



**SOLOMON ISLANDS GOVERNMENT**

**Special Audit Report into the Affairs of the**

**LAND REGISTRATION PROCEDURES  
AND KUKUM SUBDIVISION  
WITHIN THE  
DEPARTMENT OF LANDS AND SURVEY**

**MINISTRY OF AGRICULTURE AND LANDS**

Reported By

**Auditor General**

Office of the Auditor General

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12 October 2006

**National Parliament Paper No 19 of 2006**

## FOREWORD

### **Background**

I have pleasure in presenting this Report on a Special Audit of the Land Registration Procedures – Kukum Land Sub-Division within the Ministry of Agriculture and Lands.

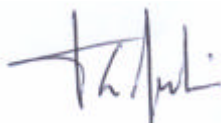
The subdivision of the land at Kukum adjoining the Police Station was undertaken by the Commissioner of Lands on behalf of the Government of Solomon Islands.

### **Audit**

The audit reviewed the allocation process in relation to the sale of land at Kukum as a pilot review to identify key learnings from the processes employed to enable a ‘blue print’ to be developed for other such allocations.

The Report contains numerous recommendations which have been accepted by the Ministry and where possible remedial action has been taken.

The lack of adequate systems and processes and documentation to evidence and support decisions in relation to administrative processes associated with the land allocation and other shortcomings were a major concern and I have made a significant number of recommendations to provide a framework going forward for the Ministry.



Floyd Augustine Fatai

**Auditor General**

**12 October 2006**

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## **OVERVIEW**

### **Background**

The Ministry of Agriculture and Lands is responsible for providing land and housing policy directives. In particular the Department of Lands and Survey (the Department) is responsible to deliver effective land administration to government and the public at large.

This audit is being conducted in recognition of the fact that an urgent need for the Government to address the high shortage of government houses due to the alleged unlawful sale of government houses from the late 1970s and early 1980s. In particular, the Kukum Commercial Site was identified as a paramount example of government housing and land occupied by government police officers which was sold to private landowners in 2002.

However as an audit has not been performed for many years, OAG had to obtain an understanding of the processes within the Department relating to land transactions. Given the enormity of this task, a more efficient and effective audit approach was to select the Kukum Commercial Site as a 'pilot' audit to:

- Understand and investigate the process followed to subdivide and subsequently allocate parcels at the Kukum Commercial Site;
- Perform testing to identify the weaknesses that led to the sale of the lots at Kukum;
- Gain an understanding of the current processes relating to land administration/transactions;
- Review the current control environment in relation to these land processes;
- Review land transactions for potential misappropriation of funds; and
- Identify areas of improvement in relation to registration and processing of land applications.

At the completion of this pilot audit, the preliminary understanding and knowledge gained will be applied to audit other areas relating to government housing, in particular, residential public housing in Guadalcanal and surrounding Provinces.

### **Qualification Audit Report**

Due to the current civil unrest as a result of the general elections since 18<sup>th</sup> April 2006, OAG has not been able to complete aspects of the investigations due to some of the landowners leaving the country. The timing of the completion of these investigations is unknown, therefore, rather than delay the issuing of this audit report for an unknown length of time, OAG strongly believes that the audit recommendations raised to date will highly assist with the improvement of current administration and processing of land transactions.

### **Audit Objective and Scope**

For the purposes of this interim audit, the parcels or Lots at the Kukum commercial site were selected for review to ensure:

- the Commissioner of Lands and Registrar of Titles have effective systems and methods of ensuring that the requirements under the Lands & Titles Act are complied with and that the revenue payable to the Government in this respect are properly identified; and
- the subdivision and subsequent allocation of the land parcels at Kukum Commercial site are transparent, equitable and fair.

### **Key Findings**

The audit identified the following:

#### **Physical Planning and Subdivision Improvements**

- Key steps in the planning and subdivision of the Kukum commercial site were not taken. In addition, the Honiara Town and Country Planning Board ceased to operate from 2003 to 2005 and commenced again on 20<sup>th</sup> September 2005. Board minutes for the period 1997, 1998, 2000 could not be located and there was no evidence to support important decisions that were made.

#### **Valuation Process Improvements**

- No authority could be located for the Commissioner of Lands to vary Valuer General's initial valuation of land premiums and rentals. In addition there was a lack of supporting documentation in the valuation process and these deficiencies have left the system open to fraud and corruption.

#### **Land Registration and Land Allocation**

- The critical systems in the land registration and allocation processes have seriously broken down resulting in a general lack of confidence in the administration of this area. Some of these issues include:
  - Lack of an operational delegation listing for Land Officers;
  - Lack of documentation to support land development proposals within the legal Instruments;
  - Lack of a documentation to support the formal acceptance of an application for land by the Commissioner;
  - Discrepancy between the land fees stated in the Letter of Offer and Signed Instruments;
  - Pre-signing of Authorisation by the Commissioner of Lands and the certification given by the Commissioner of Oaths without appointment;

- Individual Lot Files were not created when Kukum was subdivided;
- Applications reviewed were not considered on a priority basis;
- Restriction to not transfer land is not being adhered to;
- Lack of “Registration Advice” issued by Registrar of Titles - Possible Loss of Rate Revenue By Honiara City Council;
- Lack of the use of dealings checklists used by land officers as a key control to ensure a complete registration process is carried out; and
- Land instruments were registered before the applications were received at the Lands Centre.

### **Stamp Duties**

- Controls over the calculation of Stamp Duty pursuant to the Stamp Duty Act are weak and has led to deficiencies in the collection of stamp duty revenue and application thereof. Some of the issues identified are as follows:
  - Instruments that have not been ‘duly stamped’ and therefore may be inadmissible in court and inaccurate calculation of stamp duty;
  - Lack of evidence to support the appointment of Collectors of Stamp Duty;
  - The Chief Collector shall require a Valuation from the Certified Valuer before instruments are ‘stamped’ however no Valuation certificates were issued;
  - No clear indication of which Minister is to make the appointment of Chief Stamp Collectors; and
  - Lack of security and safeguarding of the “Stamp Duty” stamp within the Department.

### **Revenue: Premium, Land Rental, Survey Fees, Valuation, Registration Fees**

- Control over the collection and recording of revenue within Department of Lands and Survey is inadequate in that an estimated revenue of \$205,319 for the Kukum Commercial site (25% of total revenue for Kukum) was forgone. The weaknesses are due to the following issues:
  - Lack of follow up of annual rent in arrears and the lack of revision by the Commissioner of Town and Other Land annual rent charges;
  - Many General Treasury Receipts could not be found to support the payment of various fees to the Department such as Premium, Rental, Valuation, Registration and Survey charges; and
  - Delay in pay-over of collections to Treasury and an inconsistent charging of survey fee rate.

### **General Observations**

- As part of value-adding advice provided by OAG the following general observations were highlighted to improve the general administration and application of the *Land and Titles Act*:
  - A high excess turnover of officers appointed as Commissioner of Lands over the last 13 years contributes to the inconsistent administration of the *Land and Titles Act*;
  - The direct allocation methodology used by the Commissioner of Lands lacks transparency, therefore an open tendering process should be considered as an alternative process; and
  - General information brochures should be considered as a method to alleviate the excess clientele at the lands centre

### **Irregularities**

- A suspected fraud has been identified which involves a land officer or officers using their position and documentation within the Department, to conspire with a member of the public to defraud a Chinese businessman to acquire a parcel of land at Kukum.
- There is a lack of evidence and documentation to verify that payment has been made by a Landowner for the transfer of two (2) parcels of land at Kukum.
- A landowner has paid funds to the Department however OAG identified that the sum of \$20,000 in relation to these funds has been misappropriated.
- Two land officers within the Department of Lands & Survey used their positions as public servants to acquire and transfer a parcel of land.
- The Commissioner of Lands allocated the same parcel of land twice which has resulted in a caveat being lodged.
- Lack of a due process for the allocation of land at Kukum to a Landowner.

### **Conclusion**

The audit of Land Registration Procedures and the Kukum Sub-division has revealed many critical systems' failures in the land registration procedures which has led to the poor management and administration, lack of accountability and transparency in the allocation and registering of land transfers.

The Commissioner of Lands in executing the Kukum Subdivision, in our view, made decisions outside of his authority and power, particularly varying the Valuer-General's initial assessment of rental and valuation fees as well as the premium in the letter of offer. In addition the Commissioner of Lands has been stamping instruments according to an outdated subsidiary legislation from 1964, but under the current legislation he has not been appointed as designated stamp duty officer and therefore has no authority to 'stamp any instruments'.

Furthermore, the direct allocation of land by the Commissioner of Lands, rather than an open tender process which would be more transparent, opens opportunities for abuse of the system and a significant loss of revenue to the Government.

In summary, the deficiencies noted in the land registration procedures have left the allocation and registration of land open to fraud and abuse. This situation is highlighted by the number of serious irregularities noted during the audit of the Kukum Land Subdivision. Although this represents only a small sample of the overall land transactions within the Lands Department this situation exemplifies the inadequate state of procedures within the Ministry.

### **Overall Recommendation**

The Report contains a number of important recommendations to improve the land registration procedures and it is imperative that these be implemented. It is evident that a major strengthening program should be undertaken to improve the land administration procedures. Furthermore, there are a number of irregularities that will require further investigation and these matters should be followed up as soon as possible.

### **Management Response from Permanent Secretary, Department of Lands & Survey**

The Land Registration Procedures – Kukum Land Subdivision Audit undertaken by the Office of the Auditor General on 27 June 2006 revealed many system failures in the land registration procedures which led to the poor management and administration, lack of accountability and transparency in the allocation and registering of land transfers.

These failures are not a result of the absence of a system or ignorance of the system. They are caused by officers who, through ulterior reasons and self interests, took advantage of situations such as the ethnic tension, weak administration and leadership and selfish motives towards their own end. In my opinion what is revealed by the Audit Report is not an act of mistake but in most circumstances, deemed to be deliberate act of misapplication of law to meet ones own need.

