsibility for it. However he explains that the factors presented by the Managing Director, especially the head lease to the Government, were extremely attractive.

As stated, I only acted upon information available and presented to the Board as attractive. Therefore I reject the allegations of being labelled to be responsible for the deal. I am not.

I also deny that I fail to protect the interest of the members.

At all times, I analysed the issues with members interest as paramount and first before making decisions.

The Ombudsman Commission is of the view that Mr Eviaisa failed to discharge his responsibility to the contributors of the POSFB. He approved a seriously flawed proposal that has resulted in a serious financial loss to the POSFB. If Mr Eviaisa had carefully and thoroughly examined the proposal he should have seen these flaws.

Chris Haiveta

Mr Haiveta was the Minister for Finance and Deputy Prime Minister during the period when decisions were made to purchase The Conservatory. He is still in the Parliament, and is currently the Minister for Labour and Employment.

Mr Haiveta was out of the country during a crucial period in October 1994 when Sir Julius Chan, acting in his position, granted statutory approval for purchase of The Conservatory. Mr Haiveta cannot be held to blame for the original decision.

However, Mr Haiveta came to play an important role in the matter in January 1995, when he granted approval of the refinancing package under which the POSFB lent Moki N° Pty Ltd K13.5 million to go ahead with the purchase. Mr Haiveta appeared to act without departmental advice in giving approval.

In the opinion of the Ombudsman Commission, when the public controversy arose in November 1995 Mr Haiveta misled the Parliament by suggesting that the decision to purchase The Conservatory was justified by two market valuations.

As we noted earlier, Mr Haiveta denies that he was wrong in approving the re-financing package without Departmental approval. Mr Haiveta considers he was entitled to assume that the decision of the POSFB, on which his approval was based, was made after careful consideration and on proper advice.

Mr Haiveta also denies being involved in a cover-up in his comments to Parliament and the press. He says that all his comments were made solely on the advice of the then Secretary for Finance, Mr Mulina.

In their response to our preliminary report, Mr Haiveta's lawyers state:

The conclusion ... that Mr Haiveta improperly gave his approval of the POSF's decision to advance Moki N° 10 Pty Ltd the loan of K13.5 million is not a proper conclusion on the facts. This statement is evident of the extensive bias in the Report. Mr Haiveta accepted the recommendation of the board of POSF which on its face appeared to be proper advice which was acted upon by our client.

The Ombudsman Commission does not agree that Mr Haiveta is entitled to unquestioningly accept the recommendation of the POSFB. The fact that the Minister's approval is required by law shows that he is not supposed to merely rubber stamp the POSF's decision. We remain of the opinion that Mr Haiveta acted improperly.

Vele Iamo

Mr Iamo was at all material times a senior officer of the Department of Finance. He is currently the Deputy Secretary (Finance) of the Department.

When the proposal to purchase The Conservatory was first mooted, Mr Iamo raised very serious and valid concerns about it. Likewise, with the associated proposal to lease the entire building to the State.

Like some others, however, Mr Iamo changed his mind. He was guilty of later giving advice that his political masters wished to hear, rather than objective and independent advice. At one stage, he changed his mind completely within the space of three days, without explanation, thus calling his professional integrity into question.

In his response to our preliminary report, Mr Iamo advised that, after his three initial concerns about the purchase were addressed by the POSFB, he felt he could change his mind about the purchase.

From the foregoing you will see that the specific concerns of the Department appeared to have all been satisfied and therefore I believe that my subsequent actions were in accordance with my previous advice.

Under the circumstances, as explained above, I believe that my behaviour was, at all times, consistent with that of an officer of the Public Service who attended to his duties in an objective and proper manner.

We do not consider that Mr Iamo's response adequately explains his about-face. On any objective analysis, his earlier concerns were not sufficiently addressed by the POSFB response.

Albert Kipalan

Sir Albert Kipalan was until 31 August 1994, the Minister for Public Service. On that date, he was appointed to the caretaker cabinet of Sir Julius Chan. On 7 September 1994, he was "substantively" appointed Minister for Lands and Physical Planning. He held that office until July 1997, when he was an unsuccessful candidate for the 1997 general election. He no longer holds any public office.

Sir Albert acted grossly improperly in September 1994 when he wrote to Mr Warren Anderson, approving the lease of three office buildings as phase 1 of the Waigani Redevelopment proposal, which Mr Anderson was planning to build for the POSFB. This would have involved a capital cost to the POSFB of K142.5

million and annual rental outlays by the State of K13.65 million. Sir Albert acted flagrantly in breach of all established and acceptable procedures.

Sir Albert interfered in the decision-making processes of the POSFB in other ways. He put considerable pressure on Mr Ragi and Mr Peruka to call the crucial 10 October 1994 meeting of the POSFB, which resulted in the decision to purchase The Conservatory.

In his oral and written responses to our preliminary report, Sir Albert denied putting pressure on anyone to call the 10 October 1994 meeting. He says he asked Mr Peruka to call the meeting, but did not pressure him to do so. This is in direct conflict with the way that Mr Peruka and Mr Ragi viewed the situation.

Jacob Lemeki

Mr Lemeki was the PNG Consul to Cairns during 1994. He was recalled in 1995 and was an unsuccessful candidate in the 1997 general election. He no longer holds any public office.

Mr Lemeki was the person formally responsible for promoting the idea of purchasing The Conservatory. He held initial negotiations with Mr Solly Benn and promoted the idea, at times, as if he were a representative of the vendor rather than an independent public official.

In his response to our preliminary report, Mr Lemeki maintains that he was never interested in The Conservatory until the proposal was put to him by Mr Benn. Mr Lemeki stated that the primary responsibility for the deal rests with Sir Julius Chan and Mr Ragi.

The Ombudsman Commission has considered Mr Lemeki's response. In our view, Mr Lemeki was foolish and naive in allowing himself to be manipulated into promoting the purchase of The Conservatory.

Michael Malabag

Mr Malabag was a member of the Board of the POSF and currently retains that position. He participated in the 10 October 1994 decision to purchase The Conservatory. The decision was unanimously made, so he must share responsibility for it.

Mr Malabag was appointed to the Board to be one of the contributors' representatives. But he failed to protect their interests.

In November 1995, when the controversy surrounding The Conservatory erupted, Mr Malabag attempted to publicly defend the actions of the POSFB, but did so in a manner which was ill-conceived.

In his response to our preliminary report, Mr Malabag denied failing to protect the interests of his contributors.

At no stage did I act against the interests of contributors as I have been genuinely serving them for two terms with the full support of my PEA National Executive.

In any board, Management is fully responsible for their presentation to the directors who can then deliberate, approve, reject or defer discussions on any investment proposal.

I will always remain proud of the that our contributors' organisation (POSF) has tremendously improved its financial status to what it is today with Union contribution on the board. I will not try to defend myself, as there is absolutely nothing on my part except for the decision to buy The Conservatory.

The Ombudsman Commission accepts that Mr Malabag intended to act in the best interests of contributors. However we remain of the opinion that Mr Malabag must bear some responsibility for the decision to purchase The Conservatory, which has proved extremely costly for the POSFB and the State.

In our view, Mr Malabag failed to appreciate the significance of his decision to vote in favour of the purchase. His response appears to indicate that he did not understand the importance of his actions, both in voting in favour of the purchase and later defending the purchase publicly.

Ugwalubu Mowana

Mr Mowana was a member of the Board of the POSFB. He no longer holds that position. He is currently with the Public Employees Association. He participated in the 10 October 1994 decision to purchase The Conservatory and must share responsibility for it.

Mr Mowana was appointed to the Board to be one of the contributors' representatives.

In his response to our preliminary report, Mr Mowana explained his decision to vote for the purchase of The Conservatory. He said that the information presented to the board showed an extremely good rate of return to the fund. Mr Mowana considered that, at the time, off-shore investment was favourably considered.

The Ombudsman Commission accepts that Mr Mowana intended to act in the best interests of contributors. However in the end he failed to protect their interests. There were many flaws in the proposal to purchase The Conservatory which a diligent board member should have picked up.

Rupa Mulina

Mr Mulina was appointed Secretary for Finance, and therefore became ex-officio chairman of the POSFB, in late 1995. We understand Mr Mulina no longer holds any public office.

Mr Mulina was not a party to any of the decisions regarding the purchase of The Conservatory.

However, when the public controversy surrounding the matter erupted in November 1995, he publicly defended the POSFB. Mr Mulina gave negligent advice to the Minister for Finance, Mr Haiveta, which resulted in Mr Haiveta misleading the public and the Parliament about the purchase of the Conservatory.

Mr Mulina also published an open letter in the local press to members of the POSFB in November 1995 which contained serious errors and false statements.

Mr Mulina admitted his actions were foolish.

I had no part in the purchase of The Conservatory and must now admit in "hindsight" that I was totally foolish to sign the public advertisement and the brief to the Minister for Finance. All these briefs were prepared by the Public Officer's Superannuation Fund.

The last two paragraphs [of the preliminary report, regarding the advice to Mr Haiveta and the open letter] are a result of advice from POSF and should be qualified or deleted.

The Ombudsman Commission has carefully considered Mr Mulina's response. However we consider that Mr Mulina acted more than foolishly. He showed extremely poor judgment. We note that out of all of the public officials who were incompetent surrounding The Conservatory purchase, Mr Mulina is the only one who is honest enough to admit he was foolish.

Mr Mulina must take responsibility for the incorrect advice given to Mr Haiveta and the errors in the open letter. It is not an excuse for Mr Mulina, as Secretary for Finance, to simply blame the advice from the POSFB.

Pato Lawyers

Mr Rimbink Pato is the principal of Pato Lawyers of Port Moresby. His firm acted for and received payment from both the POSFB and Katingo Pty Ltd in relation to The Conservatory transaction. Mr Pato is currently the Chairman of Finance Pacific Ltd, the State-owned company controlling the assets of the Motor Vehicles Insurance Trust, the Papua New Guinea Banking Corporation, MMI Pacific Insurance and Finance Pacific Investments.

In our opinion, Pato Lawyers was in a serious conflict of interests which was not disclosed to the POSFB. Pato Lawyers acted for the POSFB, which was the purchaser of The Conservatory, but agreed to be paid by the vendor for certain costs.

In their response to our preliminary report, Pato Lawyers argued that they were at all times acting on behalf of the POSFB, even though their services were being paid for by the vendor of the property. Pato Lawyers stated:

As previously advised we did not act for the vendor, we acted for the purchaser and we used our best efforts to advise the POSFB on its legal position and obligations.

As a matter of comment, although we did not act for both parties, there is in principle no objection to lawyers acting for both sides of no-contentions commercial business. However, although the vendor frequently bypasses its solicitors and dealt directly with us, we did not act for or advise or accept any responsibility whatever for the affairs of the vendor. It was the "other side" and we never had any doubt as to where our duty lay - towards POSFB, for which we acted to the best of our ability in the circumstances.

The Ombudsman Commission considers that the arrangements made by Pato Lawyers were dangerous and wrong, and effectively denied the POSFB independent legal advice in this major transaction.

Pato Lawyers gave incorrect advice to the POSFB in relation to the interest payments calculated under the Amending Deed. This advice resulted in a large sum of additional interest being paid by POSFB.

Pato Lawyers incorrectly advised the POSFB that they were obliged to pay the extra legal fees incurred by Katingo Pty Ltd (the vendor) at the time of final settlement. The POSFB paid this amount, which they were not legally obliged to.

Pato Lawyers also failed to alert the POSFB to the fact that it was agreeing to

purchase the property at a price which was almost double its most recent transfer price. This was an inexcusable lapse.

We have carefully considered the response made by Pato Lawyers to our preliminary report which is set out in Chapter 6. However, in the opinion of the Ombudsman Commission, Pato Lawyers provided substandard legal advice, and failed to act to a proper professional standard, while acting for the POSFB in the purchase of The Conservatory.

Tau Peruka

Mr Peruka was the Secretary of the Department of Personnel Management until 1996. He was an unsuccessful candidate in the 1997 general election. He no longer holds public office.

As the Secretary for Personnel Management, Mr Peruka was, ex-officio, the Chairman of the Office Allocation Committee and a member of the Board of the POSF.

He participated in the decision of 10 October 1994 to purchase The Conservatory, even though he had, just three days before, recorded very serious and valid concerns about the matter.

On a number of occasions he gave contradictory advice. Overall, he gave the impression that, though he knew what was being done was wrong, he could not find it within himself to make decisions without succumbing to political pressure.

Ereman Ragi

Mr Ragi was the Managing Director of the POSFB when all decisions regarding The Conservatory were made. He was also a member of the Board of the POSF. Mr Ragi is currently the Chief Executive Officer of the Cocoa Board.

He was the individual primarily responsible for implementing the decision to purchase The Conservatory.

When he gave oral testimony before the Ombudsman Commission, Mr Ragi suggested he was under political pressure regarding the purchase of The Conservatory. However, he seemed reluctant to advise the Commission fully and frankly what he meant by that; what form the pressure took; and where it came from.

He referred to pressure being applied by Sir Julius Chan and Sir Albert Kipalan.

However, in the absence of further evidence from Mr Ragi, we are forced to the conclusion that he must bear primary responsibility for the purchase of The Conservatory, which from any objective point of view, was a monumental financial disaster for the POSFB and its contributors and the State.

Mr Ragi's conduct was incompetent and negligent. His excuse for not arranging an independent and legitimate valuation of The Conservatory - that he did not want to commit the Fund to that expense - can be only be described as feeble. It was a dreadful error of judgment on his part.

On a number of occasions his conduct was not befitting of a senior executive officer of a governmental body. Any reasonable person would have realised that the appraisals the POSFB received from Tony Roberts and Ted Crockford were no basis for judging the property's worth.

His decision to sign the contract of sale on 24 November 1994 was made without obtaining a legal clearance from the POSFB's lawyers. This was another grievous error of judgment, exacerbated by the fact that when the contract was signed, Mr Ragi had not been able to arrange any finance for the purchase. These were the type of simple, fatal, errors that might possibly be made by ordinary working people who are purchasing their first home. They are not the sort of errors that the people of Papua New Guinea - in particular, the contributors to the Public Officers Superannuation Fund - expect a person in Mr Ragi's position to make.

Mr Ragi's negligence concerning The Conservatory continued in December 1994 and January 1995, when he took recreation leave and failed to leave instructions with his senior officers regarding settlement of the purchase. As a consequence, the POSFB needlessly incurred late payment penalties under the contract of sale with Katingo Pty Ltd, and missed more than one opportunity to terminate the purchase.

Mr Ragi was willing to grant too many concessions to Mr Warren Anderson and his company Katingo Pty Ltd. At one stage, he approved an arrangement which resulted in the POSFB paying Katingo Pty Ltd's legal fees. Mr Ragi was too prone to making gentlemen's agreements with Mr Anderson without the benefit of legal advice.

