

SOLOMON ISLANDS
LAW REFORM COMMISSION



**Review of the law that applies to land below high water
mark and low water mark**

Report

2012



THE SOLOMON ISLANDS LAW REFORM COMMISSION

HONIARA, SOLOMON ISLANDS

**REVIEW OF THE LAW THAT APPLIES TO LAND BELOW HIGH WATER MARK AND
LOW WATER MARK REPORT**

2012





SOLOMON ISLANDS LAW REFORM COMMISSION

12 October 2012

Honourable Commins Aston Mewa
Minister for Justice and Legal Affairs
P.O Box 404, Kalala Haus
Honiara

Dear Hon Minister,

Review of the law that applies to land below high water mark and low water mark Reference

On 1st May 1995 your predecessor gave terms of reference to the Law Reform Commission (LRC) to enquire and report to you the Review of the law that applies to land below high water mark and low water mark.

In accordance with the Law Reform Commission Act (and the Regulations made under that Act) the LRC is pleased to present to you the Report containing recommendations for reform of the law on land below high water mark and low water mark.

Yours Sincerely,

Commissioner Gabriel Suri

Commissioner Waeta Ben Tabusasi

Commissioner Philemon Riti

Commissioner Emmanuella Kauhue

Solomon Islands Law Reform Commission

The Solomon Islands Law Reform Commission (LRC) is a statutory body established under the Law Reform Commission Act 1994. The LRC is headed by the Chairperson and four part-time Commissioners appointed by the Minister for Justice and Legal Affairs.

The Chairperson's post is currently vacant.

The part-time Commissioners are:

Mr Gabriel Suri

Mr Waeta Ben Tabusasi C.S.I., S.I.M.

Rt Reverend Philemon Riti O.B.E.

Mrs Sarah Dyer (resigned March 2012)

Mrs Emmanuella Kauhue (replaced Mrs Dyer June 2012)

The Research Manager is Kate Halliday

The Legal Officers are:

Philip Kanairara

Kathleen Kohata

Daniel A. Suluia

Derek Futaiasi

The Office Manager is Matilda Dani Diake

The Clerical Assistant is Solomon Lincoln Saemala

The project team for this reference are Philip Kanairara and Kate Halliday

The LRC is located at Kalala Haus, Honiara, Solomon Islands behind the High Court of Solomon Islands.

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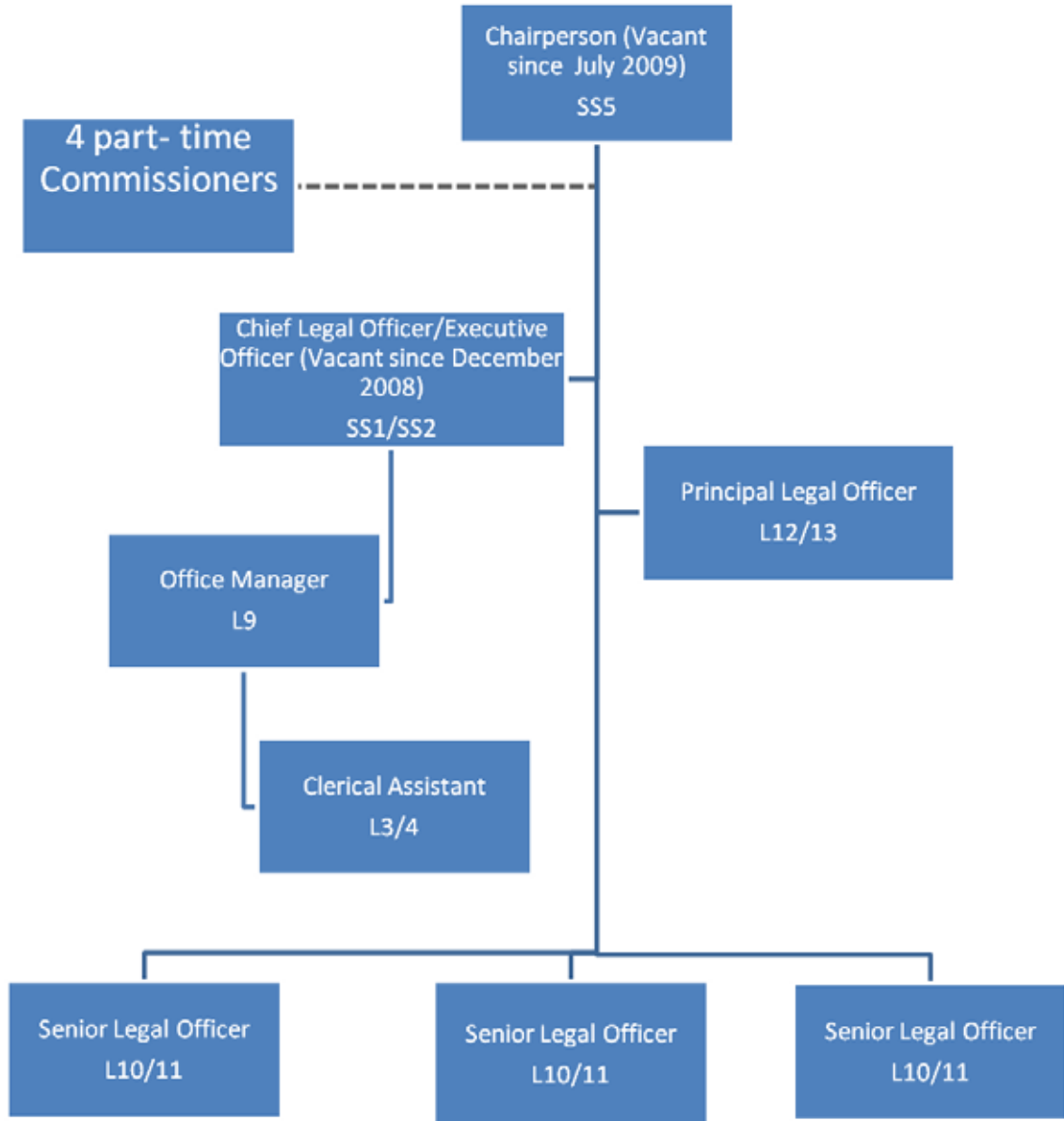
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Solomon Islands Law Reform Commission (SILRC) Organisational Structure



Commissioners



Commissioner Gabriel Suri



Commissioner Waeta Ben Tabusasi



Commissioner Rt Rev. Philemon Riti



Commissioner Emmanuella Kauhue

Law Reform Commission Staff



Left to Right: Mr. Derek Futaiasi, Ms Kathleen Kohata, Mrs. Matilda Dani Diake, Ms. Kate Halliday, Mr. Philip Kanairara and Mr. Daniel A. Suluia. Missing: Mr. Solomon-Lincoln Saemala

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Terms of reference

Whereas land in Solomon Islands is a resource of fundamental importance to the life of the people as well as to the Government of Solomon Islands.

AND WHEREAS land in Solomon Islands would include beaches/shores and land under the sea as far as the extremities of the continental shelf.

AND WHEREAS it is in the national interest that ownership and control of land between mean high water mark and mean low water mark are clearly stated by the law in view of the public interest versus the call for return of such land to customary landowners as the case may be.

NOW THEREFORE in exercise of the powers conferred by section 5(1) of the Law Reform Commission Act, 1994, I OLIVER ZAPO, Minister of Justice and Legal Affairs hereby refer to the Law Reform Commission the following-

To enquire and report to me on the following-

The current legal position regarding the ownership/control of beaches/shores and land below high water mark and low water mark;

The true position of ownership of beaches/shores and land below high water mark and low water mark in terms of customary land tenure;

Right of use of beaches/shores and land below high water mark and low water mark in custom;

The pros and cons pertaining to the current legal position in this regard;

Changes in the law to reflect the true aspirations of the people of Solomon Islands.

Dated at Honiara this 1st day of May 1995.

O. ZAPO

Minister of Justice and Legal Affairs

Abbreviations

Commissioner of Lands (COL)

Customary Land Appeal Court (CLAC)

Draft Federal Constitution 2011 (DFC)

Fixed Term Estate (FTE)

Landowners' Advocacy and Legal Support Unit of the Public Solicitor's Office (LALSU)

Perpetual Estate (PE)

Solomon Islands Law Reform Commission (LRC)

Tetepare Descendants Association (TDA)

World Wide Fund for Nature (WWF)

Terms and phrases

Act	Is a piece of law made by Parliament.
Attorney General	Is the principal or key legal adviser to the Government.
Common law	Laws made by judges in court cases which has history in the common customs of England.
Commissioner of Lands	Is a Government worker (public servant) who holds title of all Government lands on behalf of the Government.
Crown or public land	Is Government land which the Commissioner of Lands holds perpetual estate in it on behalf of the Government.
Customary law	means traditions, values, norms, institutions, and practices of a society.
Customary rights	Are rights or entitlements prescribed by customary law.
Lease	To rent a piece of land for a fixed period.
Legislative Council	The name given to the law making body in 1968 when the Land and Titles Act [Cap 133] was enacted.
Native Land	Tribal land
Ordinance	The name of the law that a Provincial Assembly can make.
Outright sale	A complete sale of land which allows a new entity other than the tribal owners to own the land for life.
Parliament	Is the national law making body of Solomon Islands which comprises of 50 elected Members of Parliament.
Tribal land	Is land own by a tribe other than registered Crown land and includes land covered by water and sea. The rights

	to use the tribal land are determined by tribal genealogy and other customary recognised practices.
Tribe	A group of people customarily originated from a or common ancestor(s).
Tribal marine land	Tribal land own by the tribe from the beaches to the sea.
Vacant or waste land	The phrases used during the protectorate era by the Protectorate Administration to mean tribal land not occupied or considered not of value or of any use to Solomon Islanders.

Chapter 1

Introduction

- 1.2 This is the Report on land below high water mark and low water mark reference. This Report has five chapters. Chapter 1 is the introductory part. It gives a general overview of the law on land below high water mark and low water mark (land below high water mark). It concludes with a set of recommendations for law reform on land below high water mark and relevant areas. The recommendations are the conclusion of this Report.
- 1.3 Chapter 2 contains three case studies which illustrate issues that are apparent to land below high water mark adjoining to registered land and development. Case Study 1 is on the Allardyce case. Case Study 2 is on Combined Fera case and Case Study 3 is on Honiara.
- 1.4 Chapter 3 is on customary governance. It describes the tribal land tenure over land below high water mark in relation to ownership, control and use based on the Solomon Islands Law Reform Commission (LRC) consultations, submissions and research.
- 1.5 Chapter 4 is on state governance. This Chapter describes and discusses the State laws on and relevant to land below high water mark.
- 1.6 Finally Chapter 5 describes and discusses other issues raised in submissions or during consultation related to land below high water mark.
- 1.7 The LRC commenced work on this reference in 2009 with the release of a Consultation Paper. Following this the LRC conducted consultation in all provinces, and invited submissions on the reference. Awareness about the reference was raised through radio broadcasts, which attracted a good number of submissions. The LRC gathered a total of 84 submissions for this reference (see Appendix 1).
- 1.8 The law that applies to land below high water mark and low water mark comes from a range of different sources including the Constitution, the Land and Titles Act, other national legislation, court decisions, provincial ordinances and customary law. There were conflicting decisions of the High Court of Solomon Islands on this area of land that are addressed in detail in Chapter 2.
- 1.9 Before the establishment of the British Protectorate of Solomon Islands access and use of this area of land was governed by customary law.

1.10 The legal establishment of the Protectorate by Great Britain did not transfer any rights over land to the Crown that would derogate or take away from the rights of the tribes or people of Solomon Islands. According to the Pacific Islands Protection Act :

“Nothing herein or in any such Order in Council contained shall extend or be construed to extend to invest Her Majesty, her heirs and successors, with any claim or title whatsoever to dominion or sovereignty over any such islands or places aforesaid or to derogate from the rights of the tribes or people inhabiting such islands or places, or of chiefs or rules thereof to such sovereignty or dominion.”¹

1.11 Despite this, law and policy during the Protectorate era about this area of land were based on English law, and the world view underlying English law that foreshore and seabed is public land, or should be vested as public land, subject to exclusive customary rights that must be proved. This view gave primacy to the introduced legal system. Parallel with this situation is the concept of ‘waste or vacant land’ that was used during the Protectorate era to legitimise foreign traders occupying and cultivating tribal land. Both concepts were, and continue to be, foreign to Solomon Islanders.²

1.12 The 1959 Land and Titles Ordinance addressed ownership of land below high water mark and low water mark. It declared that seashores between the high water mark and low water mark, and land adjoining the sea coast within 66 feet of the high water mark was public land owned by the Land Trust Board.³ This did not affect ‘native customary land’ which was defined in the Ordinance as ‘unregistered land occupied, cultivated or used by a Solomon Islander or group of Solomon Islanders for 25 years prior to 1958,’ however, the definition of land in the Ordinance excluded land covered by sea at mean low water.⁴

1.13 In his report on customary land tenure made in 1957, Allan raised the issue of the extent to which Protectorate legislation could lawfully intrude on the rights of Solomon Islanders to land under the legal mandate of the Protectorate. He suggested the need for constitutional advice on the implications and limitations of the Crown’s supreme title in the Protectorate, and a definition of the extent to which legislation could be enacted to control ‘native land’.⁵ He referred to divergence of legal interpretation of the land

¹ Pacific Islands Protection Act 1875 s 7.

² J.A. Bennett, *Wealth of the Solomons* (1987) 130.

³ Land and Titles Ordinance 1959 s 47(1).

⁴ Land and Titles Ordinance 1959 s 2(1).

⁵ S. Farren and D. Paterson, *South Pacific Property Law* (2004) 38-39, C.H Allan, *Report of the Special Land Commission on Customary Land Tenure in the British Solomon Islands Protectorate* (1957) Western Pacific High Commission, 63-64. Pacific Islands Protection Act 1875, Pacific Order 1893.

legislation. He recommended that reefs should be made subject to legislative control, that the Crown should be vested with control and has the ability to issue licences to fish, including licences to Solomon Islanders who can demonstrate an exclusive interest.⁶

- 1.14 The 1959 Ordinance was amended by the Land and Titles (Amendment Ordinance) 1964, which vested ownership of all 'public land' below high and low water mark in the Commissioner of Lands (COL). However it also provided that native customary land did not vest in the COL.
- 1.15 A new Land and Titles Act was introduced in 1968. This is the current law that applies to this area of land. Like the earlier legislation this Act provides that land below high water mark and low water mark could vest in the COL, but that it could not vest if it was native customary land. The Act also defines 'customary land' and 'land'. These provisions are the subject of two conflicting High Court of Solomon Islands decisions, considered in Chapter 2.
- 1.16 The debate that occurred in the Legislative Assembly around the time of the passage of the Land and Titles Act illustrates the tension between the views of Solomon Islanders, and the views of the foreign administrators of the Protectorate regarding rights and interests in land below high water mark and low water mark.
- 1.17 During Select Committee proceedings over the Land and Titles Bill in 1967 a request was made that the government clearly define the reefs, beaches, and river mouths as customary land. The government's response was that the definition of customary land in the Bill of "any land not being registered land other than land registered as customary land, locally owned, used or occupied by a person or community in accordance with current customary usage" would address the issue.⁷
- 1.18 In 1968, following the passage of the Land and Titles Act the Honourable Baddeley Devesi (then Member of the Legislative Council for North Guadalcanal) moved a motion in the Council requesting the Government introduce legislation to safeguard the rights, privileges and interests of landowners on beaches, reefs and river-mouths.⁸
- 1.19 He said in support of the motion:

"Now it is high time that Government recognises as I have always said in this House, the purpose of customary ownership on anything as regards the land, especially the trees and the people of the Solomons rather than be content with the

⁶ C.H Allan, above n 5, 178 para 71.

⁷ British Solomon Islands Protectorate, British Solomon Islands Protectorate, *Legislative Council Debates*, Ninth Session, Second Meeting 19th November to 4th December, Official Report (1968), 79.

⁸ Ibid.

expatriate viewpoint that there is no such thing as ownership of reefs, beaches, rivers and river mouths."⁹

- 1.20 In support of the motion he spoke about conflict between fishermen at reefs off Tasimboko in his constituency, and claims that outsiders were being supported or encouraged to fish in the area by expatriates:

"I am sorry to say, or to mention in this Council, ...that the expatriates or people who were responsible for organising this venture in this place encouraged the Solomon Islanders to say that they could fish anytime they liked...fishermen went on to say that if a person or people stopped them from fishing, then Government had given them permission to tie up anybody, put them in a canoe, and push them."¹⁰

- 1.21 He was supported by Honourable W Betu (Member of the Legislative Council for Isabel and Russells) who confirmed that he had also received complaints from people about outsiders going onto reefs to fish, collect shells and other seafood.¹¹

- 1.22 The Attorney-General responded by asserting that the common law principles applied where local laws do not cover a particular point, and in this case the common law principle of open access to sea and reefs should apply. The common law recognises specific rights to fish, but that the right must be exclusive to be recognised.

- 1.23 Honourable Devesi's response was:

..."I feel strongly that these exclusive rights with the Laws of England to put in the Solomon Islands to say that they should go with personal usage, is wrong...I feel and I will always maintain that in order to carry out any laws, successfully, to achieve aims in this country for peace and order, we should promulgate legislation that will co-ordinate with the customs of the people in many areas."¹²

- 1.24 Sir Baddeley Devesi gave a submission to the LRC revealing that Crown ownership of minerals, forests, and land below high water mark were issues of national concern in 1967 when he was a member of the Legislative Council. He suggested that any law reform should clarify customary usage as it only encourages more litigation over land below high water mark.¹³

⁹ British Solomon Islands Protectorate, n 7.

¹⁰ Ibid, 80.

¹¹ Ibid.

¹² Ibid, 83.

¹³ Sir Baddeley Devesi, Submission No. 73, *Notes taken during walk-in submission* (Tasimboko, Guadalcanal Province) (1 March 2011).

1.25 The recommendations of the LRC in response to the terms of reference regarding land below high water mark and low water mark are set out below.

Recommendation 1 Land and Titles Act

1.26 Section 10(4) of the Land and Titles Act should be amended to clarify that land below high water and low water mark is tribal land to the extent of provincial boundaries (generally three nautical miles from low water mark¹⁴), unless it is registered land. Tribal interests should, however, recognise and be subjected to existing rights of passage and recreation.

Commentary

1.27 Reform is required to address conflicting decisions of the High Court of Solomon Islands, and to align national law to the customs and values of Solomon Islands, as well as more recent provincial ordinances, and other state recognition of customary interests in marine areas. For example, a number of provincial ordinances define customary land as including adjacent lagoon and coastal areas. The view that land below high water mark is Crown land, or government land, is not consistent with the values and customs of the people of Solomon Islands.

1.28 Information concerning the law on land below high water mark in Fiji, Vanuatu, and New Zealand is in Appendix 2.

Recommendation 2

1.29 Abolish any requirement for proof of ownership over customary (tribal) land below high water mark, or low water mark, to be established prior to 1st January 1969. The true and original tribe in custom must still be established by proving ownership according to custom.

Commentary

1.30 This requirement was articulated in the High Court decision in the Combined Fera case. The date was when the Land and Titles Act commenced operation. Tribal land tenure does not have a cut-off date but instead the rules or practices of custom dictates how varying degrees of rights and interests are asserted over a piece of tribal land.

¹⁴ Provincial Government Act 1997 s 3(3).

Recommendation 3

- 1.31 Repeal the definition of the term “customary land” in the Land and Titles Act. Introduce the term “tribal land”. It should be clear that tribal land includes land covered by sea and water. Consequently, it would also be necessary to define the term “tribe” as including clan or line as circumstances dictates.

Commentary

- 1.32 The term tribal land emphasises the nature of land tenure under customary law. Reform is necessary to address the conflicting decisions of the High Court about whether the terms “customary land” and “land”, defined in the Lands and Titles Act, include land covered by sea. Reform is also necessary to align state law with the custom and values of Solomon Islands, and other State law recognition of customary interests in marine areas.

Recommendation 4 Customary Land Records Act

- 1.33 There should be one primary State law mechanism to identify interests in tribal land for all purposes. Land recording that addresses tribal land boundaries, ownership and use through tribal genealogy and other recognised customary rights and interests is the preferred mechanism. To achieve this, the Customary Land Records Act [Cap 132] must be reviewed and amended as follows:

- The title of the Act should be changed to Tribal Land Records Act.
- The term “tribal land” should be used instead of “customary land”.
- The Act should stipulate that only a tribe can record its interests in land, together with other prevailing customary recognised rights and interests.
- The law must clearly articulate primary rights and secondary rights. Ownership and Authority/Power are two elements of primary rights. Secondary rights (user rights) emanate from the Ownership element of primary rights and not from the Authority element. Other prevailing customarily recognised rights and interests that emanate from customary practices such as gift, reward, sale and marriage must be recorded too.
- The land recording should be free to all tribes wishing to record their land. A tribe that records its land must have a Deed of Trust (appears as a schedule to the Tribal Land Records Act) to regulate how decisions on the land are to be made. The Deed of Trust should prescribe the organizational structure, fiduciary duties and accountability standard. Some details of the Deed of Trust

should include: objectives of the land trust board; quorum for meeting; election of the trust board members with gender representation considerations; functions of the trust board; meetings, voting and decision of the trust board; dismissal of board members (trustees).

- Where parties to a previous court case on a tribal land wish to record their land, and the parties desire to either ignore or make a compromise on the decision of the previous court case, the law should allow parties to do so. This will allow for frankness by everyone on land recording.
- Any dispute encountered during the land recording process should be dealt with by the chiefs and community leaders through dialogue.
- The records of the tribal land should be final and cannot be defeated. The tribal landowners have the right to own, use, occupy, enjoy and dispose of their land in accordance with the current customary usage and the Deed of Trust.

1.34 Equally significant, the National Government should quickly establish the Central Land Record Office and then seconded its staff to the provinces to administer the Land Record Offices in the provinces.

Commentary

1.35 Under the existing legislative framework, the decision-making process about interests in tribal land is fragmented. In some cases questions about ownership are segregated from questions about who is entitled to consent to, and receive benefits from resource development. An example is in the forestry sector where a person who determines to grant timber rights is not necessarily the landowner.

1.36 Acquisition of tribal land for public purpose under the Constitution and Land and Titles Act is not transparent, and leads to fragmentation of interests (for example see case study 2 in Chapter 2). There is potential for conflict, and different outcomes between the different legal mechanisms for identifying tribal interests in marine areas. Those different mechanisms include chiefs panels or committees, Local Courts and Customary Land Appeal Courts, compulsory acquisition for public purpose under the Constitution and the Land and Titles Act, purchase and lease acquisition for development under the Lands and Titles Act, recording of customary fishing rights under provincial ordinances, decisions about interests in customary land relevant to the Mines and Minerals Act, the recording of primary and secondary rights under the Customary Land Records Act and

the determination of timber rights under the Forest Resources and Timber Utilisation Act.

- 1.37 These existing legislative frameworks do not place emphasis on the tribe as the sole and primary landholding entity. Rather, they allow individuals or groups to be landholding entity. The recommended tribal land recording is on tribal ownership and use and it ascertains boundaries and varying degrees of customary prevailing recognised rights and interests. The LRC consultation recorded an overwhelming support for tribal ownership for tribal land instead of customary land.
- 1.38 Law reform also needs to support local efforts to protect marine areas. Protection of resources in marine areas should be managed at the local and provincial level.
- 1.39 Land recording was done in Fiji as described in Appendix 3.

Recommendation 5

- 1.40 Governments (national and provincial) should prioritise recording of tribal land foreshores and reefs adjacent to registered town lands. The law (Tribal Land Records Act) must allow adducing of evidence to prove ownership and other recognised customary interests over a piece of tribal land that had been alienated or registered. The identification of the tribal owners and other customary recognised interests over a piece of tribal land prior to alienation will assist in claims for recording of the foreshores adjacent to registered or alienated land.

Commentary

- 1.41 Unregulated development on, and unsustainable use of, tribal marine land is increasing as town areas develop. It is also less likely that tribal landowners can exercise effective control over tribal marine areas adjacent to registered town lands because of migration, and other contested rights. Failure to identify owners of these tribal marine lands makes the lands vulnerable to degradation and unregulated uses.

Recommendation 6 Recording of marine tribal land

- 1.42 The amended Tribal Land Records Act with its recording principles as in Recommendation 4 is to apply to marine tribal land. Recording of marine tribal land needs to take into account the reality that shared, common or overlapping use of marine areas for subsistence is common, and that recording should not extinguish those rights. The tribal landowners can impose fees for access to improvements, or where the activity is connected to business. However, this should recognise and be subjected to public rights of way or access such as passage and navigation.

Commentary

1.43 Interests in tribal marine land or areas overlap and co-exist, and fixed boundaries can be difficult to ascertain. The amendments suggested to the Customary Land Records Act in Recommendation 4 should provide greater flexibility for the recording of marine interests. Any commercial development on recorded marine land should be subject to public right of way. This is to ensure that the public's right to use marine areas for transport is not disrupted. This has happened in Vanuatu where leasing of the foreshores to private companies and individuals in Port Vila and around Efate Island restricts public access to the foreshores and reefs due to business developments like resort facilities and residential developments.¹⁵ The lessees stop people from passing through their leased foreshores and reefs. This take away the existing public right to passage over the foreshores and reefs. It has been suggested that land leases in Vanuatu should stop at the mean high water mark as the Land Lease Act¹⁶ prescribes, and not extend to reefs as is permitted under the Foreshore Development Act.¹⁷

Recommendation 7

1.44 Repeal the customary land acquisition process in the Land and Titles Act (Part V Division 2). Replace that process with a new acquisition process that uses land recording under the amended Tribal Land Records Act as in Recommendation 4.

Commentary

1.45 The process for acquisition of tribal land for development that is contained in the Land and Titles Act is not transparent. Interests in tribal land are determined by a state appointed acquisition officer, rather than tribal members. Appeals from the acquisition process are determined by courts, with no reference to chiefs or people who are knowledgeable about the land. The existing system encourages individual claims and fragmentation of tribal interests.

1.46 The acquisition process is also being copied into provincial ordinances such as the Guadalcanal Fisheries Ordinance of 2009.

1.47 Mistrust of government is perpetuated by the acquisition process. Land recording provides a better basis for ensuring that tribes, rather than individuals, are recognized as the sole land holding entity.

¹⁵ Meeting with Noe Saksak, Land Desk Officer, Vanuatu Cultural Centre (Port Vila, Vanuatu) (1 September 2011). Also email to Siobhan McDonnell <siobhanmcdonnell@fastmail.fm> (Vanuatu Cultural Centre) (2011).

¹⁶ Land Leases Act [Cap 163] s 1.

¹⁷ Meeting with Noe Saksak, above n 15. See Foreshore Development Act [Cap 90] s 2 (Vanuatu).

Recommendation 8

1.48 Improve existing law on resolution of disputes about tribal land to allow persons knowledgeable about the land to make a final decision that applies to the land (subject to limited appeal). This can be achieved by amending the Local Court Act to strengthen the 'chiefs hearing panel' so that:

- their decisions have status in law whether or not the parties accept the decision;
- they publish a 30 days notice of the disputed tribal land at national and local level to draw others having interests in the tribal land to join the dispute;
- they publish 3 months notice for preparation period for the registered parties;
- they are properly regulated and remunerated; and
- their decisions can be appealed or reviewed by the Local Court.

1.49 The details of this Recommendation are:

- Chiefs panel – receive complaints, referrals or particulars of dispute and are invited to solve dispute between parties over tribal land.
- Chiefs panel – publish 30 days' notice to give other parties with interests in the land the opportunity to make known their intention to join the proceedings. Notice must be widely circulated including through Solomon Islands Broadcasting Corporation (SIBC) and the newspapers. The first hearing is a preliminary hearing for registration of claims over the tribal land.
- Chiefs panel – publish 3 months notice of hearing to give parties that had registered their claims or interests adequate time to prepare for the hearing.
- Chiefs panel – hear the tribal land dispute. A decision is one in rem (final to the tribal land except dismisses on appeal or review by the Local Court).
- The House of Chiefs or Council of Chiefs which will involve in the chiefs panels must register their groups and their members with the local courts.
- Government must provide appropriate training to chiefs and judges of the local courts.
- Government must build court houses for chiefs' panels and local courts to use.

1.50 Amend the Local Court Act to make it the final decision making body over tribal land dispute. It should have both an appeal and review jurisdictions. The relevant provisions in the Land and Titles Act that established the Customary Land Appeal Court (CLAC) and give it jurisdiction to jurisdiction to make decisions on tribal land should be

repealed. The Government must strengthen the local court and fully utilize the Local Court Act in order to deliver justice locally to the people.

Commentary

- 1.51 The current forums or mechanisms to settle disputes over tribal land are not working effectively to solve tribal land disputes and fuel more litigations and hatred among the parties concerned. Hatred and repeated litigation over a piece of tribal land is a common characteristic of the existing forums which make decisions on tribal lands.
- 1.52 The LRC recognises the work that the Ministry of Justice and Legal Affairs is doing on the Tribal Land Dispute Resolution Panel Bill 2012. This Recommendation forms LRC submission to the Ministry of Justice if the Tribal Land Dispute Resolution Panels Bill 2012 preceded this Recommendation.

Recommendation 9 Amendment of Town and Country Planning Act

- 1.53 Amend the Town and Country Planning Act so that it applies to “prescribed development” under the Environment Act on tribal land, and tribal land where the development will have a significant impact on a local planning scheme of a town or city.

Commentary

- 1.54 The Town and Country Planning Act does not apply to customary (tribal) land, while the Environment Act does apply to prescribed development on customary (tribal) land. Significant developments on tribal marine land in Honiara and other provincial centres are occurring with no effective controls.

Recommendation 10

- 1.55 Government should develop policy and law about how compensation or payments should be assessed when tribal land is used, purchased, or leased. The compensation should be based on principles that are fair and reasonable but adequate.

Commentary

- 1.56 Concerns have been raised about past Government unfair dealings on its acquired land. This recommendation will ensure that Government sets a uniform standard policy on payment of used, purchased or leased tribal land throughout Solomon Islands on an equal level.
- 1.57 Information on some mechanisms used in Fiji is in Appendix 4.

Recommendation 11

1.58 Legislation affecting marine tribal land should include provision for consultation with tribal owners and users when decisions are made about the use of the land or its resources.

Commentary

1.59 Some laws (Petroleum (Exploration) Act, Delimitation of Marine Waters Act, Continental Shelf Act, Ports Act, Light Dues & Harbour Act) do not have any mechanisms to ensure that decisions take into account the views and needs of tribal owners and users.

Recommendation 12 Awareness

1.60 There should be ongoing awareness by responsible agencies about changes to the law, including changes to the Land and Titles Act and changes to dispute resolution over tribal land.

Commentary

1.61 Information about the law and Government policies and actions is not well disseminated to the wider communities in Solomon Islands. This recommendation should ensure that responsible government agencies are actively involve in dissemination of information on law, policies and actions of the Government.

Chapter 2 Case Studies

Case Study 1: The Allardyce Lumber Company Ltd v Laore case

- 2.1 *Allardyce Lumber Company Ltd v Laore*¹⁸ (Allardyce case) concerns the foreshores and reefs of Lofung in Shortland Islands. The Plaintiff was the Allardyce Lumber Company Ltd (Allardyce) which was involved in logging business. The Defendant was Mr Laore (Laore) who represented the Saraba and Kome families who are descended from the original grantors of the land.
- 2.2 The disputed area was the foreshores and reefs adjacent to a fixed term estate land held by Allardyce. The land was originally sold in 1914 by the great grandfather of Laore to Mr. N.C. Tindal for £5. At that time, the boundaries of the land were marked on the conveyance (instrument of sale) but, over the years, the seaward boundary on both the eastern and southern sides was changed both by natural forces and by the acts of Allardyce. It was those changes which give rise to the action in the High Court of Solomon Islands.
- 2.3 Mr Laore requested Allardyce to pay to his families \$250,000 for damage to the coastline caused by the log yard and wharf. Allardyce refused the request and gave notice to Mr Laore to dispute the ownership of the Lofung reefs.
- 2.4 In 1989 Mr Laore claimed \$6,000,000 from Allardyce as damages for use of his customary land below high water mark for sinking of vessels on the reefs, discharge of oil into the reefs, and general use of the sea in the area.
- 2.5 Allardyce rejected the claim and commenced court proceedings against Mr Laore. Allardyce asked the Court to recognise that it is entitled to use the foreshores, reefs, and sea around Lofung reefs.
- 2.6 In response Mr Laore claimed the ownership of the reclaimed land and the reefs. He asked the Court to order that the reclaimed land below high water mark adjacent to the registered land, including the Lofung reefs, is customary land and Allardyce has no right to use it for its logging operations or for any other purposes without the consent of the customary landowners. If Allardyce wanted to use the area it should seek a lease from the owners, and pay.
- 2.7 At the time of the sale in 1914, the boundary was below the high water mark. Mr Laore did not dispute Allardyce's right to use the portion of the reef within the 1914 boundary.

¹⁸ [1990] SBHC 46 <<http://www.paclii.org>>.

What did the Court say?