### **Management's Overall Action Plan**

After studying the report and submitting recommendations on various components of the audit, the management has come up with the following overall recommendations :

1. That the Permanent Secretary to develop an Organizational Procedure Handbook to be followed in the process of Land Registration, Allocation, etc, covering areas such as Physical Planning, Subdivision, Stamp Duty, Revenues such as Premium, Land Rental, Survey Fees, Registration Fees, Valuation, etc. This will be in a sequential presentation format which should be accessible by the public.
2. There will be established a Land Board with one of its functions to vet all proposed land registration and allocation before final decision is made. It will provide the normal checks and balances of the system. It will have a broad based membership. It is the function of the Board to ensure that all land transactions comply with the Lands & Titles Act.
3. All land that has a potential for redevelopment, such as the Kukum Land, must go through a tender process.
4. In terms of premium, it must be based on the value of the land. (Current premiums are capitalized on the land rent).
5. Lands that are allocated which clearly show irregularity and fraudulent practice must be repossessed by the Commissioner of land and re-sold on tender. The basic premise here is that if the process is illegal, the title is illegal and hence, land should be forfeited and reverted to the Commissioner.
6. Cases that involve fraud can only be best handled by authorities that deal with such actions. Because the Department of Lands is a Government entity entrusted under law to fulfill its duty to the public, the Department is seriously considering referring such cases to the appropriate authorities as stated in the audit recommendations, including but not confined to the Leadership Code Commission to determine the nature of actions taken by lands officers guilty of such actions.

## 1. INTRODUCTION

### 1.1 Background

This Kukum Labourline area is one of the oldest residential areas in Honiara, established by the government after the 2<sup>nd</sup> World War.

The Kukum Police Station is at the centre of Kukum on the corner of Ropi St and Kukum Highway and it is entirely responsible for Traffic for Honiara. This station was built in mid 1970s and has since been used by general police for street policing until 1987, when it was converted into this existing Traffic Centre. This police station is built on a perpetual estate which is held by the Commissioner of Lands on behalf of the Government of Solomon Islands.

However in 2002 the land at Kukum was subdivided and each Lot allocated by the Commissioner of Lands. The subdivision and sale of the land to private owners was carried out whilst police officers were still residing in the public houses on this Kukum land site. In particular the subdivision did not take into account the property on the land and therefore some of the existing houses on the land were split in the middle.

In summary 42 Kukum Lots were reviewed in this audit comprising:

**Total - 42 Parcels**

7 parcels	=	unallocated
35 parcels	=	allocated

### 1.2 Mandate

The Public Finance and Audit Act provides that the Auditor General “*shall have and may exercise all the powers and authority and shall perform the duties conferred and imposed upon him by this Act and by section 108 of the Constitution.*”

Under the provisions of *section 35(1)* the Auditor General is required to, inter alia, ensure that Government revenue is collected and properly accounted for. Further, the Auditor General is also required to ensure that public expenditure conforms to the authority conferred by Parliament and that reasonable precautions are taken to safeguard public resources against waste.

### 1.3 **Legislation**

The main legislation and other pronouncements relevant to the registration of Land Titles are:

- *Public Finance and Audit Act 1978*
- *Financial Instructions 2004*
- *Lands & Titles Act (Cap 133)*<sup>1</sup>
- *Town & Country Planning (Cap 154)*<sup>1</sup>
- *Stamp Duties Act (Cap 126)*<sup>1</sup>

<sup>1</sup>. *The Laws of Solomon Islands – Revised Edition 1996*

### 1.4 **Audit Objectives and Scope**

For the purposes of this pilot audit, the parcels or Lots at the Kukum commercial site were selected for review to ensure:

- requirements under the Lands & Titles Act were complied with and that the revenue payable to the Government in this respect are properly accounted for; and
- the subdivision and subsequent allocation of the land parcels at Kukum Commercial site were transparent, equitable and fair.

Unless otherwise specified, any amounts stated in this report are denoted in Solomon Islands Dollars (\$SBD) and the Commissioner refers to the Commissioner of Lands.

## **2. PHYSICAL PLANNING AND SUBDIVISION IMPROVEMENTS**

### **2.1 Background**

Physical Planning is the planning of an area's physical structure, such as land use, roads, wharves, clinics, schools etc., and encompasses economic and environmental issues. The functions of physical planners are stipulated by the *Town and Country Planning Act of 1979 (amended in 1982)*.

### **2.2 Summary of Audit Findings and Recommendations**

A summary of audit findings and recommendations are noted below:

#### **2.2.1 Subdivision conducted without regard to a due process**

The planning process to develop the Kukum land as a commercial centre commenced in 1998 and it should have followed 8 key planning and subdivision steps:

- Step 1: Preparation of a base plan
- Step 2: Data collection
- Step 3: Consultations with relevant authorities
- Step 4: Relocation scheme by the Commissioner of Lands
- Step 5: Submission to Honiara Town & Country Planning Board
- Step 6: Implementation of relocation scheme
- Step 7: Formal survey of subdivision design
- Step 8: Allocation of subdivision

The planning progress of the Kukum Commercial site reached Step 3 up until 21 March 2000. Then in 2001 the Acting Commissioner of Lands requested the land be surveyed, subdivided and then in 2002 the Commissioner directly allocated the land. In addition to this, OAG noted the following weaknesses:

- There was no feedback received from relevant authorities responsible for infrastructure development (eg: SIWA, SIEA or Telekom);
- No final design was chosen and compiled for submission to the Honiara Town & Country Planning Board;
- There is no evidence that this subdivision planning or design was approved by the Honiara Town & Country Planning Board;
- There was no budget or infrastructure development costs estimated during the physical planning process; and

- The relocation scheme for the residents at Kukum was carried out on 6/5/2000 (Household survey), however, no alternative sites/accommodation was confirmed prior to the survey being carried out on 6 June 2001.

The implication is that the process followed for the development of land in the Solomon Islands was not in accordance with the Town and Country Planning Act. This increases the risk that the subdivision or development of land has been carried out without adequate consideration of all stakeholders, residents, tenants and other relevant policies or procedures.

#### **Recommendation 1**

We recommended that:

- the Commissioner ensures all relevant approval by the Town and Country Planning Board is obtained prior to any decisions to survey and subdivide any land; and
- consultation by the Commissioner with relevant officers within the Department, namely the Surveyor-General, Director of Physical Planning and Valuer-General be carried out and documentation of this consultation retained for future reference. This will ensure the process for surveying and subdivision of land for commercial purposes and subsequently the allocation of this land is transparent.

### **2.2.2 Honiara Town and Country Planning Board**

Pursuant to *s16(1)* of the *Town and Country Planning Act (Cap 154) s5(1)* [the “Act”] Honiara Town and Country Planning Board (the “Board”) may grant permission either unconditionally or subject to such conditions as it thinks fit in dealing with applications for the development of land. Honiara City Council is the appointing authority for the members of the Board.

A key function carried out by the Board is to ensure that the interests of all stakeholders are met in relation to the development of land. The Board provides an independent assessment of the development planning designs of commercial sites and all stakeholders present have the opportunity to provide comments in relation to the proposed plans.

#### ***Non Operation of the Board***

According to the Act it states that there shall be a Board in Honiara to carry out the duties imposed and the functions conferred on it by the Act. However, OAG noted that the Board ceased to operate during the period 2003 to August 2005 and noted it was re-established on the 20th September 2005.

***Lack of Minutes and Board approval documentation***

The Board Minutes of Meeting for the period 1997, 1998, 2000 could not be located. There is also no documentation at the Department of Lands & Survey to support these decisions or approval in relation to the sub-Division of the Kukum Commercial Site.

The implications are that:

- the lack of this approval from key stakeholders represented within the Board increases the risk that land is not being managed adequately for development purposes and subsequently the allocation of land is unauthorised; and
- due to the lack of minutes there was no evidence to support important decisions relating to the development of land, this will increase the risk that unauthorised dealings are conducted without consideration of approved decisions by the Board.

**Recommendation 2**

We recommended that:

- the Board is operational at all times to ensure approval from key stakeholders is obtained such that a fair and equitable process is carried out in decision-making relating to the development of land; and
- documentation of board approvals and key decisions are retained for future reference.

### **3. VALUATION PROCESS IMPROVEMENTS**

#### **3.1 Background**

The Land Administration Operations Group (LAOG) is responsible for the core land administration processes of the Department and it comprises three teams responsible for the following:

- Customer Service & Transaction Processing Team;
- Special Task Team/s; and
- Valuation & Rent Management Team (VRMT).

In addition the Land Rent Management Team (LRMT) is a new group within the LAOG and it is headed by the Valuer-General. The LRMT was established to manage the databases underlying these new processes, monitor land valuations and rent arrears, plan and implement awareness campaigns on the new systems, and oversee the Code of Practice for land valuers in the Solomon Islands.

#### **3.2 Summary of Audit Findings and Recommendations**

A summary of audit findings and recommendations are noted below:

##### **3.2.1 Variation of land rental and valuation fees by the Commissioner of Lands**

The Valuer-General is responsible for the calculation and assessment of an independent valuation for premium, land rentals and valuation fees. There is no specific provision in the *Land & Titles Act* concerning premium, but it is a subsidised figure derived from the capitalisation of the land rent for the term of the lease at an appropriate interest rate. Pursuant to *s135(3)* the Commissioner may revise annual rental but there is no authority to change the initial amount calculated by the Valuer-General.

A comparison of the rent and valuation fee calculated by the Valuer-General and the final amounts as stated on the signed instruments for 22 parcels showed \$15,400 difference between the annual rental and valuation fee noted in the Valuer General's valuation compared to the data in the signed instruments.

