

Investigation into Improper and unlawful issuance of entry permits and granting of citizenship by naturalization and issuance of PNG passports to Joko Tjandra alias Joe Chan by the Papua New Guinea Immigrations and Citizenship Services Authority.

SUMMARY

This is a summary of the Final Report by the Ombudsman Commission of an Own Initiative investigation under Section 219(1)(a) (Functions of the Commission) of the *Constitution* and Section 13 (Functions of the Commission) of the *Organic Law on the Ombudsman Commission* (OLOC) into the alleged improper decision by the Government Office Allocation Committee to engage Central Land Limited to build a 32 Floor Government Office Complex, at Waigani Central in NCD.

The Commission investigated the following issues:

1. Whether procurement processes and procedures provided under the *Public Finances (Management) Act* 1995 were followed by the GOAC, in the entire process leading to the signing of the MoU and drafting of Pre-Lease Terms and Conditions between the Government of PNG and Central Land Limited, to construct a 32 Floor Government Office Complex at Waigani Central in NCD.
2. Whether procurement processes and procedures provided under the *Public Finances (Management) Act* 1995 were followed by the GOAC, in the entire process leading to the facilitation of the proposal by Central Land Limited, to construct a 32 Floor Government Office Complex at Waigani Central in NCD.

Between 1996 to 2009, there have been various NEC Decisions made in regard to the rehabilitation and construction of Government office building in Waigani City Centre.

On 5 September 2012, the then Minister for Public Service, Hon. Sir Dr Puka Temu, KBE, CMG, MP, wrote an Inter-Office Memo to Secretary for DPM and Chairman of the GOAC, Mr John M. Kali, CMG, OBE, to assess the proposal for Government office Complex and proceed to negotiate pre-lease agreements with Naima Investments Limited.

On 25 September 2012, Secretary for DPM and Chairman of the GOAC, Mr John M. Kali, CMG, OBE, signed a MoU with Naima Investments Limited without legal clearance from the State Solicitor. The MoU was to establish the process leading to the lease between the Parties.

On 4 January 2013, the then Minister for Public Service, Hon. Sir Dr Puka Temu, KBE, CMG, MP, made a Policy Submission to the NEC, in regard to the approval for National Government to enter pre- leasing agreement with a private investor. The purpose of the Policy Submission was to inform NEC of acute shortage of office accommodation faced by Government Departments, Agencies and Authorities, particularly in Port Moresby, and to seek NEC's

approval for the GOAC and CSTB to invite and enter into pre-lease agreement with a private sector investor, under normal legal and transparent business transaction.

Based on the above Policy Submission, the NEC on 9 January 2013, during its Special Meeting No: 1/2013, made a decision approving the National Government to enter into a pre-lease agreement with a private investor. The Decision No. 3/2013 ***“approved in principle the construction of a 24 storey office complex building by Naima Investments Ltd under the BOT arrangement and for the State to lease the new office complex next to Central Government Building at Waigani on State land”***.

In that decision, the NEC directed the Secretary for DPM and Chairman of the GOAC, Mr John M. Kali, CMG, OBE ***“to relocate those approved Government Departments and Agencies to the new office complex consistent with its approved and established administrative guidelines”***. He was further directed to implement this decision in consultation with the Chairman of CSTB, Secretary for Department of Finance, Secretary for Department of Treasury, Secretary for Department of National Planning and Monitoring, and the Chief Secretary to Government. These Departmental Heads were directed to report the progress back to the NEC.

On 12 August 2013, the then Minister for Public Service, Hon. Sir Dr Puka Temu, KBE, CMG, MP, made a Policy Submission to the NEC, in regard to the design and construction of National Government’s Multi-Storey Office Complex. The purpose of the Policy Submission No. 215/2013 was to seek the Cabinet’s approval, to enhance its earlier Decision No: 3/2013 of 9 January, 2013, for the construction of a Multi-Storey Office Complex under “BOLT” arrangement, and select a major developer from amongst the bids that were presented. The Public Service Minister also recommended that the NEC approve the development of a lease arrangement for all Government Departments/Agencies, to be accommodated in the proposed Multi-Storey Office Complex; and then also direct the relevant Government Departments to implement this decision.