- 2.8 The Court accepted that the custom of the people of the area allowed for customary ownership over the foreshore, and that the foreshore could be customary land under the Land and Titles Act. However, the Court did not recognise Mr Laore and the people he represented as the customary owners of that foreshore because he failed to prove that the foreshore was not sold and transferred to Mr Tindal in 1914. In the absence of proof the Court decided that the foreshore was included in the land sold and transferred to Mr Tindal and that Laore had no right to it.
- 2.9 With respect to reefs and seabed, the Court decided that the definition of customary land in the Land and Titles Act¹⁹ did not include the seabed. The Court used English common law to interpret the words 'land covered by water' (part of the definition of land, and customary land, in the Land and Titles Act) to not include the seabed (the areas permanently and naturally covered by the sea). The Court accepted that other customary rights to the reefs, seabed and sea might be recognised if proved. In this case Mr Laore's right to fishing was not accepted because he failed to prove it to the satisfaction of the Court. The Court recognised that Allardyce was entitled to use the foreshores, reefs, and sea around Lofung reefs.
- 2.10 Allardyce argued that the ownership of the foreshore and seabed was vested in the State/Crown, and that the customary owners have no right to the land. The Judge (CJ Ward) had this to say to the argument:

As far as the foreshore is concerned, I feel that is too sweeping a statement... Under English common law it is clear that the foreshore and rights over the sea bed in some areas could be owned by the owners of the land adjacent. Many of the authorities deal with grants by the early English monarchs and others refer to the rights arising out of immemorial user. Generally, however, under common law, in the absence of such rights the foreshore does vest in the State giving rights of user to the public and that is the position here.²⁰

- 2.11 The decision makes no reference to section 10(4)²¹ of the *Land and Titles Act* [Cap 133].

¹⁹ [Cap 133].

²⁰ *Allardyce Lumber Company Ltd v Laore* [1990] SBHC 46 <<http://www.paclii.org>> (Chief Justice Ward).

²¹ "The Commissioner may apply to be registered as the owner on behalf of the Government of the perpetual estate in such land – a) below mean low water; and b) between the points of mean high water and mean low water, as vested in him under paragraphs (a) and (b) of section 47(1) of the repealed Act."

Further litigation in Agana & Another v Famo Trust Board case²²

- 2.12 This is a case about the same piece of land disputed in the Allardyce case. However, this time, the same family of Laore (Agana) brought the case against Famo Trust Board. The Famo Trust Board is an association representing the Fauro and Mono people of Shortlands. Agana who took Famo to court is also a person from Famo geographical area of control.
- 2.13 By 2009 the Famo Trust Board held the perpetual estate to the land. Agana asked the Court to recognise a decision of the Famo Council of Chiefs made in 1988 that his family were the customary owners of the foreshores and reefs of Lofung reefs, and that the Famo Trust Board must consult and obtain consent from Agana's families about any proposed development on the area. The Famo Trust Board regarded the coastal area next to its registered land as part of its registered land.
- 2.14 The Famo Trust Board argued that the decision made in the Allardyce case binds the Agana family, and that Agana & Another should not go to Court again with their claims.
- 2.15 The case finished in May 2010 when Agana agreed that it was bound by the decision of the Allardyce case.

Issues

- 2.16 The Allardyce case and subsequent Agana case are examples of the Solomon Islands' problematic contemporary land tenure that involves a mixture of state and customary law. The two cases also highlight issues such as marine tribal land adjacent to registered land, damages caused by commercial operations on adjacent marine tribal land that are not adequately addressed by the state legal system, and non-acceptance of the Courts' decision.
- 2.17 The case of Allardyce also highlights the resistance of the introduced legal system to customary law, even though customary law²³ should have precedence over the common law principle used by the Judge.
- 2.18 At the time of this decision the Solomon Islands *Constitution 1978* was in force. It provides that customary law is law of the Solomon Islands, unless it is inconsistent with the *Constitution* or an Act of Parliament. The principles and rules of common law and equity apply as laws of Solomon Islands unless: they are inconsistent with the *Constitution* or any Act of Parliament, they are inapplicable to, or inappropriate in, the

²² cc 357/09, High Court of Solomon Islands.

²³ Constitution 1978 Schedule 3(2)(c).

circumstances of Solomon Islands, or in their application to any particular matter they are inconsistent with customary law applying in respect of that matter.²⁴

- 2.19 It is arguable that resort to English common law was wrong because there was relevant customary law, and the common law principles (including the view that land is the opposite of sea, and does not include land covered by sea) are both inapplicable and inappropriate in Solomon Islands which had (and continues to have) its own system of marine land tenure.
- 2.20 By contrast, a number of provincial ordinances specifically define customary land as including adjoining lagoons and coastal areas for example the Choiseul Province Resource Management Ordinance 1997 and the Western Province Resource Management Ordinance 1995.
- 2.21 The cases also illustrate both the importance of foreshores to commercial operations on terrestrial land, and the vulnerability of these areas to damage by commercial operations. The state legal system is not able to provide any effective protection or redress for damage to the marine areas.
- 2.22 Mr. Laore (representing families who lived in the area) claimed that the Allardyce actions which include blasting during the wharf construction, oil leakage into the reefs and sea, and the sinking of ships on the reefs had affected the availability of fish and other marine resources. Mr Laore did not prove the claim due to lack of evidence, and the action was out of time (not brought within 6 years of the alleged incidents).
- 2.23 The emergence of the Agana case is an example of peoples' non acceptance of the Courts' decision on land matters. After almost two decades, the same families still pursued the case. The reality is that the claimants' families will never accept any development on the foreshore and reefs around Lofung reefs, or the loss of control over activities that take place on or affect the foreshore and reefs.

²⁴ Constitution 1978 s 76 and Schedule 3.

Case Study 2: The Combined Fera case

- 2.24 The Combined Fera case concerns the Auki waterfront which had previously been shallow sea or mangrove swampy area. It was later reclaimed land and used as a rubbish dump area. It is now the site for the Auki market area and the wharf.
- 2.25 An acquisition process under Part V of Land and Titles Act for purchase or lease of customary land was used to acquire the land, on the basis that it was customary land. The Acquisition Officer made a determination about the groups having interests in the land. However the determination was challenged in the Auki Magistrate Court.²⁵ (Under the Land and Titles Act an appeal from a determination by an acquisition officer must go to the Magistrates' Court). The issue before the court was whether the reclaimed land (previously under water) was customary land. The Magistrates' Court interpreted section 10(4) of the Land and Titles Act as conferring Crown ownership of foreshore and seabed. It also applied the reasoning of the High Court in the Allardyce case and set aside the determination of the Acquisition Officer that the reclaimed land was customary land.
- 2.26 The Appellants (who were the Combined Fera Group, Billy Mae & Others, the Aisisiki tribe and the Aimarako tribe) appealed to the High Court. They claimed that the land was customary land with competing customary rights vested in each of them.
- 2.27 The then Attorney-General of Solomon Islands argued that land below high water mark is Crown land, and that the area cannot be customary land. His argument was "once a vesting had taken place according to law, it subsists, unless or until it had been cancelled or withdrawn. His analysis and conclusion on the relevant legislation is that the title to the reclaimed area of land had vested in the Commissioner of Lands by virtue of section 47(1) of the LTA of Cap. 56 on 1st February, 1963 and that it had never been divested."²⁶ The Attorney-General did acknowledge that subsection 47(4) did not allow those vesting provisions to apply to native customary land, however his main argument was that land below high water mark is Crown land.
- 2.28 Justice Palmer of the High Court decided that seabed and foreshore could be customary land if customary ownership (customary use or occupation) could be proved to have existed before 1 January 1969.

²⁵ *Francis Waleilia and Others v David Totore* (May 1992) cited in F. Kabui, 'Crown ownership of foreshores and seabed in Solomon Islands' (1997) 21 *The Journal of Pacific Studies* 123.

²⁶ *Combined Fera Group v Attorney-General* [1997] SBHC 55 <<http://www.paclii.org>> (Attorney-General).

- 2.29 The High Court sent the case back to the Magistrates' Court to decide which of the appellant tribes had lawful ownership, use or occupation over the land in accordance with current native usage prior to 1 January 1969.
- 2.30 After 11 years the Magistrates' Court finally gave its decision on the land in July 2009.²⁷ The Magistrates' Court decided that the reclaimed land is customary land. The Court relied on documentary evidence, previous land case decisions and sworn evidence to come up with its decision. The Court identified the landowning groups and their representatives who have the right to sell or lease out the land. The Chief Magistrate also appointed persons who could sell or lease the land.

Issues

- 2.61 The alienation of customary land by acquisition under the Land and Titles Act can be a long and expensive process, and does not promote transparency or fairness. In this case the acquisition process started in early 1990s.
- 2.62 A common feature of many land disputes litigated in the state law system is that they have no final resolution. A court may give a decision in favour of a party but it is not final; and is subject to appeals and emerging new claimants. This case has now attracted a lot of disputing parties; all claiming to be the rightful original owner of the disputed area. This large number of claimants raises a question about the genuineness of the claims as it is questionable in custom for many claimants coming from different tribes to claim customary ownership, rather than other kinds of interests, over one area.
- 2.63 One factor driving the land disputes is the expectation that groups (or even individuals) recognised as owners or claim to have interests in land earmark for development will be receiving compensation for the use of the land. However, when it comes to compensation there appears to be no clear, or at least transparent, analysis of the interests held and how the development will affect those interests. This is in contrast with the assessments made in Fiji for compensation for loss of fishing rights where there is development in mangrove, beach and inner lagoon areas as discussed in Appendix 4.
- 2.64 Another feature of this case is that some of the parties who joined in with the Combined Fera case in the High Court were 'left out' from the court proceedings in the Magistrates'

²⁷ *George Tafisisi & Others v Attorney General* CC. Nos 6, 13, 14, 15, 15A & 22/91 (unreported, Maina CM, 2 July 2009).

Court.²⁸ The Magistrates' Court operates as an adversarial body, and is not equipped to carry out an open inquiry into ownership and other rights over tribal land.

²⁸ Dante Tolifaesuda, Submission No. 15, *Notes taken during walk-in submission* (Ambu Village, Auki, Malaita Province) (30 March 2010).

Case Study 3: Honiara

- 2.99 Honiara is the capital city of Solomon Islands. After the Second World War the capital station of Solomon Islands was moved from Tulagi to Honiara. Honiara City is situated on alienated land although the boundary of Honiara City extends into the sea as appears in Appendix 5. The Commissioner of Lands (COL) holds the Perpetual Estate (PE) title to the alienated land in Honiara. The Commissioner gives out Fixed-Term Estate (FTE) title to land users of Honiara land.
- 2.100 In Honiara the seafront alienated lands have the boundary of the high water mark, with some exceptions such as the Ports area and the Aola Patrol Boat base where the lands are extended to some metres into the sea.²⁹ The Ports facilities and the Aola Patrol Boat base are obviously for public benefit or national interest. However, some parcels of registered land on the seafronts of Honiara also extend into the sea as seen in Appendix 6.
- 2.101 Non-registered land below high water mark (except land registered as customary land) is potentially customary land. The LRC understands that the Ministry of Lands, Survey and Housing treats non registered land below high water mark as customary (tribal) land, and it advises people who claim to be from land holding groups to deal directly with development that occurs past the high water mark.
- 2.102 The Provincial Government Act 1997 states that the sea adjacent to Honiara is not part of Guadalcanal Province as by order may specify by the Minister.³⁰ It is unclear whether any order has been made by the Minister under this provision, and the current boundaries of Honiara are set by a notice issued in 1973 as shown in Appendix 5.
- 2.103 One of the demands made to the Solomon Islands Government by the Guadalcanal Province in 2000 on behalf of its people related to the issue of *coastal reefs in front of Honiara*. The Province demanded that the National Government properly acquire the Honiara seafronts or land below high water mark.³¹ It is claimed that the coastal reefs in front of Honiara were never acquired in accordance with the provisions for acquisition under the *Land and Titles Act* and as a result the original landowners and their descendants have lost their traditional and customary rights over the whole area.

²⁹ Survey General, Deputy Commissioner of Lands and the Chief Legal Lands Officer, Submission No. 84, *Notes taken during consultation meeting* (Honiara, Ministry of Lands, Housing and Survey) (11 September 2009).

³⁰ Provincial Government Act 1997 s 3(5) stating “[t]he area of Guadalcanal Province shall not include such area of sea adjacent to Honiara as the Minister may by order specify, and an order under this subsection shall be subject to negative resolution.”

³¹ Guadalcanal Provincial Assembly Demand, 2000.

- 2.104 The Solomon Islands Alliance for Change (SIAC) Government in 2000 responded to the demand by saying Government will address this in the overall review of the *Lands and Titles Act*. No national government has addressed this demand.
- 2.105 It is however noted that this demand is inconsistent with reports that individuals are engaged in 'selling' tribal marine land, or making claims for compensation for development in front of seafront registered land. These kinds of dealings are a concern because of lack of proper regulation. There is a concern that individuals carrying out the dealings only act for their own personal interests rather than acting on behalf of their tribal interest.³²
- 2.106 One submission to the LRC raises issues about claims being made by people who claim to be landowners to people who hold registered land adjacent to the seashore that is, or has been, developed. The submission argues that landowners should have to prove their claims, and that genuine claims may be small in number due to the development of Honiara over the last 50 years. This submission raises concerns about some claims being opportunistic.³³
- 2.107 A significant amount of land reclamation is occurring over the Honiara seafront, potentially on tribal marine land. Examples include reclamation between the Mendana Hotel and Heritage Park Hotel, the Kokonut Café area and at Rove.
- 2.108 Development and migration are contributing to significant pressures on public land in Honiara. There are concerns about the current capacity of the major landowner (the Government) to effectively administer and manage public land in Honiara. For example, it is reported that revenues from rent of public land (which includes very valuable seafront land) are very low.³⁴
- 2.109 The Honiara City Council (HCC) in its submission to the LRC says that development on Honiara land below high water mark is a grey area for them since this area of land is potentially customary land, even though it is inside the seaward boundary of Honiara City. The Council's Building Ordinance, and Town and Country Act have limited or no application to this area of land as it is customary land. The HCC assumes that its ordinances (being subsidiary legislation) cannot have any effect on customary land. Unlike the Provincial Government Act, the Honiara City Council Act does not authorise

³² Simon Gimo, Submission No. 75, *Notes taken during walk-in submission* (Choviri, Guadalcanal Province) (3 February 2011).

³³ Andrew Radclyffe, Submission No. 9, *Submission by email* (Honiara) (29 October 2009).

³⁴ Shaun Williams, 'Public Land Governance in Solomon Islands', *World Bank, Justice for the Poor* Vol 6, Issue 1 (February 2011).

the Council to pass ordinances that have the effect of amending customary law about land.

- 2.110 The Town and Country Planning Act regulates and controls development in town areas (known as local planning areas), but not areas under customary control.³⁵ The Act also allows for a development of a local planning scheme for the local planning area.³⁶
- 2.111 The Minister for Town and Country Planning can declare a local planning area, or make an order to control development over a particular area.³⁷ However, a declaration or an order cannot apply to customary land.³⁸
- 2.112 An order has been made to the full extent of Honiara geographical area, however non-registered land below high water mark is potentially customary land. This means the extent that the order covers customary land is void.
- 2.113 The Honiara City Council also submits that land reclamation on Honiara seafronts is spoiling the amenities of Honiara shorelines and has the potential to cause irreparable environment damage to the shoreline and the ocean. Land reclamation is likely to eventually result in complex disputes over title to the land if it is undertaken without proper consent of the true customary owners.³⁹
- 2.114 The Council says that it does not have the expertise or the resources to ascertain whether any of the land below high water mark is customary land, and the nature and extent of that customary land tenure. The Council also says that it is not in a position to determine claims about whether land reclamation is permitted under customary law. It suggests that this has been the response of people engaged in land reclamation in the jurisdiction of the Council. The Council also says that a Building Ordinance, as subsidiary legislation, cannot prohibit conduct that is permitted by customary law. As such the Council is severely restricted in its ability to regulate land reclamation.
- 2.115 The Council suggests that the Honiara City Council Act be amended to allow its Building Ordinance to apply to all building and preparatory work undertaken in its boundaries regardless of whether the work might be permitted by customary law. It also suggests that the Town and Country Planning Act be amended so it could potentially apply to customary land below high water mark.

³⁵ Town and Country Planning Act [Cap 154] ss 7 & 13.

³⁶ Town and Country Planning Act [Cap 154] s 9.

³⁷ Town and Country Planning Act [Cap 154] s 7.

³⁸ Town and Country Planning Act [Cap 154] ss 7 & 13.

³⁹ Honiara City Council, *Submission No. 23, Written submission* (Honiara) (27 May 2010).

- 2.116 The LRC research suggests that the Honiara City Council Act 1999 and its Building Ordinance could apply to its entire geographical jurisdiction. However, LRC noted the complexity about the Honiara City seafronts and sea. A way forward is to clarify that the Building Ordinance applies to the entire Honiara City geographical jurisdiction including tribal land in the City boundary.
- 2.117 The Council suggested in its submission that national legislation must allow developments on Honiara foreshore and seabed (that is within the Local Planning Area) to be regulated by the Town and Country Planning Act in the same way as developments in other parts of Honiara. This will ensure that the town or city is properly planned. The Council also submits that Honiara City Council Act will also need to be amended so that its ordinances can regulate activities on customary land.
- 2.118 Consultation by the LRC with Ministry of Environment officials indicates that many developments that involve land reclamation happening on the Honiara seafronts did not have development consent from the Director of Environment and Conservation Division. This may be because the Director takes the view that foreshore reclamation is not a prescribed development. It is understood that requirements for public environment report (PER) or environment impact statement (EIS) are more likely to be fully carried out when the development is supported by international donors.⁴⁰ Developments on the seafront, or that involve reclamation, that are carried out solely by private interests are less likely to attract PER or EIS. This may attribute to the perception that such developments are not prescribed development under the Environment Act 1998 or attributes to failures of the environment officials to fully implement the Environment Act 1998 and Environment Regulations 2008.
- 2.119 Public access to the Honiara seafronts is now a problem as business developments erode and block public access to the white sandy beaches for recreation and transport. The Honiara Local Planning Scheme (amended 2008) states an intention to reintroduce public access along the waterfront, with coastal walkways. It says that these projects would include a combination of land reclamation to protect from coastal erosion, together with an opportunity to create recreational space along the foreshore.

⁴⁰ Environment Officials, Submission No. 76, *Notes taking during consultation meeting* (Honiara, Ministry of Environment, Climate Change, Disaster Management and Meteorology) (3 November 2011).

Tribal land below high water mark in Honiara: stakeholders

Stakeholders	Interests or responsibilities
Tribal landholders	Tribal landholders (or individuals purporting to represent tribal landholders) negotiate directly with developers over land below high water mark. Landowners cannot grant lawful interests to non Solomon Islanders unless land is acquired under Lands and Titles Act, or land is converted to registered land.
Private landholders with FTE over seafront land & other private sector interests	Some holders of FTE seek to use foreshore areas for reclamation, or other activities connected to their business. Some PEs and FTEs in Honiara extends beyond high water mark. Greater guidance needed for how to develop on marine land in Honiara.
Ministry of Lands, Housing and Survey (Commissioner of Lands)	COL holds the PE of all registered seafront land. Development of seafront land can be controlled through the imposition of lease conditions. Rent payable for FTE on seafront land is generally low. Administratively (Ministry of Lands, Housing & Survey (MLHS) treats land below high water mark (that is not registered) as tribal land.
Ministry of Environment/Director of Environment	Responsible for administering the Environment Act. The Director of Environment and Conservation Division can control development through the issue and the non-issue of consent to development. Evidence suggests that little or no control is being exercised.
Honiara City Council	The Council does not have the expertise or capacity to determine tribal interests in land below high water mark.
Town and Country Planning Board	The Board has no power to control and regulate development on tribal land below high water mark adjacent to town areas.
Guadalcanal Province	The area of Guadalcanal Province does not

	include the sea adjacent to Honiara as the Minister may by order specify.
Community members who use the seafront, reefs and inshore areas in and around Honiara	Have very little say over development affecting public use and amenity of foreshores and beaches in Honiara.

Chapter 3 Customary Governance

- 3.1 The terms of reference asked the LRC to enquire and report on “the true position of ownership of beaches/shores and land below high water mark and low water mark in terms of customary land tenure; and right of use of beaches/shores and land below high water mark and low water mark in custom.”
- 3.2 Following the launch of the land below high water mark consultation paper in 2009 the LRC conducted consultation around Solomon Islands and received 84 submissions from individuals, groups, associations and organisations. The consultation shows that customary tenure over foreshores, reefs and seabed is very strong. The tribe is the primary holder of rights, and due to the nature of the area there is considerable flexibility around use rights. For example, while one tribe can make decisions about limiting access or use, members of other neighbouring tribes are permitted to use marine areas to fish and gather resources for sustenance. There are some variations to the nature and extent of this tenure, depending on factors such as the existence of local governance mechanisms (for example Lauru Land Conference), technology, the impact of land alienation that occurred during the protectorate era and demographic factors such as population growth and migration.
- 3.3 Solomon Islanders have been exercising customary governance or control over this area of land since time immemorial. Before contact with the explorers, traders, missionaries, foreign government agents and introduced laws, the rules of custom or customary tenure (customary law) set the norms as to how people in Solomon Islands used this area of land.
- 3.4 Under current state law dealings or transactions on tribal land or that affect tribal land, have to be done in accordance with the current customary usage.⁴¹ Dispute resolution over tribal land involves both customary institutions (chiefs hearings panel), and the state legal system.
- 3.5 The LRC has gathered information on marine tenure through consultations and submissions. Other information was collected from reports of inquiries held during the protectorate era, court decisions during and after the protectorate era, and anthropological texts.

⁴¹ Land and Titles Act [Cap 133] s 240.

Tribal land tenure

3.6 An important aspect of tribal land tenure is that it is based on a web of relationships that have a social, spiritual and historical significance in custom. Tribal land tenure in Solomon Islands is not uniform, however there are some important similarities across the country. The table below summarises some of the key differences between tribal marine land tenure and state land tenure.

Tribal marine land tenure	State law land tenure
Tribal control and ownership. Access is based on social relations. The ability to impose customary prohibition or control is an important aspect of marine land tenure.	Government or individual ownership and control derived from Constitution and legislation passed by National Parliament and Provincial Ordinances, or registration of interests such as perpetual estates and fixed term estates.
Spiritual, historical, social and political relations are significant, tenure cannot be separated from social relations.	Land is a commodity that can be bought, sold, leased and used for profit.
Limited entry ideology	Open access to the sea 'the sea is free', subject to the control of the state.
Multiple users are common, boundaries flexible and dependent on technology and ability to control.	Fixed marine boundaries derived from state and international law: jurisdiction of provinces and Honiara City Council, territorial sea, continental shelf and exclusive economic zone.

3.7 Tribal land tenure includes marine tenure where people, through their customary practices, exercise control and use over marine areas. Customary practices of marine tenure dictate the way in which people control and use the marine areas and the resources found in the areas. From information collected from submissions and consultation, tribal marine tenure is expressed through ancestral and spiritual beliefs, use of resources found in marine areas and control exercised over those resources.

3.8 Hviding describes fishing rights at Marovo Lagoon as highly diverse, and not a fixed system of fishing rights that was equally relevant in all contexts. For example, rights to fish or take marine resources recognised at custom, do not always translate into rights to take the same resources for a commercial purpose.⁴² He describes three "constitutive axioms of marine tenure: the (land holding) group has complete and recognised control over everything within the marine boundaries of its territory, no outsider is allowed to

⁴² E. Hviding, *Guardians of Marovo Lagoon: practice, place, and politics in Maritime Melanesia* (1996), 288.

exploit the territory for commercial purposes without first asking for permission and exploitation activities that are perceived as a threat to the territory are regulated by the group".⁴³

- 3.9 The Allan Commission report concluded that marine tenure was connected to terrestrial land tenure, and that on the sea coasts the boundaries of customary land extended to fringing reefs, although there were some exceptions to this, mainly in Lau and Reef Islands.⁴⁴ Allan also identified overlapping rights and multiple users (depending on activities, for example whether gathering shells for commercial use, net or trap fishing or spear and pole fishing).
- 3.10 This view that marine land tenure is an extension of terrestrial land tenure was also expressed during consultation by the LRC and in submissions received by the LRC. While generally ownership rights to land do extend to adjacent marine zones, there are important exceptions to this general rule due to relationships between specific groups and territories and complex historical processes.⁴⁵ An important historical factor affecting marine tenure is the general movement of population of islands from inland to the coasts that occurred in the 20th century. One submission received by the LRC argued against the idea that people own land from the bush to the sea. It was stated that every land has boundaries, and that people cannot own the land right from the bush to the sea.⁴⁶
- 3.11 Customary tenure over marine areas has some important differences to tenure over other land. Boundaries are not so absolute and exclusive ownership is not the same because joint use is important. Sometimes ownership rights may sit with one entity while various use rights may reside with others. A number of people told the LRC in submissions and consultations - that customary law does not distinguish between marine and terrestrial areas, and that high or low water marks are not used as boundaries for customary land.⁴⁷

⁴³ E. Hviding, above n 42, 294.

⁴⁴ C. H. Allan, above n 5, page 164, para 65.

⁴⁵ Joe D Foukona "The legal reality of customary tenure in Solomon Islands" presentation at workshop held in Honiara (9 February 2011).

⁴⁶ Jack Ogafura, Submission No. 43, *Notes taken during walk-in submission* (Mbita'ama, North Malaita) (21 October 2010).

⁴⁷ Police and Public Solicitor's Office, Submission No. 2, *Notes taken during consultation meeting* (Auki, Malaita Province) (April 2009). Also reflected in submissions that tribal land extends beyond reefs and seas.

Marine tribal land tenure and livelihood

- 3.12 Many submissions and comments made during consultation highlighted the link between marine tenure and livelihood. One submission said: "As Pacific islanders these are regarded as fishing gardens."⁴⁸ A submission from Santa Cruz emphasized that reefs are just like gardens for food.⁴⁹
- 3.13 The submission from Lauru Land Conference described it as follows: "Our ancestors, as stated clearly above, were born, died and buried in their land. They ate what the land produced such as wild yam (kumeqe), ngali nut (kaku), fern (zuku), local breadfruit (barrio vudu), fern (muqa), etc. They drank the fresh water from the stream and rivers. They caught eel fish and prawns from the rivers, and fish from the reefs. They ate varieties of reef fish and shell fish from mangrove swamps. When looking at what are listed above and many more to be added to the list, it becomes clear that the land and reefs and the resources in them are our life-blood. It is apparent that they (land, reefs and resources) are security and life for tribes' generations."⁵⁰
- 3.14 One submission from North Malaita described ownership in custom over reefs and sea as being based on the use of the area for collection of food and salt. Ownership extended to the "deep blue sea where they collect salt", then beyond there is a common fishing ground for everyone in the area or nearby.⁵¹
- 3.15 The Tetepare Descendants' Association said during consultation that the seafront is important to livelihoods, and that the seafront is part of the lives of the people. Traditional fishing grounds and resource areas must be linked to the people. Some places are not free for people to go and harvest, and it is necessary to ask first. While there are no specific boundaries for traditional fishing grounds (beyond the edge of the reefs), this does not mean it is free for commercial exploitation. Villagers are not happy when commercial fishing competes with their access to fish. Ownership only comes up strong when money is involved.⁵²

⁴⁸ Reuben Campbell Lauvota, Submission No. 44, *Notes taken during Law Week LRC Stall walk-in submission*. (South West Guadalcanal, Guadalcanal Province) (22 October 2010).

⁴⁹ John Mark, Submission No. 70, *Notes taken during Law Week Stall walk-in submission* (Temotu Province) (21 October 2010).

⁵⁰ Lauru Land Conference of Tribal Community Trust Board, Submission No. 21, *Written submission to LRC* (Choiseul Province) (18 May 2010).

⁵¹ Paramount Chief John Konai, Submission No. 32, *Notes taken during discussion* (Tafuna'ama village, Toabaita, North Malaita) (12 August 2010).

⁵² Tetepare Descendants' Association, Submission No. 27, *Notes taken during consultation meeting* (Munda, Western Province) (10 June 2010).

- 3.16 While tribal ownership exists over marine land, fishing grounds are also used by all of the community, not confined to the landowning tribe.⁵³
- 3.17 A number of submissions raised the importance of tabu places on reefs, places used for sacrifices to the sea gods and to worship.⁵⁴ Rights and interests in tribal marine tenure (like tribal land tenure) are evidenced by burial sites, sacrifice places and fishing grounds.
- 3.18 “Land and sea ownership was an ancestral trust committed to the living for benefit of themselves and generation yet unborn. Reverence for ancestral spirits was a cardinal point of traditional faith and such reverence dictates the preservation of Land which the living shared with the dead.”⁵⁵
- 3.19 Customary tenure is more than rights, also social connections, cannot just focus on rights, but also should focus on obligations.⁵⁶
- 3.20 A submission from Gela described reefs as part of the people’s daily living, where they collect their food for survival. In the past people travelled though the sea, the first place they landed was on the beach. They put their tabu site there and settled. The first tabu site was where they offered to their god the first prayer of thanks for the god’s protection throughout their journey in the sea. The tabu sites are there forever.⁵⁷

Tribal or communal ownership

- 3.21 During consultation the LRC specifically asked for information about the nature of ownership of marine areas – is ownership exercised by tribes or individuals?
- 3.22 The overwhelming response was that generally below high water mark is tribally owned land. However, in some places there is family ownership of reefs and fishing areas.⁵⁸
- 3.23 In Choiseul Province, participants in an LRC consultation meeting said that ownership is held by tribes not individuals, except limited areas where certain families own reefs, or chiefs’ wives only can go to certain reefs to the exclusive of any other person.⁵⁹

⁵³ Temotu Provincial Government Executive, Submission No. 33, *Notes taken during consultation meeting* (Lata, Temotu Province) (20 August 2010).

⁵⁴ Emilio Kuributo, Submission No. 25, *Notes taken during walk-in submission* (Kakabona – Verahoai village, West Guadalcanal, Guadalcanal Province) (27 May 2010).

⁵⁵ Boaz Miavana, Submission No. 26, *Written submission* (Borokuni Village, North West Choiseul, Choiseul Province) (8 June 2010).

⁵⁶ Consultation Conference, Submission No. 55, *Conference organised by LRC*, (Honiara) (9 February 2011).

⁵⁷ Tribal Chief Robert Pelupari of Kakau Tribe, Submission No. 30, *Notes taken during walk-in submission* (Tahi village, Buena Vista, Vatilau District, Central Islands Province) (30 June 2010).

⁵⁸ Some reefs and fishing grounds in Lau, North Malaita, Malaita Province and in Choiseul Province.

Extent of marine tenure and boundaries

3.24 The information collected during consultation showed differences regarding the extent of marine tenure. Some people consulted said that ownership only goes up to the reefs adjacent to the main land, others said ownership goes up to the outer reefs in the open sea, others say ownership goes up to where they can call their sharks and they appear for them in time of distress. Others say ownership goes up to the deep blue sea where they call dolphins and lead them to the shore for slaughtering, others say ownership goes as far as where they could reach and use the resources in the area, and others say ownership go as far as the deep blue sea where they reach and could still see the highest mountain on land. People revealed that they have their own stories of customary practices that align them to ownership of outer reefs and where they can reach in the deep blue sea.

3.25 For example:

Ownership extends to the reefs and lagoon areas only.⁶⁰

Small islands outside of the main islands are part of the main island/land where connected to reefs. Foreshore land stops at the reefs. Small islands outside which are separated by the blue sea are not part of the main land. If people claim ownership must prove it.⁶¹

(Ownership) extends to the reefs, lagoon areas, and the open sea as far as where their canoes can reach. The people have their tabu sites (where god blo olketa stap meaning where their god lived) in these places/areas.⁶²

Ownership extends to the open sea as far as the outer reefs. It extends to where they can call their dolphins and lead them near the shore for slaughtering.⁶³

The Local people ownership of areas extends to where they use to do fishing. It extends to where they can call their sharks and they appear for them in times of distress.⁶⁴

⁵⁹ LALSU Workshop, Submission No. 13, *Notes taken during LRC consultation meeting session* (Taro, Choiseul Province) (24 March 2010).

⁶⁰ LALSU Workshop, Submission No. 22, *Notes taken during LRC consultation meeting session* (Buala, Isabel Province) (26 May 2010).

⁶¹ Tribal Chief Robert Pelupari of Kakau Tribe, above n 57.

⁶² LALSU Workshop, above n 59.

⁶³ LALSU Workshop, Submission No. 36, *Notes taken during LRC Consultation meeting session* (Auki, Malaita Province) (16 September 2010).

⁶⁴ Community leaders, Submission No. 11, *Notes taken during consultation meeting* (Kirakira, Makira Province) (12 March 2010).