Mr Ragi did not respond to our preliminary report.

Tony Roberts

Mr Roberts is the Cairns real estate agent who prepared the first market appraisal on The Conservatory in September 1994.

Mr Roberts estimated that the building had a market value of \$18.9 million. For the reasons we stated earlier in this report, we regard Mr Roberts's report as worthless.

He did not hold his report out as a valuation. However, it was used as such by Mr Ragi, other officers of the POSFB and some officers of the Department of Finance. Mr Lemeki, the Papua New Guinea Consul, engaged Mr Roberts on the recommendation of Mr Solly Benn. The Papua New Guinea government did not pay for the valuation. Instead, it was agreed that Mr Roberts should obtain the property management rights if the building was sold.

As Mr Roberts makes clear in his report, he was not a qualified valuer. The report he prepared should not have been regarded as credible.

Mr Roberts' comments in response to our preliminary report are set out in detail in earlier chapters. We accept his contention that he was not directly engaged, nor directly paid, by the vendor of the property. However because Mr Roberts stood to gain by the purchase of The Conservatory, his market appraisal was neither independent nor objective.

Ralph Sarich

Mr Sarich was the principal of the company, Cape Bouvard Investments Pty Ltd, which owned The Conservatory up to November 1994, when it was transferred to Katingo Pty Ltd, and then almost immediately afterwards to the POSFB.

We estimate that Mr Sarich's company made a profit of \$2.85 million.

Dieter Seefeld

Mr Seefeld was the Managing Director of Air Niugini at the time when pressure was being put on Air Niugini to move its current offices in Shields Street Cairns to The Conservatory, and its offices in Brisbane to Malagan House. He no longer holds public office.

Mr Seefeld was reluctant to accede to the political pressure to which he was subject, given the cost to Air Niugini that would have been involved in a forced re-location of its offices.

Nicos Violaris

Mr Violaris was a Port Moresby based businessman when The Conservatory was purchased. He is a friend of Sir Julius Chan. He was for a brief period in 1995 the Deputy Chairman of the National Airline Commission. He resigned from that

position. He no longer holds any public office.

Mr Violaris was also a business associate of Messrs Warren Anderson and Solly Benn, whose company Katingo Pty Ltd sold The Conservatory to the POSFB and who were promoting the Waigani Redevelopment proposal in 1994. Mr Violaris was also, at one stage, approached to assist the POSFB in finding finance to support the purchase of The Conservatory.

Mr Violaris stood to gain financially if the Waigani Redevelopment proposal went ahead.

In his response to our preliminary report, Mr Violaris emphasised that the Waigani Redevelopment proposal did not go ahead, and that he had only a minor role in The Conservatory purchase.

I had no involvement with The Conservatory deal other than that Mr Ragi approached me to see if IMB could organise finance for POSFB. They called tenders for finance themselves but I was informed that the response from Australian Banks was negative. In the end, POSFB funded the purchase in-house and I had nothing to do with it.

Mr Violaris objected to being included at all in the Ombudsman Commission Report.

I have never held any leadership position in Papua New Guinea. I thus contend that the Ombudsman Commission is not entitled to make any adverse or derogatory comments in any final report about me. In any event, an analysis of the true facts, including those above, will reveal that there is no basis for making any adverse or derogatory remarks against me. I therefore request all references to me be deleted and not included in any final report.

Joseph Wingia

Mr Wingia was the Executive Manager Investments of the POSFB at all material times. He still holds that position.

Mr Wingia played a key role in the decision-making process which led to the purchase of The Conservatory. He jointly sponsored, with Mr Ragi, critical submissions approved by the Board of the POSF on 10 October 1994 and 23 January 1995. He was in a position to strongly object to and advise against the purchase of The Conservatory.

In his response to our preliminary report, Mr Wingia downplays his importance in making the decision to purchase The Conservatory.

I deny playing a key role in the decision making process in as far as the purchase of The Conservatory is concerned. As I have stated in my opening statement, I was only carrying out instructions and signed the initial Business Paper as was the requirement. I was not involved in negotiating the purchase price nor do I have a faint idea on how and who agreed on the purchase price.

If there is anything that my role in the purchase should be of concern, then it would be in negotiating the terms and conditions of the lease agreement with the State and in our effort to secure off-shore loans for Moki N° 10 Pty Ltd. These were the areas I got involved in and I believe I have carried out my mandate.

I deny having sufficient information before me at that point in time. The truth which the good Lord only knows, is that I had no such information as alleged in the report. All I had at that point was a profile of the building which was neither an offer or a contract of sale. Things like the Contract of Sale and Variation Agreements were not done with my involvement. That is the truth!

While it is true that I hold a senior position in the POSFB, I have no legal authority to put a stop to investment initiatives of the Board. It was not my duty to question the Board and the Managing Director. I was duty bound to carry out directives from the Board through the Managing Director.

The Ombudsman Commission accepts that Mr Wingia was not a member of the Board of the POSF. However his very senior position in the organisation and the nature of the role he played in the decision-making process means he must share responsibility for the decisions that were made.

Mr Wingia had sufficient information before him on which to base serious concerns. He should have realised that the market appraisals obtained from Tony Roberts and Ted Crockford lacked credibility.

Bill Wyllie

Mr Wyllie was a principal of Asia Securities Pty Ltd, which acquired an option to purchase the Conservatory in October 1994 from Cape Bouvard Investments Pty Ltd. Shortly afterwards, Asia Securities assigned its option to Katingo Pty Ltd for approximately \$2 million.

We estimate that Mr Wyllie's company made a gross profit of almost \$2 million from The Conservatory deal.



13. HOW CAN THE CONSERVATORY DEAL BE EXPLAINED?

[13.1] THE CAUSE FOR CONCERN

This investigation gives rise to an obvious cause for concern:

- The POSFB paid in excess of \$18 million for a property worth only \$7 million.

By any objective standard, this was a poor deal for the POSFB. In determining whether there was any wrong conduct or defective administration involved, the Ombudsman Commission has had to ask: How can such a deal be explained? Was it due to bad luck? Administrative incompetence? Was there corruption involved? Was there a conspiracy to defraud the POSFB?

The Ombudsman Commission's findings of wrong conduct by specific people are in the next chapter. However it is useful to summarise here the Commission's key findings of fact.

[13.2] KEY FINDINGS OF FACT

- The POSFB agreed to pay more than two-and-a-half times the market value of The Conservatory; a mark-up close to \$12 million.
- No independent valuation was sought or obtained.
- No market research was undertaken nor professional advice sought before the decision was made.
- The two market appraisals relied on by the POSFB were arranged by the vendor. The documents contained inflated values.
- The POSFB's decision to purchase the property was made on the basis of a seriously flawed submission prepared by senior officers of the POSFB.

- The meeting at which the POSFB decided to purchase The Conservatory was arranged in a rush, after "political pressure" had been put on the Managing Director Mr Ragi. The source of this pressure was the then Prime Minister, Sir Julius Chan, and the then Minister for Lands and Physical Planning, Sir Albert Kipalan.
- Pressure was also brought to bear on senior public officers, such as the Secretary for Personnel Management and Chairman of the Office Allocation Committee, Mr Tau Peruka. Mr Peruka succumbed to the pressure, resulting in him changing his mind.
- Mr Ragi promoted the idea of purchasing The Conservatory contrary to his own statements that the purchase could not go ahead without a commitment from the State to lease the entire building on a long term basis.
- The POSFB did not deal with the owner of the property. At all times it was dealing with a "middleman".
- There were in fact a number of "middlemen" involved. They all appeared to make substantial profits from the series of transactions which resulted in the sale of The Conservatory to the POSFB.
- The Prime Minister Sir Julius Chan played a significant role in expediting the purchase. At one stage, he instructed that a recommendation be prepared for his approval, even though he did not at that time have ministerial responsibility for the matter. He later granted approval in his capacity as Acting Minister for Finance, when the Minister for Finance was out of the country for a few days.
- On 24 November 1994, Mr Ragi signed the contract of sale without obtaining a legal clearance from the POSFB's lawyers. There was no finance in place at that stage and the proposed lease of the building to the State was still not finalised. There were a number of other serious irregularities surrounding execution of the contract of sale.
- The POSFB failed to take proper steps, having signed the contract of sale, to arrange settlement by the prescribed date. As a consequence, large sums of money were needlessly incurred in payment of penalties.

- There was also a dubious arrangement, apparently the product of gentlemen's agreement, which resulted in a foreign exchange rate adjustment in favour of the vendor.
- Pato Lawyers, who acted for the POSFB in the purchase of The Conservatory, were in a serious conflict of interests arising from the fact that they were being paid by Messrs Anderson and Benn.

[13.3] LINK BETWEEN WAIGANI REDEVELOPMENT AND THE CONSERVATORY

The Waigani Redevelopment proposal was initiated in March 1994 by Mr Warren Anderson and Solly Benn of Tipperary Developments Pty Ltd. They held discussions with Mr Ragi in Port Moresby. They proposed to build a new Government office complex at Somare Circuit on land held by Kalang Pty Ltd, a company in which Sir Julius Chan has a controlling interest.

The Waigani Redevelopment proposal continued to be advanced during 1994, at the same time that the proposal to purchase The Conservatory was promoted.

We conclude that Sir Julius Chan was in a serious conflict of interests regarding his involvement in the purchase of The Conservatory. This conflict derives from the fact that his political party, the People's Progress Party, stood to gain substantially in the event that the Waigani Redevelopment proposal went ahead. The Waigani Redevelopment proposal was being promoted by the same people that made a large profit from the sale of The Conservatory to the POSFB.

[13.4] POOR DEAL NOT DUE TO BAD LUCK

In attempting to work out how such a poor deal for the POSFB can be explained, one of the first things we must do is rule out the explanation that the deal was somehow due to bad luck. Or that the huge losses which have been incurred could not have been avoided.

All of the salient facts surrounding the deal - in particular the market value of the property and the price at which it was transferred just a few weeks before its sale to the POSFB - could easily have been obtained by the POSFB with a minimum of effort and expense.

In the Auditor-General's report into The Conservatory, he drew the following

conclusion about the financial viability of the purchase:

Based on the above facts, I am of the opinion that POSFB has imprudently invested in an overvalued asset. Additionally the expected returns, as there are several imponderables, will be inadequate to justify such an enormous investment of POSFB resources.

We conclude that the poor deal was due to both administrative incompetence and a lack of transparency on the part of those individuals involved.

[13.5] EXAMPLES OF ADMINISTRATIVE INCOMPETENCE

In earlier chapters we set out a number of aspects of the decision-making process which we regard to be wrong. However for the purposes of clarification we cite some of the examples again to illustrate our concerns:

- There was never an independent valuation arranged of the property.
- Mr Ragi let the vendors arrange the market appraisals.
- There was no negotiation of the purchase price.
- The contract of sale was signed without a legal clearance; and without finance being in place.
- No checks were carried out to ensure that the market appraisals were genuine.

[13.6] CORRUPTION AND A CONSPIRACY TO DEFRAUD

The nature and extent of the administrative incompetence and neglect of common sense involved in the purchase of The Conservatory was so great, we must inevitably consider the possibility that a conspiracy of some sort was in place to defraud the POSFB.

We find it very difficult to believe that a deal which was so terribly against the interests of the POSFB could take place without there being some special favours given to those involved.

We are driven to this conclusion by the manner in which the deal was put together. We

trust that our report will go some way towards a further and more intensive criminal investigation by appropriate authorities which have greater powers and capacity to obtain relevant evidence in this regard.

[13.7] CONDUCT OF SIR JULIUS CHAN

The conduct of Sir Julius Chan is of special concern to the Ombudsman Commission. Associates of Sir Julius had interests in the Waigani Redevelopment proposal and The Conservatory purchase. Sir Julius influenced processes, made decisions and promoted transactions, without declaring any of those interests.

When Sir Julius was involved in the Waigani Redevelopment proposal, he was in a position to make decisions about a proposal that, if it went ahead, would mean a significant financial gain for his political party. Commonsense says that this would also have resulted in a financial or political benefit to Sir Julius himself.

When Sir Julius was involved in The Conservatory purchase, he was making decisions about a proposal that, if it went ahead, would mean a huge financial gain to Mr Anderson and Mr Benn. Mr Anderson and Mr Benn were, at that time, putting forward the Waigani Redevelopment proposal, which, if it went ahead, would have meant a huge financial gain for Sir Julius's political party.

Although, at this time, Sir Julius was not in a direct business relationship with Mr Anderson and Mr Benn, he was involving himself in their transaction with The Conservatory at a time when they were offering Sir Julius, through his political party, a benefit via another proposal. This is a conflict of interests.

In our opinion, Sir Julius acted improperly. He did not maintain the highest standards of transparency and accountability. He did not live up to the standards expected of the country's Prime Minister.

Sir Julius's conduct, in failing to disclose his associate's interests, created an environment in which corruption could easily occur.

We have already set out in detail Sir Julius's denial that Mr Anderson and Mr Benn were his business associates, or that he personally stood to gain from the Waigani Redevelopment proposal.

In his response to our preliminary report, Sir Julius also denied that his actions were improper.

... To my mind then, if the purchase of the Conservatory Building was a corrupt transaction, which is alleged in the Report, then one would expect to see some evidence of such sharing of the proceeds of purchase. No such evidence is advanced.

There being no evidence of any payment received by me or others improperly, the Report is obliged to allege associations between myself and others, which in turn are alleged to be improper.

The Malagan House purchase and the Walganl redevelopment proposal were both abortive; there were no proceeds out of which any corrupt payment could have been made. Purported improper associations are advanced in an attempt to supplement the fundamental deficiency of the investigation of The Conservatory purchase, that is that there is no evidence advanced of a corrupt payment to any public official or anybody else, or any other probative evidence of corrupt conduct.

For the reasons set out in our findings in the following chapter, the Ombudsman Commission is of the opinion that Sir Julius's actions were wrong.

[13.8] WHO TO BLAME?

Who should bear responsibility for getting the POSFB into such a poor deal? In determining this issue, we have focussed on the roles played by public officials. It is appropriate to put the officials responsible into two categories:

- Those who pressured the POSFB into the deal.
- Those who promoted the idea of purchasing The Conservatory or who were in a position to object, but failed to do so.

In both categories, the officials failed to discharge their administrative duties. Our findings on specific people are set out in detail in the following chapter.



Chapter 13 How can the deal be explained?

14. FINDINGS OF WRONG CONDUCT

[14.1] STATUS OF FINDINGS

As we stated in Chapter 1, the purpose of this investigation was:

- To determine whether any of the conduct under investigation was *wrong*.
- To determine whether there were any *defects* in any law or administrative practices.