Acting on the above Policy Submission, the NEC during its Special Meeting No. 23/2013 held on 14 August 2013, made its Decision No. 282/2013, approving the enhancement of NEC Decision No. 3/2013 of 9 January, 2013, with particular reference to the construction of a Multi-Storey Office Complex. However, in that decision, the NEC Policy Submission in part states that ***“taking into consideration the views of the Members of the Council with regard to the lack of detailed information on the three recommended financiers/developers provided, agreed not to approve Recommendations 3 to 8 of the submission, instead it directed that a State Negotiating Team, comprising the Chief Secretary to Government as Chairman, Secretary for personnel Management, Secretary for Treasury and the State Solicitor, be appointed to negotiate the terms and conditions of the project with the three recommended financiers/developers for consideration by the NEC.”*** Recommendations 3 to 8 concerned matters related to the design and construction of a Multi Storey Office Complex together with separate office to accommodate the Office of the Prime Minister of PNG and a 1 storey annexure for conference and functions, and a separate facility for car parking; the financier and developer from the recommended short listing in the following order of preference:(1) Central Land Limited (2) Leightons PNG & Hassel and (3) CoDA PNG Limited; the Secretary and the Minister for Lands to facilitate the transfer of Allotment 1, Section 391, Hohola, and any vacant undeveloped adjoining State land including Allotment 2, Section 391, Hohola to DPM; the Secretary for DPM, in consultation with the Secretaries for Finance, Treasury, National Planning

& Monitoring, Lands & Physical Planning and the Chief Secretary to Government to implement that decision; the Secretary for DPM in his capacity as Chairman of the GOAC to negotiate fundamental lease terms and conditions with the selected developer; and the Minister for Lands to delegate his powers with respect to execution of lease agreements to the Secretary for DPM in his capacity as Chairman of GOAC to fast track the execution of that lease agreement and in all other outstanding lease agreements.

Again, on 20 August 2013, the then Minister for Public Service, Hon. Sir Dr Puka Temu, KBE, CMG, MP, made a Policy Submission No. 229/2013, to the NEC, in regard to the design and construction of National Government's Multi-Storey Office Complex. The recommendations made to the NEC in this submission, were exactly the same compared to those in the Policy Submission No. 215/2013.

Basing on the above Policy Submission, the NEC on 28 August 2013, during its Special Meeting No: 25/2013, made a decision approving the enhancement of the NEC Decision No. 3/2013, of 9 January 2013, in particular reference to the construction of a Multi-Storey Office Complex. The Decision No: 300/2013 states that **“approved in principle, *Central Land Limited to be the financier and the developer of this project.*”**

In that decision, the NEC ***“noted that the Office of the Prime Minister and the Department of the Prime Minister and NEC will be located at the Marea Haus, which is currently under renovation, and approved that the Multi-Storey Office Complex will be to accommodate various key Government Departments and Agencies.”*** The NEC also ***“noted the issues raised with regard to the leasing period and land and directed the State Negotiating Team appointed in NEC Decision No. 282/2013 and Government Office Accommodation Committee (GOAC) to negotiate the leasing agreement with Central Land Limited for endorsement by the NEC.”***

The NEC, in view of the above decision, did not approve Recommendations 3 to 8 of the Policy Submission No. 229/2013.

The State Solicitor provided advice to the GOAC, on compliance with the tender requirements under the PFMA, after NEC approved CLL's proposal for the construction of the 32 Floor Government Office Complex, but this was not complied with by GOAC.

Findings of Wrong Conduct

- [1] In the opinion of the Ombudsman Commission, the actions of the GOAC were wrong and improper when it:
- (a) obtained NEC endorsement of CLL (by way of EoI) which was outside of the procurement process provided in the PFMA and Part 13, Division 2, Paragraphs 3 & 4a of the Financial Manual;
 - (b) did not inform NEC to re-tender CLL's proposal in line with the PFMA;
 - (c) proceeded to sign a MoU with CLL;

- (d) facilitated the engagement of CLL on the construction of the Multi-Storey (32 Floor) Central Government Office Complex, though that should have been done by the CSTB.
- (e) proceeded with the signing of MoU and negotiated pre-lease arrangements with CLL to construct a 32 Floor Central Government Office Complex, which was exceeding 12 storeys and in breach of the *Waigani City Centre Development Control Policy*.
- [2] In the opinion of the Ombudsman Commission, the actions of the GOAC were wrong and improper when it called for EOI which was outside of the PFMA and not following the legal advice of the State Solicitor to re-tender CLL's proposal under PFMA for the construction of the 32 Floor Central Government Office Complex building project and service through CSTB.
- [3] In the opinion of the Ombudsman Commission, the action of GOAC was wrong and improper when it did not fully and properly inform NEC on the technical and economical advice for the 32 Floor Central Government Office Complex building project and service that will cost the State millions of kina.
- [4] In the opinion of the Ombudsman Commission, the action of GOAC was wrong and improper when it withheld vital clause in the MoU regarding the cost of the BOLT arrangement on the 32 Floor Central Government Office Complex building project and service which will cost the State approximately K981, 760,000 in one year which is much more higher than the National Government's annual budget for accommodation/rental which is at K230, 000,000. This particular information did not reach NEC.