This illustrates that the Valuer-General assessing land rental fees and a valuation fee which have subsequently been reassessed by the Commissioner. In particular, OAG noted that:

- an estimated total of \$15,400 revenue per annum is forgone as a result of the differences identified in the table above; and
- further discussion with the Valuer-General confirmed that the Commissioner changed the premium or rental at his discretion, without the knowledge of the Valuer-General.

The Commissioner according to the *Lands and Titles Act* has the authority to assess land rental within 20 years for town land and 33 years for rural land but there is no authority for the Commissioner to reassess these initial amounts calculated by the Valuer-General.

The implication is that changing the rental charge and valuation fee at the Commissioner's discretion does not contribute to a process that is transparent and may result in a potential loss of revenue to the government. The Valuer-General is viewed as being the overall expert in valuation matters.

### **Recommendation 3**

We recommended that the authority of the Commissioner to change the Valuer-General's initial assessment be determined.

#### **3.2.2 Lack of documentation held by the Valuer-General**

The Valuer-General is responsible to provide an independent valuation for the premium and annual rent charged for fixed term estate landowners to the Commissioner of Lands.

OAG noted that the documentation in relation to the Valuer-General's independent valuation of the premium and rental charged for Kukum could not be located. The Valuer-General therefore had to re-create the methodology and calculations used for the Kukum Commercial Site.

Furthermore, OAG noted that:

- there are no Valuation Certificates issued and no files retained by the Valuer-General to provide support for any of his valuations;
- the Valuer-General's methodology is not documented in a departmental policy; and
- there is no Valuation Act or guidelines to support the role and responsibilities of the Valuer-General.

The implication is that the lack of support or documentation for the valuation calculation will impact on the premium, rental and also the stamp duty charged and this lack of transparency increases the risk of revenue lost to the Government. In addition, the lack of a departmental policy to document the methodology to be used by the Valuer-General may result in an inconsistent approach being applied and also a lack of transparency in relation to the methodology.

**Recommendation4**

We recommended that:

- the Valuer-General establish his records relating to the valuation outcome and advice given to the Commissioner of Lands. This should also include a Valuation Certificate;
- the methodology used by the Valuer-General to carry out independent valuations should be formally documented. This will ensure consistency and standardisation of processes relating to land dealings; and
- the Department pursues the necessary authorities to establish the role and responsibility of the Valuer General and other valuers.

## **4. LAND REGISTRATION AND LAND ALLOCATION**

### **4.1 Background**

The primary function for the Office of the Registrar General is to formally register and archive land transactions, which is carried out by the Registry of Titles (ROT). In particular it records and maintains titles and other registered interests in land in an accurate, secure, effective and efficient manner.

The Land Administration Operations Group (LAOG) is responsible for the core land administration processes of the Department of Lands & Survey. The LAOG, based in the Honiara DOLS head office supports the decentralised Lands Centres / Offices, undertakes the basic land transaction processes and investigates any anomalies. LAOG comprises of three distinct teams identified previously.

### **4.2 Summary of Audit Findings and Recommendations**

A summary of audit findings and recommendations are noted below:

#### **4.2.1 Lack of an operational delegation listing for Land Officers**

According to *s5(1)* of the *Land and Titles Act (Cap 133)* the Commissioner may give direction to his officers, by notice, to perform such duties and exercise such powers of the Commissioner. To exercise *s5(1)* this is sometimes carried out by the Commissioner placing initials of a Lands Officer on the front of a Lot file thereby directing or authorising that land officer to take action.

Pursuant to *s180 (Cap 133)* the prescribed form is to be used and all prescribed forms contain provisions for signatures to be witnessed. A witness is imperative to be able to prove due execution if the matter is challenged in the courts. Therefore a witness should be a person not interested in the transaction and preferably should not be the authorised officer. The witnesses for most of the instruments executed for Kukum lots were Land Officers.

OAG reviewed the instruments to assess operational delegations of Land Officers and to assess the credibility of witnesses and noted the following:

- Lot files were not opened for a majority of the lots at Kukum therefore there was no evidence to support the Commissioner's delegation to the Land Officers signing on his behalf;
- there is no operational delegation of duties to detail what instruments or forms can be signed by Lands Officers however it is a common practice that officers level 5 and above can sign forms or instruments;
- signing of application forms were sometimes signed by Land Officers for the Commissioner of Lands, however, in some instances, these Land Officers were also the applicants. This is a clear conflict of interest and further details can be found in section 8.2.4 of this report;
- the instruments were witnessed by Lands Officers and these same officers signed as witnesses to the Grantees and as witness to the Commissioner of Lands;
- a Lands Officer signed the application form (Form IC) on behalf of the Commissioner of Lands and also signed as the Commissioner of Oaths ; and
- for parcels 191-035-246, 247, 254 & 259, there was no witness for the grantee and there was no certification by the Commissioner of Oaths. Therefore, the instrument was incomplete.

The implication is that where there is lack of a formal operational delegation listing for Land Officers to determine their roles and responsibilities, there is an increased risk that unauthorised officers are signing instruments. There is also an increased risk that Land Officers are signing or witnessing documents when there is a clear conflict of interest.

**Recommendation 5**

We recommended that:

- an operational delegation listing is established according to the roles and responsibilities of the land officers who administer and register land titles applications. This will also include guidelines in relation to being a credible witness.
- further legal implications are sought for the instruments above that have not been executed adequately due to the lack of witnesses and a Commissioner of Oaths certification.

#### **4.2.2 Non Compliance with Legal Instrument and lack of documentation to support land development proposals.**

The Kukum area was subdivided and allocated to applicants with the aim of developing it as a commercial site. On this basis there is a clause in the First Schedule of the instrument that requires details from the owner of the fixed-term estate to determine a reasonable length of time and minimum building cost for their land development proposal. In particular, there should be a rationale for the length of time specified (24 or 36 months) and an indication of minimum building costs. In addition these requirements should be supported by some 'planning or commercial development' documentation or plans.

Audit noted that only 22 out of the 35 lots (Refer to Appendix 1 for details) allocated specified details of their land development proposals but noted the following irregularities:

- no land has been developed since these instruments were signed;
- there were no plans or proposals for development to support any of the figures specified in the instruments;
- 13 lots did not specify these details within the instrument to support the applicants' intentions to develop the land;
- the amounts were stated in Australian Dollars. In one instance, the amount was for a minimum \$A2,200,000. This is unreasonable when converted into \$SBD, especially given that this related only to 1 Lot and a building for this amount would require a larger plot of land;
- OAG queried how a Lands Officer obtains assurance over these figures and was advised that it is 'common knowledge' by them to know how long and how much a building may cost to construct. This 'common knowledge' is not documented; and
- OAG confirmed that the instruments or Form 2 and Form 4 are old forms which have not been revised or updated.

The implication is that the landowners are not complying with the specified conditions in the legal instrument and therefore do not have a lawful entitlement to the land. In addition, there is inadequate rigour being placed in the allocation process.

**Recommendation 6**

We recommended that:

- given the current landowners have not developed this land within the period specified in the original instrument then pursuant to *s103* of the *Lands & Titles Act* which states that in default of the landowner complying with such conditions, the fixed-term estate shall be forfeited to the Commissioner;
- documentation is obtained to support any details in the instrument, particularly for commercial development purposes;
- all documentation for instruments should be stated in \$SBD;
- all applications for the development of commercial sites should include details of building costs and length of period to develop the land for completeness;
- a formal document should be produced to provide guidance in relation to the cost of commercial buildings and the length of time to build, for future reference for land officers so that a reasonableness approach is applied when assessing these applications; and
- the instruments or Form 2 and Form 4 be reviewed and updated to include guidelines in relation to completing these forms.

**4.2.3 Lack of a documentation to support the formal acceptance of an application for land by the Commissioner - Letter of Offer or an Approval in Principle**

The Letter of Offer is an important document issued to an applicant by the Commissioner because it formalises and represents a contractual agreement or acceptance by the Commissioner of the applicants' interest in land. This letter of offer also details various charges that are due and payable by the applicant and should be filed in the Lot files for each parcel of land.

In addition to the above, the Commissioner has also approved or accepted an application for land "in principle". This common practice means that the Commissioner has accepted the application received but it is subject to the outcome of a survey and /or a subdivision.

OAG noted that:

- there were no letters of offer on the lot files. However, further investigations and third party confirmation letters resulted in 19/35 letters being sighted and 16/35 letters of offer still not able to be located or sighted (46%); and
- this approval "in principle" has resulted in the Commissioner double allocating the same parcel of land.

The implication is that the lack of documentary evidence to support the Commissioner’s formal acceptance of land applications reduces assurance over a transparent land allocation process and increases the opportunities for dubious allocations of land.

**Recommendation 7**

We recommended that:

- the letter of offer should be retained in the Lot files as evidence that a ‘contractual agreement’ has been established;
- approval “in principle” should not be used due to the unforeseen circumstances of the final land subdivision; and
- further legal advice is sought by the Department to consider whether a contractual agreement has been established if the letters of offers for 46% of the sample reviewed cannot be found.

**4.2.4 Discrepancy between the land fees stated in the Letter of Offer and Signed Instruments**

The Letter of Offer is written by the Commissioner of Lands to accept in writing an application for land and to detail the premium, rental and other fees required to be paid.