In this chapter, we summarise our principal findings of wrong conduct and defective administrative practice.

The Ombudsman Commission is authorised to form opinions on these matters by Section 22(1) of the *Organic Law on the Ombudsman Commission*, which states:

The succeeding provisions of this section apply in every case where the Commission, after making an investigation under this Law, is of the opinion that-

- (a) the conduct, the subject of the investigation, was wrong; or
 - (b) the law or administrative practice, the subject of the investigation, or any other law or administrative practice, is defective; or
 - (c) the practice, the subject of the investigation is discriminatory within the meaning of any law prohibiting such practices.
-

As we pointed out in Chapter 1, the *Constitution* confers a wide discretion on the Ombudsman Commission in determining whether conduct is “wrong”.

Some of our opinions have been formed in relation to individuals who no longer hold public office. The Ombudsman Commission is of the view that public policy and public good require we should still make these findings.

We do not make any formal findings of wrong conduct on the part of private individuals and organisations. Where appropriate, however, we have stated our opinion of the actions of private individuals and organisations in previous chapters of this report.

In this chapter, each opinion is set out as follows:

- The finding (i.e. the opinion) is stated.
- The main reasons for forming that opinion are stated.
- A reference is given to the paragraphs where facts and reasons relevant to the opinion are set out in detail.

An index of findings (i.e. each opinion on wrong conduct) is set out below.

[14.2]

INDEX OF FINDINGS OF WRONG CONDUCT

Finding Number	Name
1	Ereman Ragi
2	Ereman Ragi
3	Ereman Ragi
4	Ereman Ragi
5	Ereman Ragi
6	Sir Julius Chan
7	Sir Julius Chan
8	Sir Albert Kipalan
9	Sir Albert Kipalan
10	Tau Peruka
11	Tau Peruka
12	Michael Malabag
13	Michael Malabag
14	Aloysius Eviaisa
15	Ugwalubu Mowana
16	Vele Iamo
17	Pe Cho
18	Joseph Wingia
19	Mark Basausau
20	Kila Ai
21	Kila Ai
22	Jacob Lemeki
23	Gabriel Dusava
24	Zacchary Gelu
25	Chris Haiveta
26	Chris Haiveta
27	Rupa Mulina
28	John Ban
29	Brown Bai
30	Gerea Aopi

[14.3] FINDINGS**Finding N° 1**

In the opinion of the Ombudsman Commission, the conduct of Ereman Ragi, the then Managing Director of the POSFB, in proposing to the Board of the POSF that it approve the purchase of The Conservatory, was wrong.

Reasons

- Mr Ragi succumbed to pressure applied by Sir Albert Kipalan to hold an urgent meeting of the Board on 10 October 1994 to approve the purchase of The Conservatory.
- Mr Ragi put the proposal before the Board without having received approval from the Office Allocation Committee for the State to lease any of the building. There was no approval of any form in place, let alone a commitment to lease any or all of the building.
- Mr Ragi brushed aside the valid concerns of Mr Peruka and senior officers of the Department of Finance regarding the purchase.
- The business paper put before the Board was signed by Mr Ragi and prepared on the basis of information supplied by Mr Ragi. This information was entirely based on the vendor's assessment of the property, and the market appraisal prepared by Tony Roberts. Neither source of information was independent or accurate. The business paper contained serious flaws and erroneous assumptions.
- In proposing the purchase Mr Ragi relied on the market appraisal prepared by Tony Roberts. This appraisal assumed a lease to the State at more than double market rentals, which enormously inflated the value of the building.
- Mr Ragi did not obtain an independent valuation of The Conservatory. Mr Ragi was not willing to pay for a qualified valuer.
- In effect, the proposal supported by Mr Ragi relied on information provided by the vendor of the property. This was dangerous and naive.
- Mr Ragi failed to assess the proposal in an objective or intelligent manner.

Reference

- The facts and reasons relevant to this opinion are set out in paragraphs [4.4] [4.5] [4.7] [4.11] [4.13] [4.19] [4.20] [4.23] [4.24] and [12.2].

Finding N° 2

In the opinion of the Ombudsman Commission, the conduct of Ereman Ragi, the then Managing Director of the POSFB, in executing the contract for the sale of The Conservatory, was wrong.

Reasons

- Mr Ragi signed the contract for sale on 24 November 1994 without having a commitment in writing from any person or authority that the State would lease the entire building. This made the POSFB extremely vulnerable.
- Mr Ragi signed the contract for sale without having any obtained any finance to fund the purchase price. This incredible oversight left the POSFB extremely vulnerable, and open to the possibilities of either forfeiting the deposit or having to obtain finance in a rush at unfavourable terms.
- Mr Ragi signed the contract for sale without having the deposit in place. Therefore the POSFB was immediately in breach of the contract and started incurring penalty interest.
- Mr Ragi signed the contract for sale without having obtained final legal advice. The POSFB's Australian lawyers were attempting to obtain more information and possibly amend the contract to make it more favourable to the POSFB. However, unknown to the lawyers, and before these amendments were made, Mr Ragi signed the contract.
- Mr Ragi had again asked the *vendor* to arrange a valuation of the property, to avoid the POSFB incurring any costs. Therefore at the time of signing of the contract for sale the POSFB had still not obtained an independent valuation of The Conservatory. The second market appraisal, prepared by Ted Crockford, was not an independent valuation.
- Mr Ragi did not question the unusual extent of Sir Julius Chan's interest in the

proposal. Mr Ragi briefed Sir Julius, even at times when Sir Julius had no official role to play in approving the purchase.

- Mr Ragi knew that, prior to the contract for sale being signed, the vendor did not own the property. But he failed to investigate this matter further, either to find out who did own the property or to look at the amount the vendor was paying for the property.
- Mr Ragi did not negotiate the purchase price or the terms of the contract. He was willing to accept even the most grasping conditions imposed by the vendor.
- Mr Ragi failed to keep any records of the negotiations and failed to inform the Board of how the contract price was set.
- Mr Ragi went on leave during the crucial period just before the due date for settlement without leaving any instructions for the Acting Managing Director.
- Mr Ragi completely failed to protect the interests of the POSFB and its contributors. When the contract was signed the POSFB was left dangerously exposed on several fronts.

Reference

- The facts and reasons relevant to this opinion are set out in paragraphs [5.7] [5.20] [5.21] [5.23] [5.24] [5.27] and [12.2].

Finding N° 3

In the opinion of the Ombudsman Commission, the conduct of Ereman Ragi, the then Managing Director of the POSFB, in proposing that POSFB re-finance the purchase of The Conservatory from out of its own funds, was wrong.

Reasons

- Mr Ragi presented a business paper, co-signed by Joseph Wingia, to the POSFB on 23 January 1995. This paper sought the Board's approval to finance the whole of the purchase of The Conservatory from POSFB funds.
- This business paper glossed over the reasons the POSFB had failed to secure

finance for the purchase. Mr Ragi misled the POSFB by blaming the lack of finance on "adverse publicity".

- Mr Ragi failed to appreciate or acknowledge the implications of the banks' refusals to provide finance. Mr Ragi had explicit knowledge of the varied reasons the banks had given for not providing finance, none of which were set out in the business paper.
- Mr Ragi voted for the re-financing package.
- Mr Ragi is primarily responsible for allowing the POSFB to make this decision based on inaccurate and erroneous information.

Reference

- The facts and reasons relevant to this opinion are set out in paragraphs [6.11] and [12.2].

Finding N° 4

In the opinion of the Ombudsman Commission, the conduct of Ereman Ragi, the then Managing Director of the POSFB, in approving the payment of the final purchase price of The Conservatory, was wrong.

Reasons

- Prior to making the final settlement payment on 18 May 1995, Mr Ragi agreed to pay "interest and exchange loss compensation" on top of the agreed purchase price. The POSFB was under no obligation to pay this amount.
- Mr Ragi also agreed to pay the additional legal fees of Katingo Pty Ltd incurred by the delay in settlement. The POSFB was under no obligation to pay this amount.
- During the settlement negotiations Mr Ragi gave instructions to Pato Lawyers to rescind the contract for sale of The Conservatory and instead buy all the shares in Katingo Pty Ltd, the shelf company which owned The Conservatory. This was an ill-conceived plan which unnecessarily exposed the POSFB to risk. There was a great deal of confusion generated by Mr Ragi at a time when the settlement was

due to be finalised.

Reference

- The facts and reasons relevant to this opinion are set out in paragraphs [6.17] [6.21] [6.22] and [12.2].

Finding N° 5

In the opinion of the Ombudsman Commission, the conduct of Ereman Ragi, the then Managing Director of the POSFB, in providing incorrect information to the Minister for Finance and making misleading public statements, was wrong.

Reasons

- The brief Mr Ragi gave to the Minister for Finance on 6 November 1995 contained inaccurate information.
- Mr Ragi misled the Minister by advising that Office Allocation Committee approval to lease the building had been obtained before the decision to buy The Conservatory had been made. This was not true.
- Mr Ragi also told the Minister that the POSFB had not been able to obtain finance to fund the purchase because of bad publicity about Papua New Guinea, and the floating of the kina at that time. This was also not true.
- In his brief to the Minister Mr Ragi failed to tell him that no proper valuations had been obtained. Mr Ragi failed to tell the Minister that the appraisals that had been obtained by the POSFB were not valuations, were not independent and were not objective.
- A letter to the editor from Mr Ragi was published on 8 November 1995 in a daily newspaper with national circulation. This letter made false assertions as to the value of The Conservatory.
- In December 1997, an open letter, from Mr Ragi to contributors to the POSF, was published in two daily newspapers. This letter contained incorrect and misleading information about the value of The Conservatory and the viability of the POSFB

investment.

- Mr Ragi misled the Minister, the public and the contributors to the Fund. Instead of debating the issues openly and frankly, Mr Ragi attempted to cover up the details of the purchase.

Reference

- The facts and reasons relevant to this opinion are set out in paragraphs [8.13] [8.15] and [12.2].

Finding N° 6

In the opinion of the Ombudsman Commission, the conduct of Sir Julius Chan, the then Prime Minister, in applying pressure to Ereman Ragi, Tau Peruka and Kila Ai, and closely involving himself in the purchase of The Conservatory, was wrong.

Reasons

- During October 1994 Sir Julius applied political pressure to Mr Ragi and Mr Peruka to ensure the purchase of The Conservatory was done quickly. This pressure was applied both directly and through Sir Albert Kipalan.
- On 11 October 1994 Sir Julius gave instructions to Mr Ai, through Mr Ragi, to prepare a draft heads of agreement for the purchase of The Conservatory for Sir Julius's approval. The perception of Mr Ragi was that Sir Julius wanted a recommendation approving the purchase.
- Sir Julius received a POSFB submission, and had a meeting with Mr Ragi, at a time when he had no official role to play in the proposed purchase. Sir Julius's involvement was completely inappropriate.
- Sir Julius's pressure compromised the integrity of Mr Ai and Mr Ragi. Political pressure and interference requires the complicity of both those giving and those receiving the pressure. We therefore find Sir Julius's conduct wrong.

Reference

- The facts and reasons relevant to this opinion are set out in paragraphs [4.14] [4.29] [5.2] [5.4] [5.5] [5.6] [5.7] [5.8] [5.9] [10.6] [12.2] and [13.2].

Finding N° 7

In the opinion of the Ombudsman Commission, the conduct of Sir Julius Chan, the then Prime Minister, in relation to the purchase of The Conservatory and the Waigani Redevelopment proposal, in performing official duties while having an undeclared conflict of interests, was wrong.

Reasons

- Associates of Sir Julius, including his own political party, stood to make a considerable financial gain from the Waigani Redevelopment proposal. At the same time that this redevelopment was being mooted, during September and October 1994, the proponents of the proposal were also attempting to sell The Conservatory to the POSFB at a vastly inflated price.
- Sir Julius had promoted the purchase of land or a building in Cairns from the early stages. In early August 1994, Sir Julius instructed the Secretary for Foreign Affairs, Mr Dusava, to inspect and report on overseas properties. Mr Dusava reported on only one in Cairns - The Conservatory.
- Once The Conservatory had been identified by Mr Anderson and Mr Lemeki, Sir Julius applied pressure to those officials in a position to expedite the purchase.
- Sir Julius encouraged the POSFB to approve the purchase just *two days* before the deadline, 13 October 1994, when Mr Anderson had to decide whether to exercise his option to purchase The Conservatory. If the deal had not gone ahead Mr Anderson would have made a serious financial loss.
- Sir Julius approved The Conservatory purchase under the *Public Finances (Management) Act*, despite the obvious flaws in the proposal.
- Sir Julius did not declare his interest, or the interest of his associates, in the proposals.

- Sir Julius acted improperly. He did not maintain the highest standards of transparency and accountability.
- Sir Julius's conduct, in failing to disclose his, and his associate's, interests, created an environment in which corruption could easily occur.
- Sir Julius's connections with the vendor, through the profit his associates stood to make from the Waigani Redevelopment proposal, must give rise to doubt in the public mind that Sir Julius was acting impartially.
- As Prime Minister, Sir Julius should not have had any official role to play in The Conservatory purchase. He should have completely removed himself from the process. His failure to do so was a breach of the public trust.

Reference

The facts and reasons relevant to this opinion are set out in paragraphs [3.16] [3.17] [3.18] [3.19] [3.20] [3.21] [3.23] [4.3] [4.6] [4.9] [4.14] [4.22] [5.2] [5.4] [5.5] [5.6] [5.7] [5.8] [5.9] [5.17] [5.18] [10.6] [12.2] [13.2] and [13.7].

Finding N° 8

In the opinion of the Ombudsman Commission, the conduct of Sir Albert Kipalan, then a Minister, in giving a sweeping undertaking to lease office space in the proposed Waigani redevelopment, was wrong.

Reasons

- In April 1994, Sir Albert applied pressure on Mr Peruka, as Chairman of the Office Allocation Committee, to approve the office allocation side of the Waigani redevelopment proposal, without going through a tendering process.
- In his capacity as Minister for Lands and Physical Planning, Public Service and Communications, Sir Albert gave an undertaking to Mr Anderson, on 1 September 1994, that the government would lease three buildings in the proposed Waigani redevelopment for ten years at a fixed rate. This letter was drafted for Sir Albert by Mr Solly Benn.
- Sir Albert gave this undertaking without following the tender procedures set out in

the *Public Finances (Management) Act*, and without making the undertaking conditional on the appropriate tender procedures being completed.