To the reefs and the outer lying reefs too; reefs have their names too. In custom, boundaries are determined by where you are in the deep blue sea, and can still see the highest mountain on land. This place is where people reach to do their fishing or teething their sharks.⁶⁵

It (ownership) goes to the reefs, and as far as the sea where our ancestors went for trading purposes.⁶⁶

- 3.26 One submission made by a number of representatives on behalf of the Wato Tribe (Peleto) of Nupani Island in the Reef Islands asserted ownership of reefs extending from Nupani south to Ndendo, including “Tenukula Volcano, Nupani Island, Nalogo Island, Nubonyile Island, Patteson Shawl and surrounding reefs, Broham Shawl and surrounding reefs all the sea surrounding Tenukula that extends out to the horizon, Minevi, Ngamatubi Reef and Nubonyile (Mdaoni).”⁶⁷
- 3.27 One submission suggested that “traditional ownership rights by the people of the area should own from their shores a stretch of 50 nautical miles boundary to the open sea, and that the lands under the water – seabed, beaches, reefs, harbours and all the resources therein be owned by custom and law by the traditional groups.”⁶⁸
- 3.28 It was acknowledged during some consultation that the question of boundaries over marine areas can be difficult. For example, at the workshop held in Honiara by the LRC it was stated that there are difficulties with recording fishing rights because the boundaries are not fixed or clear.⁶⁹
- 3.29 A submission from North East Malaita argued that land below high water mark is customarily owned because ancestors discovered the land and assumed ownership of the land from the bush right down to the reefs in the sea. It also specifically argued for customary ownership of harbours because the seabed which forms the base of the harbour is part of the land which is customarily owned, the rivers flow into the harbour (taking sediment and minerals from the land) and harbours are situated within the bounds of reefs.⁷⁰

⁶⁵ Temotu Provincial Government Executive, above n 53.

⁶⁶ Wato Tribe Representatives, Submission No. 24, *Walk-in Submission* (Reef Islands, Temotu Province) (27 May 2010).

⁶⁷ Clement Jimmy Natei, Jasper Maike Bonie and John Mark Okau on behalf of the Wato Tribe, Submission No. 74, *Written submission* (Reef Islands, Temotu Province) (1 August 2011).

⁶⁸ Texley Faasi & Rinaldo Talo of Ulufera Council of Chiefs, *Written submission* (North Malaita, Malaita Province) (7 April 2011).

⁶⁹ Consultation Conference, above n 56.

⁷⁰ Steward Maearo, Submission No. 37, *Written Submission* (Tribal Chiefs of Ata'a area, Ata, North Malaita) (22 September 2010).

Use and ownership

- 3.30 During consultation it appeared that many people equated rights to use with rights of ownership. However, this could be due to the way state law approaches the question of customary land. The Land and Titles Act defines customary land as land lawfully owned, used or occupied by a person or community in accordance with current customary usage. This means proof of use can get translated to ownership which occurred in the Tafisisi case where usage rights were recognized as a form of ownership.⁷¹
- 3.31 One distinction raised during consultation was between ownership and use. There is a distinction between ownership, and rights to fish. Somebody, not necessarily the owner can fish on somebody's land but if the fishing ground is damaged then compensation must be paid to the people for loss of their fishing rights.⁷² Many people may exercise rights over land, but only the tribe can own. People may have agreements in custom for fishing rights, but it does not equate to ownership.
- 3.32 Customary rights come with the tribe that discovered the area. Others are users of the foreshore and reefs. Some people who claim discovery do not use the land.⁷³
- 3.33 A submission from Gela said that use by others depends on the landowners. If landowners are not strict, others can use the reefs and foreshore. If landowners are strict others can only use the foreshores and reefs if they ask and permission is given.⁷⁴
- 3.34 A number of submissions indicated that people other than those claiming to have rights over marine areas can only use the area if they obtain permission from the tribal landowners. The degree of control by landowners tends to diminish towards the deep blue sea. For example, obtaining permission for use of sand and gravel on the foreshores is necessary, but obtaining permission to fish on the reefs and on the seas may not be necessary for people living nearby. Reefs and seas are communal grounds for people living in the area, not necessarily for the exclusive use by one tribe.
- 3.35 For example:

*No. Can only use if ask permission from the land owners.*⁷⁵

⁷¹ *George Tafisisi & Others v Attorney General* CC. Nos 6, 13, 14, 15, 15A & 22/91 (unreported, MainaCM, 2 July 2009).

⁷² Malaita Provincial Government Assembly, Submission No. 60, *Notes taken during consultation meeting* (Auki, Malaita) (6 April 2011).

⁷³ Suava Bay landowners and others, Submission No. 60, *Notes taken during consultation meeting* (Auki, Malaita Province) (7 April 2011).

⁷⁴ Tribal Chief Robert Pelupari of Kakau Tribe, above n 57.

Can use with permission. Families or land owning groups usually charged other people for taking gravel.⁷⁶

Any different person who wants to use the foreshores like collecting gravels must seek permission from the owners/tribal group.⁷⁷

...[I]n custom, the customary owners of the inland also own the beaches and reefs. If anyone to do fishing on the reefs must ask permission. Doing fishing outside the reefs is ok to anybody.⁷⁸

- 3.36 However, according to the norms of marine tenure owners can restrict the use of reefs for certain periods of time. The reasons given for restrictions include raising marine resources in preparation for a feast, or to meet community or family obligations or to allow marine resources to recover and increase.
- 3.37 For example, one submission described how restrictions are imposed on collection of trochus and fishing to allow for the marine resources to regain their population, and to meet family obligations like making cement over the dead people.⁷⁹

Use by others –free passage

- 3.38 The submissions received showed customary recognition of free passage over the land below high water mark for everyone. People acknowledged that the sea is like a road on the main land. However, in Choiseul Province, the people that LRC talked to, gave a different account as to their customary practice on free passage. It was said that in Choiseul free passage over land below high water mark is not recognized. People could only travel over this area of land if they notified the people on the coast of the area that they are passing by, if not, those passing by can be killed.⁸⁰ In one of the meetings in Isabel, a participant submitted that in Isabel free passage is allowed but not for strangers. Another participant submitted that free passage should be allowed for everyone including strangers in today's time and age.⁸¹

⁷⁵ LALSU Workshop, Submission No. 31, *Notes taken during LRC consultation session* (Kirakira, Makira Province) (15 July 2010).

⁷⁶ Munda Police, Submission No. 27, *Notes taken during consultation meeting* (Munda, Western Province) (8 June 2010).

⁷⁷ John Kavoa, Submission No. 18, *Walk-in submission* (Visale, Koimarama area, Guadalcanal Province) (30 April 2010).

⁷⁸ Modesto Luvule, Submission No. 14, *Walk-in submission* (Sumate Village, West Guadalcanal, Guadalcanal Province) (10 March 2010).

⁷⁹ Tribal Chief Robert Pelupari of Kaukau Tribe, above n 57.

⁸⁰ LALSU Workshop, above n 59.

⁸¹ Maringe House of Chiefs, Submission No. 66, *Notes taken during consultation meeting* (Buala Village, Isabel Province) (27 May 2011).

Decision making

- 3.39 During discussions in consultation about decisions making it was common for participants to express an ideal about how decisions should be made, while also identifying problems about how decisions are actually being made.
- 3.40 The ideal is for everyone (men, women, and youths) to come together in an open meeting to make a decision on the use of their land. For example:

*Tribal landowners make decision.*⁸²

*Tribal landowners make decision. Full tribe members with tribal leaders to make decision.*⁸³

*Chiefs, representatives of a tribe which could include women rep, men rep, youths rep, disable rep. It was acknowledged that it is wrong for men alone to make decision. The current practice is that men alone involves; women are left out. Women who married to other tribe not allowed to participate in decision making of the land. They can participate in the land dealings in their husband's area/tribe.*⁸⁴

*Chiefs make decision.*⁸⁵

*Tribes represented by chiefs come together to settle dispute. In Reef Islands chiefs try to settle the dispute by mediation.*⁸⁶

*Council of chiefs, elders in the village – depending on the nature and scope of the disputes as to the parties involved. Logging caused a lot of land dispute. This is because money is involved.*⁸⁷

- 3.41 However, concerns were raised about how decisions can often be made by a few individual men. The processes of the state legal system have resulted in distortions of the ideal decision making practice.

*In the past no land dispute. Now – it's the chiefs that first hear land disputes. Only chiefs Panel can give a fair decision because they know about the history of the land.*⁸⁸

⁸² LALSU Workshop, above n 75.

⁸³ LALSU Workshop, above n 60.

⁸⁴ LALSU Workshop, above n 59.

⁸⁵ LALSU Workshop, above n 63.

⁸⁶ Lata Magistrate Court Officer, Submission No. 33, *Notes taken during consultation meeting* (Lata, Temotu Province) (18 August 2010).

⁸⁷ Tetepare Descendants' Association, above n 52.

⁸⁸ Paramount Chief John Konai, above n 51.

The law must allow chiefs to make final decisions so people can't exploit the system. Land is a tribal matter but it becomes hijacked by individuals. There should be some set criteria or clarification about those who make judgments at village courts level. If someone has taken a bribe then he or she is not suitable.⁸⁹

Courts system hinder development as the system does not have the answers to resolve land disputes, chiefs should be the right body to make decision over customary land ownership and other uses. Problems with current land dispute processes = need to support power of chiefs (as most knowledgeable) to make enforceable decisions. State courts should only make decisions about interpretation of (state) law. Give more power to the chiefs. Chiefs can address genealogy and boundaries.⁹⁰

- 3.42 Concerns were raised that the chiefs' decisions are not proper in some cases where bribery is involved. State law (Local Court Act) requires disputes about customary land to be first considered by chiefs and traditional processes.⁹¹ However, the state does not remunerate or support those processes. In some cases where the land in dispute is needed for logging, a logging company will pay the sitting allowances of the chiefs. In other cases the costs of the chiefs hearing is met by the parties to the dispute. This leads to perceptions of bias in this decision making process.⁹²

Challenges for tribal marine tenure

- 3.43 Tribal land tenure, including marine tenure, has its roots in custom and tradition. Many elements of it have been in place for a long period of time. However, the introduced legal system, migration, increased population, Christianity, the introduction of a cash economy and economic development and new governance bodies are having a significant impact on it. These factors have put enormous pressure on tribal land tenure, and in some cases have modified it.
- 3.44 Bennett says that capitalism has changed Solomon Islander perceptions of resources, including perceptions about the use and ownership of resources. Disputes arose (or at least new kinds of disputes) with commercial exploitation of resources, as well as pressure from migration from bush areas to coastal areas.⁹³ Migration from inland to the

⁸⁹ Community leaders, above n 64.

⁹⁰ Malaita Provincial Government Assembly, above n 72.

⁹¹ Local Court Act [Cap 19] s 12.

⁹² Boaz Miavana, Submission No. 65, *Notes taken during walk-in submission* (North West Choiseul, Choiseul Province) (19 May 2011). See also Malaita Provincial Government Assembly, above n 72.

⁹³ J.A. Bennett, above n 2, xviii.

coast was also identified during consultation by the LRC as an issue for ownership of marine areas.⁹⁴

- 3.45 Customary tenure ceases to operate over the tribal land when it is converted to state tenure through land acquisition or sale to the national or provincial government. Customary tenure over marine areas adjacent to registered (state) land becomes confused and/or contested for a range of reasons. It is no longer possible to identify the “true” or original owners of the area, many groups (or individuals) have used the area, different perspectives about whether acquisition (by a Solomon Islander or group of Solomon Islanders) of registered land above high water mark entitles the title holder to ‘customary rights’ over the adjacent reefs and seafront.
- 3.46 Migration and population pressure causes people to argue and dispute over land because of greater demand, and competition for resources (food and other needs) that are derived from land.
- 3.47 One example given during consultation was migration to Western Province by people from the (then) Gilbert Islands, Kiribati. Settlers from Gilbert Islands now have perpetual estate over a number of islands around Gizo. The title they hold goes to the high water mark. Problems can arise where the holders of the perpetual estate seek to exercise some form of control over adjacent reefs. In some cases the holders of the perpetual estate over the islands have granted fixed term leases for tourist operations that extend (in some cases) beyond the high water mark into the sea. It was suggested that the problem with conferring ownership over reefs is that it gives rise to the right to exclude, and affects access to the reef area.⁹⁵
- 3.48 Introduced governance bodies at the local or community level are also seen as a threat to customary tenure of tribal land. It was argued during one of the LRC consultation meetings that the introduced governance body of the chiefs’ council is threatening the customary land (tribal) tenure because appointed chiefs take over role of making decisions about tribal land from chiefs who gain their role through inheritance.⁹⁶
- 3.49 One consequence of contested or confused ownership of marine areas is that the area is subject to effective control and becomes vulnerable to degradation. This is the case around Gizo. During consultation the LRC was advised that a decision either way (that

⁹⁴ Makira Provincial Executive, Submission No. 11, *Notes taken during consultation meeting* (Kirakira, Makira Province) (10 March 2010).

⁹⁵ Peter Buka, Submission No. 63, *Notes taken during consultation* (Ministry of Lands, Gizo, Western Province) (13 April 2011).

⁹⁶ Moira Pio Dasi, Submission No. 66, *Notes taken during consultation meeting* (Mothers Union President, Buala, Isabel Province) (26 May 2011).

the reefs around Gizo are customary (tribal) land, or Crown land) would cause conflict. Failure to manage and protect the reefs is leading to environmental degradation with activities such as coral mining exposing the reefs and foreshores to erosion.⁹⁷

- 3.50 During consultation at Munda it was said that the reefs in the area were vulnerable because they are so close to Gizo, and lots of people come to them to harvest resources. It was suggested that there is a need for registration of reefs, and some direction from the government about public use of these areas. Where reefs are used by divers and yachts there is a need for guidance from the legal system so the obligations of users to owners are made clear. Outsiders need to understand their obligations and what is required.⁹⁸
- 3.51 The LRC was told that when people do not follow customary boundaries or tabus about use of the sea and its resources, there is a need for guidelines to protect beaches, reefs and seas.⁹⁹
- 3.52 While registration of reefs may be seen as a strategy for protecting reefs, at another consultation concerns were raised that registration of reefs may deprive others of using reefs, and have the effect of altering custom where communal use is recognised.¹⁰⁰
- 3.53 The LRC does not support registration of marine areas but supports recording of land. The recording needs to be done on the basis that land is owned by tribes, not individuals. Such recording is subject to existing rights to access, passage and navigation.
- 3.54 Challenges to marine tenure are being met by local responses. For example, during consultation with the Makira Province Provincial Government Executive the LRC was advised that at the 2008 Ulawa Conservation Conference the issue of boundaries in the sea was considered, and a decision made that the area from high water mark to the reef is owned by the relevant tribe, further out belongs to "the community", and further out again belongs to "the region."¹⁰¹ The focus in Western Province on the establishment of marine protected areas, that utilize a variety of sanctions and institutions to enforce rules about use of the area, is another example.

⁹⁷ Bruno Manele, Submission No. 63, *Notes taken during consultation meeting* (World Wide Fund for Nature, Gizo, Western Province) (15 April 2011).

⁹⁸ Tetepare Descendants' Association, above n 52.

⁹⁹ Communityleaders, Submission No. 27, *Notes taken during consultation meetings* (Lodumaho, Dunde and Kidu – Munda, Western Province) (9 June 2010).

¹⁰⁰ Makira Provincial Government Executive, above n 94.

¹⁰¹ *Ibid.*

Table: summary of responses from provincial consultation and submissions about ownership, control and use of marine tribal land

Provinces	Are people claiming ownership over this area of land?	Is this individual ownership or tribal ownership ?	How far does the ownership go?	Are people other than landowners have to get permission before they can use this area of land?	In custom, is free passage and access allowed?
Central Islands	Yes	Tribal	To the reefs adjacent to the mainland.	Yes	Yes
Choiseul	Yes	Tribal	To the reefs, outer reefs, and open sea as far as their canoes can reach. People do have their tabu sites in the area where they can pray to their god.	Yes	No
Guadalcanal	Yes	Tribal	To where they can do their fishing, own up to the centre between their island and other islands.	Yes	Yes
Isabel	Yes	Tribal	To the reefs adjacent to the mainland including the lagoon areas.	Yes	Yes
Makira	Yes	Tribal	To the reefs, fishing grounds, own up to where they can see, own up to where their shark can show them (flying) in the open sea to assist them in times of distress.	Yes	Yes
Malaita	Yes	Tribal	To the outer reefs and to where people can exploit the resource, including where people can call dolphins and lead them shore to be slaughtered.	Yes	Yes
Rennel	Yes	Tribal	To reefs including the	Yes	Yes

			outer reefs in the open sea, the deep sea and down to the earthquake belt.		
Temotu	Yes	Tribal	To the reefs including reefs in the open sea as far as where they research and could see the highest mountain on land.	Yes	Yes
Western	Yes	Tribal	To the reefs adjacent to the land and the islands outside.	Yes	Yes

Chapter 4 State Governance

- 4.1 This chapter deals with state (national and provincial) laws on land below high water mark. It highlights laws that deal directly and indirectly with land below high water mark.
- 4.2 There is a wide range of state law that applies to land below high water mark and low water mark. State law introduced during the protectorate era is also considered because it provides important background for the current situation.
- 4.3 The protectorate era has influenced people's perception about Crown ownership of land below high water mark. This perception of the law has roots in the views and dealings of protectorate government officers and foreign traders. While protectorate law (and state law following independence) gave some recognition to tribal land tenure over reefs this was generally done in accordance with common law principles. These principles include that, subject to claims that must be proved, land below high water mark is vested in the Crown. The legacy is that there is a strong perception that introduced law has had the effect of vesting ownership of land below high water mark in the Crown. At the same time customary owners resist this legal position, which they understand to be the result of foreign law.
- 4.4 The discussion on legislation and subsidiary legislation will show that the National Government and the provincial governments both have enormous control and management over the land below high water mark. This is not surprising because National Government and the provincial governments have jurisdiction to make laws over this area of land for the protection and benefits of the people. One general observation is some laws allow the government (national or provincial) to control and manage this area of land after consulting with the people connected to this area of land¹⁰² (people having rights to the area of land), while other laws do not consider the people as party in the process to regulate, control or manage this area of land.¹⁰³

¹⁰² Fisheries Act 1998, Provincial Government Act 1997, The Protection of Wrecks and War Relics Act [Cap 150], Protected Areas Act 2010, Land and Titles Act [Cap 133], The Makira Ulawa Province Fisheries Ordinance 2009.

¹⁰³ Delimitation of Marine Waters Act [Cap 95], Delimitation of Marine Waters (Marine Scientific Research) Regulations, Continental Shelf Act [Cap 94], Petroleum (Exploration) Act [Cap 44], Ports Act [Cap 161], Light Dues and Harbours Act [Cap 159], Western Province Harbour Ordinance.

Relationship between state law and customary law

- 4.5 The term state law is used to describe protectorate legislation that became Solomon Islands law on Independence, laws made by the National Parliament, provincial assemblies and Honiara City Council, common law and UK statutes of general application. The Constitution sets out the rules for how these laws should be applied, and which law takes precedence over the other when there is conflict. The Constitution also provides for how customary law fits with state law.
- 4.6 Customary law is part of the law of Solomon Islands as long as it is not inconsistent with the Constitution or an Act of Parliament. The National Parliament can also pass a law that gives further guidance about how customary law should be applied. Parliament has done this (Customs Recognition Act 2000), but this law has not been commenced and is not active.¹⁰⁴
- 4.7 Common law is part of the law as long as it is not inconsistent with the Constitution or an Act of Parliament, it is applicable and appropriate to the circumstances of Solomon Islands and it is not inconsistent with customary law.¹⁰⁵
- 4.8 Some questions remain about the relationship between laws made by provincial governments and the Honiara City Council (called ordinances) and customary law. While it is clear that laws made by the National Parliament can override or alter customary law, it is not clear whether ordinances (which are subsidiary legislation, made on the authority of laws passed by the National Parliament) can do so, unless the Act of Parliament specifically authorise it. Therefore problems might arise when an ordinance made by a Provincial government, or Honiara City Council, tries to stop people doing something which they believe they are entitled to do because of customary law. This is most likely to arise where a province seeks to regulate activities on tribal land.
- 4.9 The Constitution of Solomon Islands is not clear on this issue. The Interpretation and General Provisions Act states that a reference to an Act also include subsidiary legislation made under the Act.¹⁰⁶ However the Constitution must be interpreted¹⁰⁷ according to the Interpretation Act 1889 (UK) which does not have such a provision. If the proposition that a reference to an Act includes a reference to subsidiary legislation is accepted, then subsidiary legislation will override customary law.

¹⁰⁴ A weakness with this Act is – it treats custom or customary law as a matter of fact rather than a matter of law. In Papua New Guinea, the *Underlying Law Act 2000* elevates custom as used to be a matter of fact (in its *Customs Recognition Act of 1964*) to matter of law.

¹⁰⁵ Constitution s 76 and schedule 3.

¹⁰⁶ Interpretation and General Provisions Act [Cap 85] s 19(2).

¹⁰⁷ Constitution 1978 s 144(3).

- 4.10 No clear guidance is given by the relevant legislation. Schedule 3 of the Provincial Government Act specifically authorises provinces to make ordinances that can amend customary law that applies to land. The delegations to the provinces in the Fisheries Act imply that the provinces will have the power to make ordinances that might override customary law on fishing to the extent that it regulate customary fishing practices on the basis of sustainability.
- 4.11 There are also questions about what transactions or actions customary law is to apply. Does it only apply to actions or transactions that it traditionally applied to, or only those involving indigenous Solomon Islanders, or does customary law apply more broadly¹⁰⁸?

Protected Regulations and Court Decisions

Land and Titles Regulation 1959

- 4.12 This Regulation vested ownership of the foreshore in the Land Trust Board (LTB) as public land.¹⁰⁹ Specifically, this was land between mean high water and mean low water, and all land adjoining the sea coast within sixty-six feet of mean high water mark. However, this provision did not apply to native customary land.¹¹⁰
- 4.13 Native customary land was defined in the Regulation to mean unregistered land owned by a Solomon Islander, or group of Solomon Islanders, that was used for the purpose of occupation or cultivation by the owners or people permitted to use it at some time during twenty-five years prior to first of January 1958.¹¹¹

Land and Titles (Amendment) Ordinance 1964

- 4.14 This amendment vested ownership of all public land below mean high water mark including land below mean low water within the territorial limits of the Protectorate in the Commissioner of Lands (COL), instead of the LTB. This vesting in the COL of the land did not apply to native customary land.¹¹²
- 4.15 During the protectorate era the High Commissioner's Court recognised customary rights over foreshores and reefs, however the decisions emphasised the requirement to prove

¹⁰⁸ D.E Paterson, *South Pacific Customary Law and Common Law: Their Interrelationship*, Commonwealth Law Bulletin Vo 21 No 2 April 1995 660.

¹⁰⁹ Land and Titles Regulation 1959 s 47(1).

¹¹⁰ Land and Titles Regulation 1959 s 47(4).

¹¹¹ Land and Titles Regulation 1959 s 2.

¹¹² Land and Titles (Amendment) Ordinance 1964 s 13.

exclusive ownership¹¹³ which is contrary to customary law of communal (tribal) ownership, and is derived from English common law. For instance, in 1951 in *Hanasiki v O J Symes* the High Commissioner's Court decided that fringing reefs could be owned by customary owners and recognized a claim of exclusive rights over the fringing reefs. In this case the customary owners were trying to protect their reef from commercial exploitation by agents of a foreigner.¹¹⁴ The Court applied common law and decided that the public is entitled to fish anywhere in territorial waters, except where the Crown or a person has gained an exclusive right to fish, the public right has been limited by legislation, or where local custom from time immemorial conferred an exclusive right to fish.¹¹⁵

- 4.16 In the Fanilei Reef case¹¹⁶ in 1955 the same Court refused to grant an order to the Salt Water people to stop the Bush people from fishing on the reefs adjacent to Fanilei Island. The Court found that fishing on those reefs for trochus and other marine resources was not exclusive to the Salt Water people, and that the Bush people shared in the use of the reefs.¹¹⁷

Land and Titles Act [Cap 133]

- 4.17 This Act, even though was enacted during the protectorate era in 1968 by the Legislative Council, is the current law that deals with land below mean high water mark. The Act contains provisions that define land, customary land and regulate some dealings on customary land.
- 4.18 The definition of land "includes land covered by water, all things growing on land and buildings and other things permanently fixed to land but does not include any minerals (including oils or gases) or any substances in or under land which are of a kind ordinarily worked for removal by underground or surface working."
- 4.19 In Chapter 2 we discussed how this definition was ignored or narrowly interpreted in the Allardyce decision so that it did not extend to land under the sea, but how in the decision in Combined Fera the court took a different view and literally accepted the definition of "land" in the Land and Titles Act. It is also interesting to note that a

¹¹³ On the other hand, this exclusive ownership restricted people with common origins from excluding each other as seen in the Fanilei Reef case. This is a strength of such introduced principle to tribal land which is communal ownership.

¹¹⁴ This Case was cited in F. Kabui, above n 25. Also see discussion in C.H Allan n 5, 173-174.

¹¹⁵ C.H Allan, n 5, 176 para 68. For this purpose in Solomon Islands 'time immemorial' is taken to be 1893.

¹¹⁶ British Solomon Islands Protectorate, above n 7. Also found reference in C.H Allan, n 5.

¹¹⁷ British Solomon Islands Protectorate, n 7. Also see C.H Allan, n 5.

number of provincial ordinances define customary land as including adjoining lagoon and coastal areas.¹¹⁸

- 4.20 Customary land in the Land and Titles Act “means any land (not being registered land, other than land registered as customary land, or land in respect of which any person becomes or is entitled to be registered as the owner of an estate pursuant to the provisions of Part III) lawfully owned, used or occupied by a person or community in accordance with current customary usage, and shall include any land deemed to be customary land by paragraph 23 of the Second Schedule to the repealed Act.”¹¹⁹
- 4.21 Part III of the Act deals with Settlement of Unregistered Documentary Titles and section 10(4) allows the COL to apply to be registered as the owner, on behalf of the government, of the perpetual estate in land below mean low water mark, and between the points of mean high water mark and mean low water mark, as long as the COL had gained ownership under the old Land and Titles Ordinance. The COL did not gain any rights of ownership under the previous Ordinance if the land in question was native customary land.¹²⁰
- 4.22 Speaking in the Legislative Council when the Bill¹²¹ was read for the second time JB Twomey, Commissioner of Lands and Surveys said:

*“Part III deals with first registration by persons holding title deeds and includes a provision whereby the Commissioner of Lands may register the Government’s interest in land below high water mark. As studied (sic) to the Select Committee, this does not mean that reefs lawfully owned by Solomon Islanders are affected by these provisions.”*¹²²

- 4.23 The Land and Titles Act have been applied in different ways by the courts with respect to marine areas, and there has been no definitive decision from the Court of Appeal. One decision took the view that ownership of land below high water mark is vested in the Government/Crown.¹²³ The other decision was that land below high water mark can be

¹¹⁸ For example, Choiseul Province Resource Management Ordinance 1997 s 4, Western Province Resource Management Ordinance 1995 s 4.

¹¹⁹ Land and Titles Act [Cap 133] s 2.

¹²⁰ Land and Titles Regulation 1959 s 47(4) and Land and Titles (Amendment) Ordinance 1964 s 13.

¹²¹ Land and Titles Bill 1968 which was passed by the Legislative Council in that year and is the current Land and Titles Act [Cap 133].

¹²² British Solomon Islands Protectorate, *Legislative Council Debates* Ninth Session, First Meeting 5th June to 14th June, Official Report (1968) 36.

¹²³ *Francis Waleilia and Others v David Totorea* (May 1992 – Magistrate Court) as discussed in Frank Kabui, above n 25. This decision was influenced by the High Court decision of *Allardyce Lumber Company Ltd v Laore* [1990] SBHC 46 <<http://www.paclii.org>>.

customary land if ownership can be proved as at 1 January 1969 (the date of commencement of the Land and Titles Act).¹²⁴

- 4.24 The issue of ownership of reefs and sea was controversial both before and after the passage of the Land and Titles Act.

Acquisition, lease of customary land (Parts V and XXVI) of the Land and Titles Act.

- 4.25 The Land and Titles Act contains provisions for acquiring customary land by purchase or lease, or by compulsory acquisition.¹²⁵ Both processes are used to make customary marine land available for public or commercial purposes.
- 4.26 Customary (tribal) land can be sold or leased to the COL or a Provincial Assembly. An Acquisition Officer (AO) is appointed to act as the agent of the COL or the Provincial Assembly.¹²⁶ The AO must identify the boundaries of the land, and make a written agreement for the purchase or lease with persons who 'purport to be owners or the duly authorized representatives of such owners'. The AO must also hold a hearing in the affected area, to determine whether the people named in the agreement are not the owners, or that the people do not have the right to sell or lease the land and receive purchase money or rent. At the hearing the AO should hear claims and determine the identity of people who do have the right to sell or lease the land. The COL can implement the original agreement (to the extent to which any claims accepted by the AO affected the rights of the vendors or lessors named in the agreement) or rescind the agreement and make a new one with people who have the right to sell or lease the land (as found by the AO).
- 4.27 Compulsory acquisition is done by a declaration made by the Minister that the land is required for a public purpose. Notice of the declaration should be put in a prominent position near the boundaries of the land. The COL must also give notice to people or groups or people who appear to have interests in the land. People who claim to have an interest in the land may make a claim for compensation which is negotiated with the COL. An application to the High Court may also be made against the declaration on the basis that the land is not required for a public purpose.¹²⁷

¹²⁴ *Combined Fera Group v Attorney-General* [1997] SBHC 55 <<http://www.pacilii.org>>.

¹²⁵ Land and Titles Act [Cap 133] Part V.

¹²⁶ Land and Titles Act [Cap 133] s 61.

¹²⁷ Land and Titles Act [Cap 133] ss71-79.

Right of way

4.28 The Land and Title Act also contains provisions for right of way, for the owner or occupier of registered land, over foreshore if there is no other reasonable means of access to and from the land. The COL can determine any disputes over the right of way, including payment of money to the owner of the land that is subject to the right of way.¹²⁸

Dispute resolution

4.29 The Land and Titles Act and the Local Court Act set out the process for resolving disputes over customary land. The Local Court has the power to resolve disputes over customary land, but only after the parties in dispute have used all available traditional means to resolve the dispute, and no acceptable decision has been made.¹²⁹ If an acceptable decision is made using traditional means then that decision can be registered in the Local Court, and then has the status of a decision of the Local Court.¹³⁰ The decision of a Local Court can be appealed to the Customary Land Appeal Court (CLAC), and from there an appeal can be made to the High Court about a point of law.¹³¹

4.30 A number of weaknesses have been identified with this process, and were brought up during consultation and submissions. The Ministry of Justice and Legal Affairs has developed a Tribal Dispute Resolution Panels Bill 2012 to replace this system of dispute resolution over tribal customary land.

4.31 Different Magistrate Courts and Local Courts have approached the issue of marine tenure in different ways. The Magistrate Court in the cases of *Francis Waleilia & Others v David Totorea* and the *Renaldo & Others v David Totorea* decided that customary or tribal ownership should not be recognised as land below high water mark is vested in the Crown.¹³² The magistrates based their decision on their interpretation of section 10(4) of the Land and Titles Act and the Allardyce case decision. By contrast, Local Courts have recognized rights to baitfish grounds, or to control access to foreshore by a logging ship on the basis of customary law.¹³³

4.32 The Tribal Dispute Resolution Panels Bill 2012 provides for decision making body called a panel that would resolve disputes about rights, interests and use of tribal land.

¹²⁸ Land and Titles Act [Cap 133] s 115.

¹²⁹ Local Court [Cap 19] s 12.

¹³⁰ Local Court [Cap 19] s 14.

¹³¹ Land and Titles Act [Cap 133] s 256.

¹³² Both cases were cited in F. Kabui, n 25.

¹³³ See *Dika v Somana* [2002] SBHC 37; <http://www.paclii.org>.

Different panels would be convened for each dispute. Each panel is made up of three people knowledgeable in customary law in the area of the dispute. The panel has to hold a public meeting where people are given an opportunity to tell their story to the panel. Legal representation is not allowed. The parties are encouraged to come to an agreement. If they cannot come to an agreement the panel makes a decision. A decision of the panel applies to everyone regardless of whether they are parties to dispute or not. There is limited appeal to the High Court from a decision of a panel, on the basis of denial of natural justice, or lack of jurisdictions.

- 4.33 The Bill stipulates that 'tribal land' has the same meaning as 'customary land' in the Land and Titles Act, and that the jurisdiction of Panels extends to tribal land covered by sea and water.

Issues in Land and Titles Act that need to be addressed

- 4.34 LRC research and consultation has revealed significant confusion about the legal status of land below high water mark and low water mark. For example, despite section 10(4) of the Land and Titles Act, the Attorney-General (on behalf of the government) in the Combined Fera case argued that land below high water mark was Crown land.
- 4.35 The confusion around section 10(4) in the Land and Titles Act may also originate from the contested political interests of the time. While Solomon Islanders were keen at the time for customary ownership of marine areas to be recognised in national legislation there was resistance from interests promoting a more western legal view.
- 4.36 It is clear now that if the Land and Titles Act is to reflect the aspirations of the people of Solomon Islands it should be clear that marine areas should be tribal land.
- 4.37 The process for acquiring tribal land for development in the Act is not transparent and contributes to lengthy and costly disputes. The processes (along with adversarial court proceedings used to determine grievances about land acquisition) encourage individual claims, and fragmentation of tribal ownership of land, including marine land.
- 4.38 The Report of the 1976 Select Committee on Land and Mining recommended that compulsory acquisition should be restricted to more clearly defined public purposes, and that negotiation should always be used first; and that when government is negotiating to lease or buy land that the Area Committee Land Board, not the Acquisition Officer, should make a decision about the true owners of the land.¹³⁴

¹³⁴ Solomon Islands Report, Special Select Committee on Lands and Mining (1976), pg 43, Recommendation 120.