To formalise this agreement an instrument is subsequently signed by the Commissioner and all relevant parties with details of the premium and rental charged. However, OAG noted that the amount paid by the landowner according to the Letter of Offer and the amount stated on the signed instrument were different. We sighted the receipts to support the amounts per the Letter of Offer not the higher amounts as stated in the Instruments. These discrepancies are summarised as follows:

Parcel # / Landowner	Amount per Letter of Offer \$		Amount per Instrument \$		Total Difference \$
	Premium	Rental	Premium	Rental	
<b>Case #1</b>					
191-035-260	5,000	2,000	18,000	3,000	14,000
191-035-261	5,000	2,000	18,000	3,000	14,000
191-035-245	5,000	2,000	18,000	3,500	14,500
191-035-244	5,000	2,000	18,000	3,500	14,500
<b>Total</b>					<b>\$57,000</b>
<b>Case #2</b>					
191-035-246	5,000	2,000	18,000	2,500	13,500
191-035-247	5,000	2,000	18,000	2,500	13,500
<b>Total</b>					<b>\$27,000</b>
<b>Loss of revenue to the Government due to differences</b>					<b>\$84,000</b>

The signed instruments in the above cases stated that the Commission acknowledges the receipt of \$18,000 (Premium) together with the sum of \$2,500 - 3,500 (Rental) being the first payment of rent (which is the Valuer-General's valuation of Premium and Rent). OAG could not locate any receipts or letters of offer at lands and as a result of third party confirmation from the landowners OAG established that only \$5,000 (Premium) and \$2,000 (Rental) were offered by the Commissioner and receipts were sighted accordingly.

OAG could not establish any authority as to why the Commissioner of Lands offered the landowners \$5,000 (Premium) and \$2,000 (Rental) in lieu of \$18,000 (Premium) and \$2500 – 3500 (Rental). This together with the lack of documentation at Lands Department, resulted in OAG being concerned that these discrepancies may be due to fraudulent activities and the issue might be of a much wider scope than examples mentioned in this Report.

OAG could not establish any mechanism within the Lands Department to ensure that the instrument being executed agrees to the original letter of offer.

The implication is that the discrepancies between the Commissioner of Lands letter of offer and the Valuer-General's valuation stated in the Instrument highlights the lack of proper documentation and a mechanism to check the accuracy of the premium and rental offered against the instrument. This increases the opportunity for fraud and loss of revenue to the government.

**Recommendation 8**

We recommended that the Department :

- investigates why the Landowner and Commissioner of Lands signed the instrument at the Valuer General's valuation knowing full well that the offer was far less than the valuation;
- investigates why the parties to the instruments acknowledged receipt of the higher amount when the lower amount was actually received;
- if necessary, refers the matter to the appropriate authorities for further investigation;
- determines the possibility of recovery action against the cases identified; and
- ensures that a mechanism is put in place so that the amounts stated in the letter of offer agrees to the final instrument that is signed by all relevant parties.

#### 4.2.5 Pre-signing of Authorisation by the Commissioner of Lands

Pursuant to s202(1) of the *Land and Titles Act*, every instrument shall be executed by all persons shown by the register to be owners at the time of registration of the instrument and by all other parties to the instrument. In addition the Registrar or such authorised officer shall verify the execution of the instrument and satisfy himself to the identity of the person appearing before him has voluntarily executed and fully understood the instrument.

The Commissioner upon granting the Fixed-Term Estate to any applicant should ensure that authorised officers verify the execution of any instrument before he signs as grantor.

However OAG noted from the review of the 35 parcels allocated that:

- the Commissioner signed 24 out of 35 instruments before the applicant;
- an application form (Form IC) for Parcel number 191-035-253 was signed by the Commissioner as grantor, 3 months before it was signed by the applicant; and
- all of these instruments were signed at the time by the Commissioner.

The implication is that the Commissioner is granting a fixed term estate before it has been adequately executed by authorised officers, thereby increasing the potential for ‘ghost’ applicants or fraudulent documents being executed.

#### **Recommendation9**

We recommended that the Commissioner; being the grantor of a fixed term estate, ensures before he signs the instrument that instruments have been properly executed by checking at all times that the :

- grantee has signed;
- verification certificate by a Commissioner of Oaths is completed; and
- witnesses have signed.

#### 4.2.6 Certification given by the Commissioner of Oaths without appointment

The certification of verification of parties on a land instrument must be verified by an authorised Commissioner of Oaths to ensure the parties on hand exist and fully understand the land transaction. All Commissioner of Oaths are given this authority by the High Court upon adequate registration.

OAG noted the registration of one person as Commissioner of Oaths expired on the 10 February 2003 but he signed transfer instrument (Parcel #191-037-44) as Commissioner of Oaths on the 1 August 2003, 6 months after expiry of his appointment. Furthermore, the transferor signed the instrument on 14 August 2003, being 13 days after the Commissioner of Oaths. In addition this person was also working as a Lands Officer at this time.

The implication is that the instrument for the transfer of land was certified by an unauthorised Commissioner of Oaths which does not provide assurance that the application or instrument was properly executed in accordance with s203(1) of the *Land & Title Act (Cap 133)* and therefore may be void. In addition there is clearly a conflict of interest in relation to this person being a Lands Officer and performing the role of a Commissioner of Oaths.

**Recommendation 10**

We recommended that:

- the Lands Officers processing or witnessing the instruments being executed ensure:
  - the Commissioner of Oaths are currently registered; and
  - applicants sign the contract prior to and in the presence of the Commissioner of Oaths certifying the instrument.;
- a Lands Officer does not perform the duties of a registered Commissioner of Oaths to achieve segregation of duties; and
- legal advice be sought to consider the consequences of an unauthorised signing by the Commissioner of Oaths of an instrument for parcel number 191-037-44.

**4.2.7 Individual Lot Files were not created when Kukum was subdivided**

When applicants lodge an interest to purchase land this application is forwarded to the Commissioner for approval. Upon approval a survey is conducted and lot numbers are created and the land is ready for direct allocation by the Commissioner. At this stage a Lot File should be created such that all correspondence, applications received, file notes and any other documents are filed.

When the surveying and subdivision of the Kukum commercial site was carried out, there were no individual lot files opened. In particular, OAG noted 30 from the total of 35 Lots sampled or 86% did not have individual files opened for them. The 5 lot files that did exist were incomplete and only contained application letters from unsuccessful applicants.

The implication is that when due process to acquire land is not adhered to, this results in a lack of transparency and uncertainty in relation to the legitimate claim over the initial acquisition of land.

**Recommendation 11**

We recommended that:

- Lot files be immediately created for any new lot parcels; and
- all correspondence and documentation pertaining to the lot parcel be kept on file.

**4.2.8 Applications reviewed were not considered on a priority basis**

According to *s123* of the *Land and Titles Act (Cap 133)* the priority of registered interests in land is in accordance to the order in which the instruments which led to their registration were presented to the Land registry. In the same manner, the same priority should be given to applications for land that are received by the Commissioner of Lands based on when the letters of applications were received.

However, OAG noted the following:

- there was no date stamp to indicate when letters of applications for land were received by the Commissioner of Lands;
- there was no indication of whether the application letters sighted were assessed or considered based on a priority basis;
- due to the lack of Lot Files being created, there was a lack of documentation relating to a letter of application received from the landowners;
- there is no criteria or checklist used by the Commissioner to assess the letters of application received; and
- A parcel number showed that an application letter dated 9 October 2002 was sent to the Commissioner of Lands and a reply was sent on 21 June 2005 (nearly 3 years later) to advise the land has been allocated.

The implication is that the lack of documentation to support the direct allocation undertaken and the untimely response to letters received from applicants by the Commissioner of Lands, increases the perception of an unfair allocation process.

**Recommendation 12**

We recommended that:

- all correspondence received be 'date stamped' to indicate the priority when applications are received;
- a process is carried out to assess and rank the applications when they are received;
- all correspondence to successful and unsuccessful applicants be retained;
- a criteria or checklist be established and used as evidence to support the Commissioners land allocation decisions; and
- the Commissioner responds to all applications received in a timely manner and a copy of this correspondence is held on file.

**4.2.9 Restriction to transfer land is not being adhered to**

The granting of a fixed-term estate by the Commissioner of Lands is formally executed on a Lands Form 2 Instrument. In the first schedule of this instrument there is a restriction which states "*the Grantee shall not give up possession or transfer all or part thereof the Land covered by this grant within the period of five (5) years from the date of this grant*". This restriction is in place to ensure land is developed and to prevent profiteering from transferring of this land.

However the following categories of restrictions on transfers were identified by OAG:

- Restrictions in the legal instrument have been crossed out;
- Restrictions have not been crossed out, however, transfers have occurred within the restricted period;
- Grant and then transfer of land occurred on the same day; and
- Transfer occurred but there was no written consent by the Commissioner.

In addition to the restriction on the instrument, on each land registry there is a General Restriction which states that "*no subdivision, lease, sublease, transfer or charge is to be registered without the written consent of the Grantor*". Although a majority of the Lots of land transferred was supported by a written consents from the Commissioner there was no rationale provided or reasons for the consents being given.

OAG is concerned that the transfer restriction and the general restriction on the Land Registry are not being enforced resulting in land being transferred within a short period of time. It is evident to OAG that these dubious transactions are being carried out with the intention of gaining profit and therefore a loss of revenue to the Solomon Islands Government.

The undermentioned are examples of these restrictions on transfers:

***Restriction crossed out***

- This restriction has been 'crossed out' and the Lots have been sold for a 'higher' consideration value. Although a written consent was provided by the Commissioner there was no reason or rationale for this to occur within a short period of time. Furthermore, as the letter of written consent by the Commissioner was not dated uncertainty exists as to when this consent was granted.

Parcel Number	Premium (Grant)	Date of Grant	Consideration (Transfer)	Date of Transfer	Written Consent Y=yes N=no
191-035-242	\$18,000	02/09/2002	\$30,000	23/10/2002	Y-No date
191-035-243	\$18,000	05/08/2002	\$50,000	09/09/2002	Y

***Restriction not crossed out but transfer has occurred within 5 year period***

- This restriction has not been 'crossed out' but a transfer has occurred within the 5 year period with and without the written consent of the Commissioner.