- Sir Albert gave this undertaking without being briefed on the matter by the Department or the Office Allocation Committee.
- The undertaking was extremely broad, involving a proposed annual financial commitment of at least K13.65 million and an initial capital outlay by the POSFB of K142.5 million.
- The land on which the development was proposed to take place was beneficially owned on behalf of Sir Albert's political party, the PPP, therefore putting him in a conflict of interests.
- The undertaking given was poorly thought out. It was foolish in the extreme for Sir Albert to make such an undertaking without properly considering all the implications and making some effort to ensure the State's interests were protected.

Reference

- The facts and reasons relevant to this opinion are set out in paragraphs [3.7] [3.11] [3.12] [3.13] [3.17] [3.18] [3.19] [3.20]. [3.21] [3.23] and [12.2].

Finding N° 9

In the opinion of the Ombudsman Commission, the conduct of Sir Albert Kipalan, then a Minister, in applying pressure on Tau Peruka and Ereman Ragi to convene meetings of the POSFB to advance the purchase of The Conservatory, was wrong.

Reasons

- In early October 1994, Sir Albert applied pressure on Mr Peruka and Mr Ragi to hold a POSFB meeting and approve the purchase of The Conservatory. Mr Peruka and Mr Ragi were told that Sir Albert wished the meeting to go ahead quickly and approve the purchase.
- Sir Albert also placed pressure on Mr Peruka to vote in favour of purchasing The

Conservatory and to put aside Mr Peruka's earlier doubts.

- Although Sir Albert was not an official participant in the POSFB approval of the purchase, his indirect involvement means he must share responsibility for the decision to purchase The Conservatory.
- Sir Albert's conduct in applying political pressure on public officials was a blatant mis-use of his office.

Reference

- The facts and reasons relevant to this opinion are set out in paragraphs [4.9] [4.14] [4.22] [4.29] [12.2] and [13.2].

Finding N° 10

In the opinion of the Ombudsman Commission, the conduct of Tau Peruka, the then Secretary of the Department of Personnel Management and ex-officio Chairman of the Office Allocation Committee and member of the Board of the POSF, in voting to purchase The Conservatory in spite of his earlier serious concerns, was wrong.

Reasons

- On 7 October 1994, Mr Peruka raised some very serious and sensible concerns about the POSFB proposal to purchase The Conservatory.
- However on 10 October 1994, at a meeting of the POSFB, Mr Peruka, who was Acting Chairman, voted for the purchase of The Conservatory.
- At that meeting none of the concerns, which Mr Peruka had earlier raised, had been addressed or resolved.
- Mr Peruka failed to examine or assess the figures given to the Board, including an unexplained K500,000.00 increase from the price in the business paper to the price in the minutes.
- Mr Peruka uncritically adopted the information presented by management as to the

rate of return on the proposed investment.

- Mr Peruka failed to insist on an independent and authorised valuation.
- Mr Peruka changed his mind and voted for the purchase as a result of political pressure applied by Sir Albert Kipalan.
- Mr Peruka failed to live up to his responsibility, as Departmental Secretary and a member of the Board of the POSF, to be independent and objective.

Reference

- The facts and reasons relevant to this opinion are set out in paragraphs [4.16] [4.18] [4.21] [4.22] and [12.2].

Finding N° 11

In the opinion of the Ombudsman Commission, the conduct of Tau Peruka, the then Secretary of the Department of Personnel Management and ex-officio Chairman of the Office Allocation Committee and member of the Board of the POSF, in agreeing first, to lease office space within The Conservatory and secondly, to lease the entire building, was wrong.

Reasons

- In early October 1994, the Office Allocation Committee would not commit the State to leasing any part of The Conservatory because of the high rents proposed by the POSFB.
- In early November 1994, Mr Peruka advised Mr Ragi that the State would lease *some* space within The Conservatory for a period of five years. This commitment was given despite the POSFB continuing to ask very high rentals.
- On 22 February 1995, Mr Peruka committed the State to leasing the *entire* building for a period of five years at \$700.00 per square metre.
- There was no meeting of the Office Allocation Committee authorising Mr Peruka to make this commitment. Mr Peruka made this commitment without the

authority to do so.

- Mr Peruka agreed to lease space despite the serious concerns he had raised in October 1994 about the proposed purchase and lease arrangements.
- Mr Peruka committed the State to pay rentals which were nearly three times the market rate for the building.

Reference

The facts and reasons relevant to this opinion are set out in paragraphs [4.16] [4.18] [5.20] [6.4] and [12.2].

Finding N° 12

In the opinion of the Ombudsman Commission, the conduct of Michael Malabag, member of the Board of the POSF, in voting for the purchase of The Conservatory and for the re-financing of the purchase using the POSF's own funds, was wrong.

Reasons

- On 10 October 1994, Mr Malabag voted for the POSFB to purchase The Conservatory.
- Mr Malabag failed to examine or assess the figures given to the Board, including an unexplained K500,000.00 increase from the price in the business paper to the price in the minutes.
- Mr Malabag failed to insist on an authorised and independent valuation.
- Mr Malabag uncritically adopted the information presented by management as to the rate of return on the proposed investment.
- On 23 January 1995, at a special meeting of the Board of the POSF, Mr Malabag voted in favour of the Board financing the purchase of The Conservatory from POSFB's financial resources.
- The proposal was accepted on the basis of a business paper signed by Mr Ragi and

Mr Wingia. The business paper set out extremely shallow reasons for the failure to find external finance, and glossed over the real problems with the purchase of The Conservatory.

- Mr Malabag failed to submit either business paper to any critical assessment and therefore failed to protect the interests of the contributors.

Reference

- The facts and reasons relevant to this opinion are set out in paragraphs [4.21] [6.11] and [12.2]

Finding N° 13

In the opinion of the Ombudsman Commission, the conduct of Michael Malabag, member of the Board of the POSF, in making incorrect and misleading public statements about the purchase of The Conservatory, was wrong.

Reasons

- On Tuesday 28 November 1995 identical letters to the editor were published in two national newspapers. These letters were written by Mr Malabag and defended the decision by the POSFB to purchase The Conservatory.
- These letters stated that The Conservatory purchase was above board and followed all necessary financial procedures.
- These letters also stated that The Conservatory is a sound investment for POSFB.
- Both of these statements were untrue.
- Mr Malabag attempted to stifle or deflect public debate on The Conservatory and present a false version of events to the public. By doing so he failed to safeguard the interests of the contributors he was appointed to represent.

Reference

- The facts and reasons relevant to this opinion are set out in paragraphs [8.11] [8.13] and [12.2].

Finding N° 14

In the opinion of the Ombudsman Commission, the conduct of Aloysius Eviaisa, member of the Board of the POSF, in voting for the purchase of The Conservatory, was wrong.

Reasons

- On 10 October 1994, Mr Eviaisa voted for the POSFB to purchase The Conservatory.
- Mr Eviaisa failed to examine or assess the figures given to the Board, including the unexplained K500,000.00 increase from the price in the business paper to the price in the minutes.
- Mr Eviaisa failed to insist on an authorised and independent valuation.
- Mr Eviaisa uncritically adopted the information presented by management as to the rate of return on the proposed investment.
- By not subjecting the information he was given to a critical assessment, Mr Eviaisa failed to protect the interests of the contributors to POSFB.

Reference

The facts and reasons relevant to this opinion are set out in paragraphs [4.21] and [12.2].

Finding N° 15

In the opinion of the Ombudsman Commission, the conduct of Ugwalubu Mowana, then a member of the Board of the POSF, in voting for the purchase of The Conservatory and for the re-financing of the purchase using the POSF's own funds, was wrong.

Reasons

- On 10 October 1994, Mr Mowana voted for the POSFB to purchase The Conservatory.
- Mr Mowana failed to examine or assess the figures given to the Board, including the unexplained K500,000.00 increase from the price in the business paper to the price in the minutes.
- Mr Mowana failed to insist on an authorised and independent valuation.
- Mr Mowana uncritically adopted the information presented by management as to the rate of return on the proposed investment.
- On 23 January 1995, at a special meeting of the Board of the POSF, Mr Mowana voted in favour of the Board financing the purchase of The Conservatory from POSFB's financial resources.
- The proposal was accepted on the basis of a business paper signed by Mr Ragi and Mr Wingia. The business paper set out extremely shallow reasons for the failure to find external finance, and glossed over the real problems with the purchase of The Conservatory.
- Mr Mowana failed to submit either business paper to any critical assessment and therefore failed to protect the interests of the contributor.

Reference

The facts and reasons relevant to this opinion are set out in paragraphs [4.21] [6.11] and [12.2].

Finding N° 16

In the opinion of the Ombudsman Commission, the conduct of Vele Iamo, a senior officer of the Department of Finance and the then representative of the Secretary for Finance on the Board of the POSF, in voting in favour of the purchase of The Conservatory after earlier raising serious concerns about the proposal, was wrong.

Reasons

- On 4 October 1994, Mr Iamo, with Mr Eddy Galele of the Department of Finance, presented a brief to the Acting Secretary for Finance, Mr Kila Ai. This brief raised some very serious concerns about the POSFB proposal to purchase The Conservatory.
- On 7 October 1994, Mr Iamo signed a letter to Mr Ragi, raising the same concerns as in the departmental brief.
- On 10 October 1994, Mr Ragi responded in writing to these concerns. However Mr Ragi did not satisfactorily deal with the major problems, and brushed aside the serious issues which had been raised.
- On 10 October 1994, at a meeting of the POSFB, Mr Iamo voted for the purchase of The Conservatory.
- Mr Iamo failed to examine or assess the figures given to the Board, including an unexplained K500,000.00 increase from the price in the business paper to the price in the minutes.
- Mr Iamo uncritically adopted the information presented by management as to the rate of return on the proposed investment.
- Mr Iamo failed to insist on an authorised and independent valuation.
- Mr Iamo did not sufficiently pursue his earlier concerns. Mr Iamo's unexplained about-face enabled the purchase to go ahead, and therefore he failed to protect the interests of the contributors.

Reference

- The facts and reasons relevant to this opinion are set out in paragraphs [4.17]

[4.21] [5.19] and [12.2].

Finding N° 17

In the opinion of the Ombudsman Commission, the conduct of Pe Cho, Manager Investments of the POSFB, in preparing an incorrect and flawed business paper recommending the purchase of The Conservatory to the Board of the POSF, was wrong.

Reasons

- The business paper presented to the Board at the meeting of 10 October 1994 contained serious flaws and incorrect assumptions about the proposed POSFB purchase of The Conservatory.
- These assumptions were based on information given to Mr Cho by Mr Ragi and Mr Wingia.
- Mr Cho, as Manager Investments, failed to assess or examine this information in any way.
- The information contained omissions and errors which should have been obvious to any sensible reader, especially one whose official position was to advise on investments.
- Mr Cho knew that the market appraisals being relied on were not authoritative valuations. However, he did not raise this as a matter of concern.
- Mr Cho did not address the most basic and most critical risk in the proposed investment - the risk of the State not leasing the whole building. This was an appalling omission.
- Mr Cho has explained his actions as simply following instructions. We consider that Mr Cho's attitude is both unprofessional and simplistic. Mr Cho has a duty to assess and analyse information, not merely to provide the advice his superiors wish to hear.

Reference

- The facts and reasons relevant to this opinion are set out in paragraphs [4.20] [4.27] [4.29] and [12.2].

Finding N° 18

In the opinion of the Ombudsman Commission, the conduct of Joseph Wingia, the Executive Manager Investments for the POSFB, in providing inaccurate information to the POSF Board regarding both the purchase of The Conservatory, and the re-financing of the purchase using the POSF's own funds, and executing the contract of sale for The Conservatory, was wrong.

Reasons

- Mr Wingia signed the business paper, prepared by Pe Cho and co-signed by Ereman Ragi, which was presented to the POSFB on 10 October 1994, recommending the purchase of The Conservatory.
- This business paper, which was seriously flawed and contained a number of inaccurate and misleading assumptions, convinced the Board to approve the purchase.
- Mr Wingia failed to submit the business paper to an intelligent assessment before signing.
- Mr Wingia failed to insist on an authorised and independent valuation.
- Mr Wingia signed the business paper, presented to the POSFB on 23 January 1995 and co-signed by Ereman Ragi, which sought the Board's approval to finance the whole of the purchase of The Conservatory from POSFB funds.
- This business paper glossed over the reasons the POSFB had failed to secure finance for the purchase. The business paper misled the POSFB by blaming the lack of finance on "adverse publicity".
- Mr Wingia must share the responsibility for allowing the POSFB to make decisions on two occasions based on inaccurate and erroneous information.

- Mr Wingia had also signed the contract of sale for The Conservatory in November 1994, without keeping any records of the negotiations and without ensuring that the most basic of due diligence procedures were carried out.

Reference

The facts and reasons relevant to this opinion are set out in paragraphs [4.20] [4.27] [4.29] [5.23] [5.24] [5.27] [6.11] and [12.2].

Finding N° 19

In the opinion of the Ombudsman Commission, the conduct of Mark Basausau, then a Deputy Secretary of the Department of Finance and member of the Office Allocation Committee, in giving a commitment to increase the term of the State's lease on The Conservatory from 5 to 7 years, was wrong.

Reasons

- In March 1995 Mr Basausau wrote to the POSFB confirming that the State would lease the entire building for a period of seven years. The agreement that existed before this letter was that the State would lease the building for five years.
- Mr Basausau wrote this letter without the authority of the Office Allocation Committee or of its Chairman, Mr Puka. Under the Public Service General Orders the Committee must authorise all government allocation of office space.
- The commitment given by Mr Basausau was extremely generous, promising to lease the entire building for seven years at more than double market rates.
- Mr Basausau gave a very broad commitment, outside his authority, to lease property to the long-term financial detriment of the State.
- In July 1995, Mr Basausau signed a ten-year property management agreement with Tony Roberts Real Estate, without following tender procedures or obtaining legal advice on the agreement.
- In our view, Mr Basausau did not appreciate the significance of the decisions he was making, and the political repercussions of those decisions.

Reference

- The facts and reasons relevant to this opinion are set out in paragraphs [6.4] [7.3] and [12.2].

Finding N° 20

In the opinion of the Ombudsman Commission, the conduct of Kila Ai, the then Acting Secretary for Finance, in dealing with the POSFB proposal to purchase The Conservatory, was wrong.

Reasons

- Mr Ai briefed Sir Julius Chan on 11 October 1994, and provided Sir Julius with draft heads of agreement for the purchase and lease of The Conservatory on 13 October 1994, despite the then Prime Minister having no formal part to play in approving the purchase of The Conservatory.
- The draft heads of agreement included the lease of the whole of The Conservatory building, despite there being no commitment by the State to such a lease, and despite the advice of senior officers of his Department that the issue of the lease should be kept separate to the purchase proposal.
- Mr Ai did not question the unusual extent and nature of Sir Julius's involvement.
- Mr Ai briefed Sir Julius on the basis of the POSFB submission, despite the serious concerns about the submission raised by senior officers of the Department. Mr Ai ignored these concerns.
- Mr Ai failed to provide Sir Julius with independent advice. Mr Ai instead provided the advice he considered the Prime Minister wished to receive.
- On 26 October 1994, Mr Ai recommended that Sir Julius, as Acting Minister for Finance, give approval for the purchase of The Conservatory. Mr Ai did not take into account the fact that the serious problems, pointed out earlier by senior officers of the Department, had not been resolved.
- Mr Ai relied on the market appraisal provided by Ted Crockford, despite the obvious flaws in that appraisal. Mr Ai did not subject this appraisal to any kind of

critical assessment.