Irregularities

- Non-compliance of the tender requirements, and provisions of the *Public Finances (Management) Act 1995* by the GOAC on the facilitation of the proposal and engagement of CLL to construct the 32 Floor Government Office Complex.
- The EoI process which GOAC followed in the engagement of CLL was outside of the procurement process provided in the PFMA and the Financial Manual in particular Part 13, Division 2, Paragraphs 3 & 4a.
- Signing of MoU with Central Land Limited by GOAC after State Solicitor advised not to do so until the procurement process is followed.
- Bypassing of due process and hijacking roles and responsibilities of CSTB by the GOAC.
- Non-compliance with the building height restrictions of the *Waigani City Centre Development Control Policy* which provides for buildings not exceeding the height restriction of 12 storeys.

Findings of Wrong Conduct

- [1] Hon. Sir Dr Puka Temu, KBE, CMG, MP, the then Minister for Public Service
- [2] Mr John M. Kali, CMG, OBE, Secretary for DPM and Chairman of the GOAC

The following legislations have been breached by Hon. Sir Dr Puka Temu, KBE, CMG, MP, the then Minister for Public Service, and Mr John M. Kali, CMG, OBE, Secretary for DPM and Chairman of the GOAC, who were implicated in relation to the engagement of Central Land Limited to construct the 32 Floor Central Government Office Complex at Waigani in NCD:

- [1] Sections 39 (Central Supply and Tenders Board) & 40 (Tender for Property, Stores and Services) of the *Public Finances (Management) Act*, 1995.
- [2] Part 13, Division 2, Paragraphs 3 & 4a of the Financial Manual.
- [3] Waigani City Centre Development Control Policy.

Conclusion

The Commission has observed that the above mentioned leaders and persons failed to follow proper processes and procedures outlined in the above Laws, relating to the engagement of Central Land Limited to construct a 32 Floor Central Government Office Complex at Waigani in NCD.

Recommendations

- [1] The Ombudsman Commission recommends that, the GOAC through the then Minister for Public Service, Hon. Sir Dr Puka Temu, KBE, CMG, MP:
 - (a) inform NEC of State Solicitor's advice for Waigani Multi-Storey Central Government Office Complex (CLL Proposal) to be procured by CSTB in accordance with the PFMA;
 - (b) inform NEC that no lease agreement has been executed between the State (DPM) and CLL as yet;
 - (c) recommend for NEC to revoke its earlier decision for State Solicitor to finalize leasing agreement to be signed by DPM and CLL;
 - (d) seek NEC approval for the Waigani Multi-Storey Central Government Office Complex Project (CLL Proposal) to be procured through CSTB.
 - (e) inform NEC that according to the Waigani City Centre Development Control Policy, the highest building allowed is 12 storeys and cannot be beyond that. The different zones within the city have specific building requirements and for the areas that the proposed building is intended to be built on would not allow for a 32-storey building.
- [2] The Ombudsman Commission recommends that the State Solicitor as delegated by the Attorney General and mandated by the Attorney General Act (Amended) 2013, is the

only Principal Legal Advisor of the government in terms of clearance on MoUs and agreements, hence in future, projects and services of such nature must fully comply with the advice of the State Solicitor.

- [3] The Ombudsman Commission recommends that in future, NEC must be fully and properly informed with the technical and economical advice so that NEC is properly guided to make informed and proper decisions on projects and services that will cost the State millions of kina.
- [4] The Ombudsman Commission recommends that CSTB is the only mandated procuring authority of the national government, hence in future; projects and services of such magnitude that will cost the State millions of kina must be procured through CSTB.
- [5] The Ombudsman Commission recommends that the BOLT arrangement under PFMA on projects and services is done away with. Although it has good intentions, the provision can be abused.