*Written consent*

Parcel Number	Premium (Grant)	Date of Grant	Consideration (Transfer)	Date of Transfer	Written Consent Y =yes
191-035-262	\$18,000	15/08/2002	\$140,000	15/08/2002	Y
191-035-263	\$18,000	15/08/2002	\$140,000	15/08/2002	Y
191-035-246	\$18,000	29/10/2002	\$75,000	6/10/2005	Y
191-035-247	\$18,000	29/10/2002	\$75,000	6/10/2002	Y
191-037-45	\$18,000	29/08/2002	\$40,000	20/12/2002	Y
191-037-46	\$18,000	29/08/2002	\$40,000	20/12/2002	Y
191-037-44	\$18,000	6/12/2002	\$40,000	20/12/2002	Y

*No written consent*

Parcel Number	Premium (Grant)	Date of Grant	Consideration (Transfer)	Date of Transfer	Written Consent Y= yes N = no
191-037-42	\$18,000	31/10/2002	\$40,000	4/08/2005	N
191-037-43	\$18,000	31/10/2002	\$40,000	4/08/2005	N

***Transfer occurred on the same day***

- Although the restriction was not crossed and a written consent was given by the Commissioner, the following 2 parcels were granted and then transferred on the same day. From the consideration transfer amount this dubious transaction was carried out with a view to gain a profit.

Parcel Number	Premium (Grant)	Date of Grant	Consideration (Transfer)	Date of Transfer	Written Consent Y=yes N=no
191-035-262	\$18,000	15/08/2002	\$140,000	15/08/2002	Y
191-035-263	\$18,000	15/08/2002	\$140,000	15/08/2002	Y

***No written consent from the Commissioner of Lands***

- Although a written consent was provided for parcel 191-035-242 the letter was not dated and therefore reduces the reliance on when approval or authorisation was given.

Parcel Number	Premium (Grant)	Date of Grant	Consideration (Transfer)	Date of Transfer	Written Consent Y=yes N=no
191-035-242	\$18,000	2/09/2002	\$30,000	23/10/2002	Y – but <u>no date</u>
191-037-42	\$18,000	31/10/2002	\$40,000	4/08/2002	N
191-037-43	\$18,000	31/10/2002	\$40,000	4/08/2002	N

This methodology of direct allocation by the Commissioner of Lands allows these restrictions to be easily bypassed and the above situations to occur and thus a potential loss of revenue to the Government. Therefore the Commissioner should contemplate an open tender process to allocate land which will be more transparent and it will make it more difficult for the above transactions to occur.

The implication is that when these restrictions are not being enforced; not supported by a written consent by the Commissioner; and not supported by adequate reasons by the Commissioner to circumvent restrictions, this increases the opportunity for applicants to profiteer and for dubious land transactions to occur, and a loss of revenue to Government.

**Recommendation 13**

We is recommended that:

- the Commissioner or authorised Land Officers ensure that the restrictions are enforced;
- for any transfers that occur within the 5 year restriction period, the Commissioner’s written consent adequately provides reasons for this to occur;
- the Commissioner ensures written consents are dated;
- the methodology of direct allocation by the Commissioner of Lands be re-considered and a more transparent process, such as open tendering is contemplated; and
- consideration be given by the Department to refer some of these instances to the appropriate authorities for further investigation if required.

**4.2.10 Lack of “Registration Advice” issued by Registrar of Titles - Possible Loss of Rate Revenue By Honiara City Council**

Upon the registration of land transactions, the Registrar of Titles completes the registration process by sending an advice of registration to the Commissioner of Lands, Applicants and the Honiara City Council (HCC). In particular the HCC is advised of current landowners so that land rates are calculated and charged accordingly.

However, OAG noted that 10 out of the 35 allocated lots, that the advice of Registration from the Registrar of Titles was not always evident in the Lot files or Registrar of Titles records.

The implication is that where key stakeholders are not advised of current landowners this has an indirect affect on the rates revenue to be collected by the HCC.

Further discussion with personnel at the HCC identified that these advice letters are not dealt with. In fact, rate notices have not been send out to ratepayers for a few years as the HCC have not been able to reconcile current landowners and the rate system. Although reviewing the rate system is outside the scope of this audit, this highlights the need for the land registration process to be accurate and advice provided to key stakeholders in a timely manner.

**Recommendation 14**

We recommended that the Registrar of Titles ensures that registration advice letters be issued in a timely manner to HCC, once registration has been accepted and completed. This will assist in collection of rates revenue by HCC.

**4.2.11 Lack of “Dealings checklist” attached or completed**

A ‘dealings checklist’ is not a prescribed form but has been prepared to be used by Land Officers and land registry officers to ensure that each step of the process to register land has been followed correctly and the proper details have been obtained. This checklist should be placed with every application for registration that is received and accepted by the Lands Officers. The use of the dealings checklist is a key internal control to ensure the execution and verification of instruments for the land registration process is accurate and complete.

OAG noted that 22 out of the 35 (63%) allocated lots did not have a dealings checklist attached. In some instances it was noted that although the checklist was completed, the process for registration was not. Furthermore, the boxes in the checklists were not always completed and the initials of the officers responsible were not always clear.

The implication is that if checks for important steps of the land registration process are not carried out adequately, documentation and key information are missed which may result in an illegitimate registration of land and a potential loss of revenue to the government

**Recommendation 15**

We recommended that the relevant staff are reminded of the importance of completing accurately the dealings checklist at all times.

#### 4.2.12 Irregular registration of Land Instruments

According to *s123* of the *Land and Titles Act (Cap 133)* the priority of registered interests in land is in accordance to the order in which the instruments which led to their registration were presented to the land registry. OAG noted that the following 10 out of the 35 allocated parcels of land were registered before the application was received by the Lands Department:

#	Lot /Parcel Number	Application received		Instrument registered	
		Date	Time	Date	Time
1	191-035-244	29/8/2002	1430	29/8/2002	1130
2	191-035-245	29/8/2002	1430	29/8/2002	1130
3	191-035-260	29/8/2002	1430	29/8/2002	1130
4	191-035-261	29/8/2002	1430	29/8/2002	1130
5	191-035-262	15/8/2002	1500	15/8/2002	1100
6	191-035-263	15/8/2002	1500	15/8/2002	1100
7	191-037-50	29/8/2002	1500	29/8/2002	1400
8	191-037-51	29/8/2002	1500	29/8/2002	1400
9	191-037-52	22/11/2002	1500	22/11/2002	1400
10	191-037-53	22/11/2002	1500	22/11/2002	1400

This highlights a weakness in the administration and processing of applications received and as a result the process for registering land does not appear to be fair and equitable.

#### **Recommendation 16**

We recommended that:

- all land officers are reminded of the importance of ensuring that all applications and instruments received in the land centre be date and time stamped;
- a closer scrutiny of these dates be carried out by the titles registration officers and if there is an irregularity noted, the application should not be registered; and
- the implications of these irregularities should be considered by the Commissioner and the Permanent Secretary of the Department of Lands & Survey and further legal advice should be sought as to the legality of these instruments.

## **5. STAMP DUTIES**

### **5.1 Background**

Stamp Duty is charged based on the rates stipulated under the *Stamp Duties Act (Cap 126)* and the *Stamp Duties (Amendment) Order 1998, Legal Notice No 70, Schedule 1 to 11* and is denoted by the stamp impressed by the Chief Collector or by affixing postage stamps which have been duly cancelled.

If Stamp Duty is payable on a document no instrument required by law to be stamped shall be accepted for registration unless it is duly stamped.

The audit of Kukum has identified weaknesses in the application of the *Stamp Duty Act* and the calculation of Stamp Duty revenue. Although the revenue shortfall identified during this audit may be insignificant it has highlighted weaknesses which if applied across the whole of government land sales could result in significant revenue shortfalls to Government.

### **5.2 Summary of Audit Findings and Recommendations**

A summary of audit findings and recommendations are noted below:

#### **5.2.1 Inaccurate stamp duty calculation**

Stamp Duty is charged based on the rates stipulated under the *Stamp Duties Act (Cap 126)* and is calculated by either the Lands Officers or stamp duty collectors at Treasury Department.

OAG recalculated the stamp duty payable and compared it to the stamp duty amount impressed on the instruments and concluded that for 22 parcels the Stamp Duty charged was incorrect and a loss of revenue of \$3,644 resulted.

The implication is that the lack of accuracy in relation to stamp duty due and payable results in potential loss of revenue to the Solomon Islands Government.

**Recommendation 17**

We recommended that:

- the Chief Collector of Stamp Duties and his designated Collectors of Stamp Duty (Land Officers) be re-trained to ensure the calculation of stamp duty is carried out correctly and consistently for all instruments received;
- recovery action for the understatement of stamp duty be carried out; and
- a process be implemented whereby, the calculation of stamp duty is re-checked by another independent officer for accuracy, prior to it being 'stamped' and prior to the instrument being registered for accuracy.

**5.2.2 Instruments that have not been 'duly stamped'**

Pursuant to *s10(1)* of the *Stamp Duties Act* [Cap.126] every document executed should be duly stamped and *s16(1)* states that “no documents which is required by law to be registered shall be registered until it is duly stamped in accordance with this Act.” In addition to this *s204* of the *Lands and Titles Act*, [Cap.133] states that “no instrument required by law to be stamped shall be accepted for registration unless it is duly stamped”.

OAG noted that 5 out of 35 allocated lots (14%) at Kukum did not have a stamp duty charge, however these instruments were still accepted for registration. The amount of stamp duty revenue uncollected was \$2,385.

The following implications for non-compliance with both the *Stamp Duties Act* and the *Lands & Titles Act* are:

- should there be a dispute in relation to the land dealings, according to *section 9* of the *Stamp Duties Act* documents that are not duly stamped are inadmissible in Court; and
- there could be a significant shortfall in uncollected or unforgone revenue for the Department of Lands & Survey across the whole of government.