- Mr Ai buckled to political pressure to support a very bad investment decision.

Reference

- The facts and reasons relevant to this opinion are set out in paragraphs [4.17] [4.18] [5.5] [5.7] [5.8] [5.9] [5.17] [5.19] and [12.2].

Finding N° 21

In the opinion of the Ombudsman Commission, the conduct of Kila Ai, the then Acting Secretary for Finance and Acting Chairman of the POSFB, in voting for re-financing of the purchase of The Conservatory using the POSF's own funds, was wrong.

Reasons

- On 23 January 1995, at a special meeting of the Board of the POSF, Mr Ai, who was the Acting Chairman of the Board, voted in favour of the Board financing the purchase of The Conservatory from the POSFB's financial resources.
- The proposal was accepted on the basis of a business paper signed by Mr Ragi and Mr Wingia. The business paper set out extremely shallow reasons for the failure to find external finance, and glossed over the real problems with the purchase of The Conservatory.
- Mr Ai failed to submit the business paper to any critical assessment.

Reference

- The facts and reasons relevant to this opinion are set out in paragraphs [6.11] and [12.2].

Finding N° 22

In the opinion of the Ombudsman Commission, the conduct of Jacob Lemeki, the then Papua New Guinea Consul to Cairns, in actively promoting the purchase of The Conservatory, was wrong.

Reasons

- Mr Lemeki failed to identify any other potential buildings or vacant land for purchase which could be compared to The Conservatory.
- Mr Lemeki states that he contacted Mr Anderson and Mr Benn, in early July 1994, on the basis of a recommendation by Sir Julius Chan. Mr Lemeki did not satisfy himself of the credentials of these two men before asking them to assist him in locating a suitable building.
- Mr Lemeki accepted Sol Benn's recommendation of Tony Roberts to provide a market appraisal of The Conservatory. Mr Lemeki did not attempt to satisfy himself of the independence and qualifications of Mr Roberts.
- Mr Lemeki should have obtained an independent valuation from a qualified and registered valuer at the commencement of negotiations. Mr Lemeki should not have accepted an appraisal from someone recommended by the vendor.
- Mr Lemeki was foolish and naive in allowing himself to be manipulated into promoting the purchase of The Conservatory.

Reference

- The facts and reasons relevant to this opinion are set out in paragraphs [4.3] [4.5] [4.7] and [12.2].

Finding N° 23

In the opinion of the Ombudsman Commission, the conduct of Gabriel Dusava, the then Secretary for Foreign Affairs, in endorsing and seeking further approval of the POSFB proposal to purchase The Conservatory, was wrong.

Reasons

- Mr Dusava prepared a brief for Sir Julius Chan, describing The Conservatory as a "blue chip investment", which was copied almost word for word from a letter from Mr Solly Benn to the Papua New Guinea Consul, Mr Lemeki.
- Mr Dusava acted in a manner that was naive and foolish.
- Mr Dusava adopted Mr Ragi's proposal to purchase The Conservatory, and on 24 September 1994 advised Mr Peruka that the Department of Foreign Affairs and Trade would confirm a lease of The Conservatory by way of a letter of intent.
- Mr Dusava gave these undertakings without the project being formally approved by the POSFB, the Office Allocation Committee or the Minister for Finance.
- Mr Dusava made no attempt to negotiate the rent, despite having previously advised the Prime Minister that The Conservatory could be leased for less than half the amount that the POSFB was now proposing.
- Mr Dusava gave his approval without obtaining any independent advice on whether the purchase or the lease represented value for money.

Reference

- The facts and reasons relevant to this opinion are set out in paragraphs [4.6] [4.11] and [12.2].

Finding N° 24

In the opinion of the Ombudsman Commission, the conduct of Zacchary Gelu, the then State Solicitor, in advising that the Secretary of the Department of Lands had the power to execute the lease of The Conservatory to the State, on behalf of the State, was wrong.

Reasons

- Prior to the Secretary for Lands signing the lease from Moki N° 10 Pty Ltd to the State on 30 May 1996, Mr Gelu advised the State on the legal implications of the

lease.

- Mr Gelu considered that the Secretary for Lands had the power to sign the lease on behalf of the State using powers delegated from the Minister for Lands. Mr Gelu considered the Minister had this power under the *Land Registration Act*.
- However, the Minister does not have any powers under the Act regarding land outside of Papua New Guinea.
- Legally, the lease should have been signed by the Head of State in accordance with the *Public Finances (Management) Act*.
- Mr Gelu acted well below the standard expected from the State Solicitor.

Reference

- The facts and reasons relevant to this opinion are set out in paragraph [9.1].

Finding N° 25

In the opinion of the Ombudsman Commission, the conduct of Chris Haiveta MP, the then Minister for Finance, in approving the re-financing package for The Conservatory, was wrong.

Reasons

- On 23 January 1995, Mr Ragi requested Mr Haiveta to approve the re-financing package proposed by the POSFB. Under this package the POSFB would provide 100% of the purchase price, instead of obtaining bank finance.
- Mr Haiveta did not obtain the advice of the Department of Finance before giving this approval.
- Mr Haiveta relied on the advice of Mr Ragi to make his decision on this proposal.
- Mr Haiveta failed to obtain independent advice, or to submit the proposal to his own critical assessment.
- As Minister for Finance, Mr Haiveta was under an obligation to consider the

impact of the proposal on the State, not just on the POSFB. Mr Haiveta failed to discharge this obligation.

Reference

- The facts and reasons relevant to this opinion are set out in paragraphs [6.11] [6.12] and [12.2].

Finding N° 26

In the opinion of the Ombudsman Commission, the conduct of Chris Haiveta MP, the then Minister for Finance, in making inaccurate and misleading statements to the press and the Parliament about the purchase of The Conservatory, was wrong.

Reasons

- Mr Haiveta's press release of 3 November 1995 contained some glaring inaccuracies and completely wrong statements.
- Mr Haiveta failed to address the issues raised in the Parliamentary motion of 30 November 1995 in any meaningful way.
- Mr Haiveta misled Parliament by stating an incorrect purchase price and by brushing off many of the allegations raised regarding the purchase of The Conservatory.
- Mr Haiveta relied exclusively on the advice he received from the Secretary for Finance, Mr Mulina. Mr Mulina obtained his information directly from the POSFB.
- Mr Haiveta failed to subject any of the information he was given to any critical assessment.
- The result of this failure was that the true facts of the purchase were effectively hidden from both the public and Parliament.

Reference

The facts and reasons relevant to this opinion are set out in paragraphs [8.6] [8.12] [8.13] and [12.2].

Finding N° 27

In the opinion of the Ombudsman Commission, the conduct of Rupa Mulina, the then Secretary for Finance and ex-officio Chairman of the POSFB, in incorrectly advising the Minister for Finance and making a misleading public statement about the purchase of The Conservatory, was wrong.

Reasons

- In November 1995 Mr Mulina gave a seriously flawed briefing to the Minister for Finance regarding The Conservatory purchase.
- This brief was prepared by the POSFB. Mr Mulina did not acquaint himself with the facts and did not examine the accuracy of the advice given by the POSFB. As Secretary for Finance, Mr Mulina should have taken the responsibility of ensuring that any advice he gave was completely correct.
- On 7 November 1995 Mr Mulina issued an open letter to the members of the POSFB. This letter was prepared on the basis of advice by the POSFB, and was published in a national newspaper.
- The open letter included several statements that were either misleading or completely wrong.
- Mr Mulina should not have given the weight of his public office to any statement in the press without being completely sure that it was entirely correct. Despite the incorrect information coming from the POSFB, Mr Mulina must be held responsible for gravely misleading and misinforming the public.

Reference

- The facts and reasons relevant to this opinion are set out in paragraphs [8.5] [8.8] [8.13] and [12.2].

Finding N° 28

In the opinion of the Ombudsman Commission, the conduct of John Ban, Acting Managing Director of the POSFB, in failing to appreciate and to act upon certain contractual obligations and rights of the POSFB, was wrong.

Reasons

- Mr Ban was the Acting Managing Director of the POSFB in January 1995, at the time of settlement of the purchase of The Conservatory.
- Mr Ban failed to appreciate the significance of the final dates for settlement of the purchase.
- Mr Ban failed to appreciate the seriousness of the contractual obligations on the POSFB to find the final purchase price.
- Mr Ban failed to take action on the advice he was given, on more than one occasion, that the POSFB had the opportunity to terminate the contract to purchase The Conservatory.
- Mr Ban failed to either terminate the contract when the opportunity arose, or pass the matter to the Board for further consideration.

Reference

- The facts and reasons relevant to this opinion are set out in paragraphs [6.5] [6.6] [6.8] [6.9] and [12.2].

Finding N° 29

In the opinion of the Ombudsman Commission, the conduct of Brown Bai, the then Secretary of the Department of the Prime Minister and National Executive Council, in directing Air Niugini to re-locate to The Conservatory in Cairns, was wrong.

Reasons

- On 12 December 1994 the General Manager of Air Niugini, Mr Seefeld, met with the Prime Minister and other officials, including Mr Bai, to discuss the re-location of Air Niugini offices in Brisbane and Cairns.
- Mr Seefeld agreed the one-stop shop policy was sound in principle and undertook to do a study to assess the commercial consequences and cost of re-location. The Air Niugini study later concluded that re-location could not be justified on commercial grounds.
- On 15 December 1994 Mr Bai wrote to Mr Seefeld saying the Prime Minister had directed Air Niugini to re-locate. Mr Bai reminded Mr Seefeld of this direction throughout early 1995.
- Mr Bai applied this pressure despite the Air Niugini study showing it was not commercially feasible. Mr Bai had no regard to the commercial imperatives of Air Niugini.

Reference

The facts and reasons relevant to this opinion are set out in paragraphs [6.3] and [12.2].

Finding 30

In the opinion of the Ombudsman Commission, the conduct of Gereia Aopi, the then Secretary for Finance and ex-officio Chairman of the POSFB, in not objecting to or raising any queries about the purchase of The Conservatory, was wrong.

Reasons

- Mr Aopi was absent overseas during the first two weeks of October 1994 while the crucial decisions were made to purchase and finance The Conservatory. Mr Aopi returned in time to be present at the Board meeting of 21 October 1994 which discussed The Conservatory.
- Mr Aopi was fully aware of the details of the purchase and financing plans. Given

his position, he should have expressed concern about the price paid for The Conservatory, and the procedures adopted in approving the purchase.

- Mr Aopi failed to live up to the standard expected from one of the country's most senior public officials. Mr Aopi had a responsibility to the contributors of the POSFB and to the public, which he failed to discharge.

Reference

- The facts and reasons relevant to this opinion are set out in paragraphs [4.21] [5.11] and [12.2].



15. RECOMMENDATIONS

[15.1] CONSTITUTIONAL FRAMEWORK FOR MAKING RECOMMENDATIONS

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

The Commission's opinions on those matters are set out in the previous chapter. The Commission is expressly authorised to form such opinions by Section 22(1) of the *Organic Law on the Ombudsman Commission*.

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

Section 22(2) states:

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

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

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

In this chapter we make a number of formal recommendations based on the findings of

wrong conduct and defective administration referred to earlier.

Each recommendation is set out as follows:

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

[15.2] **RECOMMENDATIONS CONCERNING PARTICULAR INDIVIDUALS**

We recommend that some individuals have their continuing public employment carefully reviewed. We note that some individuals are now in different positions to those they occupied during the events set out in this report. It may be argued that a person should not have their current employment reviewed for wrong conduct in a previous job. The Ombudsman Commission has given this matter careful consideration, and is of the opinion that holders of public office must continue at all times to be accountable for their actions.

In our view, if a public official acted wrongly in a previous position, then he or she should not escape the negative consequences of their action by simply occupying a new position.

[15.3] **IDENTITY OF RECIPIENTS**

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

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

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

- First, the service, body or person we are asking to do things, is identified.
- Secondly, the Minister responsible for that service, body or person is identified.
- Thirdly, if appropriate, the permanent or statutory head responsible for that service, body or person is identified.

[15.4] RESPONSIBLE MINISTERS

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

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

TABLE 15.1
MINISTERS RESPONSIBLE FOR FOLLOWING-UP
IMPLEMENTATION OF RECOMMENDATIONS

Services, bodies or persons being asked to do things	Responsible Minister
National Executive Council Hon Chris Haiveta MP Secretary, Department of Treasury and Planning POSFB Managing Director, POSFB	Prime Minister & Minister for Finance and Treasury, Hon Sir Mekere Morauta KBE Kt MP
Cocoa Board	Minister for Agriculture and Livestock, Hon Ted Diro CBE OStj MP
Attorney-General Secretary, Department of Attorney-General	Minister for Justice, Hon Kilroy Genia MP
Secretary, Department of Lands and Physical Planning	Minister for Lands and Physical Planning, Hon Fabian Pok MP
Mr Rupa Mulina	Minister for Provincial and Local-level Governments, Hon Andrew Kumbakor MP
Secretary, Department of Personnel Management	Minister for Public Service, Hon Philemon Embel MP

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

[15.5] DUTIES OF RECIPIENTS OF RECOMMENDATIONS

The fact that our opinions on things that should be done are expressed in the form of

"recommendations" does not mean that recipients are entitled to ignore them.

Each recipient is requested under Section 22(3) of the *Organic Law on the Ombudsman Commission* to notify the Commission in writing within 60 days after the date of service of this report of the steps proposed to be taken to give effect to our recommendations.

Section 22(3) states:

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

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

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

[15.6] INDEX OF RECOMMENDATIONS

An index of recommendations is set out in the table below.