- 4.39 Related to this problem is the existence of a number of other procedures for determining customary interests in land, usually where there is an intention to use the land or its resources for a commercial purpose. For example, the Customary Land Recording Act, procedures under various provincial Fisheries ordinances, the dispute resolution procedures for customary land in the Local Court Act and Land and Titles Act as well as the Mines and Minerals Act. These processes are also considered in this Chapter. There is considerable potential for these processes to result in different outcomes, which will contribute to conflict and confusion around tribal land and the way it is regulated by state law.
- 4.40 The Land and Titles Act does not adequately address compensation for acquisition of tribal land. While the definition of customary land is very broad (taking into account ownership and use of land) there appears to be little distinction made during acquisition processes, including court proceedings, to distinguish the nature of interests of claimants.

Other state law

- 4.41 Other state law, mostly dating from the early days following Independence is also based on assumptions drawn from English law about ownership and control. International law of the sea is also influential. In this section we give information about other state law that applies to this area, and identify problems or issues that need to be addressed.

Delimitation of Marine Waters Act [Cap 95]

- 4.42 Ships and aircraft of all States have right of innocent passage through and over the territorial seas and archipelagic waters.¹³⁵
- 4.43 The Act also empowers the Minister of Foreign Affairs, to make regulations on:
- the conduct of scientific research within the exclusive economic zone;
 - the exploration and exploitation of the exclusive economic zone for the production of energy from the waters, currents and winds, and for other economic uses;
 - the construction, operation and use of artificial islands, installations and structures within the exclusive economic zone, including, but not confined to, the establishment of safety zones around islands, installations and structures;

¹³⁵ Delimitation of Marine Waters Act [Cap 95] s 10.

- prescribing measures for the protection and preservation of the marine environment of the exclusive economic zone; and
- providing for such other matters as are necessary or expedient to give effect to Solomon Islands rights and obligations in relation to the exclusive economic zone or are necessary to give full effect to the provisions of this Act.¹³⁶

Delimitation of Marine Waters (Marine Scientific Research) Regulations

4.44 This regulation deals with marine scientific research conducted in Solomon Islands waters. Such research could only be done with the written consent of the Minister for Foreign Affairs.¹³⁷

Continental Shelf Act [Cap 94]

4.45 According to this Act the continental shelf is the sea bed and subsoil of submarine areas adjacent to the coasts of the islands of Solomon Islands, but beyond the territorial limits of Solomon Islands, to a depth of two hundred metres below the surface of the sea, or beyond that limit, to where the depth of the superjacent waters admits of exploitation of natural resources of those areas.¹³⁸ The Act vests natural resources found in the continental shelf in the Crown, and give the Crown the right to explore and exploit those natural resources.¹³⁹

Petroleum (Exploration) Act [Cap 44]

4.46 This Act vests ownership of all petroleum in natural state found in Solomon Islands in the Crown, and it gives the Crown the responsibility to explore and develop the resource.¹⁴⁰

Mines and Minerals Act [Cap 42]

4.47 The Act vested the ownership of all minerals in all lands in the people and the Crown, but the Crown has the exclusive right to deal with and develop the mineral resources.¹⁴¹

¹³⁶ Delimitation of Marine Waters Act [Cap 95] s 11.

¹³⁷ The Delimitation of Marine Waters (Marine Scientific Research) Regulations s 4.

¹³⁸ Continental Shelf Act [Cap 94] s 2.

¹³⁹ Continental Shelf Act [Cap 94] s 3(1).

¹⁴⁰ Petroleum (Exploration) Act [Cap 44] ss 4 & 5.

¹⁴¹ Mines and Minerals Act [Cap 42] s 2.

Customary (tribal) land owners are only entitled to negotiate surface access rights.¹⁴² It is unclear how this right might be exercised with respect to minerals found in reefs and seabed.

- 4.48 When the Minister intends to issue a prospecting licence the applicant (mining company) identifies and records the names of landowners, land holding groups and other persons and groups having interests in the land for the purpose of surface access agreement and compensation for damage.
- 4.49 When a mining lease is granted it is subject to the acquisition of surface access rights by the Company. The law sets out process that must occur before a surface agreement is signed. The Director of Mines and the applicant (mining company) negotiate with landowners and others with an interest in the land to acquire surface access rights, and make arrangements for surface rental and compensation for damage caused by the mining. If agreement cannot be reached then compulsory acquisition under the Lands and Titles Act can be used.¹⁴³
- 4.50 Seabed mining is a growing development in the Pacific region. Papua New Guinea and Cook Islands are now on the forefront in seabed mining. Papua New Guinea is set to start its Solwara 1 mining project in the Bismarck sea while Cook Islands prepares its legal framework and national seabed mineral policy.¹⁴⁴ This is to prepare itself for seabed mining. Cook Islands passed its Seabed Minerals Act in 2009. Kiribati, Tonga, Fiji, Vanuatu, and Solomon Islands have also a growing interest in seabed mining.

Fisheries Act 1998

- 4.51 The Fisheries Act aims at ensuring long-term conservation and sustainable utilisation of the fisheries resources; which includes fisheries resources found in the land below high water mark. The Act delegates responsibility for reef and inshore fisheries to provincial governments.

¹⁴² Mines and Minerals Act [Cap 42] ss 21, 25 and 32. However, section 33 of the Mines and Minerals Act allows for the land to be compulsorily acquired by the Government for public interest if negotiations fails or delay in arriving at a satisfactory settlement.

¹⁴³ Mines and Minerals Act [Cap 42] ss 32 and 33.

¹⁴⁴ Dionisia Taburegui, 'Cover Report: Pacific reacts to seabed mining, Cooks cautious, PNG review laws, Fiji reacts'

http://www.islandsbusiness.com/islands_business/index_dynamic/containerNameToReplace=MiddleMiddle/focusModuleID=19769/overrideSkinName=issueArticle-full.tpl (Accessed 4 Nov 2011).

- 4.52 The Act allows the Director of Fisheries to prepare and keep under review a management and development plan of fisheries in Solomon Islands waters outside the jurisdiction of provincial waters.¹⁴⁵ The Director must consult with any customary groups or private organisations or similar bodies that the plan may affect.¹⁴⁶
- 4.53 Each provincial government is to prepare and keep under review a management and development plan of fisheries within its waters except for highly migratory species.¹⁴⁷ Also each provincial government is responsible for the proper management and development of the reef, inshore, and freshwater fisheries within its waters.¹⁴⁸ A provincial government can make Ordinances for the regulation of fisheries within its provincial waters. The Ordinances can cover:
- Registration or recording of customary fishing rights, their boundaries and the persons or groups of persons entitled under those rights;¹⁴⁹
 - Open or closed seasons for fishing for all or any species of fish or other aquatic organisms in all or any areas based on scientific advice;
 - Closure of areas in which fishing for all or any species of fish or other aquatic organisms may be prohibited;
 - Prescribing the minimum mesh sizes for nets employed, and minimum species sizes for all or any species of fish or other aquatic organisms caught and retained or collected in all or any fisheries management areas;
 - Prescribing the number of fishing vessels, the types of fishing gear employed in any fishery or fishery management area;
 - Prohibiting specified methods of fishing that are harmful to fisheries and the environment, or the use of specified types of fishing gear;
 - The establishment and protection of marine reserves;

¹⁴⁵ Fisheries Act 1998 s 7(1).

¹⁴⁶ Fisheries Act 1998 s 8(2)(b).

¹⁴⁷ Fisheries Act 1998 s 7(2).

¹⁴⁸ Fisheries Act 1998 s 9.

¹⁴⁹ Fisheries Act 1998 s 10.

- Regulating and prohibiting the destruction of mangroves;
- Authorising the use of specified natural poisons indigenous to Solomon Islands for fishing in, any specified area or all areas;
- Prescribing penalties for offences against any Ordinance or by-law made under this section, not exceeding five thousand dollars for an offence against any Ordinance and one thousand dollars for an offence against a by-law.¹⁵⁰

4.54 Makira, Guadalcanal and Western provinces have made ordinances on registration or recording of the customary fishing rights. The three provinces have taken different approaches to register or record these rights.

The Makira Ulawa Province Fisheries Ordinance 2009

4.55 The objective of this Ordinance is sustainable harvesting and effective management of fisheries resources for the benefit of the people of Makira Province.

4.56 The Ordinance recognises that the Ward Council of Chiefs (Council), with the consent of the Provincial Executive (Executive), can make decisions about inshore fisheries development projects that would affect traditional fishing grounds.¹⁵¹ Section 11 prohibits harvesting of turtles during the months of November to February and June to August except for traditional or death ceremonies and rituals. The Council shall determine the operational and closure seasons for their Wards, especially for Trochus, Sea Cucumber and Crayfish.

4.57 The Ordinance empowers the Ward Council of Chiefs (Council) acting upon the advice of the Provincial Executive (Executive) to record and register fishing rights.¹⁵² The process to record and register the fishing rights involves the following:

- The Council identifies and records communities, tribes, clans, families or individuals that have or claim to have fishing rights to reefs, fishing grounds and pools as well as fishing sea-beds.

¹⁵⁰ Fisheries Act 1998 s 10 and Fisheries (Amendment) Act 2009 Schedule 2.

¹⁵¹ The Makira Ulawa Province Fisheries Ordinance 2009 s 8(2).

¹⁵² The Makira Ulawa Province Fisheries Ordinance 2009 s 10(1).

- The Council displays a 30 day notice on the record for public awareness and possible verification.
- If there is any dispute, the Executive of the Council convenes a meeting for parties concerned to dialogue and resolve the matter.
- The parties can go to court if they cannot resolve the matter themselves through dialogue before any recording or registration can take place.¹⁵³

4.58 The Provincial Government is conducting community awareness about this process at the moment and recording has not yet started.¹⁵⁴

4.59 The Ordinance is silent on what is the legal effect of the recording. However, it appears that any party that has their customary fishing rights recorded and registered is in a stronger position than any party that may claim to have rights in the same area but has no records to prove its claims.

Guadalcanal Province Fisheries Ordinance 2009

4.60 This Ordinance prohibits any unauthorised person from carrying out research or development of marine resources in the Province. However, this provision does not apply to research or development of the marine resources by customary owners within their customary fishing rights areas.¹⁵⁵ The Provincial Executive (Executive) may facilitate the process for foreign investors to acquire a leasehold interest in customary fishing rights.¹⁵⁶ Customary fishing rights must not exceed 3 nautical miles from the low water mark of each island in the province.¹⁵⁷ Customary owners may record their fishing rights area.¹⁵⁸

4.61 In order to record fishing rights customary owners may apply through a representative to the Provincial Secretary to verify and record their customary fishing rights area.¹⁵⁹ The Provincial Secretary must then appoint a recording officer to undertake the verification and recording of customary fishing rights.¹⁶⁰ The recording officer can

¹⁵³ The Makira Ulawa Province Fisheries Ordinance 2009 s 10(3).

¹⁵⁴ Telephone conversation with Thomas Weape, Premier, Makira Ula Province, 28th November 2011.

¹⁵⁵ Guadalcanal Province Fisheries Ordinance 2009 s 5.

¹⁵⁶ Guadalcanal Province Fisheries Ordinance 2009 s 7(5).

¹⁵⁷ Guadalcanal Province Fisheries Ordinance 2009 s 9(1).

¹⁵⁸ Guadalcanal Province Fisheries Ordinance 2009 s 10(1).

¹⁵⁹ Guadalcanal Province Fisheries Ordinance 2009 s 10(2).

¹⁶⁰ Guadalcanal Province Fisheries Ordinance 2009 s 11(1).

appoint a committee of up to five people who are knowledgeable in customs of the subject area to assist and advise the recording officer in hearing the application.¹⁶¹ However the recording officer is not obliged to do this, and does not have to act on the advice of this committee.

4.62 The recording officer must put up a public notice in the area subject to the claim which specifies:

- the identity of the claimant;
- the subject area and its boundaries;
- the proposed dates, times and venue for hearing of the application;
- any other matter the officer thinks necessary to provide full information on the application.¹⁶²

4.63 At the hearing the recording officer must:

- record any oral evidence given and receive any documentary evidence or other information;
- record the area as claimed if there are no other claimants;
- record any other claims if there are other claims;
- record any other observations made at the hearing in relation to any claim; and
- date and sign the record of the hearing.¹⁶³

4.64 Following the recording the recording officer must:

- send the original record to the Provincial Secretary and a copy to the applicants, other claimants on the record and the relevant house of chiefs; and

¹⁶¹ Guadalcanal Province Fisheries Ordinance 2009 s 11(3).

¹⁶² Guadalcanal Province Fisheries Ordinance 2009 s 12(1).

¹⁶³ Guadalcanal Province Fisheries Ordinance 2009 s 12(2).

- publish a summary of the record in a newspaper having wide circulation in the area or in another way to ensure that the record is widely known in that locality.¹⁶⁴
- 4.65 The Ordinance allows an arrangement made by the chiefs of two or more tribes that have entered into an inter-tribal agreement on customary fishing areas to apply for the recording of the agreement. The Provincial Secretary or a public officer appointed by the Secretary may:
- record the agreement if he is satisfied that the application is in the proper form and is signed by the chiefs concerned; or
 - may refer the application to a recording officer for recording.¹⁶⁵
- 4.66 A person, tribe, line or other group that is dissatisfied with the recording of a customary fishing area can appeal to the Local Court. The Local Court can confirm or cancel the recording or make any other order it sees fit. The decision of the Local Court can be appealed to the Customary Land Appeal Court (CLAC), and to the High Court on point of law.¹⁶⁶
- 4.67 The Ordinance also allows the Provincial Government Minister responsible for fisheries, with the approval of the Executive, to declare by order in the Gazette a fishery area and adjoining land to be a marine reserve or marine protected area.¹⁶⁷ The Minister must consult with customary owners, relevant house of chiefs or other persons that may be affected if the land is customary land.¹⁶⁸ The consultation must include negotiation for compensation or acquisition of leasehold interest in the area under Part V of the Land and Titles Act [Cap 133].¹⁶⁹
- 4.68 Any person who fish or take any marine species in the marine reserve or protected area commits an offence and is liable to a maximum fine of \$5000.¹⁷⁰ This provision does not apply to use of hand line or hand held spear fishing for subsistence use.¹⁷¹
- 4.69 The protected area must not be disturbed by any activity or development without the permission of the Executive on the recommendation of the relevant chiefs. A breach of

¹⁶⁴ Guadalcanal Province Fisheries Ordinance 2009 s 13.

¹⁶⁵ Guadalcanal Province Fisheries Ordinance 2009 s 15.

¹⁶⁶ Guadalcanal Province Fisheries Ordinance 2009 s 16.

¹⁶⁷ Guadalcanal Province Fisheries Ordinance 2009 s 17(1).

¹⁶⁸ Guadalcanal Province Fisheries Ordinance 2009 s 17(2).

¹⁶⁹ Guadalcanal Province Fisheries Ordinance 2009 s 17(3).

¹⁷⁰ Guadalcanal Province Fisheries Ordinance 2009 s 17(7).

¹⁷¹ Guadalcanal Province Fisheries Ordinance 2009 s 17(8).

this section is an offence which carries the maximum penalty of \$5000 or a maximum of 3 months imprisonment.¹⁷²

Western Province Fisheries Ordinance 2011

4.70 The aims of this Ordinance are to:

- establish a statutory framework to promote the long term conservation, management and sustainable utilization of the marine resources of the Western Province;
- establish a statutory framework to provide for the recognition and enforcement of customary fishing rights of traditional customary rights holders in the Western Province;
- provide a statutory framework to allow for the establishment and management of Marine Protected Areas where this is considered to be appropriate; and
- provide a statutory framework to regulate commercial fishing in the Western Province.¹⁷³

4.71 The principles underlying the Ordinance are:

- The promotion of the sustainable use of Solomon Islands fisheries resources to assist Provincial Economic Growth, in a manner which acknowledges that the marine resources belong to the people of Solomon Islands and ensures that they are managed for their benefit;
- Employment creation and sound ecological balance;
- The recognition of customary fishing areas, their ownership and the rights which arise out of such ownership;
- The protection of biodiversity in the marine environment;

¹⁷² Guadalcanal Province Fisheries Ordinance 2009 s 18.

¹⁷³ Western Province Fisheries Ordinance 2011 s 2.

- Recognising that fish and marine products provide the main means of livelihood of the majority of people living in the Western Province and therefore any regulations or restrictions contained in this Ordinance serve to promote and strengthen the ability of the people living in the Western Province to obtain a satisfactory livelihood from fish and marine products.¹⁷⁴

4.72 The Ordinance recognises customary fishing rights. It acknowledges that the Provincial Government has a responsibility for the conservation, management, development and sustainable use of reefs, inshore and fresh water fisheries, and it fully respects customary fishing interests and rights of the indigenous people of Western Province to these areas and resources.

4.73 Indigenous groups who want to have their customary fishing and marine interests and rights legally recognised to first have their interests and rights determined by the appropriate local Council of Chiefs at an official hearing by the Chiefs. The Provincial Secretary must be notified of the Chiefs hearing.¹⁷⁵ The Provincial Secretary is notified to:

- Ensure that there is sufficient publication of the hearing so that all interested groups have the opportunity to place submissions and/or objections with regards to an application;¹⁷⁶
- Ensure that a designated public officer of the Province is present at the hearing of the Council of Chiefs. The purpose of the presence of the Designated Public Officer at the hearing is to keep:
 - an accurate record of the hearing;
 - a clear description and record of the nature and of the rights and interests covered by the customary fishing rights and the boundaries;
 - any objections raised about the recognition of customary fishing rights.¹⁷⁷

¹⁷⁴ Western Province Fisheries Ordinance 2011 s 3.

¹⁷⁵ Western Province Fisheries Ordinance 2011 s 18(4).

¹⁷⁶ Western Province Fisheries Ordinance 2011 s 18(5)(a).

¹⁷⁷ Western Province Fisheries Ordinance 2011 s 18(5)(b).

4.74 The notification to the Provincial Secretary must have:

- A description of the location and boundaries of the area which is claimed to be subject to customary fishing rights;
- A description of the tribe or group claiming customary fishing rights over a particular specified area;
- An explanation of the historical connection of the group or tribe to the area and the justification for the claim of customary fishing rights.¹⁷⁸

4.75 The reason for the requirement of such a detailed notification is to:

- Provide the Provincial Government with sufficient detail about the notification of the claim;
- Assist the customary group claiming such rights to set out such a claim with sufficient precision and detail.¹⁷⁹

4.76 The Provincial Secretary, through the designated officer, must ensure that there is adequate publication of notification about the Chiefs hearing.

4.77 The chiefs hearing must be conducted according to the custom of the particular area.¹⁸⁰ At the chiefs hearing the designated officer records the decision of the chiefs including the reasons, as well as objections.¹⁸¹

4.78 The Provincial Secretary is to place the decision of the chiefs before the Provincial Executive for endorsement. Before its endorsement, the Provincial Executive must note any objections made by interested parties to the Council of Chiefs. The Provincial Executive may refer the matter back to the Council of Chiefs for reconsideration if it (Provincial Executive) thinks that the objections have not been dealt adequately by the Chiefs. Once reconsidered the matter is to be placed before the Provincial Executive for endorsement.¹⁸²

¹⁷⁸ Western Province Fisheries Ordinance 2011 s 18(6)(a).

¹⁷⁹ Western Province Fisheries Ordinance 2011 s 18(7).

¹⁸⁰ Western Province Fisheries Ordinance 2011 s 18(8).

¹⁸¹ Western Province Fisheries Ordinance 2011 s 18(9).

¹⁸² Western Province Fisheries Ordinance 2011, s 18(11).

- 4.79 The Ordinance requires a copy of the decision and its accompanying reasons and the associated endorsement must be sent to the Permanent Secretary for Fisheries, Provincial Fisheries Office. It must also be displayed in appropriate public areas.¹⁸³
- 4.80 The decision of the Council of Chiefs is binding subject to judicial review provisions.¹⁸⁴ The decision of the Chiefs (that is endorsed by the Provincial Executive) gives the tribe or group the power to supervise and manage the area including prohibiting unauthorised fishing.¹⁸⁵
- 4.81 Under the Ordinance the extent of a customary fishing area can be from the mean low water mark reaching to where the bed is invisible.¹⁸⁶
- 4.82 The supervision and management of the customary fishing area is to take place according to the group or tribe Management Plan approved by the Provincial Executive.¹⁸⁷ The group or tribe must appoint an Authorised Officer to perform its supervision and management work which include prohibiting unauthorised activities or report the matter to the police for enforcement.¹⁸⁸ Products taken without permission from a customary fishing rights area can be confiscated by the authorised officer or the police and where possible the products are to be returned to the area.¹⁸⁹
- 4.83 Any person, entity, or company which carries out any unauthorised activity within the recognised customary fishing area is liable to a fine of \$1000.00 payable into the Provincial Treasury.

Provincial Government Act 1997

- 4.84 This Act empowers a provincial government through its provincial assembly to make laws called ordinances to govern its province.¹⁹⁰ The geographical extent of each province extends seaward for three nautical miles from the low-water line of each island in the province.¹⁹¹
- 4.85 The area of Guadalcanal Province does not include the sea adjacent to Honiara as specified by the Minister in an order. Currently the seaward boundary of Honiara is set by the Town Land (Honiara) Order 1973.

¹⁸³ Western Province Fisheries Ordinance 2011 s 18(12).

¹⁸⁴ Western Province Fisheries Ordinance 2011 s 18(13).

¹⁸⁵ Western Province Fisheries Ordinance 2011 s 18(14).

¹⁸⁶ Western Province Fisheries Ordinance 2011 s 18(15).

¹⁸⁷ Western Province Fisheries Ordinance 2011 s 18(16).

¹⁸⁸ Western Province Fisheries Ordinance 2011 s 18(18).

¹⁸⁹ Western Province Fisheries Ordinance 2011 s 18(19).

¹⁹⁰ Provincial Government Act 1997 s 30.

¹⁹¹ Provincial Government Act 1997 s 3.

4.86 A provincial assembly can make laws to regulate and control:

- Coastal and lagoon shipping;
- Harbours;
- Fresh-water and reef fisheries;
- Codification and amendment of existing customary law about land;
- Registration of customary rights on land including customary fishing rights; and
- Water pollution.¹⁹²

4.87 The Minister for Provincial Government can withhold assent to a provincial ordinance, and refer it to the National Parliament for a negative motion if it is within legislative competence but would, if enacted, conflict with Government policy for Solomon Islands as a whole.¹⁹³

Provincial Ordinances

4.88 Many provinces have exercised their power to regulate reefs and sea areas within provincial boundaries with ordinances. Generally those ordinances recognize customary ownership of the areas, or resources found in those areas. Some examples include fisheries ordinances passed by Western, Makira and Guadalcanal provinces, and provinces directed at protection of the environment and natural resources such as the Choiseul Province Preservation of Culture Ordinance 1997, Western Province Resource Management Ordinance 1995 and the Isabel Province Natural Resources Management and Environmental Protection Ordinance 2006. It is also common for these ordinances to define land or customary land as including reefs, and lagoon areas (for example the Isabel and Choiseul ordinances). Another common feature is provision for resource management orders over customary land. Ordinances use a variety of processes for the development of resources management orders, however it is also common for the process to include some form of hearing or consultation with traditional or local leaders. The Western Province ordinance also makes provision for a Register of Policy Statements and Plans on Customary Land.

¹⁹² Provincial Government Act 1997 Schedule 3.

¹⁹³ Provincial Government Act 1997 s 32.

- 4.89 Provincial ordinances can also regulate harbours. In the case of Malaita Province the ordinance allows the province to declare a harbour, and to impose fees for the use of harbours. There is no need for any improvements to be made to a natural harbour before the province can impose a fee.
- 4.90 One issue, already identified in the discussion about the Land and Titles Act, is how provincial ordinances on resource protection relate to older national laws on land and resources, such as the Land and Titles Act, the Customary Land Records Act and the Mines and Minerals Act as well as with more recent national laws such as the Environment Act and Protected Areas Act. From LRC consultation it appears that local and tribal level activity on resource management is more likely to be linked to provincial level ordinances, and provincial level declarations of marine protected areas, rather than national laws. There is considerable potential for different legal outcomes regarding tribal land under provincial ordinances, and other laws (including the Land and Titles Act).
- 4.91 A further issue highlighted during consultation is the connection between anchorage fees sought by tribal landowners, and harbour fees imposed by provinces. Some landowners negotiate fees, while others may be deterred from fees because they are told that the province has already levied a fee.

Environment Act 1998

- 4.92 The Act aims to protect and conserve the environment. It gives the Director of the Environment and Conservation Division the power to approve or consent to certain kinds of development including logging, mining, hotels, tourist resorts, infrastructure development, and ports and harbours.¹⁹⁴ Land below high water mark is part of the environment that this Act aims to protect and conserve.
- 4.93 Prior to giving development consent, the Director must advise the developer to submit a development application either with a public environment report¹⁹⁵ or an environment impact statement.¹⁹⁶ The Director may dispense with this requirement.¹⁹⁷
- 4.94 The Environment Regulations 2008 provides the grounds on which the Director can dispense with the requirement of producing a public environment report or an environment impact statement. The grounds are:

¹⁹⁴ Environment Act 1998 s 16 and Second Schedule.

¹⁹⁵ A brief report presenting the results of a preliminary environment assessment of an existing or proposed development. This report is less detailed report than an environment impact statement.

¹⁹⁶ A report presenting the results of an environment impact assessment.

¹⁹⁷ Environment Act 1998 s 17.

- the Director is satisfied that the short-term and long-term impact of the prescribed development will be trivial or negligible;
- there is already an environment impact statement for the same prescribed development and the Director is satisfied that his action (to dispense with the requirement) would not be harmful to the environment;
- the anticipated impact of the prescribed development will not adversely affect forested areas and services, the coastal zones and the marine environment;
- the prescribed development does not fall into the category of construction, infrastructure, agriculture or mining.¹⁹⁸

4.95 If the Director is satisfied with the public environment report¹⁹⁹ or environment impact statement²⁰⁰ it must be published to bring to the attention of all stakeholders (parties having an interest in the proposed development). Any authority or person has 30 days from the date of publication of the report or statement, to make written objections to the Director about the proposed development.²⁰¹ A public meeting must be held to discuss matters on the proposed development.

4.96 It is an offence for a developer to provide false or misleading information to the Director or to any public authority concerning matters addressed in the public environment report or in an environment impact statement. The offence carries a maximum fine of \$10,000 or imprisonment for 12 months or both such fine and imprisonment.²⁰²

4.97 The decision of the Director to give consent can be appealed to the Environment Advisory Committee (EAC) within 30 days of publication of the decision. The EAC is not currently a functioning body as the responsible Minister has not appointed the necessary members of the Committee. The decision of the EAC can be appealed to the Minister for Environment and Conservation within 30 days of making the decision. The Minister shall make such order as he considers just.²⁰³

4.98 There are some concerns on the current process. These include:

- A public environment report (brief report) is often given instead of an environment impact statement (more detailed report);

¹⁹⁸ Environment Regulations 2008 s 9.

¹⁹⁹ Environment Act 1998 s 22.

²⁰⁰ Environment Act 1998 s 24.

²⁰¹ Environment Act 1998 ss 22 and 24.

²⁰² Environment Act 1998 s 26.

²⁰³ Environment Act 1998 s 32.

- Publication and distribution of the notice about the report or statement is not done evenly;
- Information about the public meeting or public hearing is not widely distributed; and
- The EAC is not currently (2012) a functioning committee so in practice people cannot appeal a decision to grant a development.

4.99 Experiences where logging has caused destruction to the marine environment were raised with the LRC during its consultation meetings in the provinces.²⁰⁴ It was revealed in one consultation that an environment impact report was ignored.²⁰⁵

4.100 It is also clear that the processes in the Environment Act are not working to control development of the foreshore and sea in Honiara.

4.101 The LRC view these concerns as failures of the environmental officials and authority to perform their work as prescribed in the Environment Act 1998 and the Environment Regulations 2008.

The Protection of Wrecks and War Relics Act [Cap 150]

4.102 This Act restricts interference with wrecks and war relics. Most of the wrecks and war relics are on the land below high water mark.

4.103 The Act allows the Minister of Cultural Affairs after consultation with the people claiming to have rights over the area and the relevant provincial government to make an order restricting interference in an area containing wrecks and war relics.²⁰⁶ It is an offence to damage or remove the wreck or war relics without a licence in areas where the Minister has made restriction orders to cover.²⁰⁷

Protected Area Act 2010

4.104 This Act allows the Minister responsible for Environment, on recommendation from the Director of Environment and Conservation Division; to declare by order in the Gazette

²⁰⁴ Danny Kennedy, Submission No. 63, Notes taken during consultation meeting (Gizo, Western Province) (15 April 2011).

²⁰⁵ Forestry officers, Submission No. 63, Notes taken during consultation meeting (Gizo, Western Province) (13 April 2011).

²⁰⁶ Protection of Wrecks and War Relics Act [150] s 3.

²⁰⁷ Protection of Wrecks and War Relics Act [150] s 4.

any area that has biological diversity significance as a protected area.²⁰⁸ Before making a declaration the Minister must ensure that:

- the conservation objectives of the protected area are identified and are in accordance with sound conservation practices;
- the boundaries of the area are accurately identified, or otherwise demarcated and surveyed;
- the consent and approval are obtained from persons having rights or interests in the area; and
- an appropriate conservation, protection or management plan is developed for the area to ensure that the conservation objectives of the protected area will be achieved.²⁰⁹

4.105 The Director must verify who has rights and interests in the area being nominated for declaration before the area is declared.

4.106 Protected areas are managed by a management committee comprising owners of the area, public officers or people living in the area.²¹⁰ The management Committee is appointed by the Protected Areas Advisory Committee established under the Act. The Committee has not yet been established.

4.107 The Protected Areas Advisory Committee can also issue permits for biodiversity research or bioprospecting. The Committee cannot give a permit unless the applicant has the written consent of the owners, and has made an agreement with the owners about access, acquisition of resources and the benefits or remuneration that owners will receive. The decision whether to give a permit over customary land or customary fishing areas also needs to be approved by Cabinet.²¹¹

Shipping Act 1998

4.108 This Act allows the Superintendent of Marine to establish, maintain, operate, alter or remove any marine navigation aid.²¹² It is an offence for any unauthorized person to tamper with navigational aids.²¹³ It is also an offence for anyone to obstruct or hinder a

²⁰⁸ Protected Area Act 2010 s 10.

²⁰⁹ Protected Area Act 2010 s 10(7).

²¹⁰ Protected Areas Act 2010 s 12.

²¹¹ Protected Areas Act 2010 ss 17,18.

²¹² Shipping Act 1998 s 163.

²¹³ Shipping Act 1998 s 166.

navigational officer when inspecting or maintaining the navigational aids or performing duties under the Act.²¹⁴

4.109 The Minister upon advice from the Receiver²¹⁵ may by notice in Gazette declare an area around a wreck vessel as prohibited area. The advice from the Receiver to the Minister is based on the wreck as a potential danger to life, property, and environment, which should not be tampered with by unauthorized person(s).²¹⁶ It is an offence for anyone to enter the prohibited area.²¹⁷

Honiara City Council Act 1999

4.110 The Honiara City Council has powers to make laws called ordinances. Among the areas that it has jurisdiction to make laws over include: trade and industry; culture and environment; river and waters.²¹⁸ The ordinances apply to the Council's physical area. The physical geographical area of the Council extends to some hectares into the sea.²¹⁹

Town and Country Planning Act [Cap 154]

4.111 The Act regulates and controls development in town areas (known as local planning areas) but does not apply to customary land.²²⁰ The Act also allows for development of a local planning scheme for the local planning area.²²¹

4.112 The Minister responsible for Town and Country Planning on the request of the Provincial Government or Town Council can declare a local planning area.²²² On recommendation from a Town and Country Planning Board, or with consent of the Provincial Government or Town Council, the Minister may by notice in Gazette make an order to control development in an area of land. The declaration of a local planning area or an Order to control development cannot apply to customary land.²²³

4.113 This Act poses an issue for land below high water mark adjacent to registered town areas or cities. This area can be subject to significant development, including reclamation.

²¹⁴ Shipping Act 1998 s 162(3).

²¹⁵ The Receiver is the Superintendent of Marine, or such as other person appointed by the responsible Minister.

²¹⁶ Shipping Act 1998 s 181(1).

²¹⁷ Shipping Act 1998 s 181(3).

²¹⁸ Honiara City Council Act 1999 s 34 and Part II of Schedule 5.

²¹⁹ Honiara City Council Act 1999 ss 2, 4 and Schedule 1. Town Land (Honiara) Order 1973.

²²⁰ Town and Country Planning Act [Cap 154] ss 7 & 13.