**Recommendation 18**

We recommended that:

- the responsibility and roles of the relevant authorised officers assisting the Commissioner of Lands are clearly defined to ensure that instruments are not accepted for registration if they are not ‘duly stamped’;
- a valuation certification is obtained and stamp duty is charged accordingly for the instruments not yet duly stamped; and
- the Commissioner should seek further legal advice in relation to possible forfeiture of these lots with instruments that have not been duly stamped and therefore not adequately executed.

**5.2.3 Appointment of Collectors of Stamp Duties**

Currently the Chief Collector of Stamp Duties is the Commissioner of Inland Revenue and pursuant to *s4* of the *Stamp Duties Act, Cap 126* the Chief Collector could designate such other public officers to be collectors of stamp duties. Currently, the Commissioner stamps instruments and collects stamp duties however OAG could not locate a document to formalise this appointment.

Further discussion with staff at the Department identified that stamping of instruments by the Commissioner of Lands has been a common practice for sometime and this authority is based on a ‘subsidiary legislation’ dated *13<sup>th</sup> January 1964*. However, OAG noted that under the current legislation (1996 Law of Solomon Islands) this does not include this subsidiary legislation and therefore the Commissioner of Lands is not a designated officer.

The Commissioner of Lands grants Fixed Term Estates and as noted during the review of the valuation of consideration and rent, the Commissioner can, at his discretion, vary the Valuer General’s valuation. This has a direct affect on the stamp duty. There is a conflict of interest and lack of segregation of duties as a result of appointing the Commissioner as an authorised collector of stamp duty.

The implication is that the lack of a process to monitor and ensure authorised collectors of stamp are formally appointed; lack of segregation of duties and perceived conflict of interest, increases the risk that unauthorised or inaccurate calculation and application of stamp duty can occur. In addition, if the Commissioner of Lands is not legally authorised to stamp instruments, therefore these instruments may be interpreted as not ‘duly stamped’ and may be inadmissible in court pursuant to *s9* of the *Stamp Duties Act*.

**Recommendation 19**

We recommended that:

- given the perceived conflict of interest between the roles of the Valuer General, Collector of Stamp Duty and the Commissioner, the authorised collectors of stamp duty should be segregated and only staff within the Inland Revenue Department should be appointed;
- further legal advice be sought to determine the consequences of instruments stamped by the Commissioner and whether these Lots should be forfeited; and
- a listing of all other designated collector of Stamp Duties are made available to the relevant officers for transparency and good governance purposes.

**5.2.4 Chief Collector Shall require Valuation from the Certified Valuer**

Pursuant to *section 11 (1),(2)* of the *Stamp Duties Act [Cap 126]* every document which affects a transfer of property shall accompany a valuation certificate from a certified valuer and the Chief Collector should satisfy himself to the value stated in the document is the certified value. OAG noted that there were no valuation certificates accompanying any of the instruments stamped for the Kukum Commercial site.

The implication is that the premium or rent charged is not at market value, due to the lack of an independent valuation and this will result in a potential loss of revenue to the Department of Lands and Survey.

**Recommendation 20**

We recommended that the role and responsibility of the Chief Collector of Stamp Duties be clearly defined and carried out to ensure:

- compliance with the *Stamp Duties Act*;
- stamp duty is charged on the correct valuation amount; and
- stamp duty revenue is collected.

We also recommended that the Commissioner of Inland Revenue who is responsible for the administering of the Stamp Duty Act (the Act), should monitor and ensure appointed Chief Collectors of Stamp Duties are aware of their roles and responsibilities.

### 5.2.5 No clear indication of which Minister is to make the appointment

Section 4(2) of the *Stamp Duties Act [Cap 126]* (the “Act”) states that the appointment of a Chief Collector of Stamp Duties shall be made by the Minister.

OAG noted that the Act does not indicate which Minister it refers to under s4(2) and there is no interpretation of the word ‘Minister’ in the Act. Unlike the *Income Tax Act* and *Custom and Excise Act*, these Acts specifically refers to the Minister of Finance.

OAG sighted a Legal Notice dated 11 January 1977 that appointed the Commissioner of Income Tax to be the Chief Collector of Stamp Duty, however this was signed by the Secretary to the Council of Ministers.

The implication is that the ambiguity of the Act in relation to which Minister is responsible for the appointment of the Chief Collector of Stamp Duties, increases the risk of improper administration and poor corporate governance.

#### **Recommendation 21**

We recommended that the Minister responsible for the appointment of the key role of the Chief Collector of Stamp Duties is clearly defined in the relevant Acts and a formal appointment to this effect is made.

### 5.2.6 Lack of security and safeguarding of the “Stamp Duty” stamp

The Commissioner has been ‘stamping’ the instruments for the Kukum commercial site and when OAG asked about the location of the stamp the Commissioner advised that it was missing since the end of 2005. The stamp was mainly being used by Lands Officers on the ground floor. Instruments have since been sent to the Commissioner of Inland Revenue for stamping until a replacement stamp is issued.

The implication is that the lack of security over the stamp may result in unauthorised access or misuse of the stamp.

**Recommendation22**

We recommended that preventative controls are put in place to deter any opportunity for the misuse of the stamp. The following controls are recommended:

- securely lock away the stamp when it is not in use;
- restrict access to the stamp to authorised designated collectors of stamp duties; and
- make available to all relevant departments and personnel a listing of authorised “Collectors of Stamp Duty”.

## 6. REVENUE

### 6.1 Background

The Central Revenue Collection (CRC) at Treasury Division, Ministry of Finance is the administrative centre of all Revenue collection points in the Solomon Island Government. The current revenue collection points are as follows: Ministry of Infrastructure Development, Ministry of Education, Ministry of Agriculture & Land Ministry of Health and Medical Services, Ministry of Fisheries and Registrar of High Court. The Ministry of Police and Justice, and Ministry of Commerce are receipting revenues at the CRC office and no longer in their respective Ministries.

### 6.2 Summary of Audit Findings and Recommendations

A summary of audit findings and recommendations are noted below:

#### 6.2.1 Revenue Forgone

The Department of Lands & Survey collect revenue for premium, land rentals, registration fees, valuation fees, and survey fees. The premium and the rent is determined as a result of an independent valuation by the Valuer-General. The survey fees are determined by the surveyors and the other administration fees charged are per the Schedule of Fees which is applied to all applicants.

For the Kukum commercial site the total amount of revenue that should have been collected by the Government is \$812,527. OAg noted as a result of tracing monies to cashbooks; reviewing third party confirmation results and reviewing contracts, that 25% of revenue totalling \$205,319 has been forgone or could not be substantiated as being received for 11 parcels.

#### **Recommendation 23**

We recommended that:

- action be undertaken to recover the revenue that has been forgone; and
- the Department seeks legal advice to consider forfeiture of land if these amounts are not substantiated or proven to have been paid.

### **6.2.2 Lack of follow up of annual rent charges**

Pursuant to *section 136(1)[Cap 133]* the Commissioner has the right to forfeit an estate if the owner fails to pay any rent incident to the estate. Therefore it is imperative that the Department has a process in place to monitor this rent on a regular basis. OAG acknowledges the establishment of a Lands Database to capture and produce Rental Statements for rent in arrears, however, there is currently no process in place to progressively monitor these outstanding annual rent amounts.

OAG noted that according to the land database a total of \$356,701 was still owed by previous and current landowners at the Kukum commercial site. To date 71% is still outstanding.

The implication is that the lack of monitoring of rent results in a loss of revenue for the Solomon Island government.

#### **Recommendation 24**

We recommended that:

- the Commissioner or the Registrar of Titles ensure that rental monies owing are monitored and recovery action is undertaken immediately; and
- the Commissioner of Lands should exercise his right to forfeit land pursuant to *s136(1) [Cap 133]* should an owner fail to pay rent.

### **6.2.3 Lack of receipts to support the receipt of Premium, Rental, Valuation, Registration and Survey Fees**

*Financial Instruction 42(1)* provides that the accountable officer should immediately issue a General Treasury Receipt (GTR) for each sum of money paid to him for the account of Government. There was a lack of receipts at the Department of Lands and Survey to support the revenue collected from premiums, rent, valuation, registration and survey fees. Furthermore, OAG tried to trace the receipts to cashbooks at the Central Revenue Collection (CRC) division at Treasury however no documentation could be located.

The implication is that the lack of evidence to support whether payment was received for the land title and failure by the Department to retain GTR as required by FI 42(1) results in a loss of accountability of cash and revenue.

**Recommendation 25**

We recommended that the carbon copy of all receipts issued be retained as evidence of the land registration to comply with *Financial Instruction 42(1)*.

**6.2.4 Overcharged survey fee rate**

The survey fee is determined by surveyors and charged according to the surveyed area. In the case of Kukum the area was surveyed at one time to determine the subdivision requirements and a flat survey fee of \$650 was calculated to be charged to all landowners. However, OAG noted that a survey fee of \$1,300 each was charged for the granting of two parcels of land (191 035 262 & 191 035 263). The bts were no different to all the other lots at Kukum, therefore the landowner was overcharged.

The implication is the lack of documentation, particularly receipts retained to support survey fees provides the opportunity for Land Officers to overcharge landowners with the view to profit from these monies received.

**Recommendation 26**

We recommended that:

- a written statement be provided by the surveyors to support the survey fee charges and becomes part of the documentation held by the Registrar of Titles; and
- the Department further investigates this matter (Refer Irregularity 8.2.2).

**6.2.5 Lack of revision of rent charges for town and other land**

According to *s135(3)* the Commissioner may revise the annual rent charges after 20 years in the case of town land or 33 years for other land. However it was noted that there is no process to ensure this is revised.

In particular, OAG noted that:

- currently there is no mechanism for the Commissioner to monitor the rent charged and when estates are due for revision; and
- the revision of rent for a period not less than 20 years or 33 years seems to be unrealistic and this interval should be reduced to an interval that is commensurate with the economic conditions relating to land.