INDEX OF RECOMMENDATIONS

Number	Summary
1	The POSFB consider civil proceedings to recover money.
2	The head lease for The Conservatory be terminated.
3	The POSFB engage a specialist consultant to advise on The Conservatory.
4	The POSFB urgently introduce due diligence and investment analysis procedures.
5	The NEC make a policy decision regarding all future Waigani precinct developments.
6	The current or future employment of certain public officials be reviewed.
7	The Cocoa Board review the employment of Eremat Ragi.
8	The Minister for Finance and Treasury notify Michael Malabag of the intention to terminate his appointment to the POSFB.
9	The Minister for Finance and Treasury notify Aloysius Evaisa of the intention to terminate his appointment to the POSFB.
10	The Secretary of the Department of Treasury and Planning review the employment of Vele Iamo.
11	The Managing Director of the POSFB review the employment of Pe Cho.
12	The Managing Director of the POSFB review the employment of Joseph Wingia.
13	The POSFB engage a consultant to conduct a management review of the POSFB.
14	Chris Haiveta make a public retraction and apology.
15	Rupa Mulina make a public retraction and apology.
16	The Attorney-General issue guidelines advising that Pato Lawyers should no longer act for the State or any governmental body.
17	The NEC make a policy decision not to conduct business with Warren Anderson and Solly Benn.
18	The Prime Minister make all future determinations of changes of portfolio of Ministers in writing.
19	The Minister for Public Service initiate legislation to clarify the status of the Office Allocation Committee.
20	The Minister for Finance and Treasury initiate amendments to the <i>POSF Act</i> to alter the composition of the Board of the POSF.

[15.7] RECOMMENDATIONS**Recommendation N° 1**

That the POSFB, in consultation with the Attorney-General, promptly consider the viability of instituting civil proceedings in Australia or Papua New Guinea with a view to recovering money lost as a result of the purchase of The Conservatory.

We understand the Attorney-General has made enquiries into this matter and a report has been obtained from an Australian law firm. The Attorney-General did not allow the Ombudsman Commission to view the report prepared by the Australian law firm. Therefore we do not make any recommendations on specific legal steps, but recommend that any decision be made as soon as possible.

Recipients

- The members of the Board of the POSF.
- The Attorney-General.
- The Minister for Finance and Treasury.
- The Managing Director of the POSFB.

Reasons

- The POSFB made an extremely poor investment decision in buying The Conservatory.
- While much of the responsibility rests with the POSFB, they were provided with misleading and inaccurate information from several sources.
- The POSFB may be able to take legal action to recover some of the costs of The Conservatory.

- The POSFB must make a considered decision, taking into account all the relevant factors, including the cost of the litigation and the likelihood of its success.

Recommendation N° 2

That the Board of the POSF and the Attorney-General (representing the State) meet and agree to terminate the head lease for The Conservatory; and that the head lease be terminated as soon as is practicable without penalty or reward to either the POSFB or the State; and that all litigation concerning the head lease be discontinued immediately.

Recipients

- The members of the Board of the POSF.
- The Attorney-General.
- The Minister for Finance and Treasury.
- The Minister for Justice.
- The Secretary, Department of Attorney-General.
- The Managing Director of the POSFB.

Reasons

- The rentals the State is paying under the head lease of The Conservatory are more than three times the market rental. Even if the building were fully occupied, the State would only recoup less than one-third the amount they are paying the POSFB.
- In effect, the people of Papua New Guinea are heavily subsidising the poor decision of the POSFB to purchase The Conservatory. The lease is an artificial creation designed to protect the POSFB with the government's money.

- This inequitable and unfair lease should be stopped immediately. The POSFB must take primary responsibility for the future of The Conservatory.

Recommendation N° 3

That the POSFB engage an independent and reputable specialist consultant to advise it on how to deal with The Conservatory in order to maximise the return on the investment.

Recipients

- The members of the Board of the POSF.
- The Minister for Finance and Treasury.
- The Managing Director of the POSFB.

Reasons

- The Conservatory has experienced very low occupancy levels since it was purchased.
- Because The Conservatory is not making a profit, the POSFB cannot expect to sell the building for more than \$3 to \$4 million.
- However, all options as to the future of The Conservatory must be considered, including the sale of the building.
- There are a range of remedial actions that might be taken to improve The Conservatory's occupancy; for example re-naming and re-marketing the building, re-branding the building for alternative use, or temporarily dividing the building to reduce the impression of empty space. However any action must be taken after expert advice is received, and as part of an on-going strategic plan for the building.
- There was a hive of activity and interest while the purchase of the building was taking place. However this interest has completely dropped away. In the opinion of the Ombudsman Commission, the POSFB must re-focus its attention

of The Conservatory in order to make a considered decision in the interests of the contributors.

Recommendation N° 4

That the POSFB urgently introduce due diligence and investment analysis procedures, and an investment policy, to accurately assess all investments, especially offshore investments, against certain fixed criteria.

Recipients

- The members of the Board of the POSF.
- The Minister for Finance and Treasury.
- The Managing Director of the POSFB.

Reasons

- The POSFB made an extremely poor investment decision in buying The Conservatory.
- The investment was never properly assessed. In a large part this was due to the failure to obtain an independent valuation.
- The obvious risk involved in buying a building for three times its market value was never addressed. The projected rate of return, if the POSFB were forced to rely only on market rentals, was never considered.
- The danger involved in requiring the State to enter into a contrived and artificial leasing arrangement was not considered.
- The staff of the POSFB, the Managing Director and the members of the Board failed to critically evaluate the investment. Procedures must be put in place to ensure this kind of failure does not occur again.
- Where the POSFB does not have the staff who are able to accurately assess an investment, especially a large investment with new or unusual characteristics,

the POSFB should seek outside expertise.

- The investment policy, which the POSFB is required to formulate under Section 18 of the *Public Officers Superannuation Fund Act*, must be approved and adopted.
- The investment policy should require that all future leasing arrangements between the POSFB are "arms length" transactions, in which the State pays market rentals for property which it actually occupies.

Recommendation N° 5

That the National Executive Council make a policy decision that all future proposals to redevelop the Waigani precinct for government office buildings must be thoroughly screened in a manner which ensures full compliance with the *Land Act*, the *Public Finances (Management) Act* and the *Public Services (Management) Act*; and that the policy decision be conveyed formally to the following:

Secretary, Department of Personnel Management

Secretary, Department of Lands and Physical Planning

Secretary, Department of Treasury and Planning

Chairman, Office Allocation Committee

Recipient

- The Chairman of the National Executive Council, the Prime Minister.

Reasons

- The 1994 attempt to develop a Waigani government office centre was marred by:
 - no critical assessment of actual and potential office space requirements;

- making commitments and undertakings without the proper approvals being obtained;
 - not obtaining public tenders on the basis of what the State actually requires; and
 - not obtaining skilled professional assessments of proposals.
- It is necessary to take steps to ensure these errors do not occur again.

Recommendation N° 6

That the on-going public employment, or re-employment, of the following public officials whose conduct was wrong, be carefully and critically reviewed:

- Kila Ai;
- John Ban;
- Mark Basausau;
- Pe Cho*;
- Gabriel Dusava;
- Aloysius Eviaisa*;
- Zacchary Gelu;
- Vele Iamo*;
- Jacob Lemeki;
- Michael Malabag*;
- Ugwalubu Mowana;
- Rupa Mulina;

- Tau Puka;
- Ereman Ragi*; and
- Joseph Wingia*.

Recipients

- Secretaries of all Departments, or heads of governmental bodies, where any of the above people are employed, or who are considering employing the above people.
- Ministers responsible for those Departments, or governmental bodies, where any of the above people are employed, or who are considering employing the above people.

Reasons

- The conduct of all the above-named public officials was, to varying degrees, wrong. They failed to live up to the standard demanded of them.
- The on-going employment of these officials, or their re-employment in a public capacity, should be carefully and critically considered in light of the findings of this report.
- We are not recommending that the public employment of all the above persons be necessarily terminated. Indeed, there are some who no longer hold public office in any capacity. There are some whose wrong conduct does not necessarily warrant the termination of their employment.
- However, it is the opinion of the Ombudsman Commission that, in order to aid the process of accountability, the persons referred to above who continue to hold public office, or who are being considered for re-employment in a public office, should be carefully assessed for their suitability to hold such an office. This process must be carried out in accordance with the principles of natural justice.
- There are some persons listed above, marked with an asterisk (*), who, in the opinion of the Ombudsman Commission, were seriously culpable in respect of the decisions concerning The Conservatory, and who continue to hold public office. We believe that these persons should have to show cause why their public employment should not be terminated.

- These persons (*) are the subject of additional, specific, recommendations which are set out below.

Recommendation N° 7

That the Cocoa Board meet and, using its power in Section 15 of the *Cocoa Act* (Chapter 388) to appoint or terminate employees, decide to review the employment of Ereman Ragi as Chief Executive Officer of the Cocoa Board; and ask him to show cause as to why he should continue to hold that position.

Recipients

- The members of the Cocoa Board.
- The Minister for Agriculture and Livestock.

Reasons

- Mr Ragi was responsible for pushing the POSFB to approve the purchase of The Conservatory.
- Mr Ragi signed the contract for sale without having a commitment from the State to lease the building, without having the deposit in place, without having secured funding, without having obtained legal advice and knowing the vendor had not owned the property until just before the contract was signed. Mr Ragi's negligent conduct left the POSFB in an extremely vulnerable position.
- Mr Ragi blindly accepted all the vendor's statements. This resulted in the POSFB purchasing the property for more than twice what it was worth, and the POSFB unnecessarily paying hundreds of thousands of additional kina at settlement.
- When the purchase of The Conservatory came to the attention of the public and the media, Mr Ragi gave misleading and incorrect information to the Minister for Finance and the public.

- Mr Ragi failed to protect the interests of the contributors, and failed to reach the most basic standards of analysis and intelligence.
- Mr Ragi succumbed to political pressure. He allowed this pressure to influence his actions.
- Mr Ragi presently holds a senior public office and, on the basis of his conduct concerning the purchase of The Conservatory, it is doubtful whether he should continue to hold any public office.
- In the opinion of the Ombudsman Commission, the Cocoa Board should seriously consider whether Mr Ragi should continue to occupy his current position.

Recommendation N° 8

That the Minister for Finance and Treasury give written notice to Michael Malabag under Section 7 of the *POSF Act*, advising that he intends to terminate his appointment as a member of the Board of the POSF on the grounds of inability and inefficiency; and that the Minister, after receiving Mr Malabag's reply, give due consideration to terminating his appointment.

Recipient

- The Minister for Finance and Treasury.

Reasons

- Mr Malabag made an extremely poor investment decision that cost the Fund millions of kina in lost revenue.
- Mr Malabag failed to live up to his statutory obligations, failed to protect the interests of the contributors, and failed to reach the most basic standards of analysis and intelligence.
- In this transaction Mr Malabag showed extremely poor judgment.
- When the public controversy over the purchase began in November 1995, Mr

Malabag compounded his errors by misleading the public and the contributors with a factually wrong public statement.

- In the opinion of the Ombudsman Commission, Mr Malabag should not continue to hold an office he has shown himself unable to adequately perform.

Recommendation N° 9

That the Minister for Finance and Treasury give written notice to Aloysius Eviaisa under Section 7 of the *POSF Act*, advising that he intends to terminate his appointment as a member of the Board of the POSF on the grounds of inability and inefficiency; and that the Minister, after receiving Mr Eviaisa's reply, give due consideration to terminating his appointment.

Recipient

- The Minister for Finance and Treasury.

Reasons

- Mr Eviaisa made an extremely poor investment decision that cost the Fund millions of kina in lost revenue.
- Mr Eviaisa failed to live up to his statutory obligations, failed to protect the interests of the contributors, and failed to reach the most basic standards of analysis and intelligence.
- In this transaction Mr Eviaisa showed extremely poor judgment.
- In the opinion of the Ombudsman Commission, Mr Eviaisa should not continue to hold an office he has shown himself unable to adequately perform.

Recommendation N° 10

That the Secretary of the Department of Treasury and Planning take immediate steps to review the employment of Vele Iamo on the grounds of incompetence and inability; and, in particular, lay disciplinary charges against him.

Recipients

- The Secretary of the Department of Treasury and Planning.
- The Minister for Finance and Treasury.

Reasons

- Mr Iamo presented a brief to the then Secretary for Finance outlining some serious concerns with the purchase of The Conservatory.
- Three days later, as the representative on the Board of the POSF of the Secretary for Finance, Mr Iamo voted *in favour of* the purchase of The Conservatory. This was despite none of his earlier concerns being satisfactorily addressed.
- Mr Iamo's unexplained about-face enabled the purchase of The Conservatory to go ahead.

Recommendation N° 11

That the Managing Director of the POSFB take immediate steps to review the employment of Pe Cho on the grounds of incompetence and inability; and, in particular, lay disciplinary charges against him.

Recipients

- The Managing Director of the POSFB.
- The Minister for Finance and Treasury.

Reasons

- Mr Cho was responsible for preparing the business paper presented to the Board regarding the decision to purchase The Conservatory. This business paper, in particular its predictions of investment return, was a large factor in convincing the Board to approve the purchase.
- Mr Cho failed to assess any of the information he was given by Mr Ragi. Mr Cho failed to address any of the investment risk issues arising from the purchase.
- In particular, Mr Cho failed to comment on the risk of having to rely on market rentals for the investment income.

Recommendation N° 12

That the Managing Director of the POSFB take immediate steps to review the employment of Joseph Wingia on the grounds of incompetence and inability; and, in particular, lay disciplinary charges against him.

Recipients

- The Managing Director of the POSFB.
- The Minister for Finance and Treasury.

Reasons

- Mr Wingia co-signed the business papers presented to the Board proposing the purchase of The Conservatory and the later re-financing package. Both of these proposals were financial disasters for the POSFB.
- Mr Wingia failed to subject either proposal to the most basic of analysis. Despite his title of "Executive Manager, Investments", Mr Wingia failed to assess this investment at all.

Recommendation N° 13

That the Board of the POSF engage an independent and reputable consultant (or firm) to conduct a management review of the POSFB; in particular to review, assess and make recommendations for changes, if necessary, to all senior management positions in the organisation and, if necessary, to the occupants of those positions.

Recipients

- Members of the Board of the POSF.
- The Minister for Finance and Treasury.

Reasons

- Our investigation has revealed that the decision-making process which led to the purchase of The Conservatory was marred by administrative incompetence, a misunderstanding of roles and responsibilities, and a management culture which allowed obvious causes for concern to be brushed aside.
- This management culture led a superannuation fund to enter into a highly speculative and risky investment.
- A management review would reduce the chances of the same type of errors being repeated.
- A management review may reveal that changes in top management need to be made; and if that is the case, the Board must ensure that a detailed and systematic merit selection process is implemented.

Recommendation N° 14

That Hon Chris Haiveta MP make a public retraction and apology, at his own expense, for his misleading statements to Parliament and the public and the Parliament in November 1995 regarding the purchase of The Conservatory.

Recipients

- Mr Haiveta.
- The Prime Minister.