²²¹ Town and Country Planning Act [Cap 154] s 9.

²²² Town and Country Planning Act [Cap 154] s 7.

²²³ Town and Country Planning Act [Cap 154] ss 7 & 13.

However, since most of this area is customary (tribal) land, development cannot be controlled.

4.114 In the case of Honiara the Minister has issued an Order to control development²²⁴ that applies to the full extent of Honiara geographical area. However much of the land below high water mark that is controlled by Honiara City Council is not registered, and potentially is customary (tribal) land. The Order has no effect over customary land.

Ports Act [Cap 161]

4.115 The Act allows:

- the Minister to declare by order any place in Solomon Islands and any navigational channel leading to that place, a port area.²²⁵
- the Solomon Islands Ports Authority (Authority) servants or agents to enter on any land, swamp, embankment, wharf, shore, or bed of any tidal or other waters, to erect, maintain, alter, or remove any beacon.²²⁶
- the Authority to make rules to maintain, control and manage any port to ensure good order.²²⁷
- the harbor master to regulate the movement of ships within the port.²²⁸
- The Authority to make by-laws for the control and management of the wharfs and premises of the Authority to ensure good order.²²⁹

4.116 The Rules made pursuant to section 32 prohibits discharging of waste in the port area.²³⁰ The Rules also prohibit the erection any wall, wharf, jetty, building, or hut, or placing any mooring or buoying within the limits of a port area without the written permission of the Authority.²³¹ The by-law made pursuant to section 35 prohibits removing or

²²⁴ LN 41/1980 Application of Part IV Orders.

²²⁵ Ports Act [Cap 161] s 5.

²²⁶ Ports Act [Cap 161] s 26.

²²⁷ Ports Act [Cap 161] s 32.

²²⁸ Ports Act [Cap 161] s 33.

²²⁹ Ports Act [Cap 161] s 35.

²³⁰ Ports Rules on s 32, clause 49.

²³¹ Ports Rules on s 32, clause 51.

excavating of any land above or below high water mark which is in the limits of a port without a written permission from the Authority.²³²

Light Dues and Harbours Act [Cap 159]

4.117 The Act allows the Minister, by proclamation, to declare a place as a harbour and set out limits and boundaries of the harbor.²³³ The Chief Marine Officer shall collect light and other dues that the Minister prescribes by notice from vessels entering or leaving the harbour.²³⁴ The owner of a vessel sunk or stranded in the harbour that obstructs navigation must clear or remove the vessel from the harbour.²³⁵

Customary Land Records Act [Cap 132]

4.118 The Customary Land Records Act [Cap 132] provides a process for recording primary and secondary rights in customary land. A primary right is a right to carry out an act on the land without reference to any other person. A secondary right is any other right to carry out any act on the land without reference to the primary right holders.²³⁶

4.119 The Act makes provision for a Central Land Record office, as well as for Land Record Offices in each province. An application for a recording of customary land is made to the relevant provincial Land Record Office. A recording officer makes a record of groups claiming primary rights, genealogy, names of representatives who can give effect to dealings, names of groups with secondary rights and the extent of those rights.²³⁷ Boundary disputes should be settled by negotiation, or referral to chiefs. If decision about the boundaries of the land in question has been made by the High Court or Court of Appeal then that must take precedence.²³⁸

4.120 The recording officer decides when the record is complete, and a map from the Surveyor-General is also required before the record is complete. Completed records must be available for public inspection at the Central Land office, and provincial land records office. Land holding groups or people with interests in the land can make

²³² Ports By-law on s 35, clause 22

²³³ Light Dues and Harbour Act [Cap 159] s 3.

²³⁴ Light Dues and Harbour Act [Cap 159] s 4.

²³⁵ Light Dues and Harbour Act [Cap 159] s 5.

²³⁶ Customary Land Records Act [Cap 132] s 2.

²³⁷ Customary Land Records Act [Cap 132] s 11.

²³⁸ Customary Land Records Act [Cap 132] s 13.

representations to the National Recorder, and the National Recorder must finalise the record within six months.²³⁹

- 4.121 The legal result of land recording is partially clear. Once a record is finalized the primary interests only are not liable to be defeated except as provided by the Act, and is held by the primary land holding group free from other interests but subject to leases, charges and other encumbrances, conditions and restrictions affecting the rights shown or referred to in the record.²⁴⁰ The Act is not clear about the legal effect of the recorded secondary rights interests.
- 4.122 Primary rights can be registered by the Registrar of Titles. However it is not clear what is meant by registration, and the legal effect of registration.²⁴¹
- 4.123 Subject to the Act, and the Land and Titles Act, customary land registered and recorded in the name of a customary land holding group grants to that group all rights to use, occupy, enjoy and dispose in accordance with current customary usage.²⁴²
- 4.124 The principles in the Act were used to identify land interests at Auluta Basin in East Malaiata and Waisisi in West Are'are. The Act promotes inquiry rather than adversarial litigation which can happen following a customary land acquisition process under the Land and Titles Act.

Issues in relation to the Act

- 4.125 The LRC considers that the process of recording tribal land interests should be the primary vehicle for establishing tribal interests. Determination of tribal interests in land and its resources is currently fragmented, and can occur by many different methods, depending on the immediate purpose. For example, fishing rights are determined by processes set out in provincial fisheries ordinances. Chiefs and other traditional forums are making determinations about tribal interests in marine areas that can then give legal effect (for example, bait fishing agreements). Acquisition officers determine interests when tribal land is sought for public development. Decisions about interests in tribal land relevant to the Mines and Minerals Act, the recording of primary and secondary rights under the Customary Land Records Act and determining of timber rights under the Forest Resources and Timber Utilisation Act, are other legal frameworks that tribal land rights can be determined.

²³⁹ Customary Land Records Act [Cap 132] s 14.

²⁴⁰ Customary Land Records Act [Cap 132] s15. This provision is copied from the Land and Titles Act [Cap 133].

²⁴¹ Customary Land Records Act [Cap 132] s 19.

²⁴² Customary Land Records Act [Cap 132] s 20.

4.126 Two concerns came up during the land recording process in Auluta Basi. First, the recording does not have the same protection of indefeasibility to title as provided in land registration under the Land and Titles Act. Since customary land recording process is intensive, the landowners thought that it should end up with an indefeasible title. This concern is addressed by the proposal to amend the Customary Land Records Act which provides for the entire tribal land record as conclusive to the tribe and it is an evidence of indefeasibility of the ownership and use of the land. The recorded tribal land should give the tribe the right to own, use, occupy, enjoy and dispose of such land in accordance with the current customary usage and the Deed of Trust. The second concern is people feared paying tax to the government if their land is recorded.²⁴³ The Government should not tax the people for tribal land records but should collect normal taxes if commercial development takes place on the land.

4.127 There is also the issue that the nature of secondary rights can vary according to the context, and location. Distinctions about the use of land are the outcomes of relationships as well as transactions. For example, some secondary rights only extend for the natural life of the holder of the interests. In the case of marine tribal land common and overlapping use by a wide range of people is prevalent. Giving precedence to primary rights through legislation may have the effect of cutting out secondary or use rights holders. While exclusion of users' rights occurs under customary law, usually for a specific purpose, there is a risk that recording of marine tribal land might provide the basis for permanent exclusion of users from marine areas. For example, in some parts of Western Province the descendants of migrants from Kiribati use seabed and reef areas for a variety of low level commercial activities (fishing, seaweed farms and diving for shells). On this context, it is preferred that the primary and secondary rights attached to the tribal genealogy should not be distinguished but other prevailing recognised customary rights attached to the tribal land such as specific gifts, rewards, sale or other existing recognised customary practice on land allocation should be clearly identified. Tribal genealogy as well as existing customary recognised transactions should determine the varying degrees of rights that tribal members and others have on the tribal land. To the contrary, it is strongly argued that the distinction (i.e primary and secondary rights) of the recorded rights must be maintained. This is to settle any uncertainties of rights over tribal land. The risk of exclusion cannot happen because those asserting secondary rights will continue to use the tribal land. What is important is for all tribal members or others attached to land to understand and accept their position in the tribal land as dictates by their membership to the land through tribal genealogy or through other

²⁴³ Gabriel Suri, Legal Consultant to Auluta Basin Land Recording Project.

recognised customary practices. Primary rights have the elements of Ownership and Authority/Power over the piece of tribal land. Secondary rights are users' rights and stems out only from the Ownership element of the primary rights. The distinction between these rights must be maintained and clearly articulated to avoid any confusion.

- 4.128 The Act allows for customary land holding groups which includes tribe, community or group of persons to record their interests in the land. The LRC consultation indicates that tribes are the sole ownership entity.
- 4.129 The Act allows for provincial executives to establish Land Records Offices. This has not been utilized as no province has established its Land Records Office.
- 4.130 The costs of recording may also be a deterrent for a tribe that wishes to engage in the process. Under the Act the Recording Officer can impose a fee for recording that is based on the actual costs of the recording, including the preparation of the record map.²⁴⁴
- 4.131 The Act requires the recording of names of persons who will make dealings concerning the recorded land representing the customary land holding group.²⁴⁵ It provides no guidance as to how these representatives are chosen and their accountability to the group or people they represent.
- 4.132 Under the Act recording cannot alter interests in tribal land that are declared by the courts.²⁴⁶ As seen in case studies 1 and 2 and the tribal land dispute settlement, the courts are not the right forum to make decisions on tribal land disputes. The law should allow for tribal land recording in cases that parties to the court's decision are willing to compromise the decision for land recording.
- 4.133 The process for recording in the Act may not be suitable for recording of marine tribal land. The process in the Act requires a survey, as well as a walk of the boundaries of the land. Some marine tribal boundaries are likely not to be as fixed as terrestrial boundaries.
- 4.134 The Act gives responsibility for resolution of disputes about boundaries to tribes, and chiefs. It is silent about how disputes about rights should be determined. It is more likely for marine tribal land that disputes may arise about the nature and extent of use rights. These should also be determined through negotiation, and referral to traditional leaders.

²⁴⁴ Customary Land Records Act [Cap 132] s9.

²⁴⁵ Customary Land Records Act [Cap 132] s 11 (1)(d).

²⁴⁶ Customary Land Records Act [Cap 132] s 11(2).

Customs Recognition Act 2000 (not commenced)

4.135 The Customs Recognition Act was passed by Parliament in year 2000 but has not come into force to become laws of Solomon Islands. Under this Act custom must be applied by courts unless it would lead to injustice, or is not in public interests, or is inconsistent with the Constitution or an Act of Parliament.²⁴⁷ In civil cases, custom that applies to ownership of customary land and ownership rights over or in connection with the sea or a reef, or seabed including rights of fishing may be considered.²⁴⁸

Draft or proposed legislation

Draft Federal Constitution

4.136 The draft federal constitution (DFC) would vest the ownership of all lands and seas and natural resources found either on the land or in the sea in the owners of such land and sea.²⁴⁹ The word "owner" is not defined in the DFC, however, section 16 states that customary land and natural resources in, on or above such lands and the adjacent seas vests in the tribe, clan, group, family or individuals as they have been using or enjoying since time immemorial. The lawfully owned land, sea, or other property must not be deprived from the owner(s) except in accordance with law and justice with fair and prompt compensation where appropriate.²⁵⁰ The Government would only be able to acquire a leasehold interest or an interest of a similar nature not exceeding 75 years in customary land.²⁵¹ The Government and customary landowners must enter into a fair deal on the acquisition of rights to access or ownership of customary land or use of resources for public works purposes.²⁵² The rights of indigenous tribes or clans in Solomon Islands to own, develop, control and use their customary land including the surrounding of their lands, air, waters, coastal areas, minerals and other resources which they customarily owned or otherwise occupied or use in accordance with valid customary practices should not be extinguished without the consent of the indigenous relevant tribes or clans.²⁵³

²⁴⁷ Customs Recognition Act 2000 s 6.

²⁴⁸ Customs Recognition Act 2000 s 8.

²⁴⁹ Draft Federal Constitution 2011 s 192(1).

²⁵⁰ Draft Federal Constitution 2011 s 192(2).

²⁵¹ Draft Federal Constitution 2011 s 193.

²⁵² Draft Federal Constitution 2011 s 194.

²⁵³ Draft Federal Constitution 2011 s 16.

Tribal Land Dispute Resolution Panel Bill

- 4.137 Under current state law all disputes on land cases must be first heard by chief's panel or any traditional means of solving disputes.²⁵⁴ Parties are to sign an 'accepted settlement form' if they all agree to the decision of the chief's panel. When this is done, the decision of that chief's panel in effect is deemed to be a decision of a local court.²⁵⁵ What is evident from the chief's panel is that parties signed the 'unaccepted settlement form'. This means the aggrieved party will proceed to the Local Court to hear the land dispute case.²⁵⁶ The decision of a local court on customary tribal land can be appealed to the Customary Land Appeal Court (CLAC).²⁵⁷ The decision of the CLAC can be appealed to the High Court on any point of law.²⁵⁸
- 4.138 Research by the Ministry for Justice and Legal Affairs has found there are significant delays in the current system for resolving disputes on customary land and frustration with the process and outcomes.
- 4.139 The Ministry of Justice and Legal Affairs had developed the Tribal Land Dispute Resolution Panels Bill 2012 to replace the existing system of resolving disputes over tribal land.
- 4.140 Under the Bill a decision making body called a Panel would resolve disputes about rights, interests and use of tribal or customary land. Different Panels would be convened for each dispute. Each panel is made up by people who are knowledgeable in customary law for the area in dispute. Any other person or party having an interest in the customary land in dispute can join as a party to the dispute. The Panel has to hold a public meeting where witnesses are given an opportunity to tell their story to the Panel. People cannot have legal representation. The parties are encouraged to come to an agreement. If they cannot come to an agreement, the Panel can make a final and binding decision. A decision by the Panel applies to everyone regardless of whether they are parties to the Panel or not.
- 4.141 There is limited appeal to the High Court from a decision of a Panel on the grounds of denial of natural justice or lack of jurisdiction.
- 4.142 In the Bill 'tribal land' has the same meaning as 'customary land' in the Land and Titles Act and the Customary Land Records Act. The LRC defines tribal land to mean land own

²⁵⁴ Local Court Act [Cap 19] s 12.

²⁵⁵ Local Court Act [Cap 19] s 14.

²⁵⁶ Local Court Act [Cap 19] s 12. See also Land and Titles Act [Cap 133] s 254.

²⁵⁷ Land and Titles Act [Cap 133] s 256(1).

²⁵⁸ Land and Titles Act [Cap 133] s 256(3).

by a tribe other than registered Crown land and include land covered by water and sea. The rights to use the tribal land are determined by tribal genealogy and other prevailing customary recognised practices.

Chapter 5 Other Issues on tribal marine land

- 5.1 Foreshore and marine areas are significant for public and commercial development, as well as providing food security and cash earning opportunities for people throughout Solomon Islands. Foreshore and seabed areas are, or are potentially, used for: public infrastructure development such as wharves, private businesses such as tourism, baitfishing and local commercial fishing, mining and other resource extraction (including sand, coral, seaweed, bio-resources and shell).
- 5.2 60% of households in Solomon Islands rely on fishing for subsistence; or both subsistence and sale (of fish).²⁵⁹ Customary governance plays an important role in regulating the use of coastal and inshore fisheries for subsistence and livelihoods, although potentially the Fisheries Act and provincial Fisheries Ordinances as well as other ordinances also play a role.
- 5.3 This Chapter considers issues relevant to development of marine tribal land (land below high water mark) including mistrust of government, gender and decision making, acquisition of tribal marine land for public and commercial uses and protection of marine land. It also considers issues that affect marine tribal land adjacent to registered land, many of which were raised in Chapter 2. Some of the issues discussed have been identified in earlier chapters (for example, the lack of effective control of development through the Environment Act).
- 5.4 In summary, resource exploitation and commercialisation on tribal land tends to weaken both the state and customary systems available to manage the land and its resources.
- 5.5 There is a perception that land disputes have seriously impeded the development of infrastructure such as wharves, due to an inability by the Government to purchase suitable land.²⁶⁰ However, the ambivalent legal situation regarding ownership of marine areas (Crown or tribal), mistrust of government in dealings over customary tribal land, the use of the acquisition process in the Land and Titles Act, negotiation on the basis of sale rather than lease and the use of compulsory acquisition for development may also contribute to delays and inability to secure tribal land for development.
- 5.6 It appears that the national government prefers to purchase tribal land, rather than enter into other kinds of arrangements with landowners. Recently (in late 2011 and early 2012)

²⁵⁹ Solomon Islands Government, 'Report on 2009 Population and Housing Census 2009,' tables supplied on request of LRC by Ministry of Finance.

²⁶⁰ For example, see Solomon Islands Diagnostic Trade Integration Study Report 2009, 74 and Island Sun 17 March 2010 page 10 where it was reported that the Domestic Marine Project within Ministry of Infrastructure and Development identified land disputes as a problem for building or refurbishing wharves.

it bought tribal lands from the Kwana'ai tribe in North Malaita, Malaita Province and from Choiseul Bay Association in Choiseul Province.²⁶¹ The Government purchased this land, rather than leasing it. Therefore, the government will have title to the land in perpetuity. While it may be beneficial for the Government to have complete control over those portions of lands, social disharmony may arise in the future. This is because those lands are alienated from the people in perpetuity and future generations may not support the sale their forefathers had agreed to. This would be different if those lands were leased as the future generations will still have their say in the use of the land.

Mistrust of government

- 5.7 Lack of trust of government and suspicion of state law processes as being hostile to customary marine tenure was a strong theme during our consultation, and in the submissions received by the LRC. The suspicion or resistance to state processes (such as land acquisition, or negotiations to use foreshores to build wharfs) is linked in the minds of people to the whole history of government (including pre-independence government) dealings with tribal land. This is not surprising given that legal frameworks and processes introduced during the Protectorate period are still being used to determine interests in customary land. These include the acquisition process in the Land and Titles Act, the provisions in the Mines and Minerals Act for agreements with customary landholders and the provisions in the Local Court Act and Land and Titles Act regarding the determination of disputes over customary land.
- 5.8 The government tends to take multiple and conflicting roles in relation to land tenure in Solomon Islands. One role is as middleman in commercial dealings between Solomon Islanders and foreigners that involve tribal land. This is illustrated by the processes used by the state for acquisition of customary tribal land. Another role is to provide a framework of law and order for commercial development.²⁶² However some of this legal framework (for example, the Environment Act) although is strong is hindered by non-implementation and does not operate effectively. Another role taken by leaders is that of landowner or business man, through direct participation in commercial activity on tribal land.
- 5.9 LRC consultation suggests that part of the problem (of securing tribal land for public or private development) might be attributed to how governments approach the issue, as well as the use of legal mechanisms such as acquisition in the Land and Titles Act.

²⁶¹ Denver Newter, 'Govt to pay \$4m to landowners' (Solomon Star, Issue No. 4930, pg 3) (10 August 2012).

²⁶² Harold Scheffler and Peter Larmour,, *Solomon Islands: Evolving a new custom* in Ron Crocombe (ed), *Land Tenure in the Pacific* 218.

- 5.10 A number of submissions (see Appendix 7) specifically identified the need to put right unfair dealings in relation to vacant and waste land. State law used by the government to acquire tribal land is also perceived as foreign, and not serving the interests of the people. During one consultation it was noted that people now have a better understanding of the value of their land, and are less likely to make an easy agreement about its use for development.²⁶³
- 5.11 Mistrust (or reluctance to give over control of land to the government for development) may also be linked to concerns about preserving tribal land for subsistence. The need to preserve land for subsistence is particularly important given the growth in population in Solomon Islands: in 1970 the population was 160 998, in the most recent census held in 2009 the population was 515 870.²⁶⁴
- 5.12 The issue of capacity of both landowners and the state to effectively look after the interests of tribal land used for development was raised in a consultation workshop held by the LRC.²⁶⁵ The main actor is the state, but the capacity of communities (landowners) has to be improved. It was also suggested that a statutory body be created to support and coordinate development activities over marine land. Issues about this type of development include how landowners receive benefits and how developers obtain security.²⁶⁶

Gender

- 5.13 Lack of participation by women in decision making about tribal land was raised during consultation. While it is recognized that women have knowledge about tribal land, and are custodians of such land (in particular in areas where land tenure is matrilineal) they are generally excluded where tribal land is used for non-traditional or non-subsistence purposes.
- 5.14 Exclusion of women happens in a number of ways. Women are excluded when decisions on the use of tribal land are made by men outside the community, and agreements are signed in provincial centres away from community scrutiny. It also happens where women are excluded from trust boards established to deal with development of land.

²⁶³ Tetepare Descendants' Association, above n 52.

²⁶⁴ Solomon Islands Government, 'Report on 2009 Population and Housing Census Basic Tables and Census Description,' *Statistical Bulletin* 06/2011.

²⁶⁵ Consultation Conference, above n 56.

²⁶⁶ *Ibid.*

Contemporary decision making bodies (including appointed chiefs) can also distort the role of women in relation to tribal land.²⁶⁷

- 5.15 The adoption of introduced law in relation to tribal land, which occurs when tribal land is converted to registered land, can also exclude women from participation in decision making. For example, in Tulagi, Central Islands Province where foreshore areas have become registered land that is leased to the province, an individual man is registered as the owner, even though under customary law tenure is matrilineal (see Appendix 8). As registered land rights to the land will be passed by the male registered owner to his children, this is inconsistent with customary law of that area.
- 5.16 There was some acknowledgement during consultation that women should participate in decision making about tribal land, although the current practice is that women are left out.²⁶⁸
- 5.17 In some areas it is important for women to participate in decisions making because of the knowledge they bring to the process. At Rendova, traditionally, men and women carried out different roles with respect to land: men take roles of chief and warrior, however women are custodians of knowledge and carry information from generation to generation.²⁶⁹
- 5.18 Women also have a specific role as custodian of tribal land in some areas. While the LRC did consult with a number of women, we only received one submission from a woman. In her submission she said that in Guadalcanal land passes through the female line and women are custodians of the land for the tribe. She said that any Trust Board (set up to manage tribal land) must consist of male and female representatives but currently only men make up Trust Boards.²⁷⁰
- 5.19 The concern that women are generally not involved in Land Trusts Boards, or if they are it is a token measure, was also raised in Malaita and Makira. In Auki mostly men make decisions about tribal land, and women are more likely to talk in their family setting than the head of the family will attend tribal meetings. Men do not value the views of women because they marry out. During the consultation one woman asked whether the law could provide a guarantee to assist women to participate in land dealings.²⁷¹ One chief

²⁶⁷ Moira Pio Dasi, above n 96.

²⁶⁸ LALSU Workshop, n 59.

²⁶⁹ Tetepare Descendants' Association, above n 52.

²⁷⁰ Grace Delight Buga, Submission No. 51, *Notes taken during walk-in submission* (Suta District, Isunakomu tribe, Central Guadalcanal) (1 December 2010).

²⁷¹ Clara Rikimani, Submission No. 60, *Notes taken during consultation meeting* (Women's Development Officer, Malaita Provincial Government) (7 April 2011).

submitted that women have rights to own and speak on land, but disputes arise because of lack of courtesy, respect and the influence of money.²⁷²

- 5.20 At a village meeting in Makira women raised concerns about exclusion from trust boards established to manage tribal land.²⁷³
- 5.21 Similarly in Western Province it is perceived that it is always men making decisions (about tribal land) even though land tenure is matrilineal.²⁷⁴
- 5.22 During consultation with the Western Province Council of Women the issue was also described as one of lack of awareness in villages about development, caused by people signing agreements without understanding the outcomes. Women can make decisions about resources but every paper (agreement) is signed by men away from the village. One good experience from Vella was where women pushed to be part of the (trust) board and it was reported that a clinic and school will open with the proceeds of logging. It was submitted during the consultation that it is important for women to join trust boards and advocate for good agreements.²⁷⁵
- 5.23 The need for benefits to be shared equally was raised during consultation at Lata. Benefits derived from resources must be shared equally between everybody, both men and women. The current practice that men take the benefit for themselves and women members of the tribe are ignored.²⁷⁶
- 5.24 At Isabel concerns were raised about how the contemporary chiefly system has affected the participation by women in decision making about tribal land. In Isabel tribal land ownership is matrilineal. Contemporary or appointed chiefs (as distinct from chiefs by birth or inheritance and tribal chiefs) dominate the decision making process with no or little participation by women. Women as landowners are disadvantaged when they are excluded from decision making.²⁷⁷

²⁷² Chief Peter Waikiri, Submission No. 71, *Notes taken during telephone conversation* (Chairman Council of Chiefs West Areare) (2010).

²⁷³ Tawani community, Submission No. 11, *Notes taken during consultation* (12 March 2010).

²⁷⁴ Forestry officers, above n 205.

²⁷⁵ Western Province Council of Women, Submission No. 63, *Notes taken during consultation* (14 April 2011).

²⁷⁶ Women's group meeting, Submission No. 33, *Notes taken during meeting* (Lata, Temotu Province) (19 August 2011).

²⁷⁷ Moira Pio Dasi, above n 96.

Customary marine land for public purposes

- 5.25 Securing tribal marine land for public purpose or development can be done by compulsory acquisition under the Constitution and Land and Titles Act, or acquisition by purchase or lease under the Land and Titles Act.
- 5.26 Customary land can be sold or leased to the Commissioner of Lands (COL) or any Provincial Assembly where an acquisition officer acts as the agent of the government who identifies boundaries, and makes agreements with people who claim to be landowners, holds public hearings and makes a determination about claims.
- 5.27 The acquisition officer is not required to make any thorough investigation about the nature of rights, and the extent to which the sale or lease will interfere with other customary rights. The acquisition officer makes a decision on the basis of upholding or rejecting objections made to an initial assessment or application. The process does not complement the reality of tribal land tenure.
- 5.28 When customary land is to be leased the COL makes an order vesting the perpetual estate in the persons named in the agreement as the lessors. There is no restriction on who may be the lessor, and no stipulation that the lessor should be the tribe or persons representing a tribe.
- 5.29 The weaknesses of the acquisition processes are that it does not consider or take into account use rights, significant power is vested in one state official (the acquisition officer), and the process does not support open negotiation and information sharing. Appeals from decision of acquisition officer go to Magistrates' Court (with no involvement of customary leaders or chiefs).
- 5.30 Acquisition was used initially to secure land at Auki for the wharf development (see Chapter 2 case study 2), as well as at Bina Harbour in Malaita Province. In both of these cases there is the high number of individual claimants and competing claims from different tribes or sub-tribes, and the acquisition was in both areas incomplete.

Consultation and submissions

- 5.31 During consultation the LRC learnt about the compulsory acquisition of marine land adjacent to Kennedy Islands in Western Province. In 2011 a marine area adjacent to Kennedy Island was compulsorily acquired, including three nearby small islands, a reef and sand bank. The provincial lands office advised the LRC they were also planning for a compulsory acquisition of the sea side coastal area of Gizo Island too. The reason given for compulsory acquisition in both cases is that the development will extend over the

seashore and into the seabed and adjacent reefs. In the case of the marine area adjacent to Kennedy Island no customary land interests were identified and no compensation was paid. The intention is to grant a fixed term estate of this area to the same entity that has a fixed term estate over Kennedy Island. The LRC was advised that the province supports this process because of the benefits to the community from development, such as employment.²⁷⁸

- 5.32 However some concerns were raised about this acquisition process. The original purpose given for the compulsory acquisition was for marine conservation. No public environmental assessment was conducted, and there was no public hearing for the acquisition. The risk is now that the public will be excluded from an area that is commonly used for recreation, and that a big development in the area will not be appropriate.²⁷⁹
- 5.33 In Tulagi tribal foreshore land was registered, and then leased to the province to ensure access to the public, and for sand and gravel. A nominal rent is paid for a lease of 50 years.
- 5.34 A number of submissions and consultations emphasized that negotiation about the use or acquisition of tribal land should be based on principles of full participation by landowners and users, fair sharing of benefits, information about the impact of development being available, recognition of traditional and social values, and sustainability.²⁸⁰
- 5.35 At several consultation meetings, it was argued that for development done for a public purpose, land should be the people's contribution towards the development. This will stop people from arguing over the land as they only argue when money is made available from the project. It will also shift people's money driven perception about public benefit projects to one of partnership where people would see themselves as owners of the project.²⁸¹
- 5.36 The Provincial Secretary of Western Province explained that one wharf was built on tribal land at Vella La Vella with no cash compensation to the landowners because it was recognised that the development would bring benefits to everyone. However he also

²⁷⁸ Peter Buka, above n 95.

²⁷⁹ Danny Kennedy, above n 204. Also Bruno Manele, above n 97.

²⁸⁰ LALSU Workshop, above n 60. LALSU Workshop, Submission No. 34, *Notes taken during LRC consultation session* (Lata, Temotu Province) (20 August 2010). Community leaders, above n 99. LALSU Workshop, above n 63.

²⁸¹ Police Officers, Submission No. 66, *Notes taken during consultation meeting* (Buala, Isabel Province) (25 May 2011).

said that this attitude was not uniform, and that in places where tribes are mixed, the use of land is more contested and this results in landowners asking for 'rent.'²⁸²

- 5.37 It was also suggested during consultation at Isabel that processes used for negotiating and consulting about public development on tribal land (above high water mark) should apply to land below high water mark.²⁸³
- 5.38 During consultation people also identified the need for land registration by tribes²⁸⁴, the need to preserve shared use of beaches (for both the tribe and the public), the need for restrictions on the type of development taking place and an assessment of the environmental impact of the development.²⁸⁵ At one meeting at Auki the need to consider the circumstances of the area was raised, for example the Lau people are close to the reefs and rely heavily on the reefs for food.²⁸⁶

Marine customary land and commercial use

- 5.39 Coastal and inshore fishing on a relatively small scale provides important cash earning opportunities for many people in Solomon Islands (31% of households, mainly in the provinces).²⁸⁷ Most of this activity is regulated by customary law, depending on the strength of customary institutions in the area.
- 5.40 In Western Province concerns were raised about the impact of small scale commercial fishing on marine resources. The response in that region is the use of marine protected areas that use a variety of controls (both customary and state) to address fisheries management and other activities such as coral mining.
- 5.41 Other commercial use of coastal areas by tribal owners includes bait fishing agreements, logging access and anchorage fees and fees for diving or surfing. Usually benefits for landowners are negotiated in direct agreements between landowners (or representatives of landowners) and the business. This activity is largely unregulated by state law, and obtaining fair benefits depends on the capacity of the particular landowning group. One consequence of logging activity on adjacent land to reefs has been damage to reefs and foreshores. While there is a significant amount of state law about damage to reefs it is not always accessible to landowners.

²⁸² Provincial Secretary, Submission No. 63, *Notes taken during consultation meeting* (Gizo, Western Province) (12 April 2011).

²⁸³ Isabel Provincial Government Executive, Submission No. 66, *Notes taken during consultation meeting* (Buala, Isabel Province) (24 May 2011).

²⁸⁴ LALSU Workshop, above n 280.

²⁸⁵ LALSU Workshop, above n 75.

²⁸⁶ LALSU Workshop, above n 63.

²⁸⁷ Solomon Islands Government, above n 259.

- 5.42 Development of the foreshore areas in Honiara (and most other town areas) is largely unregulated by state law, and land reclamation in many places along the Honiara seafront has spoilt the amenity and prevented public access to foreshore and beaches.²⁸⁸ It was reported that when landowners go to the Ministry of Lands for assistance about development, they are advised to deal directly with the developer.²⁸⁹
- 5.43 Anchorage and harbour fees are not regulated except through provincial ordinances. However, these ordinances only provide for fees payable to the province, and do not provide any guidance on how fees to customary landowners should be regulated.
- 5.44 A number of submissions/consultations indicated the need to set or regulate these kinds of fees. One reason is that members of the relevant tribe cannot come to an agreement about the fee.²⁹⁰ In some cases the logging company may 'set' a fee (of say \$1 or \$2 per cubic metre) and land owners do not have the capacity to negotiate other conditions regarding degradation of marine areas.
- 5.45 One submission from North West Choiseul gave information about how following an agreement between landowners and a logging company (on the basis of money paid to the individual signatories to the agreement) the log pond and associated activities caused significant damage to the foreshore and adjacent reefs. Landowners attempted to negotiate a more favourable agreement with no success.²⁹¹
- 5.46 Consultation with Forestry officers in the provinces (particularly Malaita and Western Province) confirmed that landowners make direct agreements with logging companies. It depends on the education, experience of landowners and access to legal or commercial advice. Some landowners seek advice from Forestry officers. In some cases a flat fee is negotiated, in others the fee is based on the amount of logs taken out. In Malaita it was also reported that the province charges anchorage fees (probably under the Malaita Province Harbours Ordinance 1991) although it is not clear whether the ordinance is consistently implemented.²⁹²
- 5.47 It was reported that in Western Province most landowners do not take anchorage fees because the companies say that the government has already taken the fee.²⁹³

²⁸⁸ Honiara City Council, above 39.

²⁸⁹ Consultation Conference, above n 56.

²⁹⁰ Paul Telovai, Moli, Submission No. 68, Notes taken during telephone conversation (Moli, West Choiseul, Choiseul Province) (16 June 2011). See also Isabel Provincial Government Executive, Submission No. 4, *Notes taken during consultation meeting* (Buala, Isabel Province) (26 May 2009).