The implication of not monitoring the rental charge is the potential loss of revenue to the Solomon Islands Government.

**Recommendation 27**

We recommended that:

- a process be carried out to capture when annual rental charges are due for a revision by the Valuer General; and
- a 7 year period for the review of annual rents is adopted, rather than 20 or 33 years.

**6.2.6 Delay in pay-over of collections to Treasury**

Financial Instruction 53 requires that under no circumstances whatsoever shall a revenue collector retain any part of revenue that has been collected, received and brought to account in his cashbook.

During the audit, the receipt of land fees of \$22,422.50 for parcel No: 191-037-266 was not recorded in full amount in the Cashbook by the Cashier and the understatement of \$20,000 had been directly used to fund other expenditure. According to the Cashier the justification for the retention and expenditure of this \$20,000 was due to cashflow problems, however, OAG could not obtain supporting documents said to be authorized by the Permanent Secretary of Ministry of Finance to support this claim. Further details in relation to this are in Section 8.2.3.

Further work carried out identified significant delays in the pay-over of revenue to the Central Revenue Collection (CRC) point. In particular, for the months of February to May 2003, the period in which the above land fees were received, the following delays were identified:

Month	Date of receipt by Department of Lands & Survey (DOLS)	Date DOLS submitted revenue collection & cashbook	Amount	Number of days delayed
February 2003	7 <sup>th</sup> - 20 <sup>th</sup>	6 <sup>th</sup> March 2003	\$ 6,969.00	21 days
March 2003	3 <sup>rd</sup> - 6 <sup>th</sup>	1 <sup>st</sup> April 2003	\$ 15,810.00	28 days
	7 <sup>th</sup> - 12 <sup>th</sup>	4 <sup>th</sup> April 2003	\$ 89,733.00	28 days
	13 <sup>th</sup> - 27 <sup>th</sup>	17 <sup>th</sup> April 2003	\$ 49,658.00	30 days
	26 <sup>th</sup> - 28 <sup>th</sup>	4 <sup>th</sup> April 2003	\$ 3,026.00	6 days
	28 <sup>th</sup> - 31 <sup>st</sup>	26 <sup>th</sup> May 2003	\$ 17,915.00	26 days
April 2003	1 <sup>st</sup> - 14 <sup>th</sup>	29 <sup>th</sup> April 2003	\$ 70,008.00	28 days
	14 <sup>th</sup> - 16 <sup>th</sup>	06 <sup>th</sup> June 2003	\$ 27,422.00	50 days
	17 <sup>th</sup>	29 <sup>th</sup> April 2003	\$ 30,639.00	17 days
	17 <sup>th</sup> - 25 <sup>th</sup>	29 <sup>th</sup> May 2003	\$ 20,680.00	34 days
	25 <sup>th</sup> - 30 <sup>th</sup>	26 <sup>th</sup> May 2003	\$ 20,241.00	28 days
May 2003	1 <sup>st</sup> - 7 <sup>th</sup>	25 <sup>th</sup> May 2003	\$ 14,349.00	19 days
	13 <sup>th</sup> - 14 <sup>th</sup>	26 <sup>th</sup> June 2003	\$ 34,870.00	12 days
	14 <sup>th</sup> - 16 <sup>th</sup>	14 <sup>th</sup> July 2003	\$ 9,282.00	30 days
	16 <sup>th</sup> - 21 <sup>st</sup>	26 <sup>th</sup> June 2003	\$ 12,310.00	24 days
	23 <sup>rd</sup>	26 <sup>th</sup> June 2003	\$ 24,515.00	23 days
	26 <sup>th</sup>	20 <sup>th</sup> June 2003	\$ 70,871.00	26 days
	27 <sup>th</sup> - 28 <sup>th</sup>	26 <sup>th</sup> June 2003	\$ 3,368.00	28 days
	28 <sup>th</sup> - 30 <sup>th</sup>	14 <sup>th</sup> July 2003	\$ 16,415.00	14 days

Furthermore OAG discussed this matter with the Cashier and Assistant Accountant General and they provided a statement to confirm further delays in the pay-over to the CRC by the Department of Lands and Survey (DOLS).

In particular the revenue collected by DOLS on the 13 to 20 January 2006 was submitted to CRC by the Department on 14 March 2006, two months delay. In addition a delay in submitting approx \$1,000 was due to the Chief Accountant using this money to assist the Principal Accountant's father's funeral expenses.

The implications is that delays in banking of public monies is contrary to the *Financial Instruction 53* and leaves the system open to abuse and fraud, including lapping. It also has an impact on the cash management of the public bank account and a loss of accountability of cash. In addition, there are security concerns over large amounts of revenue that are not banked.

**Recommendation 28**

We recommended that:

- all revenue be paid-over to Treasury on a regular (preferably daily) basis to comply with FI 53; and
- the Department further investigates the delays identified above.

## **7. GENERAL OBSERVATIONS**

### **7.1 Background**

Although the objective of this audit was specifically to review the process in relation to the Kukum commercial site, the following issues were noted through enquiry and observation. The following recommendations are made to provide value-adding advice to further enhance the administration and processes of land registrations.

### **7.2 Summary of Audit Findings and Recommendations**

A summary of audit findings and recommendations are noted below:

#### **7.2.1 Duties and Powers of the Commissioner of Lands**

The power of the Commissioner to directly allocate perpetual estates should be reviewed because one of the reasons why land has been allocated twice is due to the lack of a:

- process by which the Commissioner can assess all applications received by the Department;
- transparent process to support the final decision of the Commissioner; and
- set of procedures or policies to provide guidance in relation to the discretionary powers of the Commissioner.

At present the system of allocating land by the Commissioner is not transparent and can easily be manipulated leading to the abuse in the allocation of land. It is apparent that action is required, such as the open tendering process in order to bring more accountability into the process.

#### **Recommendation 29**

We recommended that until the direct allocation process can become more transparent and the processes improved, the open tendering process should be considered as an option to allocate land.

### 7.2.2 General information for clients

OAG noted there were always a crowd of locals at the Lands Centre and only a few Lands Officers able to assist them. Furthermore, OAG did not sight any general information brochures which would provide basic land registration processes and general information about documentation requirements for the public. This may assist with the locals who may wait for hours before they are attended to and it may answer some basic queries.

The implication of having too many people at the Lands Centre puts a lot of pressure on the Lands Officers and certain processes may be missed to get through all the queries and the crowds.

#### **Recommendation30**

We recommended that:

- General Information brochures be made available for public use; and
- A priority system is established where certain transactions are dealt with and allocated to one Lands Officer. This may be similar to the ‘ticketing’ system at the banks. At least the customers or locals are not kept waiting and they can see that a priority, first come first serve basis is being carried out.

### 7.2.3 Excess turnover of Commissioner of Lands Officers

Over the last 13 years (1991 - 2004) there have been 10 officers appointed at one stage or another to act in the capacity role of the Commissioner of Lands.

The implication is that having a high turnover of staff acting in this integral role of Commissioner of Lands is a contributing factor to the inconsistent application of policies and procedures in the last decade.

#### **Recommendation31**

We recommended that the Department standardise and formalise the procedures relating to the Powers of the Commissioner of Lands to achieve consistency as a result of a history of a high turnover of officers in this role.

## **8. IRREGULARITIES**

### **8.1 Background**

OAG reviewed documentation from lot files and the Registrar of Titles Office and further investigated irregularities on a case by case basis. In addition third party confirmation letters were sent out to previous and current landowners to request confirmation for the payment of certain land-related charges and other documentation.

From the above review the following case studies were identified as requiring further investigation by the relevant authorities. In general, there is a lack of planning and co-ordination in relation to the allocation of land and this is evident from the results and case studies reviewed relating to the allocation of the Kukum commercial site.

### **8.2 Summary of Audit Findings and Recommendations**

A summary of audit findings and recommendations are noted below:

#### **8.2.1 Suspected fraud within the Department - Parcel 191 035 239**

This suspected fraud involves a Land Officer or officers using their position within the Department of Lands and Survey to conspire with a third party to defraud a Chinese businessman to acquire a parcel of land at Kukum. This person provided the latter with the land registry documents to allow this transfer to occur and these persons entered into a private compensation arrangement.

The payments to this third party were made in cash and goods, and no receipts were issued for these payments. In addition, the victim advised that he paid money to two Land Officers. Full details of the case were provided to the Ministry.

### ***Fraudulent Documentation***

OAG also asked about the security and supply of the 'blank Land Registration Certificates'. The Acting Registrar of Titles advised that the supply of these certificates is only held in his office and only his staff has access to it. Audit obtained the original 'certified copies' of the Fixed Term Estate certificates for the above transfer and traced the source of the "certified copy stamp". Further investigation identified that the Registrar of Titles secures the only certified copy stamp within his office, however OAG verified that there were 2 stamps that exist. The other stamp is in the Lands Centre on the ground floor and kept in a cabinet. Comparing the imprint of both of these stamps it was clear that the stamp used for the fraudulent documents is the one secured in the Registrar of Titles office.

OAG concluded that an Officer (or Officers) within the Lands Department had conspired with the third party to defraud the person by fictitiously claiming that land has been transferred to the latter. These actions could also result in the loss of public monies and have an impact on the controls operating over the Department of Lands with the use of official stationery and stamps.

#### **Recommendation32**

We recommended that this matter be referred to the appropriate authorities such as the Police or Deputy Public Prosecutor to identify and uncover the fraudulent activities that is occurring in the Department of Lands and Survey.

### **8.2.2 No payment has been made for parcels of land**

The Commissioner of Lands granted two parcels of land at Kukum to an individual however OAG identified that no actual payment for these land transactions was made. Instead a request for an offset for these land fees from monies held at the Ministry of Reconciliation and Peace was requested but OAG confirmed that this request was not processed. OAG undertook a detailed investigation of all the events associated with these transactions and provided details to the Ministry.