Reasons

- Mr Haiveta issued a press release on 3 November 1995 containing some glaring errors and inaccuracies regarding the purchase of The Conservatory.
- Mr Haiveta issued this press release on the basis of information he had uncritically accepted from the then Secretary for Finance.
- Mr Haiveta later made incorrect statements to the Parliament during the debate on the Leader of the Opposition's, Mr Yaki's, motion regarding The Conservatory.
- The effect of Mr Haiveta's actions was that essential information regarding The Conservatory was hidden from Parliament, the public, and the contributors to the POSF, and the . Parliament.
- Mr Haiveta should publicly rectify his mistake by retracting his comments and apologising for his actions. Mr Haiveta should do this both publicly in a daily newspaper, and in person on the floor of the Parliament.

Recommendation N° 15

That Rupa Mulina make a public retraction and apology, at his own expense, for his misleading statements to the public in November 1995 regarding the purchase of The Conservatory.

Recipients

- Mr Mulina.

Reasons

- In November 1995 Mr Mulina, the then Secretary for Finance, gave a seriously flawed briefing to the Minister for Finance. This briefing was based on information that Mr Mulina had uncritically accepted from the POSFB.
- On 7 November 1995 Mr Mulina issued an open letter to the contributors of the POSF. This letter was also prepared on the basis of information Mr Mulina had obtained from the POSFB.
- This letter contained several statements that were either misleading or completely wrong.
- The effect of Mr Mulina's actions was that essential information regarding The Conservatory was hidden from the public and the contributors to the POSF.
- Mr Mulina should publicly rectify his mistake by retracting his comments and apologising for his actions. Mr Mulina should do this publicly in a daily newspaper.

Recommendation N° 16

That the Attorney-General issue guidelines to all government departments and governmental bodies, advising that Pato Lawyers should not act for the State, any government department or other governmental body, for a period of five years from the date of this report.

Recipients

- The Attorney-General.
- The Minister for Justice.
- The Secretary of the Department of Attorney-General.

Reasons

- In the opinion of the Ombudsman Commission, Pato Lawyers gave wrong and misleading legal advice. As a result of their advice the POSFB ended up paying considerably more in the final settlement payment than it was legally obliged to pay.
- Pato Lawyers failed to pass on the vitally important information given to them regarding the purchase price of The Conservatory in the prior sale to Katingo Pty Ltd.
- Pato Lawyers allowed themselves to be paid by one party to a transaction while acting for the other party. This put Pato Lawyers in a serious conflict of interests.
- In the opinion of the Ombudsman Commission, Pato Lawyers failed to live up to an adequate professional legal standard.
- The Attorney-General, as the Principal Legal Adviser to the National Executive, should use his power under the *Attorney-General Act* to convey the results of this investigation and highlight the need for government departments and governmental bodies to obtain competent legal advice at all times.

Recommendation N° 17

That the National Executive Council make a policy decision that neither the State nor any government department or other governmental body should conduct any further business with Warren Anderson or Solly Benn or any company or business wholly or partly owned or controlled by them, separately or together; and that the policy decision be conveyed formally to all departmental heads and all heads of other governmental bodies.

Recipient

- The Chairman of the National Executive Council, the Prime Minister.

Reasons

- Mr Anderson, through Tipperary Developments, and his business associate, Mr Benn, appear to have made a profit of at least \$7 million by selling The Conservatory to the POSFB at a hugely inflated price, just seven days after acquiring the property.
- We have no evidence that Mr Anderson and Mr Benn necessarily acted illegally. However we consider that they acted below normal ethical standards.
- Mr Anderson and Mr Benn constantly inflated the purchase price for The Conservatory for little or no reason.
- Mr Benn obtained worthless property appraisals in order to sustain the asking price. Mr Benn controlled the engagement of the property consultants through the Papua New Guinea Consul in Cairns.
- Mr Anderson and Mr Benn, in both The Conservatory and the Waigani Redevelopment proposal, showed a propensity to involve the government in grand schemes resulting in large profits for themselves and little return for the government.

Recommendation N° 18

That the Prime Minister make all future determinations of Ministerial portfolios, under Section 148 of the *Constitution*, in writing, and that such determinations be published in the National Gazette as soon as possible after being made.

Recipient

- The Prime Minister.

Reasons

- Sir Julius Chan, while Prime Minister, signed the approval to purchase The Conservatory as "Acting Minister for Finance". There was no documentation to show that Sir Julius had made a determination under Section 148 of the *Constitution* re-allocating the responsibility for the finance portfolio to himself.
- There is no express requirement in the *Constitution* that such determinations are made in writing. However, if there is no documentation, there is no proof that the determination was validly made.
- It is extremely important that the responsibilities of Ministers for the various portfolios is clear at all times.

Recommendation N° 19

That the Minister for Public Service, with the advice and assistance of the Secretary of the Department of Personnel Management and the Secretary of the Department of Treasury and Planning, initiate legislation to ensure that the powers, authority and procedures of the Office Allocation Committee be more clearly defined; in particular so that:

- the jurisdiction of the Committee is clearly stated;
- the power of the Committee to give final approval is clearly differentiated from the power of the Secretary for Personnel Management to "consider" all requests for office space; and
- the powers of the Chairman and other members of the Committee, in particular their authority to act on behalf of the Committee, is defined and restricted.

Recipients

- The Minister for Public Service.
- The Secretary of the Department of Personnel Management.
- The Secretary of the Department of Treasury and Planning.

Reasons

- The requests to the Office Allocation Committee, for approval to rent office space within The Conservatory, were made haphazardly. The requests were often made directly to the Chairman, who then gave undertakings without the authority of the Committee as a whole.
- The current arrangement, where the Committee secretariat is located within the Department of Treasury and Planning, causes confusion and duplication. In the case of The Conservatory this led to officers of the Department making undertakings without the authority of the Committee.
- It is not clear whether the jurisdiction of the Committee extends to offices

outside Papua New Guinea. This must be immediately clarified.

- The status of the Committee is not clear. It is not a statutory authority, and therefore lacks a legislative basis for its actions.
- The Committee's decision-making processes should be set down clearly in law and strictly enforced so as to instil a much greater culture of transparency, accountability and discipline within an administrative body which authorises the expenditure of millions of kina of public money.

Recommendation N° 20

That the Minister for Finance and Treasury, with the advice and assistance of the Secretary of the Department of the Treasury and Planning and the Attorney-General, initiate amendments to the *POSF Act* 1990 to alter the composition of the Board of the POSF;

In particular by amending Section 4 of the Act by removing from the Board both the Secretary of the Department of Treasury and Planning and the Secretary of the Department of Personnel Management.

Recipients

- The Minister for Finance and Treasury.
- The Secretary of the Department of Treasury and Planning.
- The Attorney-General.
- The Secretary of the Department of Attorney-General.

Reasons

- The Board of the POSF must be composed of persons who have the time, capacity and independence to routinely make a balanced and careful consideration of many issues, particularly investment decisions involving millions of kina of contributors' money.

- Our investigation has revealed that both the then Secretary for Finance, Mr Aopi, and the then Secretary for Personnel Management, Mr Peruka, lacked the time, capacity and independence to exercise the amount of care and control required as Board members to deal with the proposal to purchase The Conservatory.
- Mr Aopi was placed in position where he inevitably had a conflict of official interests. On the one hand, he was Chairman of the Board which had made a decision in favour of purchasing The Conservatory. On the other hand, he was responsible for advising the Minister for Finance on whether the contract for the purchase should be approved under the *Public Finances (Management) Act*; and he was the head of a Department which had expressed serious reservations almost the proposal.
- Mr Peruka was also in a conflict of official interests. He was a member of the Board of the POSF when it was seeking the agreement of the Office Allocation Committee to lease the whole of The Conservatory. At the same time, he was Chairman of that Committee, which was for a considerable period reluctant to lease the building.
- These conflicts will inevitably continue whenever the POSFB and the State are considering entering into a landlord/tenant relationship.
- If the conflicts are allowed to persist, the situation will continue to exist whereby artificial and contrived leasing arrangements, under which the State wastes public money to prop up poor investments by the POSFB, will be encouraged.
- We do not recommend who should replace the two Departmental Heads. This can only be determined after a thorough review of all feasible alternatives. In particular, the membership of the controlling bodies of public sector superannuation funds in other jurisdictions must be carefully looked at.
- The necessity of having skilled, diligent and independent persons appointed to the Board of the POSF cannot be overstated.

16. CONCLUSION

[16.1] TERMS OF REFERENCE

As we said in Chapter 1, there were a number of terms of reference identified at the start of this investigation.

Our conclusions on these matters are set out below.

- **Who made the decision to purchase The Conservatory?**

The decision to purchase was made by a unanimous vote of the members of the Board of the POSF, based on a business paper presented to the Board by Ereman Ragi, the Managing Director. Mr Ragi had also provided the largely inaccurate, and extremely misleading information, from which the business paper was prepared.

Although Mr Ragi was responsible for getting the decision through the Board, he was under some pressure to do so. This pressure came from Sir Albert Kipalan and Sir Julius Chan. Sir Julius gave statutory approval of the purchase.

The Conservatory had originally been promoted as a target for purchase by Jacob Lemeki, the Papua New Guinea Consul in Cairns. He had found the building with the assistance of Warren Anderson and Solly Benn.

- **How was the purchase price arrived at?**

At all times the purchase price was solely the price given by the vendors. There was no attempt to negotiate it. Originally, in August 1994, the asking price was *K13 million*. After the devaluation of the kina in September 1994, it was raised to *K14.8 million*. On 10 October 1994, when the purchase was approved by the POSFB, the purchase price was *K15.5 million*.

The purchase price in the contract, signed six weeks after the approval, was \$18.7 million, which converted at the time to *K16.7 million*. The actual

purchase price paid at settlement was still more, rising to an inexplicable *K17.6 million*, or \$19.7 million at the then exchange rates.

None of the officials involved in the sale made any attempt to slow the rapid acceleration of the purchase price. All of the figures gave the impression of being plucked from the air by the vendors, and accepted with enormous gullibility by Mr Ragi and the other members of the Board of the POSF.

- **Were any members of Parliament involved in the transaction?**

Sir Julius Chan was involved closely in the purchase. As Acting Minister for Finance, he approved the POSFB's purchase of the property. Sir Julius had a conflict of interests as a result of a potential benefit for his associates in the Waigani Redevelopment proposal, who were also the vendors of The Conservatory, Mr Anderson and Mr Benn.

Sir Julius and Sir Albert Kipalan applied pressure on Mr Ragi, Mr Peruka and Mr Ai to ensure they facilitated the purchase.

The Minister for Finance, Mr Chris Haiveta, approved the decision to re-finance the purchase of The Conservatory. When the controversy surrounding the purchase became public in November 1995, Mr Haiveta made misleading statements to both the public and the Parliament.

- **How was the deal put together?**

The actual sale of The Conservatory to Moki N° 10 Pty Ltd (the corporate vehicle used by the POSFB) was a result of a complex string of transactions. At the time the POSFB approved the purchase, the vendor, Katingo Pty Ltd, did not actually own the building.

Katingo only owned an option to purchase The Conservatory for a fixed price (\$9.75 million). Katingo had bought this option from Asia Securities Pty Ltd for \$2 million. The actual owner of the building at this time was Cape Bouvard Investments Pty Ltd. Asia Securities had previously bought the option to purchase from Cape Bouvard for \$100,000.00.

Katingo therefore paid \$2 million to Asia Securities for the option and, after deciding to exercise the option, a further \$9.75 million to Cape Bouvard Investments for the building itself. Katingo had therefore paid well above the

market value of the building.

The actual transfer to Katingo from Cape Bouvard did not take place until 17 November 1994, just seven days before the contract with Moki N° 10 Pty Ltd. On 24 November 1994, Katingo on-sold the building to Moki N° 10 Pty Ltd for \$18.72 million.

All the parties to the transactions, except Moki N° 10 Pty Ltd and the POSFB, made a considerable profit.

- **What was the market value of The Conservatory? Did the POSFB pay too much for it?**

We obtained independent market valuations, from registered and qualified valuers, of The Conservatory. As a result of these valuations we conclude that, at the time of the purchase by POSFB, The Conservatory was worth approximately \$7 million. This is less than half the \$18.72 million the POSFB paid.

The POSFB paid far too much for the property.

The State has since agreed to lease the entire building from POSFB at grossly inflated rentals. If the entire building were to be currently leased at market rentals it would generate a gross annual income of approximately \$630,000.00. The State pays annual rentals of \$2.1 million.

The end result is that the \$11 million dollars overpayment made by the POSFB has gone straight into the hands of foreign property developers. The attempt to claw back some of this overpayment from the State by way of exorbitant rents merely means some of the overpayment comes from the Papua New Guinea public as well as the POSF contributors.

- **If too much was paid, how can the deal be explained?**

The deal was largely a result of gross administrative incompetence. The vast majority of public officials, whose job it is to assess, analyse, criticise and above all apply common-sense to these kind of proposals, failed miserably to carry out their duties. Basic mistakes were made; for example not obtaining a valuation, and not obtaining finance before the settlement date.

Most of the decision makers seemed happy to accept anything the vendor told them, and were spineless when confronted with political interference in the decision-making processes. It is difficult to avoid the conclusion that some of the officials would take more care in buying their *buai* in the street than they would when spending millions of kina held in trust for the public and the contributors of the POSF.

- **Was there corruption involved in the decision to purchase The Conservatory?**

The other possible conclusion when we find such a level of administrative incompetence and neglect is that it was deliberate, and done for some corrupt benefit or motive. It is significant that the purchase of The Conservatory involved an inordinate amount of profit. The transaction carried so much fat that it created an environment where corruption could easily occur, and money could be paid or taken without causing a ripple.

We have no evidence of any payment or kickbacks made as a result of The Conservatory purchase. However, as we state earlier, we consider Sir Julius Chan, who acted in an official capacity while in a conflict of interests regarding this purchase and the Waigani Redevelopment proposal, was responsible for creating an environment where corruption could easily occur; and his conduct in that regard was improper and wrong.

[16.2] SUMMING UP

Focus of this report

This report has necessarily focussed on the movers and shakers of The Conservatory purchase - the politicians, public officials and businessmen who made the deal happen. However the real recipients of this report are the people who were *not* in a position to do anything - the people who relied on the POSFB and the government to act in their best interests.

This report is dedicated to:

- The contributors to the POSF, who have been kept in the dark and misled, too many waiting for their payout, as their hard-earned contributions were carelessly spent.
- The people of Papua New Guinea, who are being asked to subsidise the bad

decision of the POSFB through an ill-conceived and artificial lease to the State.

- The professional and ethical public officials that still exist in our country, and who watch as their less honest and less competent colleagues go unpunished or even rewarded and promoted for their bad advice and wrong conduct.