²⁹¹ Boaz Miavana, above n 92.

²⁹² Forestry officers, Submission No. 60, *Notes taken during consultation meeting* (Auki, Malaita Province) (5 April 2011).

²⁹³ Forestry officers, above n 205.

- 5.48 It was also reported that landowners claim anchorage fees for other ships including those that provide transport services to the province. It was argued that these types of fees drive up the costs of shipping for everyone.²⁹⁴
- 5.49 Some informants talked about the need for greater guidance from the legal system about the use of reefs by yachts and divers, so that the obligations of users with respect to owners are understood.²⁹⁵
- 5.50 Arrangements between landowners and tourist operations such as dive businesses are negotiated directly on an ad hoc basis, with businesses appearing to have their own policies about how they deal with landowners. Having a good relationship between the business and landowners is important, with the need to be flexible (for example, stop using an area) when disputes arise. Disputes are more likely to arise where customary governance or leadership is not strong.²⁹⁶
- 5.51 One submission said that for development to take place there must be proper negotiation with the tribe or clans, not with individuals.²⁹⁷
- 5.52 Problems associated with commercial fishing conducted by Solomon Islanders were highlighted in some submissions and consultations. For example, one submission said it might be necessary to protect resource owners from net fishing.²⁹⁸

Marine tribal land adjacent to registered land

- 5.53 Honiara and most other provincial centres on registered land have a sea front that is likely to be tribal land. Tribal rights in relation to marine land adjacent to registered land in Honiara and other centres (Gizo and Auki for example) are more likely to be contested because of the history of land alienation, as well as other factors such as development, population growth and migration towards the coast (which occurred in both early 20th century, and after World War II).
- 5.54 There also appears to be confusion about the difference between ownership, and the jurisdiction of provincial governments over marine areas within provincial boundaries, and tribal land in general.

²⁹⁴ Northern Regional Lands Centre, Submission No. 60, Notes taken during consultation *meeting* (Auki, Malaita Province) (5 April 2011).

²⁹⁵ Tetepare Descendants' Association, above n 52.

²⁹⁶ Evan, Submission No. 57, Notes taken during consultation meeting (Bilikiki Cruises, Honiara) (23 February 2011). Robertson Batu, Submission No. 64, *Notes taken during walk-in submission* (Munda, Western Province) (4 May 2011).

²⁹⁷ Luru Land Conference of Tribal Community Trust Board, above n 50.

²⁹⁸ Stephen Wasi, Submission No. 20, Notes taken during walk-in consultation meeting (Paipai village, South Malaita) (4 May 2010).

- 5.55 According to LRC consultation, ownership of reefs around Gizo Island is confused. Landowners for Gizo who settled at the western end of Gizo left, but then returned to the area. When World Wide Fund for Nature (WWF) did work on developing a Marine Conservation Areas Ordinance they talked to people in the province about ownership of the reefs. A decision either way, that reefs are tribal land or Crown land would cause conflict, so they tried to use the Ordinance as a solution to the problem. The Ordinance is designed for places like Gizo, Munda and Ringgi. While the problem (ownership cannot be ascertained easily for Gizo) is not solved, environmental degradation caused by coral mining becomes worse.
- 5.56 During consultation with the Renbel Provincial Government it was suggested that the province owned Luguki Bay and could charge a logging company for landing. As a result the landowners claimed a portion of the fee from the province.²⁹⁹
- 5.57 One submission advised that holders of registered seafront land in Honiara run the risk of claims from people claiming ownership over the foreshore adjacent to the registered land. In one case the registered title holder received letters of demand from three different groups all claiming rights over the foreshore.
- 5.58 The submission suggests that foreshore within the Honiara City boundary and other urban centres should be considered public or Crown land.
- 5.59 Another view is that land adjacent to Crown or public land (like the foreshores in Tulagi) should be acquired by the Government as they (developers, business owners) cannot deal effectively with the landowners who come one by one to demand payment for the use of foreshores.³⁰⁰

Registered marine land in town areas

- 5.60 Some areas of marine land next to town areas are registered land held by the National or provincial government, or private interests. Different processes appear to have been used to achieve registration which have probably contributed to confusion about tribal ownership of this area.
- 5.61 At Tulagi (see Appendix 8) a portion of the foreshore is registered land. It was leased to the Premier of Central Islands Province under Part V of the Land and Titles Act, on behalf of the province for fifty years to ensure access for the public to the beach and sea, as well as supply of sand and gravel for the province.

²⁹⁹ Renbel Provincial Office, Submission No. 8, *Notes taken during consultation meeting* (Tigoa, Renbel Province) (19 October 2009).

³⁰⁰ Vanita Resort, Submission No. 10, *Notes taken during discussion* (Tulagi, Central Province) (4 November 2009).

- 5.62 In Buala (see Appendix 9) a portion of foreshore registered in the name of the Premier (holding PE) following an acquisition process under Part V of the Land and Titles Act.
- 5.63 In Honiara, Gizo and Noro (see Appendix 10) some portions of foreshores and seabed areas are held by the COL (holding PE), with FTE (sometimes at very low annual rents) granted to private individuals, companies or to Solomon Islands Ports Authority (a statutory body). For these grants it is possible that the COL made the grant on the basis of section 10(4) of the Land and Titles Act. However it is not clear what (if any) process might have been used by the COL to determine whether the land below high water mark in those grants was not tribal land, so that the COL was entitled to register the land.

Registered land adjacent to tribal marine land in rural areas

- 5.64 One issue identified during consultation is where organisations that represent landowners, or have some link to landowners gain title to land above high water mark that is registered land that had been alienated during the protectorate period. Case study 1 in Chapter 2 is also an example of this type of situation, where the Agana group tried to take action against the Famoia Land Trust (previously title to this land had been held by Allardyce Lumber Company) regarding use and ownership of adjacent foreshore and reefs.
- 5.65 In these kinds of situations the people holding the title to the registered land may seek to extend their title into the sea on the basis of their customary understanding about land tenure (ie that the high water mark or low water mark is not a boundary). This may result in conflict with other groups of people who assert tribal ownership (usually these groups are formally at least part of the organization holding title to the registered land).
- 5.66 In Isabel concerns were raised about development of a plantation that abuts the seashore, where there is a dispute between the registered owners and customary owners of the seashore about rights to take sand. Some people believe that whoever has a lease or title to dry land has title as far as the seafront.³⁰¹
- 5.67 Diverse views were expressed at a workshop attended by the LRC during consultation in Western Province. One suggestion was that where registered land is adjacent to the seashore the foreshore should be given to the registered owner. There should be no need to apply for registration of this area, but the foreshore, reef and seabed should automatically be given to the person who has registered the customary land because they have to use the seafront area for toilet, canoe sheds, other sea farming such as seaweed

³⁰¹ Isabel Provincial Government Executive, above n 290.

and fish farming. Another view was that there should not be automatic ownership for the registered owner of the land, but that you must apply to register.

- 5.68 A further view was that all seabed and foreshore should be given back to the customary owners. However the majority of participants held the view that the foreshore and seabed should belong to them, as practiced by their ancestors. People of Gilbertese descent (many of whom hold PE over islands in Western Province) were concerned that if the foreshore is legislated as customary land then they would be disadvantaged, as they are not customary landowners, but have registered land and have used the foreshore and seabed. In their view if the land above foreshore is registered that should include the foreshore and seabed.³⁰² This issue was also raised during consultation with the Ministry of Lands at Gizo. It should also be noted that at Gizo itself there a number of registered titles that either extend into the sea, or are wholly below the high water or low water mark.
- 5.69 One submission received relates to how a dispute has arisen between a society that has title to registered land and other members of the local community. The Tiaro Savulai Land Purchase and Cooperative Society hold the perpetual estate over an area of land that had previously been a coconut plantation owned by RC Symes. The Society represents four tribes who originally owned the area. It was submitted that the seafront adjacent to the land (foreshore, beaches, reefs and seabed) should be treated as part of the registered land. There was a wharf development planned for the area, and it was argued that the Society should be the right body to deal with the government about that development. However there are some members of the community who do not want to be part of the Society, who are claiming the foreshores.³⁰³
- 5.70 At Lunga Point where land is alienated, concerns were raised about development by Markworth Company Limited. It was asserted that land below high water mark is subject to tribal land tenure, and whoever wants to do anything must have a proper agreement with the landowners. Related is the perception that the original acquisition of the land (by Levers) was not fair, that it was only acquired for the purpose of planting coconuts, not for other purposes like selling.³⁰⁴

³⁰² Public Solicitor's Office - Landowners' Advocacy and Legal Support Unit, Legal Awareness Workshop, Submission No. 6, *Notes taken during awareness meeting* (Workshop Report - Gizo, Western Province) (5-6 October 2009). Also see Choiseul Provincial leaders and other stakeholders, Submission No. 7, *Notes taken during consultation meeting* (Taro, Choiseul Province) (13 October 2009).

³⁰³ Modesto Luvule, above n 78.

³⁰⁴ Andrew Kuvu, Submission No. 19, *Notes taken during walk-in submission* (Chairman Lengo Landowners Association, Fox Wood, Guadalcanal Province) (April 2010).

- 5.71 Registration of islands was addressed in some detail by one submission from Choiseul. In some coastal areas there are areas of limestone rocks that are not susceptible to erosion, while other coastal areas are susceptible to erosion. Following 20 or 25 years after registration the boundary marked by registration does not match the actual coastal boundary with the sea. A question comes up whether the person who holds the perpetual estate is entitled to own reef adjacent to the registered land, that is customarily owned by another tribe. The submission suggests that if the holder of the perpetual estate married to that tribe he can pass on ownership (through a will as opposed to under customary law) of both the registered estate and adjacent reef and seabed because it is adjacent to the registered land. His children would be entitled to collect stones, build a wharf and would conserve the resources inside the reef for commercial use. It is suggested that the law should recognize the need for flexible boundaries (where the perpetual estate is held to the high water mark). It is also suggested the owner of a perpetual estate in an island who marries a women from the tribe that has ownership of an adjacent reef should be able to gain tenure over the reef so that it can be devised to his children by a will.³⁰⁵
- 5.72 In Western Province migrants from Gilbert Islands hold perpetual estate over islands, but have no formal title over adjacent marine areas. It was suggested during the consultation that settlers from Gilbert Islands and Malaita are more likely to assert the right to fish everywhere.³⁰⁶ Disputes can arise between holders of perpetual estate (who are not indigenous to Solomon Islands) and customary owners of reefs. It appears that there is limited understanding about user rights for the purpose of access.³⁰⁷

Protection of marine land

- 5.73 As indicated earlier, weak state or customary governance can result in degradation of tribal marine areas. Protection of these areas can potentially occur through customary law, national legislation and provincial ordinances, for example the Fisheries ordinances introduced by Guadalcanal, Western Province and Makira.
- 5.74 In some areas steps are being taken to merge customary governance of marine areas with state law and institutions, the most common being the development of marine conservation areas. For example, in Western Province WWF is working with seven sites. The methods and penalties for enforcement of marine conservation areas varies and

³⁰⁵ Voyce Pitakaka, Submission No. 52, *Written submission* (Taro, Choiseul Province) (10 January 2011).

³⁰⁶ Bruno Manele, above n 97.

³⁰⁷ Peter Buka, above n 95.

includes use of customary law, with compensation payable in shell money or pigs, to the use of ordinances such as the proposed Marine Conservation Areas Ordinance.

- 5.75 At a national level the Environment Act 1998 and the Protected Areas Act 2010 provide protection for marine tribal land but there are questions about how effective they are. The LRC consultation suggests that the Environment Act has not been fully implemented to protect marine areas affected by logging, or marine areas adjacent to Honiara. The Protected Areas Act 2010 also has not yet been effective as no protected areas have been declared under the Act.

Consultation and submissions

- 5.76 One example raised by police at Gizo is how the written criminal law might be used to protect reefs adjacent to Gizo. An underlying assumption is that the person who owns the seafront has ownership rights out to the deep sea. In another case a man was taking stone from a reef near Titiana for commercial purposes and the people came to police for help and advice.
- 5.77 Fish dynamiting in Central province was raised as a concern. Some people use dynamite to fish in areas under customary restrictions, but poor communications and reporting is a barrier to village based restrictions.³⁰⁸
- 5.78 Damage to reefs by logging ships, particularly in Western Province, was raised a number of times during consultation. At one community meeting the impact of environmental damage on reefs by logging ships (leaking oil) was raised.³⁰⁹ Forestry officers raised the problem of the impact of spillage and rubbish from logging ships. In some cases the anchorage and access fees paid to landowners is considered to be compensation for this.³¹⁰ During another consultation it was reported that in Western Province ships run aground around 4 to 5 times a year, and that extensive damage can occur due to fuel leakage.³¹¹
- 5.79 Taking of corals in Western Province for land reclamation activities was raised as an important issue of concern. This removal of corals aggravates erosion of beaches.³¹²

³⁰⁸ Tribal Chief Robert Pelupari of Kakau Tribe, above n 57.

³⁰⁹ Public Forum, Submission No. 1, *Notes taken during the consultation forum* (Gizo, Western Province) (21 April 2009).

³¹⁰ Forestry officers, above n 205.

³¹¹ Danny Kennedy, above n 204.

³¹² Police officers, Submission No. 63, *Notes taken during consultation meeting* (Gizo Western Province) (12 April 2011).

APPENDICES

Appendix 1

1.1 This appendix contains the list of submissions gathered or received for this land below high water mark reference.

Lists of Submissions

1. Gizo community (open public forum include church leaders, women), Submission No. 1, *Notes taken during consultation meeting* (Gizo, Western Province) (21 April 2009).
2. Malaita Provincial gov't executive reps and police, Submission No. 2, *Notes taken during consultation meetings* (Auki, Malaita Province) (28 April 2009).
3. Bungana Community, Submission No. 3, *Notes taken during consultation meetings* (Central Islands Province) (10 June 2009).
4. Isabel Provincial gov't executive reps and provincial council of women, Submission No. 4, *Notes taken during consultation meeting* (Buala, Isabel Province) (26-27 June 2009).
5. Savo Council of Chiefs, Submission No. 5, *Notes taken during consultation meetings* (Savo, Central Islands Province) (23 June 2009).
6. Participants from Simbo, Ranonga, Vella Lavella, Kolombangara, Submission No. 6, *Notes taken during Landowners' Advocacy and Legal Support Unit (LALSU) Workshop* (Gizo, Western Province) (5-6 October 2009).
7. Provincial gov't executive reps, police, ngos, chiefs, church, women, and youths, Submission No. 7, *Notes taken during consultation meetings* (Taro, Choiseul Province) (12-15 Oct 2009).
8. Provincial gov't reps, police, West Rennell Council of Chiefs, provincial member for ward 6 Matthew Taupongi and James Tepuke of West Rennell, Tegano and Niupani communities of East Rennell, Submission No. 8, *Notes taken during consultation meeting* (Rennell Island, Renbel Province) (19-22 October 2009).
9. Andrew Radclyffe, Submission No. 9, *Email submission* (Private Lawyer, Honiara City) (29 October 2012).

10. Provincial gov't executive reps, police, ngos, women, and youths, Submission No. 10, *Notes taken during consultation meeting* (Tulagi, Central Islands Province) (3-4 November 2009).
11. Provincial gov't executive reps, police, ngos, chiefs, church, women, and youths, Tawani Village, Submission No. 11, *Notes taken during consultation meeting* (Kirakira, Makira Province) (9-12 March 2010).
12. Mose Ramo, Submission No. 12, *Notes taken during telephone conversation* (Distance Service Exchange, Indigenous People Human Rights Advocacy Association, Honiara) (12 March 2010).
13. LALSU workshop (chiefs/community elders, women) from Paoe in North Choiseul to Sasamuga in South Choiseul, Submission No. 13, *Notes taken during consultation* (Taro, Choiseul Province) (22-23 March 2010).
14. Mr. Modesto Luvule, Submission No. 14, *Notes taken during walk-in submission* (Sumate Village, West Guadalcanal) (March 2012).
15. Dante Tolifaesuda, Submission No. 15, *Notes taken during walk-in submission* (Ambu Village, Auki, Malaita Province) (30 March 2010 and 11 April 2010).
16. Harry Tupa, Submission No. 16, *Notes taken during walk-in submission* (Boromole Village, North Big Gela, Boli District, Central Islands Province) (5-April 2010).
17. Samson Sade, Submission No. 17, *Notes taken during walk-in submission* (Uruta Village, North Malaita, Fishing Village in Honiara) (19 April 2010).
18. John Kavoa, Submission No. 18, *Notes taken during walk-in submission* (Visale, Koimarama Area, Guadalcanal Area) (30 April 2010).
19. Andrew Kuvu, Submission No. 19, *Notes taken during walk-in submission* (Chairman Lengo Landowners Association, Fox Wood, North Guadalcanal) (April 2010).
20. Stephen Wasi, Submission No. 20, *Notes taken during walk-in submission* (Paipaii Village, South Malaita) (4 May 2010).
21. Luru Land Conference of Tribal Community Trust Board Inc, Submission No. 21, *Written Submission* (Taro, Choiseul Province) (24 March 2010).
22. LALSU workshop (chiefs/community elders, women) from Bolotei to San Jorge, Submission No. 22, *Notes taken during consultation* (Buala, Isabel Province) (26 May 2010).

23. Honiara City Council, Submission No. 23, *Written Submission* (Honiara, Guadalcanal, Solomon Islands) (27 May 2010).
24. Tribal landowners namely, Clement Jimmy Natei Wato, John Mark Okau, Jasper Bonie, Patterson Natei, Patterson Lepera, Submission No. 24, *Notes taken during walk-in submission* (Santa Cruz Islands, Temotu Province) (27 May 2010).
25. Emilio Kuributo, Submission No. 25, *Notes taken during walk-in submission* (Kakabona - Verahoai, West Guadalcanal) (27 May 2010).
26. Boaz Miavana, Submission No. 26, *Written Submission* (North West Choiseul, Choiseul Province) (8 June 2010).
27. Police, reps of Roviana Conservation Association, community leaders from Lodumaho, Dunde and Kidu, Tetepare Decendant Association (TDA) Executive, Munda, Submission No. 27, *Notes taken during consultation* (Munda, Western Province) (8-10 June 2010).
28. Gorou- Tetere Community, Submission No. 28, *Notes taken during consultation meeting* (Gorou, Tetere, Guadalcanal Province) (16 June 2010).
29. Paramount Chief William Ba'aai, Submission No. 29, *Notes taken during consultation meeting* (Manulafa House of Chiefs, Toabaita, North Malaita) (24 June 2010).
30. Tribal Chief Robert Pelupari, Submission No. 30, *Notes taken during walk-in submission* (Kakau tribe, Tahi village, Boena, vesta, Vatilau District, Gela) (30 June 2010).
31. LALSU Workshop (chiefs/community leaders + women from all around San Cristobel Island), Submission No. 31, *Notes taken during consultation meeting* (KiraKira, Makira Province) (15 July 2010).
32. Paramount Chief John Konai, Submission No. 32, *Notes taken during discussion* (President Matakwalao House of Chiefs, Tafuna'ama Village, Toabaita, North Malaita) (12 August 2010).
33. Provincial gov't executive reps, Andrew Nalua, James Meplana, Lata Magistrate staff, and women's group, Submission No. 33, *Notes taken during consultation* (Lata, Temotu Province) (18-20 August 2010).
34. LALSU Workshop (chiefs/community leaders + women from Lata and surrounding villages at Santa Cruz), Submission No. 34, *Notes taken during consultation* (Lata, Temotu Province) (20 August 2010).

35. DALOBALA-SIRAHITAFUBALA TRIBAL ASSOCIATION, DALOBALA-SIRAHITAFUBALA TRIBAL ASSOCIATION, Submission No. 35, *Written submission* (AUKI, MALAITA PROVINCE) (10 September 2010).
36. LALSU Workshop (chiefs/community leaders + women from West Fataleka to West Are'are), Submission No. 36, *Notes taken during LRC consultation meeting session* (Auki, Malaita Province) (16 September 2010).
37. Steward Maearo, Submission No. 37, *Written Submission* (Tribal Chiefs of Ata'a area, Ata, North Malaita) (22 September 2010).
38. Jacob Zinihite, Submission No. 38, *Notes taken during Law Week stall walk-in submission* (Munda, Western Province) (18 October 2010).
39. Flex Waneuria, Submission No. 39, *Notes taken during Law Week stall walk-in submission* (North Malaita, Malaita Province) (19 October 2010).
40. Ezekiel Tamoia, Submission No. 40, *Notes taken during Law Week stall walk-in submission* (Vanikoro, Temotu Province) (19 October 2010).
41. John Putuika, Submission No. 41, *Notes taken during Law Week stall walk-in submission* (Tigoa, West Rennell) (20 October 2010).
42. Samson Sonia, Submission No. 42, *Notes taken during Law Week stall walk-in submission* (Balasuna, Guadalcanal Province) (20 October 2010).
43. Jack Ogafura, Submission No. 43, *Notes taken during walk-in submission* (Mbita'ama, North Malaita) (21 October 2010).
44. Reuben Campbell Lauvota, Submission No. 44, *Notes taken during Law Week stall walk-in submission* (South West Guadalcanal, Guadalcanal Province).
45. Geralda Kauhoko, Submission No. 45, *Written submission given to LRC during Law Week* (Nariekeara Village, West AreAre, South Malaita) (22 October 2010).
46. Elision Houma, Submission No. 46, *Walk-in submission* (Maka Station, South Malaita, Malaita Province) (26 October 2010).
47. Albert Marshall Fangadola, Submission No. 47, *Notes taken during walk-in submission* (Retired Police Officer & now Tribal Chief, Folifoua, West Kwarae) (October 2010).
48. Claudius Saraiulawa, Submission No. 48, *Notes taken during walk-in submission* (Marau Sound, Guadalcanal Province) (Oct 2010).

49. Timothy Labesau, Submission No. 49, *Notes taken during walk-in submission* (Afu Village, East Kwaraae) (25 November 2010).
50. Gideon Moses, Submission No. 50, *Notes taken during walk-in submission* (Tau Village, East Tasiboko, North Guadalcanal) (November 2010).
51. Grace Delight Buga, Submission No. 51, *Notes taken during walk-in submission* (Gold Ridge, Suta District, Isunakomu tribe, Central Guadalcanal, Guadalcanal Province) (1 December 2010).
52. Voyce Pitakaka, Submission No. 52, *Written Submission* (Taro, Choiseul Province) (10 January 2011).
53. Wilson Tetea, Submission No. 53, *Notes taken during walk-in submission* (Marau main land, Guadalcanal Province) (25 January 2011).
54. George Kwari, Submission No. 54, *Notes taken during walk-in submission* (New-way Bana, Langlanga Lagoon) (26 January 2011).
55. Gov't ministries like Lands, Fisheries, Justice, and Infrastructure, Submission No. 55, *Notes taken during workshop discussions* (LRC Honiara stakeholders workshop) (9 February 2011).
56. Guadalcanal Provincial Executive, Submission No. 56, *Notes taken during consultative meeting* (Guadalcanal Provincial Government) (22 February 2011).
57. Evan, Submission No. 57, *Notes taken during consultation meeting* (Bilikiki Cruises - Dive Operator, Honiara) (23 February 2011).
58. John Fale, Shirley Biti and George Bulu, Submission No. 58, *Notes taken during walk-in submissions* (Mafalua, Lilisiana Vge, Auki, Malaita Province) (28 February 2011).
59. Wilfred Atomea, Submission No. 59, *Notes taken during walk-in submission* (Manakwai Vge, North Malaita, Malaita Province) (24 March 2011).
60. Malaita Provincial Gov't Assembly, Fisheries, Forestry, Lands, Police, Magistrate, Public Solicitor's reps, DPP's rep, Suava Bay Resources Owners, Women's rep, Save the Children, and Jehovah's Witness Church reps, Submission No. 60, *Notes taken during consultation meetings* (Auki, Malaita Province) (4-8 April 2011).
61. John Kisina & Rev John R. Gereia, Submission No. 61, *Written submission* (Auki, Central Malaita, Malaita Province) (5 April 2011).

62. Rinaldo Talo, Submission No. 62, *Written submission* (Ulufera Council of Chiefs, Suava Bay, North Malaita, Malaita Province) (7 April 2011).
63. Provincial Secretary (PS), Forestry, Lands, Police, Magistrate, Public Solicitor's reps, Women's reps, Infrastructure, and WWF, Submission No. 63, Notes taken during consultation meetings (Gizo, Western Province) (12-16 April 2011).
64. Robertson Batu, Submission No. 64, *Notes taken during walk-in submission* (Dunde Vge, Munda, Western Province) (4 May 2011).
65. Boaz Miavana, Submission No. 65, *Notes taken during walk-in submission* (North West Choiseul, Choiseul Province) (19 May 2011).
66. Provincial Gov't Executive, Fisheries, Forestry, Lands, Police, Women's rep, Save the Children, planning office, and the Chiefs, Submission No. 66, *Notes taken during walk-in submission* (Buala, Isabel Province) (23-28 May 2011).
67. Anthony Telovai, Submission No. 67, *Notes taken during telephone conversation* (Moli, North West Choiseul) (31 May 2011).
68. Paul Telovai, Submission No. 68, *Notes taken during telephone conversation* (Moli, North West Choiseul, Choiseul Province) (16 June 2011).
69. Unknown, Submission No. 69, *Solomon Islands Booklet contains poems/vision given as submission* (1 November 2009).
70. John Mark, Submission No. 70, *Notes taken during Law Week Stall walk-in submission* (Reef Island, Temotu Province) (21 October 2010).
71. Peter Waikiri, Submission No. 71, *Notes taken during telephone conversation* (Community Policing Officer and Chairman West Areare Council of Chiefs, West Areare, Malaita Province) (2010).
72. Boaz Miavana, Submission No. 72, *Notes taken during walk-in submission* (North West Choiseul, Choiseul Province) (8 August 2011).
73. Sir Baddeley Devesi, Submission No. 73, *Notes taken during walk-in submission* (Tasimboko Area, Guadalcanal Province) (1 March 2011).
74. Clement Jimmy Natei, Jasper Maike Bonie, John Mark Okau, Submission No. 74, *Written submission* (Reps of Wato Tribe, Reef Island, Temotu Province) (1 August 2011).

75. Simon Gimo, Submission No. 75, *Notes taken during walk-in submission* (Choviri, North West Guadalcanal, Guadalcanal Province) (3 February 2011).
76. Environment officials (staff), Submission No. 76, *Notes taken during consultation meeting* (Ministry of Environment, Climate Change, Disaster Management and Meteorology (MECDM) Honiara) (3 November 2011).
77. Gabriel Ala'alia, Submission No. 77, *Notes taken during walk-in submission* (Ambu Village, Auki, Malaita Province) (11 February 2011).
78. Alfred Samani, Submission No. 78, *Notes taken during walk-in submission* (Takwa, North Malaita, Malaita Province) (18 February 2011).
79. Joseph Siausky, Submission No. 79, *Notes taken during walk-in consultation* (Tribal Chief, Ata, North East Malaita, Malaita Province) (22 February 2011).
80. Stephen Koba, Submission No. 80, *Notes taken during walk-in submission* (Reko, North East Guadalcanal, Guadalcanal Province) (1 March 2011).
81. Peter Norman, Submission No. 81, *Notes taken during walk-in submission* (Kibelifolu Village, LangLanga Lagoon) (28 July 2011).
82. Kathleen Kohata, Submission No. 82, *Email submission* (Honiara) (4 November 2011).
83. No name (Not given), Submission No. 83, *Letter submission*.
84. Ministry of Lands officials (Deputy COL, Surveyor General, Legal Adviser), Submission No. 84, *Notes taken during consultation meeting* (Honiara, Ministry of Lands, Housing and Survey) (11 September 2009).

Appendix 2

- 1.2 This is a description on the status of land below high water mark in Vanuatu, Fiji and New Zealand. This description is linked to discussion under Recommendation 1, paragraph 1.26.
- 1.3 In Fiji, land below high water mark is Crown land.¹ However, the Government or developers must compensate the iTaukei people² for the loss of their fishing rights for using the foreshores and reefs for development. The iTaukei people of Fiji would like to see Government or the developers compensate them too for the loss of their cultural connection to the foreshores, reefs and the sea that are used for development.
- 1.4 In Vanuatu, land below high water mark is customary land.³ The Constitution in Vanuatu states that all land in the Republic of Vanuatu belongs to the indigenous custom owners and their descendants.⁴ Article 74 states that the rules of custom form the basis for ownership and use of land in the Republic of Vanuatu.
- 1.5 The Foreshore Development Act empowers the Minister responsible for Town and Country Planning to give written consent to any foreshore development in Vanuatu.⁵ The Minister may give the consent after looking at the application for the consent and any other representation made to him or her concerning the proposed development.
- 1.6 Foreshore areas in Vanuatu can be leased for development. Before any foreshore can be leased for development, the Minister responsible for Town and Country Planning must give a written consent to the development. Once the written consent for development is received, concern parties then have to go through the normal lease process as provided for under the Land Lease Act [Cap 163].
- 1.7 In New Zealand, land below high water mark particularly the foreshore is a contested area. In 2003 the Court of Appeal ruled that the Maori Land Court had jurisdiction to determine claims of customary ownership to areas of the foreshore and seabed.⁶ In response to this Court of Appeal decision, the Labour Party led Government in 2004 introduced the Foreshore and Seabed Act 2004 that vest foreshores in the Crown.⁷ In 2011 the National Party led Government repealed the 2004 Foreshore and Seabed Act and enacted the Marine and Coastal Area (Takutai Moana) Act 2011 which vests no ownership

¹ Crown Land Act [Cap 132] s 2 (Fiji). See also *Tokyo Corporation v Mago Island Estate Ltd* [1992] FJHC 76; <http://www.paclii.org>.

² iTaukei people is the native or indigenous people of Fiji.

³ Constitution articles 73 and 74 (Vanuatu). *Browne v Bastien* [2002] VUSC 2; <http://www.paclii.org>.

⁴ Constitution article 73 (Vanuatu).

⁵ Foreshore Development Act [Cap 90] s 2 (Vanuatu).

⁶ *Attorney-General v Ngati Apa* [2003] 3 NZLR

⁷ Foreshore and Seabed Act 2004 s 13 (New Zealand).

in anybody but instead treat this area as common marine and coastal area for all New Zealanders. The law however recognises interests of New Zealanders that can be proved to have been existed.⁸

⁸ Marine and Coastal Area (Takutai Moana) Act 2011 (New Zealand).

Appendix 3

- 1.8 This is a description on how land recording was done in Fiji. This description is linked to discussion under Recommendation 4, paragraph 1.33.
- 1.9 In Fiji, the iTaukei Lands and Fisheries Commission (previously two separate entities known as the Native Lands Commission and the Native Fisheries Commission) set up by the Native Lands Act [Cap 133] and the Fisheries Act [Cap 158].
- 1.10 The iTaukei Lands and Fisheries Commission⁹ records the rightful and hereditary iTaukei owners of customary land and customary fishing rights.¹⁰ If there is a dispute, the Commission shall inquire into the dispute and make its decision.¹¹
- 1.11 The decision of the Commission can be appealed to the Appeals Tribunal which its decision is final.¹²
- 1.12 The records of the lands, customary fishing rights, boundaries and the rightful owners are kept in the “Register of iTaukei Lands and customary fishing rights”.¹³
- 1.13 The records were done during the colonial period and it is difficult for emerging claims to defeat them.

⁹ This is one of the iTaukei or native Fijian institutions which is under the Ministry of iTaukei Affairs and has the support of the iTaukei Fijians.

¹⁰ Native Lands Act [Cap 133] s 4 and Fisheries Act [Cap 158] s 14 (Fiji)

¹¹ Native Lands Act [Cap 133] s 6(7) and Fisheries Act [Cap 158] s 15 (Fiji)

¹² Native Lands Act [Cap 133] s 7(1) and Fisheries Act [Cap 158] s 17 (Fiji).

¹³ Native Lands Act [Cap 133] s 8 and Fisheries Act [Cap 158] s 19 (Fiji).

Appendix 4

- 1.14 This description is an example of mechanisms developed in Fiji to assist with determining compensation or damages amount(s) for use of the iTaukei lands for development. This discussion is linked to Recommendation 10, paragraph 1.55.
- 1.15 In Fiji, the Agricultural Landlord and Tenant Act [Cap 270] allows for the establishment of agricultural tribunals. ¹⁴An agricultural tribunal hears disputes between landlord and tenant on agriculture land that is more than 1 hectare. ¹⁵ This includes dealing with compensation claims for the utilization of the land by investors arising from agriculture land leases. As a matter of policy it also deals with claims over the foreshores concerning Fijian customary fishing rights where the foreshore is utilized and the customary fishing rights would be taken away because of the development. ¹⁶
- 1.16 Also the Arbitration Act [Cap 38] provides for appointment of independent arbitrators. ¹⁷ Independent Arbitrator(s) on the fishing rights is/are ad hoc mechanism where parties agree to appointment of an Independent Arbitrator to decide on quantum of compensation payable to fishing rights owners. The Fisheries Department will first consult with the fishing rights owners, make an assessment and come up with the compensation package. Where parties do not agree with the figure, the parties will then agree to the appointment of an independent arbitrator to decide on the compensation amount. ¹⁸
- 1.17 An example of this was in the case of *Vanua (tribe) of Nacula & Yasawa v Turtle Island*. In this case an Independent Arbitrator conducted an inquiry to determine the level of compensation to be awarded to customary fishing rights owners for the use of the area for development. The propose development on the area concern include:
- Construction of a main jetty;
 - Construction of a stone jetty and landfilling of an access road to the jetty;
 - Reclamation of an inshore mangrove area as an aquaculture site;
 - Conversion of a mangrove area into a rubbish dump;
 - Construction of a new jetty to the hospital, commercial area and sports ground.