From the irregularities identified by OAG there is sufficient evidence to support the fact that the allocation of these parcels of land to the individual did not follow a due process and there was non-compliance with various sections of the *Land and Titles Act (Cap 133)* and the *Stamp Duties Act (Cap126)*.

The implication is that non-compliance with the relevant Acts relating to land registration and by not following a due process increases the risk of instruments not being properly executed or instruments being fraudulently registered with the view of making a profit.

**Recommendation 33**

We recommended that based on the evidence obtained to date:

- the initial granting of the Fixed Term Estate to the individual should be considered 'void ab initio' based on the irregularities and non-compliance issues identified by OAG; and
- the forfeiture of these parcels of land should be considered by the Commissioner of Lands and the Permanent Secretary of the Department of Lands & Survey.

**8.2.3 Unaccounted funds amounting to \$20,000**

The Commissioner of Lands granted the Fixed Term Estate to another individual on 20 February 2003 and OAG identified that payment for this land was misappropriated by the Cashier. Receipt #B821807 - in the amount of \$22,422.50 was traced to the Revenue Collector's cash book at the Department of Lands & Survey and the amount stated was for only \$2,422.50. The total for the page that included this receipt was \$6,267.50 and it agreed to the CBSI statement. Therefore a discrepancy of \$20,000 was identified.

OAG further investigated the discrepancy and obtained a signed statement from the Cashier in relation to possible use of this \$20,000 and several unusual transactions occurred whereby these funds were falsely used for other purposes.

The receipt of the original \$22,422.50 was in February 2003; however these other transactions occurred 3 months later in May 2003. Furthermore, as a result of continuing investigations OAG noticed another shortfall in revenue for the sum of \$7,000 on 19 September 2003.

The statement by the Cashier clearly identifies fraudulent actions by the cashier, Chief Accountant and implicates other employees (former employees) of the Department. In addition it is in breach of *Financial Instruction 53* which states that under no circumstances whatsoever shall a revenue collector retain any part of revenue that has been collected, receipted and brought to account in his cashbook.

**Recommendation 34**

We recommended that:

- the information and allegations made by the Cashier and alleged involvement of the Chief Accountant and Permanent Secretary be referred for further investigation by the Police;
- from the investigation carried out by OAG to date the \$20,000 and \$7,000 revenue shortfall has still not been identified and further investigation is required;
- The Registrar updates the Land Registry to reflect the parcel of land owned by the individual referred to in this Report.

**8.2.4 Conflict of Interest by Land Officers**

The Commissioner of Lands granted on 10 September 2002 a parcel of land to two persons who were both working as Land Officers at the time for the Department of Lands & Survey. Both of these Land Officers then transferred this parcel of land to a private company for an amount that was 36% more than the amount initially paid by themselves.

Further discussion with one of these former officers in relation to this land transaction resulted in the following information obtained:

- as land officers they were aware of high volume of applications received for the purchase of Kukum land;
- a former officer applied and paid for land in the Town Area. However he did not get allocated this land as it was already allocated to another person. Instead, an alternative Kukum site was allocated; and
- it is claimed that the monies used to pay for this initial town area land was used to pay for the Kukum site. OAG has not been able to obtain details of this initial offer from the former officer and nor could it confirm whether the initial payment was made.

The implication is the perception that these Land Officers abused their official duties as public servants to acquire land and then transferred it, with the aim of gaining a profit. Such action is potentially in breach of the *Penal Code (Cap 26)*.

OAG is also concerned that there is no evidence to support the initial land allocated to the former officer which was used to obtain the land at Kukum. Therefore, the parcel of land acquired by these land officers may not be valid or binding.

**Recommendations 35**

We recommended that:

- if there is no evidence to support the original payment by the individual then the Commissioner of Lands should consider the land to be forfeited;
- this matter be referred to the appropriate authorities such as the Police or Deputy Public Prosecutor pursuant of *s91* of the *Penal Code (Cap 26)*; and
- the Commissioner of Lands remind Lands Officers of the importance of declaring and being aware of situations which may represent conflicts of interest.

**8.2.5 Double allocation of land**

The Commissioner of Lands granted a parcel of land at Kukum to a person on 23 October 2002 and on the same day this person transferred this land to a private company. However a Caveat was lodged by another person claiming that this parcel of land was also allocated to him on 15 August 2003. OAG interviewed this latter person and confirmed that this matter has not yet been resolved. Furthermore the undermentioned describes irregularities identified by OAG.

The implication is that where the Commissioner of Lands does not have a process to ensure allocation of land has not been previously registered to another land owner this results in caveats being lodged and land disputes that may take a long time to resolve. The effect or impact of these double allocations is a delay in land development and the negative public perception of the mismanagement of land by the Commissioner of Lands.

***Misrepresentation by Chief Legal Officer***

Furthermore the Chief Legal Officer for the Registrar of Titles sent a “without prejudice” letter dated 24 January 2006 to the Manager of the private company. In this letter he:

- advises that the second individual instructed him that this matter in relation to the caveat lodged, be settled out of court.
- states that he sighted all documentation held at the Registrar of Titles including evidence to support the amount of \$22,400 being received by the Commissioner.

OAG further queried the Chief Legal Officer about sighting this documentation and he admitted that he did not sight any documentation.

The implication is that the Chief Legal Officer has deliberately misrepresented the Department by sending this letter to the client based on evidence that he did not sight. The perception is the motive to gain a profit from the 'out of court' settlement.

**Recommendation 36**

We recommended that:

- the segregation of duties between the Registrar of Titles and the cashier is strictly adhered to;
- the Commissioner should follow a strict process to reduce the risks of double allocation of land; and
- appropriate disciplinary action is imposed on the Chief Legal Officer pursuant to *s91 of the Penal Code (Cap 26)* for misrepresentation of the Department of Lands & Survey.

**8.2.6 Lack of due process for allocation of land**

An other individual was allocated a parcel of land 192-007-185 (Burns Creek) which is said to be currently occupied by the Republic Of China (ROC). This individual complained that the drainage of buildings constructed by ROC ran through the front of her land. Therefore she requested the Commissioner of Lands at the time to compensate her for the land being used by ROC. On 30 October 2001 the two parcels of land at Kukum were allocated to her to compensate for the land being used by ROC.

OAG noted the following irregularities:

- There was no application letter for the parcels;
- No letter of offer from the Commissioner of Lands was issued but according to the individual this agreement was made verbally;
- the same individual still holds the land at Burns Creek because nothing has been done to facilitate the exchange of the piece land with the land at Kukum; and
- Revenue that should have been collected from the two Kukum lots that were allocated to her as compensation, should have totalled \$44,846. The value of the Burns Creek parcel of land is not comparable, as it was only transferred for \$10,000.

In addition to this OAG sighted the instrument for the Burns Creek land (previously 192-007-166) and noted that when it was transferred originally to the same person by Livestock Development Authority, it was witnessed by her husband, who was, at the time, a surveyor at the Department of Lands & Survey. This is clearly a conflict of interest and increases the perception that this is a dubious transaction.

The implication is that the Commissioner had allocated land without following a due process to subdivide the Burns Creek land; update the registry and obtain revenue for the reciprocal land at Kukum. Therefore, the allocation may not be binding and the Commissioner may need to consider forfeiture. Furthermore there is a loss of revenue to the Government.

**Recommendation37**

We recommended that based on the information obtained:

- the granting of the Fixed Term Estates by the Commissioner should never be based on only a verbal agreements and either the Commissioner should survey and subdivide the land at Burns Creek and update the Registry immediately; or
  - take action to recover the revenue owing for the Kukum reciprocal land; or
  - consider forfeiture of land back to the Commissioner.
- careful consideration be undertaken by the Commissioner to ensure that if there is a need for land to be allocated as compensation, that the land allocated is comparable in relation to the premium, rental and size;
- the conflict of interest matter is further investigated and referred to the appropriate authorities such as the Police or Deputy Public Prosecutor pursuant of *s91 of the Penal Code (Cap 26)*; and
- the Commissioner of Lands remind Lands Officers of the importance of declaring and being aware of situations which may breach conflicts of interest.

**Appendix 1**

Parcel #		Number of months to develop a commercial site	Minimum amount to develop commercial site
1	191-035-242	36	A\$2,200,000
2	191-035-243	24	A\$ 300,000
3	191-035-244	36	A\$ 100,000
4	191-035-245	36	A\$ 100,000
5	191-035-260	36	A\$ 100,000
6	191-035-261	36	A\$ 100,000
7	191-035-262	X	\$ -
8	191-035-263	X	\$ -
9	191-035-266	X	\$ -
10	191-035-246	X	\$ -
11	191-035-247	X	\$ -
12	191-035-248	24	A\$ 100,000
13	191-035-249	24	\$ -
14	191-035-250	24	\$ -
15	191-035-251	24	\$ -
16	191-035-252	24	\$ -
17	191-035-253	X	\$ -
18	191-035-254	24	A\$ 300
19	191-035-255	24	A\$ 100,000
20	191-035-256	24	A\$ 100,000
21	191-035-257	24	A\$ 100,000
22	191-035-258	18	A\$ 100,000
23	191-035-259	36	A\$ 300,000
24	191-037-040	24	\$ -
25	191-037-041	24	\$ -
26	191-037-042	36	A\$ 200,000
27	191-037-043	36	A\$ 200,000
28	191-037-044	X	\$ -
29	191-037-045	24	A\$ 100,000
30	191-037-046	24	A\$ 100,000
31	191-037-049	24	A\$ 100,000
32	191-037-050	24	A\$ 100,000
33	191-037-051	24	A\$ 100,000
34	191-037-052	24	A\$ 100,000
35	191-037-053	36	A\$ 300,000

X : The months are not specified in the Instruments