Incompetence

The outstanding thread winding through our investigation and this report was the sheer administrative incompetence and lack of care shown by the public officials responsible for putting the deal together. Very few of the public servants were willing to look beyond their own noses and say that they thought this decision was wrong. Senior officials of the POSFB had the opportunity, indeed the responsibility, to objectively analyse the purchase. None did.

It is a sad commentary on the state of governance in Papua New Guinea when no officer is prepared to stand up and give an honest and professional view. Perhaps the public officials are frightened for their jobs. Certainly in this report those public officials who did speak out quickly "changed their minds".

Lack of transparency

Another major concern with the way The Conservatory deal was put together was the lack of transparency and openness in the process. One aspect of this was the conflict of interests of Sir Julius Chan, who promoted the purchase while having undeclared links with Mr Anderson, the vendor. Sir Julius had an obligation to declare his interest before dealing with this matter in any way. He did not fulfil this obligation.

Sir Julius, as the Prime Minister, had the power to stop this transaction. He was closely involved in the purchase. He knew when all the major steps were being taken to purchase the property. He approved the purchase. Sir Julius was in a position to obtain proper advice and be properly informed. As the person in Papua New Guinea at the time with the most political power, Sir Julius should have exercised that power with responsibility.

Dishonesty

Another aspect of lack of transparency was the willingness of almost everyone involved to hide the details of the purchase. When this matter came to the public eye in November 1995, everyone concerned rushed to hide the facts. Politicians and

public officials gave the public information which was at best misleading, and at worst completely wrong and dishonest. No one was willing to admit a mistake had been made. Nobody told the truth.

The Ombudsman Commission received many responses to its preliminary report, from people mentioned adversely in this report. The vast majority of those responses were from people passing the buck and evading responsibility. With the exception of Rupa Mulina, no one was willing to admit, even years after the event, that a mistake had been made.

Irresponsibility

A number of officials attempted to justify the purchase of The Conservatory by pointing to the head lease between Moki N° 10 Pty Ltd and the State. This lease was supposed to generate rentals of more than \$2 million a year. When this lease is taken into account, they say, this is a very good investment. It has even been argued, using that reasoning, that it did not really matter what the POSFB paid for the building. As long as the State could be signed up on a long term lease, everything was OK.

We conclude that these arguments are not sustainable. The fact that some respondents to this report continued with them long after the matter became public has unfortunately provided further evidence of the contemptible and irresponsible attitudes displayed through this matter.

We liken those attitudes to a person who buys a house in Boroko for K250,000.00 when it was only worth K100,000.00, rents it to their father for three times the market rate and then claims it was a very good investment.

Even if the head lease were an arms length transaction (which clearly it is not) the hard fact remains that the POSFB paid far too much for The Conservatory. It was a disgusting and contemptible rip-off.

Image of Papua New Guinea

There is no doubt that the image of Papua New Guinea overseas has been tarnished by this deal. The Conservatory sits in Cairns, half empty, as a monument to bad judgment, poor planning, lack of professionalism, administrative incompetence and greed.

To this day the contributors of the POSF have had no satisfactory explanation of the decision of the Board to purchase The Conservatory.

Legitimate expectations

We must ask ourselves: What do the people of Papua New Guinea want from our politicians and public servants? We suggest:

- professionalism
- discipline
- backbone
- commitment
- competency
- and above all, a healthy dose of common sense.

These qualities were distinctly lacking in the events surrounding the purchase of The Conservatory. The Ombudsman Commission hopes and trusts that the public officials of today will read, digest and learn. In particular we ask the readers to whom we have directed our recommendations to carefully and conscientiously consider our recommendations, and then implement them without delay.



S G PENTANU
CHIEF OMBUDSMAN



I GENO
OMBUDSMAN



R HITOLO
OMBUDSMAN

PORT MORESBY
18 NOVEMBER 1999

Consul.....	65-67, 83, 296, 303, 309, 342-343, 372, 377
Consulate.....	66-68, 71-72, 83, 102, 168, 216, 253, 257, 278
Coyle, David.....	13, 188-189, 191, 194-195, 299
Crockford Property Consultants Pty Ltd.....	127, 130, 216, 246, 290, 296
Crockford report.....	127-130, 133-134, 139, 147, 154, 204, 223, 286-287
Crockford, Ted.....	13, 127, 131-134, 147, 286, 299, 308, 311, 322

D

Department of Finance.....	55-56, 90-93, 100, 102, 112, 122-126, 135-136, 139-144 157, 164-167, 179, 181-182, 203, 205-206, 208, 232, 236, 242 256, 273, 290, 293, 302, 309, 321, 336, 339, 344, 384
Department of Foreign Affairs and Trade.....	66, 78-79, 145, 163, 299, 343
Department of Personnel Management.....	30-31, 48, 102, 167, 308, 330-331, 353, 360, 374-375
Department of Works.....	48, 55
Dusava, Gabriel.....	14-15, 66, 68-69, 72-74, 78-79, 88, 102-103, 141, 163-164, 296 299-300, 320, 327, 342-343, 361

E

Eviaisa, Aloyius.....	14, 20, 99-100, 126, 175, 177, 300, 320, 334, 355, 361, 365
-----------------------	---

F

Finance Pacific Ltd.....	306
Foo, Simon.....	163
Foreign Investment Review Board.....	152-153, 168, 170-172, 177, 180, 219
Fraser, James.....	33

G

Galele, Eddie.....	336
Gelu, Zachary.....	14, 253-254, 320, 343-344, 361
Genia, Kilroy.....	353
Gianotti Umberto.....	132, 264
Gowing, Dennis.....	279

H

Haiveta, Chris.....	14, 50, 76-77, 84, 86, 121, 125, 134, 136-137, 142, 158, 180-182, 207, 211-212 215, 217, 219-220, 231, 246, 249-251, 253 301, 305, 320, 344-345, 353, 355, 369, 378
Hambros Equities.....	146-147
Hickey, John.....	208-210, 215

I

Iamo, Vele.....	14, 90, 93, 97, 99-100, 115, 139-140, 142-143, 208, 210, 273 302, 320, 336, 355, 361, 366
Indosuez Australia Ltd.....	207-210, 215
International Monetary Brokers Pty Ltd.....	146, 310, 384
Investment Promotion Authority.....	32
Ivarato, Aita.....	231, 243-244, 250

J

Jones Lang Wootton Advisory Services Pty Ltd.....	103-109, 209, 260, 262, 279-287, 285-287
---	--

Joseph Pease (Cairns) Pty Ltd	90
-------------------------------------	----

K

Kalang Pty Ltd.....	40, 42, 53, 56-63, 158-159, 297, 314
Kalnins, A.....	48
Katingo Pty Ltd	75, 107, 150-151, 154-155, 162, 171, 174-176, 185-192, 195-201 207, 212, 216, 248, 264-266, 270-277, 286, 289, 291-292 295-296, 299, 306, 308-311, 324, 371, 378-379
Kila, Darby	13-14, 97, 118, 126, 177
Kilage, Sir Ignatius.....	8
Kipalan, Sir Albert.....	14, 45, 50, 52-54, 59-61, 63, 77, 86-87, 101-102, 115, 302-3 313, 320-321, 326, 328-329, 331, 377-378
Knapp, Bernard	14
Kundin, Glenn	58

L

Land Board.....	42
<i>Land Registration Act</i>	254, 344
Leadership Code.....	296
Lemeki, Jacob.....	14, 40, 65-77, 82-85, 102-103, 114, 205, 296, 303 310, 320, 327, 342-343, 361, 377
Liosi, Napoleon	243
Lupari, Isaac	14
Lus, Sir Pita	231, 233

M

Macquarie Bank.....	146, 148
Malabag, Michael.....	14, 20, 97-99, 118, 126, 177, 179, 230-231, 243, 246, 248-249 303-304, 320, 332-333, 355, 361, 364-365
Malagan House.....	1-2, 39, 108, 278, 309, 317
Mangor, J.....	55
Matane, Sir Paulius.....	222
McNamara & Smith	149-151, 198-199
Minister for Finance	20-23, 25, 29, 33, 36, 40, 42, 77-78, 84, 86, 91, 97, 117, 119, 125-126 134-135, 137, 139, 142-144, 146, 157-158, 177, 180, 182, 200, 208, 211, 215-216 231, 232, 236, 239, 246, 249, 253, 291-294, 296, 301, 305, 313, 325, 340, 343-346 355-359, 363-368, 370, 373, 375-376, 378
Minister for Foreign Affairs and Trade	39, 66-67, 69, 72, 296
Minister for Lands and Physical Planning.....	42, 50, 59, 77, 302 313, 328, 353
Minister for Public Service.....	48, 51, 238, 302 353, 355, 374
Moki N° 10 Pty Ltd	117, 151, 170, 175-177, 179-183 186-188, 208-211, 277
Mowana, Ugwalubu	14, 20, 99, 126, 177, 179, 304-305, 320, 335, 361
Mulina, Rupa	14, 215-217, 220-221, 246-248, 250, 301, 306, 346-347, 361, 370, 382
MVIT.....	26

N

Namaliu, Rabbie.....	233, 244
National Airline Commission.....	32, 164
National Australia Bank	146
National Court	11, 15, 354

National Executive Council.....	27, 35, 50, 56, 63-65, 97, 120, 125, 142-143, 162-164 166, 253, 254, 347, 353, 355, 360, 372
---------------------------------	---

O

Office Allocation Committee	30-32, 43-46, 48, 51, 54-55, 58, 60, 63, 68-69, 78-79, 84 89-90, 93, 99, 100-101, 110, 114, 135-136, 142-144, 165-167, 203, 219 247, 273, 293, 307, 313, 321, 325, 328-331, 339, 343, 355, 360, 374, 376
Omega Property Management.....	256
one-stop-shop policy	216
Orchid Plaza	81, 95, 105, 129
Orea, John.....	48-49
<i>Organic Law on the Duties and Responsibilities of Leadership</i>	9
<i>Organic Law on the Ombudsman Commission</i>	2, 3, 9-12, 14, 318, 350-351, 354
Owston Nominees Pty Ltd.....	52, 264

P

Painap, John.....	255
Pato Lawyers	14, 52, 54, 62, 87-88, 117, 149-151, 153, 157, 167-176, 184-201 207, 267, 271, 273, 275, 296, 299, 306-307, 314, 324, 355, 371
PEA National Executive	304
People's Progress Party	40, 53, 56-59, 61-63, 159, 297, 314, 329
Peruka, Tau.....	14, 20, 44-46, 54-55, 60, 68-69, 78-79, 84-86, 88-92, 97, 99-102, 118 126, 141, 143-145, 165-167, 177, 219, 238, 247, 271, 273, 293-294 303, 307, 313, 320-321, 326, 328-332, 339, 343, 362, 376, 378
Peters, Greg	75-76, 132
Philemon, Bart.....	231, 353
Popoitai, Benny	209
Porter, Bruce.....	208, 215
POSFB	1, 3, 4, 17-19, 22-25, 28-30, 32, 36-38, 42-43, 46, 50-54, 58, 60, 63, 65, 68-69, 74-75 78-79, 83-84, 86-93, 95-96, 98-99, 101-102, 104-105, 109-123, 125-127, 135-142, 145-149 151-158, 162, 164-165, 167-173, 175-186, 188-196, 198-212, 215, 217, 219-220, 230-239 241-243, 246-253, 256-261, 263-266, 270-279, 281, 286-287, 289, 291-297, 299-315, 317 321-327, 329-349, 353, 355-360, 363-372, 375-382
Prime Minister	25, 28, 33-34, 39-40, 42-43, 45-46, 50, 52, 54, 57, 63, 66-67, 76-77 86, 88, 101, 103, 116-117, 119-122, 124-125, 135-136, 141, 146, 157, 162-163 177, 230-234, 236, 238-243, 273, 291-292, 297-298, 302, 313, 316, 326-328 340, 343, 347-348, 352-353, 355, 360, 369, 372-373, 381, 384
<i>Public Finances (Management) Act</i>	17, 27-29, 36-37, 117, 119, 126, 137-138, 157 181, 203, 234, 254, 294, 296, 329, 344, 360, 376
Public Prosecutor.....	299, 350
<i>Public Services (Management) Act</i>	17, 30, 32, 294, 360

R

Ragi, Ereman	14-15, 20, 38-40, 42-44, 46, 48-49, 52, 54, 68-69, 71, 74, 77-79 83-84, 86-90, 92-93, 94-103, 109-111, 113-122, 124, 126-127, 137, 141-146 148-151, 153-157, 165-166, 168-170, 172-182, 185-186, 190-191, 194-196, 202 206-210, 215, 219, 222, 246-248, 251-252, 272-277, 294-296, 303, 309-310, 313-315 320-326, 329, 331-332, 335-338, 341, 343-344, 355, 362-364, 367, 377-378
Ranjit Kanagasabai.....	189
Richard Ellis, International Property Consultants	260-262

- Roberts, Tony 14, 74-76, 79-89, 104-111, 114, 126-128, 130-134, 154
202-205, 255-256, 273, 284, 286-287, 295-296, 308-309, 311, 321, 339, 342

S

- Sarich Corporation Pty Ltd 128
Sarich, Ralph 107, 128, 150, 204, 263, 269-270, 272, 309
Schroders Australia 146
Seefeld, Dieter 14, 162-164, 309, 348
Singapore 134, 136
Somare Circuit 38, 52, 62, 64, 314
stamp duty 71, 97, 185-187, 201, 255
State Solicitor 31, 204, 216, 220, 254, 255, 343-344
Supreme Court 15, 34-36, 50, 76

T

- Tarata, Koiari 210
The National 222, 230, 250-251
The Saturday Independent 211, 214, 217
Tipperary Developments Pty Ltd 38, 42-46, 48-55, 57-60, 62, 69, 71, 74, 76-78, 82
88-89, 92, 94, 98, 101, 110, 116, 131-132, 149, 155, 184, 192-194, 198
200, 264, 273-274, 284, 291, 295, 314, 372
Tomuriesa, Rodney 44
Tony Roberts Real Estate 89, 102, 203, 205, 256, 286, 339
Tourism Promotion Authority 163, 165, 253
Tsiamalili, Peter 14

U

- Unagi, David 251

V

- Violaris, Nicos 14, 39-40, 44-46, 58-60, 146, 298, 309-310
Vulupindi Haus 44

W

- Warena, Glaimi 58
Westpac Banking Corporation 146
Wingia, Joseph 14, 23-24, 94, 98, 111, 114, 117, 118, 151, 155-157, 168-170, 173,
177-179, 182, 189-190, 194-195, 207-208, 211-212, 275, 310-311
320, 323, 332, 335, 337-339, 341, 355, 362, 367
Wingti, Paia 50, 67, 236
Wyllie, Bill 263, 269, 276, 311

Y

- Yaki, Roy 231, 237, 250, 369