¹⁴ Agricultural Landlord and Tenant Act [Cap 270] s 16 (Fiji).

¹⁵ Agriculture Landlord and Tenant Act [Cap 270] s 3 (Fiji).

¹⁶ Meeting with Mr. Peni Daltuicama, Agricultural Tribunal (Suva, Fiji) (9 September 2011).

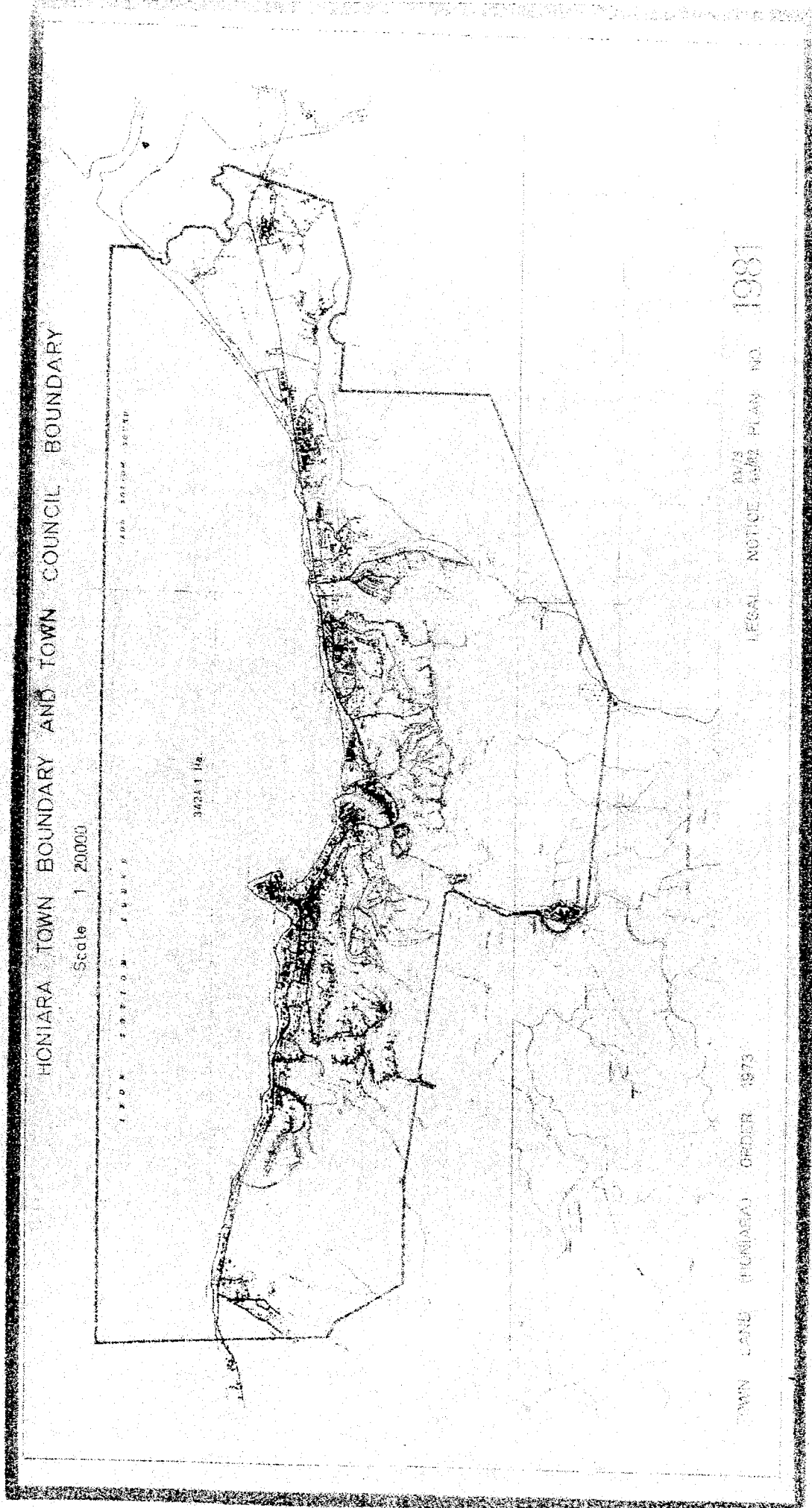
¹⁷ Arbitration Act [Cap 38] s 6 (Fiji).

¹⁸ Meeting with Mr. Peni Daltuicama, above n 25.

- 1.18 The main jetty, stone jetty, and the hospital jetty were completed. The rubbish dump was abandoned. The aquaculture reclamation involves access road only. The hospital and sports ground were filled with minimal destruction of the mangrove area. With the development, mangroves, beaches, bays and inner lagoons were destroyed. Underwater visual censoring was affected. A total of 124 species were recorded for underwater visual censoring. Eighteen (18) food fishes and 16 finfishes group were found in the inter-tidal areas. Eight (8) species of crabs and 4 species of brackish water prawns were also found. During the initial stage of the development, a net of 400 metre length was soaked for 4 hours in two nights. The average catch per night was 26.5kg. Two years later when most of the major developments were done, using the similar net the average catch per night was 1.38kg. This is a reduction of 25.12kg. The Tribunal uses the survey figures to calculate its award for the loss of customary fishing rights. It considered the average price of FJ\$4.00 per kg of fish and 5 times per week plus an annual interest of 12% for 99 years. The Tribunal awarded FJ\$217,703.70 for the loss of the customary fishing rights to be paid by the developers of Turtle Island to the customary fishing rights owners.
- 1.19 Another example of this was an inquiry was conducted to ascertain the damage to the customary fishing rights as a result of a proposed road realignment by the Ministry of Works. The customary fishing rights belonged to the Vanua (tribe) of Nasavusavu with a total adult population of 2112. The development was on reclaimed land approximately 2 hectares of mangroves forest for a construction of a bay road. A fisheries survey was conducted to find out the presence of edible and other resources of value in the area. The survey shows that about 80% of the area have mangroves crabs. Mud lobster and fiddler crabs were also found. Mangroves are well appreciated for their values. They are long time source of building materials, firewood, and also provide a secure habitat for different edible crab species. They also contribute to reduction in the severity of coastal storms, waves and flood. The independent arbitrator noted that while it is difficult to value mangrove resource in monetary basis, it must be appreciated for its significant ecological, environmental and socio-economic value of this commodity resource and dependence by those who utilize it for their dialing living. The independent arbitrator awarded FJ\$33,524.54 as compensation for customary fishing rights owners for the development.
- 1.20 Solomon Islands has a similar Arbitration Act¹⁹ to this Fijian one but not been utilized.

¹⁹ See Arbitration Act [Cap 2] (Solomon Islands).

Appendix 5



Special Map Request Form

Lands

To: The Surveyor General
 Ministry of Lands, Housing and Surveys
 P.O. Box G38 Honiara
 Ph: 28156 / 23365 Fax 27298
 Email: jvaikota@lands.gov.sb

From: Name: PHILIP KANAIRARA Date: 9th June 2011

Designated Position: SENIOR LEGAL OFFICER

Company/Department/Organisation: SI LAW REFORM COMMISSION

Address: P.O. BOX 1534, KALALA HILLS, HONIARA

Telephone: 38773 FAX: 38760

E-Mail Address: lawreform@trngov.sb & philipkanairara@trngov.sb

Description of request:

Request cadastral maps in electronic form (PDF form) for all provincial centres and Honiara. This is for our land below high water mark project/ reference that our Minister for Justice & Legal Affairs direct us to do

For Official Use Only

Approved Not Approved PK SG Signature: [Signature] Date: 26/06/11

Comments: Please prepare ^{OPM} Coastal sheets only i.e. PDts and hard copy sheets. Charge as appropriate.

* Also include: Sizo, Munda, Auki, Tulagi, Buala, Kirakira, Taro, Nono PDFs & Hard copy

Fax or mail this completed form to Surveyor General at the address above. Your request will be processed and if successful you will be contacted to arrange an interview to further clarify your map requirements.

DISCLAIMER
 Data is disseminated for general planning purposes only.
 The Ministry reserves the right to prioritise or refuse requests for the production of special maps.
 The Ministry hereby disclaims any and all liability or responsibility for any damage, injury, loss, claim, or lawsuit arising from any error, inaccuracy, or other problem with the map data. The User hereby releases the Ministry and the referenced officials of the Ministry, from all liability, damages, claims, injuries, or suits arising from any such error, inaccuracy or problem. Furthermore, the User agrees to indemnify and hold harmless the Ministry and its officials and employees, from any and all claims, liability damages, injuries, and suits arising from the use of the product.
 The map data provided is "as is" and the Ministry expressly disclaims all warranties, express or implied including warranties as to the accuracy of the map data and merchantability and fitness for a particular purpose, and further expressly disclaims responsibility for all incidental, consequential or special damages arising out of or in connection with the use or performance of the map data.
 The User acknowledges this disclaimer of warranty and expressly waives all warranties express or implied and waives any right of claim for damages incidental, consequential or special, arising out of or in connection with the use of performance of the map data.

Signed: [Signature] Date: 9/6/11

Printed Name: PHILIP KANAIRARA
 (Please Note: Any unsigned request forms will not be processed)

For Official Use Only

Priority code: <input type="checkbox"/> SIISLAP <input type="checkbox"/> MOL	Request processed by:	Date:	Job number:
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HONIARA LAND REGISTRY

FIXED - TERM ESTATE REGISTER

PARCEL NUMBER 192-010-24

PART A - PROPERTY SECTION

PARCEL NUMBER 192-010-204

EASEMENTS APPURTENANT ETC.

Edition

1

Grantor: COMMISSIONER OF LANDS

Grantee: METAL SHEET PRODUCTS LIMITED

Term: 50 years From: 1/1/98 Rent: \$300-00 a year

Area (approx.): 0.3397 ha. Survey Plan No: XK 102587

Date of Grant: 13th August 1998

Mutation Number: -

Superseded Parcels: -

Current Parcels: -

Number of pages in this Register. 2

Entry No.

PART B - OWNERSHIP SECTION

Name, Description and Address of Owner and Restrictions affecting Right of Disposition

Application Number and Date of Presentation Y M D

Observations (Nature of Instrument, Consideration, etc.)

Signature of Registrar

1. RESTRICTION: no subdivision, lease, sublease, transfer or charge is to be registered without the written consent of the Grantor.

2. RESTRICTION: no transfer, lease or sublease is to be registered within 5 years from the date of the Grant Instrument. (2006)

3. METAL SHEET PRODUCTS LIMITED, P O Box R2 Honiara TRANTS CER 26/106

4. CHAYEMA INTERNATIONAL LIMITED, P.O BOX 1065, Honiara

659/98 1998 8 13

Grant and s.122(3) of the L. & T. Act (Cap 93) Grant and s.122(3) of L. & T. Act. Grant Premium: \$5,000.00. Transfer Consideration: \$550,000.00

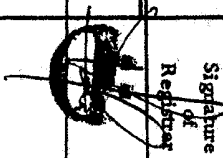
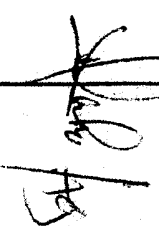
10:00 FTE 192-010-204 11 November 2011

PART C - INCUMBRANCES SECTION

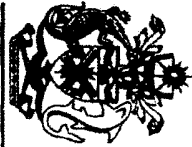
FIXED - TERM ESTATE REGISTER

PARCEL NUMBER,

192-010-2

Entry No.	Nature of Incumbrance	Application Number and Date				FURTHER PARTICULARS	Signature of Registrar	Surrender, Cancellations etc.
		Number	Y	M	D			
1.	Obligations incident to estate	659/98	1998	8	3	The covenants, obligations, liabilities etc. contained or implied in the Instrument of Grant.		
						<p style="text-align: center;">FTE 10:00</p> <p style="text-align: center;">11</p> <p style="text-align: center;">2 192-010-201 November 2011</p> <p style="text-align: center;"></p>		

ANY ENTRIES STRUCK THROUGH IN RED ARE NO LONGER SUBSISTING



HONIARA LAND REGISTRY

FIXED - TERM ESTATE REGISTER

PARCEL NUMBER 192-010-261

PART A - PROPERTY SECTION

PARCEL NUMBER 192-010-261

EASEMENTS APPURTENANT ETC.

Edition 1

COMMISSIONER OF LANDS

Grantor: ABRAHAM EKE

Grantee: ABRAHAM EKE

Term: 50 years From 1/11/05 Rent: \$257.00 a YEAR

Area (approx.): 0.3215 ha. Survey/Plan No: XK 110592

Date of Grant: 18th February 2008 XK 110595 & XK 112595

Mutation Number: -

Superseded Parcels: -

Current Parcels: -

Number of pages in this Register. 2

opened 2/12/08

Entry No.

PART B - OWNERSHIP SECTION

Name, Description and Address of Owner and Restrictions affecting Right of Disposition

Application Number and Date of Presentation Y M D

Observations (Nature of Instrument, Consideration, etc.)

Signature of Registrar

1. RESTRICTION: no subdivision, lease, sublease, transfer or charge is to be registered without the written consent of the Grantor.

213/08

2008

2

19

Grant and s.132(3) of L. & T. Act, (Cap 133).

2. ABRAHAM EKE, P O Box 698, Honiara.

274/10

2010

6

4

Grant. Premium: \$3,100-00. See Application.

3. CAVEAT, by South Pacific Oil, P O Box 879, Honiara.

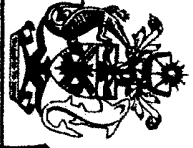
PART C - INCUMBRANCES SECTION

FIXED - TERM ESTATE REGISTER

PARCEL NUMBER.....192-010-2

Entry No.	Nature of Incumbrance	Application Number and Date of Presentation			FURTHER PARTICULARS	Signature of Register	Surrenders, Cancellations etc.
		Y	M	D			
1	Obligations incident to estate	213/08	2008	2 19	The covenants, obligations, liabilities etc. contained or implied in the Instrument of Grant. FTE 10:00 11 192-016-261 November 2011 [Signature]	[Signature]	

ANY ENTRIES STRUCK THROUGH IN RED ARE NO LONGER SUBSISTING



HONIARA LAND REGISTRY

PERPETUAL ESTATE REGISTER

PARCEL NUMBER 192-010-264

PART A - PROPERTY SECTION

PARCEL NUMBER 192-010-264

EASEMENTS APPURTENANT ETC.

20/12/08
Opened
Number of pages in this Register.

Edition 1
Location: HONIARA
Previous Lands Department)
Reference or other description) Lot 3321/VI/H
Area (approx.): 0.1225 ha. Survey/Pj/Plan No. XK 107592 & XK 110592
Mutation Number: 75/07
Superseded Parcels: 192-010-254
Current Parcels: 192-010-260 to 265

Entry No.	PART B - OWNERSHIP SECTION		Application Number and Date of Presentation		Observations (Nature of Instrument, Consideration, etc.)	Signature of Registrar
	Name, Description and Address of Owner and Restrictions affecting Right of Disposition	M	D	Y		
1	COMMISSIONER OF LANDS, for and on behalf of the Government.		1176/07	2007	1130	Mutation

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192-010-264
November 2011
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ANY ENTRIES STRUCK THROUGH IN RED ARE NO LONGER SUBSISTING



HONIARA LAND REGISTRY

PERPETUAL ESTATE REGISTER

PARCEL NUMBER 191-031-81

PART A - PROPERTY SECTION

PARCEL NUMBER 191-031-84

EASEMENTS APPURTENANT ETC.

Edition

1

Opened

21/5/09

Number of pages in this Register.

2

Location: HONIARA

Previous Lands Department)

Lot 350/A/H

Reference or other description)

Area (approx.): 0.0390

ha. Surrendered Plot No. XK 062575

Mutation Number: 47/05

Superseded Parcels: 191-031-82

Current Parcels: 191-031-83 to 85

Entry No.	PART B - OWNERSHIP SECTION		Application Number and Date			Observations (Nature of Instrument, Consideration, etc.)	Signature of Registrar
	Name, Description and Address of Owner and Restrictions affecting Right of Disposition	Number	Y	M	D		
1.	COMMISSIONER OF LANDS, for and on behalf of the Government.	448/05	2005	7	1	Mutation	

PNE
10:00

11

1
191-031-84
November 2011



HONIARA LAND REGISTRY

PERPETUAL ESTATE REGISTER

PARCEL NUMBER 191-031-81

PART A - PROPERTY SECTION

PARCEL NUMBER 191-031-84

EASEMENTS APPURTENANT ETC.

Edition
1

Opened
21/11/09

Number of pages in this Register
2

Location: HONIARA

Previous Lands Department)
Lot 350A/H

Reference or other description)
Area (approx.): 0.0390 ha. Surrendered to the State No. XK 062575

Mutation Number: 47/05

Superseded Parcels: 191-031-82

Current Parcels: 191-031-83, to. 85

Entry No.	PART B - OWNERSHIP SECTION		Application Number and Date of Presentation			Observations (Nature of Instrument, Consideration, etc.)	Signature of Registrar
	Name, Description and Address of Owner and Restrictions affecting Right of Disposition	Y	M	D			
1.	<u>COMMISSIONER OF LANDS, for and on behalf of the Government.</u>	448/05	2005	7	1	Mutation	

PNE
10:00

11
191-031-84
November 2011

PART C - INCUMBRANCES SECTION

PERPETUAL ESTATE REGISTER

PARCEL NUMBER... 191-031-84

Entry No.	Nature of Incumbrance	Application Number and Date of Presentation			FURTHER PARTICULARS	Signature of Registrar	Surrender, Cancellation etc.
		Number	Y	M D			
1.					<p>10:00 PM 11</p> <p>2 191-031-84 November 2011</p> <p><i>[Signature]</i></p>		

ANY ENTRIES STRUCK THROUGH IN RED ARE NO LONGER SUBSISTING



HONIARA LAND REGISTRY

FIXED - TERM ESTATE REGISTER

PARCEL NUMBER 192-010-203

PART A - PROPERTY SECTION

PARCEL NUMBER 192-010-203

ESATEMENTS APPURTENANT ETC.

Edition 2

Grantor: COMMISSIONER OF LANDS
 Grantee: ESTATE DEVELOPMENT COMPANY LIMITED

Term: 50 years From: 1/1/96 Rent: \$450-00 a year

Area (approx.): 0.5927 ha. Surveyed Plan No: XK 102587

Date of Grant: 15th April 1997

Mutation Number: -

Superseded Parcels: -

Current Parcels: -

Opened 2/12/2010
 2011
 12/2010

Number of pages in this Register: 2

2

Entry No.	Part B - OWNERSHIP SECTION	Name, Description and Address of Owner and Restrictions affecting Right of Disposition	Application Number of Presentation	Y	M	D	Observations (Nature of Instrument, Consideration, etc.)	Signature for Registrar
1.		RESTRICTION: no subdivision, lease, sublease, transfer or charge is to be registered without the written consent of the Grantor.	293/97	1997	4	18	Grant and s.132(3) of L. & T. Act, (Cap 133);	
2.		PETER BOYERS, Director, and BEVAN AMOS VOLKROTH, P O Box 1238, Honiara, as joint owners.	50/07	2007	1	22	Transfer. Consideration: \$160,000-00.	
3.		RESTRICTION: no subdivision, lease, transfer, surrender or charge is to be registered without the written consent of the owner of the charge registered at Entry 2 in Part C.	130/08	2008	1	30	Charge and s.168(1)(d) and s.169 of L. & T. Act, (Cap 133).	
4.		CAVEAT, by Solomon Breweries Limited, P O Box 848, Honiara.	388/11	2011	5	2	See Application.	

FTE 10:00

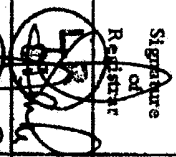

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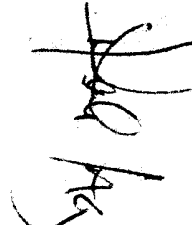
192-010-203
 November 2011

PART C - INCUMBRANCES SECTION

FIXED - TERM ESTATE REGISTER

PARCEL NUMBER. 192-010-2

Entry No.	Nature of Incumbrance	Application Number and Date				FURTHER PARTICULARS	Signature of Registrar	Surrender, Cancellation, etc.
		Number	Y	M	D			
1.	Obligations incident to estate	293/97	1997	4	18	The covenants, obligations, Habilitas etc. contained or implied in the Instrument of Grant.		
2.	Charge	130/08	2008	1	30	Date: 16th January 2008. Chargee: Australia and New Zealand Banking Group Limited. Subject to further advance \$1,600,000-00.		

FTE
 10:00
 11
 192-010-203
 2
 November 2011


ANY ENTRIES STRUCK THROUGH IN RED ARE NO LONGER SUBSISTING

Appendix 7 Mistrust and unfair dealings of Government

1.1 This Appendix is linked to discussion on Chapter 5, paragraph 5.7. The submissions identified the need for the national government to correct unfair dealings in the past in relation to land.

<p>Submissions No. 5;¹ Submission No. 12;² and Submission No. 19³</p>	<p>Law reform must put right unfair dealings on vacant and waste land issues. Waste land is wrong – no such thing as waste or vacant land in custom in Solomon Islands.</p> <p>Government needs to know that most land dealings in the past were unfair to landowners.</p> <p>Vesting minerals below 6 feet in the State is inconsistent with customary law.</p>
<p>Submission No. 6⁴</p>	<p>Customary landowner's ancestor's were first to settle the land and not government or Commissioner of Lands. Government policies, regulations, constitution and law only Steal, Kill, and Destroy land.</p>
<p>Submission No. 7;⁵ and Submission No. 8⁶</p>	<p>All alienated land acquired in the past by Government through unfair dealings should be returned to the rightful customary owners.</p>

¹ Savo Council of Chiefs, Submission No. 5, *Notes taking during consultation meeting* (Sunset Lodge, Savo, Central Islands Province) (23 June 2009).

² Mr. Moses Ramo, Submission No. 12, Notes taken during telephone conversation (Indigenous People Human Rights Advocacy Association, Honiara) (12 March 2010).

³ Mr. Andrew Kuvu, Submission No. 19, *Notes taken during walk-in submission* (Chairman Lengo Landowners Association, Foxwood, Guadalcanal Province) (April 2010).

⁴ Public Solicitor's Office - Landowners' Advocacy and Legal Support Unit, Legal Awareness Workshop, Submission No. 6, *Notes taken during awareness meeting* (Workshop Report - Gizo, Western Province) (5-6 October 2009).

⁵ Provincial Government and other NGOs stakeholders, Submission No. 7, *Notes taken during consultation meeting* (Taro, Choiseul Province) (12 – 15 October 2009).

⁶ West Rennell Council of Chiefs, Submission No. 8, *Notes taken during consultation meeting* (Tingoa, Renbel Province) (20 October 2009).

Submission No. 21 ⁷	<p>Land alienations in the past were obtained through vacant, waste, private and public land. In Luru custom, Choiseul Province, there were no such things as vacant, waste, private and public land. The acquiring of land in the past under these foreign concepts was one of the main causes of problems of tribal land ownership between original land owners and government nowadays. The sale of tribal mother land in the past (19th and twentieth century) have greatly affected land ownership, tribal land boundaries, tabu sites, and so forth. Those who involved in the sale were not the right and important people in the tribe, some just got good relationship with the tribal chiefs. Because of their knowledge in speaking pidgin-English, they involved in the sale of land to Europeans.</p>
Submission No. 27 ⁸	<p>“Land is our mother” – no such a thing as alienated land in custom. Sadly, Government alienated people’s land and allow the land for foreigners to use for commercial purposes. The people are now poor at the expense of government. People who allow their land for development should receive proper revenue sharing from the development. There should be proper negotiation between landowners and the government before any development to happen on customary land.</p> <p>The right landowners were left out from enjoying the benefit of their land. There is a need for a mechanism to fairly return land to custom owners. People who had good education during the protectorate era had sold different people’s land to Government and foreigners.</p>

⁷ Luru Land Conference of Tribal Community Trust Board Inc, Submission No. 21, *Written submission* (Taro, Choiseul Province) (24 March 2010).

⁸ Community leaders from Ludomaho, Dunde, Kidu and reps from Tetepare Descendant Association, Submission No. 27, Notes taken during consultation meeting (Munda, Western Province) (8 – 10 June 2010).

	<p>In colonial times and early independence development on customary land was easy. Now it is harder. People now see land as more important and appreciate its value therefore people less likely to make easy agreement about its use. Because of the past experience (land taken from customary owners for a particular purpose and then it was made public land).</p> <p>Public interests projects and commercial development: the Government past dealings with people about land that resulted in massive lands been alienated by the Government had made people nowadays not willing to deal with government about land regardless of the benefits that such development might bring to the people.</p> <p>Tetepare Descendant Association (TDA) still struggling to get back the Perpetual Estate (PE) from the Commissioner of Lands over a portion of land on Teterape Island. Other big part of the Island already given back to the customary landowners through TDA. Don't know why Government still holding onto their land even though Government no longer has any property on that land. Past Government (protectorate) land deals make people not trust government and don't open up land for development.</p>
Submission No. 31 ⁹	<p>As a landowner she is not happy with the protectorate government's alienation of their land. The land dealings during the protectorate days were really bad. They still are struggling to take back their land from the government even though the landowners now cultivate the land and have properties on the land. She questioned - who is the Commissioner of Lands to own their land? They don't see any fairness</p>

⁹ A female landowner, Submission No. 31, *Notes taken during discussion* (Kirakira, Makira Province) (15 July 2010).

	in the past land dealings that result in the alienation of their land during the protectorate days. Landowners no longer trusted the government because of these past unfair land dealings.
Submission No. 42 ¹⁰	Surrender all Perpetual Estate (PE) to the true owners before any developmental deals.
Submission No. 51 ¹¹	<p>Past land dealings unfairly done; European came and fired gun at locals. Locals flew away – European then occupy the land. After that Europeans invite locals (most of them were not right landowners) and gave them axe, smoking pipes, bottles, and few pounds – those locals then allow the land for Europeans to use.</p> <p>In some places, Europeans (colonial government) consider some land as waste/vacant land – they then took it for them. There is no such a thing like waste/vacant land in Guadalcanal custom.</p>
Submission No. 53 ¹²	He was concerned over the past Protectorate Government dealings to land that result in waste/vacant land taken up by the government. He said such land dealings were bad and that Government need to re-look at those lands alienated from the landowners under such move.

¹⁰ Samson Sonia, Submission No. 42, *Notes taken during Law Week walk-in consultation* (Balasuna, Guadalcanal Province) (20 October 2010).

¹¹ Grace Delight Buga, Submission No. 51, *Notes taken during walk-in submission consultation* (Landowner Isunakomu tribe, Gold Ridge, Suta District, Guadalcanal Province) (1 December 2010).

¹² Wilson Tetea, Submission No. 53, *Notes taken during walk-in submission consultation* (Marau – Main Land, Guadalcanal Province) (25 January 2011).

Appendix 8

THE LAND AND TITLES ORDINANCE

181-001-8, 181-001-9, 181-003-184
LEASE

(Section 133 and 135)

PARCEL NUMBER

181-001-8
181-001-9
181-003-184

23 Oct 2007
[NOTE CAREFULLY THE NOTES IN THE MARGIN AND ON PAGE 4]

LESSOR(S): (a) MR JOHN LOKU - farmer
VOLOA VILLAGE
of (b) GELA, CENTRAL PROVINCE

LESSEE(S): (a) PREMIER - ON BEHALF OF PROVINCE
TULAGI
of (b) CENTRAL PROVINCE

(a) Full name and occupation or other description.

(b) Address.

(c) Delete alternatives inapplicable.

(d) Registered Parcel number.

(e) Delete this clause if no premium paid.

(f) Amount in words and figures.

(g) Registered Parcel Number.

(h) Delete whichever of the phrases underlined is inapplicable.

(i) Insert "yearly" "monthly" or as the case may be

(j) Amount in words and figures.

(k) Insert dates for payment.

(l) The provisions of sections 136, 137, 141(5), 144 and 149 (1) of the Ordinance may be varied or negated by the express terms of the lease.

(m) Delete if inapplicable.

(n) Delete this clause if Lessee is a single individual or corporation. If the clause is not deleted either "joint owners" or "owners in common" etc. must be deleted. If "joint owners" deleted, insert details of undivided shares.

1. The Lessor(s) is/are registered as the owner(s) of (c) the perpetual estate in/the fixed term estate in/a lease of PARCEL NUMBER (d) 181-001-8, 181-001-9 & 181-003-184

2. (e) The Lessor(s) acknowledge(s) the receipt from the Lessee(s) of the sum of (f) ONE HUNDRED & FIFTY DOLLARS

(\$ 150.00)

being the premium required for the grant of this LEASE.

3. The Lessor(s) HEREBY LEASE(S) to the Lessee(s) PARCEL NUMBER (g) 181-001-8, 181-001-9, 181-003-184

(that part of PARCEL NUMBER (g))
more particularly described in the First Schedule hereto
for the term of FIFTY (50) years
from the 24th day of January 19 85

4. The Lessee(s) shall pay to the Lessor(s) the (i) Monthly rent of (j) Forty-one dollars sixty six cents (\$ 41.66) payable (k) Beginning of every month.

5. This LEASE is granted and accepted under and subject to the provisions of the Land and Titles Ordinance and upon and subject to the rights, undertakings, agreements, conditions, covenants and stipulations set out in the Second Schedule hereto and to those implied by the said Ordinance (l) except as otherwise expressly provided to the contrary in this instrument.

6. (m) ~~The rights and easements specified in the Third Schedule hereto are included in this LEASE.~~

7. (n) ~~The Lessee(s) declare that they hold this LEASE as joint owners/owners in common in the following shares:-~~

RULE UP ALL BLANK SPACES BEFORE SIGNING

(o) To be completed where there is no rent in monetary terms. Otherwise delete.

(p) Delete the underlined phrase if clause 6 has been deleted.

(q) Amount in words and figures.

(r) To be completed only if the Lease is in respect of a part of the Parcel. The description must be adequate for identification of the part and a survey plan which meets the approval of the Crown Surveyor will be required.

~~8. (o) The annual value of this Lease together (p) with the rights and easements is hereby declared to be estimated~~
as

(q) (\$)

FIRST SCHEDULE (r)

SECOND SCHEDULE
(Clause 5)

1. The Land is to be used for the purposes of collecting sand; gravel; and stones for buildings, roads and bridges and any other works and to build a sea defence on the sea frontage at Tulagi.

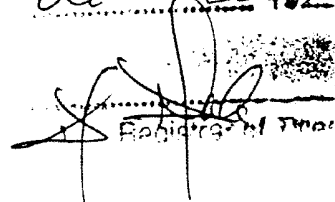
LAND AND

Verified to be a true copy of an instrument consisting of 4 of the Land Registry files 181-001-8, 181-001-9, 181-003-184

Dated this 23

Oct 20 1982

Honiara
Solomon Islands


Registrar of Titles

verified to be a true copy of an instrument consisting of 4 of an instrument in the Land Registry

181-001-8, 181-001-9, 181-001-10, 181-001-11, 181-001-12, 181-001-13, 181-001-14, 181-001-15, 181-001-16, 181-001-17, 181-001-18, 181-001-19, 181-001-20, 181-001-21, 181-001-22, 181-001-23, 181-001-24, 181-001-25, 181-001-26, 181-001-27, 181-001-28, 181-001-29, 181-001-30, 181-001-31, 181-001-32, 181-001-33, 181-001-34, 181-001-35, 181-001-36, 181-001-37, 181-001-38, 181-001-39, 181-001-40, 181-001-41, 181-001-42, 181-001-43, 181-001-44, 181-001-45, 181-001-46, 181-001-47, 181-001-48, 181-001-49, 181-001-50, 181-001-51, 181-001-52, 181-001-53, 181-001-54, 181-001-55, 181-001-56, 181-001-57, 181-001-58, 181-001-59, 181-001-60, 181-001-61, 181-001-62, 181-001-63, 181-001-64, 181-001-65, 181-001-66, 181-001-67, 181-001-68, 181-001-69, 181-001-70, 181-001-71, 181-001-72, 181-001-73, 181-001-74, 181-001-75, 181-001-76, 181-001-77, 181-001-78, 181-001-79, 181-001-80, 181-001-81, 181-001-82, 181-001-83, 181-001-84, 181-001-85, 181-001-86, 181-001-87, 181-001-88, 181-001-89, 181-001-90, 181-001-91, 181-001-92, 181-001-93, 181-001-94, 181-001-95, 181-001-96, 181-001-97, 181-001-98, 181-001-99, 181-001-100

Dated this 23 OCT 1987

Honlara
Solomon Islands

[Handwritten signature]

Dated at TULAGI this 3RD day of APRIL 1987.

(s) In the case of execution by a corporation substitute in this part the usual form of words recording the affixing of its seal

(s) SIGNED by the Lessor(s) in the presence of: [Handwritten signature]

Signature of Witness: [Handwritten signature]
Name of Witness: MASON NEBA
Address: PROVINCIAL OFFICE, TULAGI, CENTRAL

(t) Delete the certificate where execution is by a corporation.

(t) I certify that the above-named JOHN LOKU

* Delete the underlined alternatives which are inapplicable

appeared before me at TULAGI this 3RD day of APRIL 1987, and I have satisfied myself as to his*/her*/their* identity (he*/she*/they* being identified to me by* (u)

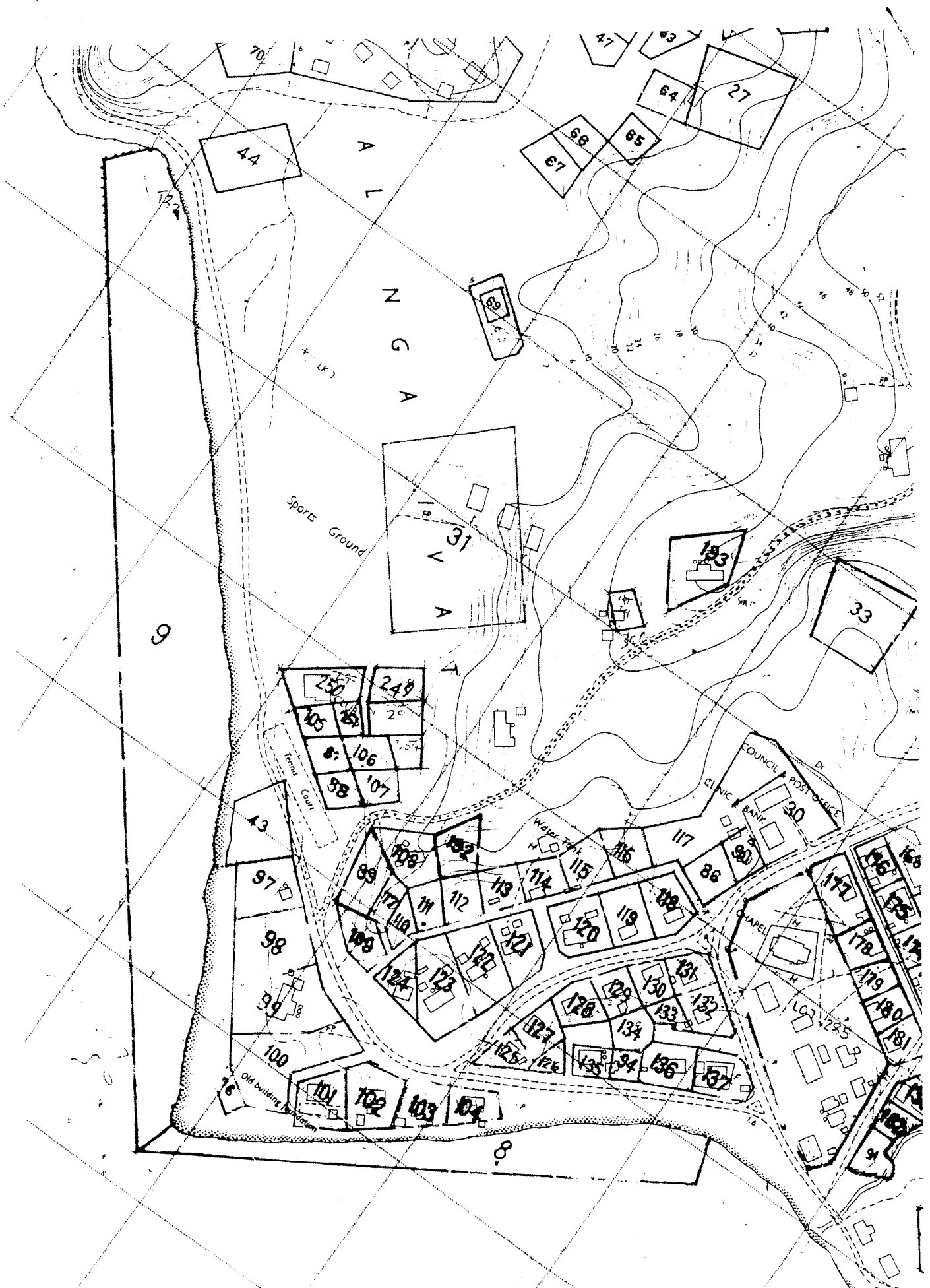
(u) Insert name and address of person identifying, if applicable.

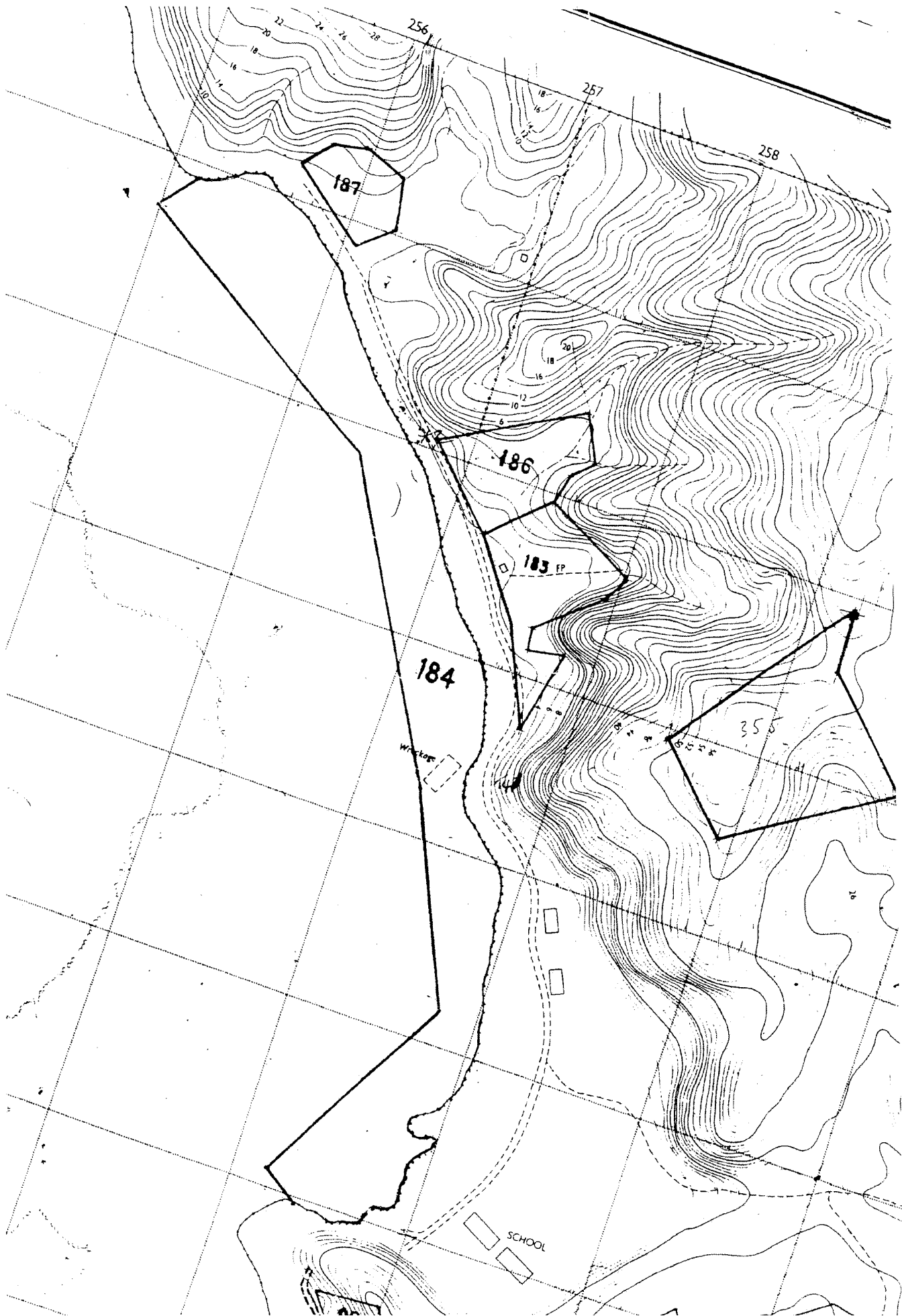
or being well known to me*) and that he*/she*/they* freely and voluntarily signed and appeared fully to understand this instrument.

(v) If instrument executed in British Commonwealth certificate may be given by magistrate, notary public or commissioner for oaths. SEE ALSO NOTE 5 below for other authorised officers.

COMMISSIONER FOR OATHS.
Seal or Stamp of office
(OR if none)
Address (v) An Authorised Officer

[Handwritten signature]
(Signature and description of completing verification certificate)







SCALE 1 : 2,000

Horizontal Datum: WGS 1984

Projection: UTM Zone 47 South

Disclaimer: The Department takes no responsibility for any errors or omissions in this map. The user of this map should verify the accuracy of the information shown on this map by independent means. The Department is not liable for any loss or damage arising from the use of this map. This map is provided for information only. The Department cannot be held responsible for any loss or damage arising from the use of this map. Prepared and published by The Department of Information (DID) Kuala Lumpur. All rights reserved. No part of this publication may be reproduced, stored in a retrieval system, or transmitted in any form or by any means, electronic, mechanical, photocopying, recording, or by any information storage and retrieval system, without the prior written permission of the Department of Information.



Legend

	Highway Road		Track Road
	Unimproved Road		Boundary
	Other Road		Survey Station
	Water		Survey Station
	Plot Number		Survey Station
			Survey Station
			Survey Station
			Survey Station



CIM BL 1
Sheet 1 Rev 2
Revised 13th June 2011

Special Map Request Form

To: **The Surveyor General**
 Ministry of Lands, Housing and Surveys
 P.O. Box G38 Honiara
 Ph: 28156 / 23365 Fax 27298
 Email: jvaikota@lands.gov.sb

Lands

From: Name: PHILIP KANAIRARA Date: 9th June 2011

Designated Position: SENIOR LEGAL OFFICER

Company/Department/Organisation: SI LAW REFORM COMMISSION

Address: P O BOX 1534, KALALA (MTH), HONIARA

Telephone: 38773 FAX: 38760

E-Mail Address: lawreform@legislation.palipanduan.com.tonga

Description of request:

Request cadastral maps in electronic form (PDF form) for all
Provincial Centres and Honiara. This is for our land reform high
water mark project/ reference that our Minister for
Justice & Legal Affairs direct us to do

For Official Use Only

Approved Not Approved PK SG Signature: PK Date: 26/06/11

Comments: Please prepare ^{OPM} Coastal sheets only i.e. PDts
and hard copy sheets. Charge as appropriate.

* Also include: Sizo, Munda, Auki, Tulagi, Bunka, Kirakira, Tare Noto
PDFs & hard copy

Fax or mail this completed form to Surveyor General at the address above.
 Your request will be processed and if successful you will be contacted to arrange an interview to further clarify your map requirements.

DISCLAIMER

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Signed: [Signature] Date: 9/6/11

Printed Name: PHILIP KANAIRARA

(Please Note: Any unsigned request forms will not be processed)

For Official Use Only

Priority code: <input type="checkbox"/> SIISLAP <input type="checkbox"/> MOL	Request processed by:	Date:	Job number:
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HONIARA LAND REGISTRY

PERPETUAL ESTATE REGISTER

PARCEL NUMBER 108-007-1

PART A - PROPERTY SECTION

PARCEL NUMBER 108-007-1

EASEMENTS APPURTENANT ETC.

Edition

1

Opened

11/2/86

Number of pages in this Register.

2

ISABEL PROVINCE

Location: ISABEL PROVINCE

Previous Lands Department) IR 884 BUILT FORESTLAND & STABED

Reference or other description)

Area (approx.): 1.02 ha. Surveyed Plan No. 415400

Mutation Number: [Signature]

Superseded Parcels:

Current Parcels:

PART B - OWNERSHIP SECTION

Entry No.

1

PETITION for and on behalf of Isabel Province

Name, Description and Address of Owner and Restrictions affecting Right of Disposition

Application Number and Date of Presentation

Y M D

Observations (Nature of Instrument, Consideration, etc.)

Signature of Registrar

1/1/86 1996

1 30

First Registration
1 of I.P.A.
(Sec. 95)

2.

CAVEAT: By Mary Baura, of C/- Saint Nicholas Kinder Garten School, P.O. Box R258, Honiara.

716/04 2004

11 8

See Application

PE
10:00

11

108-007-1

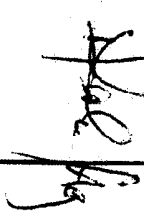
November 2011

[Signature]

PART C - INCUMBRANCES SECTION

PERPETUAL ESTATE REGISTER

PARCEL NUMBER, 108-007-1

Entry No.	Nature of Incumbrance	Application Number and Date of Presentation			FURTHER PARTICULARS	Signature of Registrar	Surrender, Cancellation etc.
		Number	Y	M D			
1.					<p>PE 10:00</p> <p>11</p> <p>108-007-1² November, 2011</p>		

ANY ENTRIES STRUCK THROUGH IN RED ARE NO LONGER SUBSISTING



HONIARA LAND REGISTRY

FIXED - TERM ESTATE REGISTER

PARCEL NUMBER 192-010-203

PART A - PROPERTY SECTION

PARCEL NUMBER ... 192-010-203

EASEMENT'S APPURTENANT ETC.

Edition

2

Grantor: COMMISSIONER OF LANDS

Grantee: ESTATE DEVELOPMENT COMPANY LIMITED

Term: 50 years From: 1/1/96 Rent: \$450-00 a year

Area (approx.): 0.5927 ha. Surveyed Plan No: XK 102587

Date of Grant: 15th April 1997

Mutation Number: -

Superseded Parcels: -

Current Parcels: -

Number of pages in this Register: 2

Opened 8/2/2011
12/2010

FTE
10:00

11

192-010-203
November 2011

Entry No. PART B - OWNERSHIP SECTION Name, Description and Address of Owner and Restrictions affecting Right of Disposition

Application Number and Date of Presentation Y M D

Observations (Nature of Instrument, Consideration, etc.)

Signature of Registrar

1. RESTRICTION: no subdivision, lease, sublease, transfer or charge is to be registered without the written consent of the Grantor.

293/97 1997

4 18

Grant and s.132(3) of L. & T. Act, (Cap 133);

2. PETER BOYERS, Director, and BEVAN AMOS VOLLROTH, P O Box 1238, Honiara, as joint owners.

50/07 2007

1 22

Transfer. Consideration: \$160,000-00.

3. RESTRICTION: no subdivision, lease, transfer, surrender or charge is to be registered without the written consent of the owner of the charge registered at Entry 2 in Part C.

130/08 2008

1 30

Charge and s.168(1)(d) and s.169 of L. & T. Act, (Cap 133).

4. CAVEAT, by Solomon Breweries Limited, P O Box 848, Honiara.

388/11 2011

5 2

See Application.

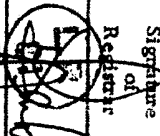

Signature of Registrar

PART C - INCUMBRANCES SECTION

FIXED - TERM ESTATE REGISTER

PARCEL NUMBER

192-010

Entry No.	Nature of Incumbrance	Application Number and Date of Presentation				FURTHER PARTICULARS	Signature of Registrar	Surrender Cancellation No.
		Y	M	D				
1.	Obligations incident to estate	293/97	1997	4	18	The covenants, obligations, liabilities etc. contained or implied in the Instrument of Grant.		
2.	Charge	130/08	2008	1	30	Date: 16th January 2008. Chargee: Australia and New Zealand Banking Group Limited. Subject to further advance \$1,600,000-00.		

FTE
10:00
11
2
192-010-203
November 2011

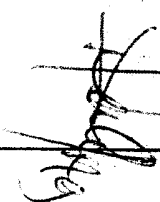

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ANY ENTRIES STRUCK THROUGH IN RHD ARE NO LONGER SUBSISTING

PART C - INCUMBRANCES SECTION

FIXED - TERM ESTATE REGISTER

PARCEL NUMBER.....097-002

Entry No.	Nature of Incumbrance	Application Number and Date of Presentation			FURTHER PARTICULARS	Signature of Registrar	Surrenders, Cancellations etc.
		Number	Y	M D			
L.	Obligations incident to estate	539/90	1990	5 18	The covenants, obligations, liabilities etc. contained or implied in the Instrument of Grant. FTE 10.00 1/7th 20 097-002-17 November 20th 		

ANY ENTRIES STRUCK THROUGH IN RED ARE NO LONGER SUBSISTING



HONIARA LAND REGISTRY

FIXED - TERM ESTATE REGISTER

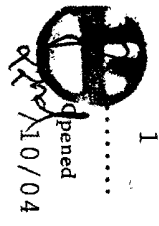
PARCEL NUMBER 097-002-44

PART A - PROPERTY SECTION

PARCEL NUMBER ... 097-002-44 ...

EASEMENTS APPURTENANT ETC.

COMMISSIONER OF LANDS



Edition 1

Number of pages in this Register. 2

Number of pages in this Register. 2

Current Parcels: 097-002-37, 097-002-42, TO 097-002-44

Superseded Parcels: 097-002-37, 097-002-42, TO 097-002-44

Mutation Number: 42/2004

Date of Grant: 7th September 2004

Area (approx.): ha. Survey/Filed Plan No: 42/2004

Term: 75 Years From 1/6/92 Rent: -

Grantee: PREMIER

Grantor: PREMIER

PART B - OWNERSHIP SECTION

Name, Description and Address of Owner and Restrictions affecting Right of Disposition

Application Number and Date of Presentation

Observations (Nature of Instrument, Consideration, etc.)

Signature

Entry No.	Name, Description and Address of Owner and Restrictions affecting Right of Disposition	Application Number	Date of Presentation	Observations (Nature of Instrument, Consideration, etc.)	Signature
1.	RESTRICTION: no subdivision, lease, sublease, transfer or charge is to be registered without the written consent of the Grantor.			Grant & s.132(3) of the L.T.Act. (Cap. 133).	
2.	PREMIER , for and on behalf of the Government.	513/04	2004	Mutation	

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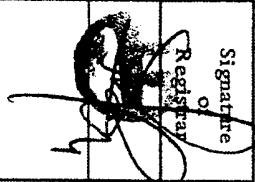
097-002-44

10/04

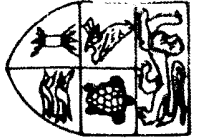
PART C - INCUMBRANCES SECTION

FIXED - TERM ESTATE REGISTER

PARCEL NUMBER, 097-002

Entry No.	Nature of Incumbrance	Application Number and Date of Presentation			FURTHER PARTICULARS	Signature of Registrar	Surrenders, Cancellations etc.
		Number	Y	M D			
1.	Obligations incident to estate	697/92	1992	9 10	<p>The covenants, obligations, liabilities etc. contained or implied in the Instrument of Grant.</p> <p><i>Handwritten:</i> FTE 10.00. 20.00. 097-002-44 November 2004</p>		

ANY ENTRIES STRUCK THROUGH IN RED ARE NO LONGER SUBSISTING



HONIARA LAND REGISTRY

FIXED - TERM ESTATE REGISTER

PARCEL NUMBER 097-0-5-46.....

PART A - PROPERTY SECTION

PARCEL NUMBER 097-005-45.....

EASEMENTS & PURTENTANT ETC.

Edition

Grantor: COMMISSIONER OF LANDS.

Grantee: VILLAGE CHAN CHEUNG HONG.

Opened

Term: 99 Years. From: 1st July 1976. Rent: \$57.00 a year.

Area (approx.): 0.1154 ha. Survey/Filed Plan No: TM 517245, TM 620045

Date of Grant: 22nd March 1977.

Number of pages in this Register.

Mutation Number:

Superseded Parcels:

Current Parcels:

PART B - OWNERSHIP SECTION

Name, Description and Address of Owner and Restrictions affecting Right of Disposition

Application Number and Date of Presentation

Observations (Nature of Instrument, Consideration, etc.)

Sigma-ture of Registr

1. RESTRICTION: No subdivision, lease, sublease, transfer or charge is to be registered without the written consent of the Grantor.

180777 1977 4 18 Grant & s.122(2) of L.T.O (Cap. 99).

2. ~~RESTRICTION: No subdivision, lease, sublease, transfer or charge is to be registered without the written consent of the Grantor.~~

~~180777 1977 4 18 Grant & s.122(2) of L.T.O (Cap. 99).~~

3. ~~RESTRICTION: No subdivision, lease, sublease, transfer or charge is to be registered without the written consent of the Grantor.~~

~~180777 1977 4 18 Grant & s.122(2) of L.T.O (Cap. 99).~~

4. CHAN CHEUNG RENDOVA TRADING COMPANY LIMITED, C/O P O Box 730, Honiara.

558/86 1986 9 25 Transfer consideration: \$8,000-00 (include 097-005-32).

5. RESTRICTION: No subdivision, lease, transfer, surrender or charge is to be registered without the written consent of the owner of the charge registered at Entry 4 in Part C.

559/86 1986 9 25 Charge and s.157(1)(d) and s.158 of L.T.A.

PART C - INCUMBRANCES SECTION

FIXED - TERM ESTATE REGISTER

PARCEL NUMBER: 097-00

Entry No.	Nature of Incumbrance	Application Number and Date of Presentation				FURTHER PARTICULARS	Signature of Registrar	Surrender Cancellations
		Number	Y	M	D			
1.	Obligations incident to estate	193/77	1977	4	16	The covenants, obligations, liabilities etc. contained or implied in the Instrument of Grant.		
2.	Charge	209/77	1977	4	16	Varies a term of charge registered at entry 2. Date of instrument: 10th March 1977. Limit now to \$25,000-00 (included 097-005-113 and 097-005-114).		
3.	Charge	201/84	1984	5	11	Varies a term of charge registered at entry 2. Date of instrument: 10th March 1977. Limit now to \$25,000-00 (included 097-005-113 and 097-005-114).		
4.	Charge	559/86	1986	9	25	Date: 15th September 1986. Chargee: National Bank of Solomon Islands Limited. Subject to further advance to \$85,000-00 (included 097-005-113 and 097-005-114).		
5.	Variation of Charge	175/88	1988	3	1	Varies charge at Entry 4. Date of instrument: 1st March 1988. Limit now to \$110,000-00 (included 097-005-113 and 097-005-114).		
6.	Variation of Charge	792/88	1988	10	10	Varies charge registered at Entry 4. Date of instrument: 7th October 1988. Limit now to \$150,000-00 (included 097-005-113 and 097-005-114).		
7.	Variation of Charge	905/89	1989	10	11	Date of instrument: 11th October 1989. Varies charge registered at Entry 4. Limit now to \$200,000-00.		
8.	Variation of Charge	1177/90	1990	11	19	Varies charge registered at Entry 4. Date of instrument: 19th November 1990. Limit now: \$235,000-00.		
9.	Variation of Charge	962/99	1999	11	8	Varies charge registered at Entry 4. Date of instrument: 8th November 1999. Limit now: \$305,000-00 (includes other parcels).		
10.	Variation of Charge	513/02	2002	11	28	Varies charge at Entry 4. Date of instrument: 21st November 2002. Limit now: \$455,000-00.		
11.	Transfer of Charge	1079/07	2007	11	6	Date of instrument: 23rd October 2007. Transfer Charge registered at entry 4 to Bank of South Pacific Limited.		

ANY ENTRIES STRUCK THROUGH IN RED ARE NO LONGER SUBSISTING



HONIARA LAND REGISTRY

FIXED - TERM ESTATE REGISTER

PARCEL NUMBER 097-001

PART A - PROPERTY SECTION

PARCEL NUMBER 097-005-55

EASEMENTS APPURTENANT ETC.

Edition

Grantor: COMMISSIONER OF LANDS

Grantee: BRITISH SOLOMONS TRADING COMPANY LIMITED

Term: 82 years From: 1/1/74 Rent: \$90-00 a Year

Area (approx.): 0.2609 ha, Survey/Filed Plan No: TM 620042

Date of Grant: 22nd January 1974

Mutation Number: -

Superseded Parcels: -

Current Parcels: -

PART B - OWNERSHIP SECTION

Name, Description and Address of Owner and Restrictions affecting Right of Disposition

Application Number and Date of Presentation

Observations (Nature of Instrument, Consideration, etc.)

Signature of Registrar

Entry No.	Name, Description and Address of Owner and Restrictions affecting Right of Disposition	Application Number and Date of Presentation	M	D	Observations (Nature of Instrument, Consideration, etc.)	Signature of Registrar
1.	RESTRICTION: no subdivision, lease, sublease, transfer or charge is to be registered without the written consent of the Grantor.	27/74	1	24	Grant and s.122(3) of L.T.O. (Cap 93).	<i>[Signature]</i>
2.	VATULE LAND DEVELOPMENT ASSOCIATION COMPANY LIMITED, P O Box 1, Gizo, Western Province.	10/00	3	7	Transfer. Consideration: \$525,000-00.	<i>[Signature]</i>
3.	RESTRICTION: no subdivision, lease, transfer, surrender or charge is to be registered without the written consent of the owner of the charge registered at Entry 2 in Part C.	10/00	3	7	Charge and s.168(1)(d) and s.169 of L. & T. Act (Cap 133).	<i>[Signature]</i>
4.	CAVEAT by MICAH ALOPIPU, C/- Forum Fisheries Agency, P O Box 699 Honiara.	5/2007	2	14	See Application	<i>[Signature]</i>
5.	CHACHABULE AMOI, P O Box 1106, Honiara.	136/05	3	23	Transfer. Consideration: \$270,000-00.	<i>[Signature]</i>
6.	RESTRICTION: no subdivision, lease, transfer, surrender or charge is to be registered without the written consent of the owner of the charge registered at Entry 3 in Part C.				Charge and s.168(1)(d) and s.169 of L. & T. Act, (Cap 133)	<i>[Signature]</i>
7.	CAVEAT by Mark Keston Kennedy, Gizo Hotel, P O Box 30 Gizo, Western Province.	10/00	9	21	See Application	<i>[Signature]</i>




LANDS 68

ANY ENTRIES STRUCK THROUGH IN RED ARE NO LONGER SUBSISTING

PART C - INCUMBRANCES SECTION

FIXED - TERM ESTATE REGISTER

PARCEL NUMBER... 097-02

Entry No.	Nature of Incumbrance	Application Number of Presentation	Year	Month	Day	FURTHER PARTICULARS	Signature of Registrar	Surrenders, Cancellations etc.
1.	Obligations incident to estate	27/74	1974	1	24	The covenants, obligations, liabilities etc. contained or implied in the instrument of Grant.		
2.	Charge	164/2000	2000	3	7	Date: 2nd December 1999. Chargee: Development Bank of Solomon Islands. Amount Loan: \$434,600-00.		DISCHARGE 136/05
3.	Charge	136/05	2005	3	23	Date: 21st March 2005. Chargee: Development Bank of Solomon Islands. Amount of Loan: \$270,000-00.		

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November 2005
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ANY ENTRIES STRUCK THROUGH IN RED ARE NO LONGER SUBSISTING



HONOLULU LAND REGISTRY

FIXED - TERM ESTATE REGISTER

PARCEL NUMBER 097-005

PART A - PROPERTY SECTION

PARCEL NUMBER 097-005-81

EASEMENTS APPURTENANT ETC.

Edition

Grantor: **COMMISSIONER OF LANDS**

Grantee: **HENRY KUMA**

Term: 50 years From: 1/10/92 Rent: \$150-00 a year

Area (approx.): 0.0690 ha, Survey/Registered Plan No: TM 617045

Date of Grant: 20th August 1993

Mutation Number: -

Superseded Parcels: -

Current Parcels: -

Number of pages in this Register.
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Entry No.	PART B - OWNERSHIP SECTION	Name, Description and Address of Owner and Restrictions affecting Right of Disposition			Application Number and Date of Presentation			Observations (Nature of Instrument, Consideration, etc.)	Signature of Registrant
		Y	M	D	Y	M	D		

1. **RESTRICTION:** no subdivision, lease, sublease, transfer or charge is to be registered without the written consent of the Grantor.

2. **HENRY KUMA**, P O Box 108, Gizo, Western Province, 75% undivided shares trading as and on behalf of Magheso Marine Enterprises.


3. **BILLY TERA QAQARA**, P O Box 108, Gizo, Western Province, 25% undivided shares trading as and on behalf of Magheso Marine enterprises.

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 097-005-81
 November 2001
 [Signature]

PART C - INCUMBRANCES SECTION

FIXED - TERM ESTATE REGISTER

PARCEL NUMBER...**097.00**

Entry No.	Nature of Incumbrance	Application Number and Date of Presentation			FURTHER PARTICULARS	Signature of Registrar	Surrenders, Cancellations etc.
		Number	Y	M D			
1.	Obligations incident to estate	714/93	1993	8 20	<p>The covenants, obligations, liabilities etc. contained or implied in the Instrument of Grant.</p> <p><i>FT3</i> <i>10.00</i></p> <p><i>1/15</i></p> <p><i>097-000-87</i> <i>2</i> <i>Notional</i></p>		

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HONIARA LAND REGISTRY

FIXED - TERM ESTATE REGISTER

PARCEL NUMBER 097-005

PART A - PROPERTY SECTION

PARCEL NUMBER 097-005-93

EASEMENTS APPURTENANT ETC.

Edition 11



Opened 14/2002

Number of pages in this Register. 2

Superseded Parcels: -

Grantor: **COMMISSIONER OF LANDS**

Grantee: **TRADING COMPANY (SOLOMONS) LIMITED**

Term: 45 years From: 1/1/78 Rent: \$75-00 a Year

Area (approx.): 0.3624 ha, Survey/Plan No: TM 615045 & IM 617045

Date of Grant: 19th October 1978

Mutation Number: -

Current Parcels: -

PART B - OWNERSHIP SECTION

Name, Description and Address of Owner and Restrictions affecting Right of Disposition

Entry No.	Application Number of Presentation	Year	Days	Observations (Nature of Instrument, Consideration, etc.)	Signature Register
1.	1019/78	1978	11	Grant and s.132(3) of L. & T. Act (Cap 133).	
2.	1037/98	1998	12	Transfer. Consideration: \$400,000-00.	
3.	743/99	1999	8	Charge and s.168(1)(d) and s.169 of L. & T. Act (Cap 133).	
4.	313/04	2004	5	Change of Company Name.	

RESTRICTION: no subdivision, lease, sublease, transfer or charge is to be registered without the written consent of the Grantor.

~~INDIAN PACIFIC SEAFOODS LIMITED, P O Box 202, Honiara.~~

~~RESTRICTION: no subdivision, lease, transfer, surrender or charge is to be registered without the written consent of the Grantor.~~

~~GEMSTAR SEAFOODS LIMITED, P O Box 202, Honiara.~~

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11/04

097-005-93


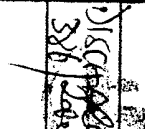

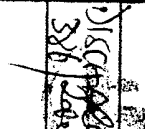
November 2004

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PART C - INCUMBRANCES SECTION

FIXED - TERM ESTATE REGISTER

PARCEL NUMBER... 097-00

Entry No.	Nature of Incumbrance	Application Number and Date of Presentation			Further Particulars	Signature of Registrar	Surrender, Cancellations etc.
		Y	M	D			
1.	Obligations incident to estate	1019/78	1978	11 2	The covenants, obligations, liabilities etc. contained or implied in the Instrument of Grant.		
2.	Charge	147/99	1999	8 18	Date: 15th July 1999. Chargee: Robyn Bycroft. Amount of loan: \$A\$40,000.00.		

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 FT 2
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 019-003-98
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 [Signature]

ANY ENTRIES STRUCK THROUGH IN RED ARE NO LONGER SUBSISTING



HONIARA LAND REGISTRY

FIXED - TERM ESTATE REGISTER

PARCEL NUMBER 097-005-

PART A - PROPERTY SECTION

PARCEL NUMBER ...097-005-96...

EASEMENT'S APPURTENANT ETC.

28/1/05 opened

Number of pages in this Register.

Edition 1

Grantor: **COMMISSIONER OF LANDS**

Grantee: **MARKWARTH OIL LIMITED**

Term: 25 Years From: 1/7/03 To: 27/7/28

Area (approx.): 0.5636 ha, Survey/E.P.G. Plan No: TM 615045

Date of Grant: 24th September 2004

Mutation Number: -

Superseded Parcels: -

Current Parcels: -

Entry No. 1

PART B - OWNERSHIP SECTION

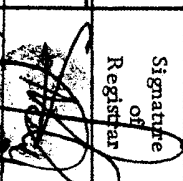


Name, Description and Address of Owner and Restrictions affecting Right of Disposition

Entry No.	Name, Description and Address of Owner and Restrictions affecting Right of Disposition	Application Number of Presentation	Y	M	D	Observations (Nature of Instrument, Consideration, etc.)	Sigature of Register
1.	RESTRICTION: no subdivision, lease, sublease, transfer or charge is to be registered without the written consent of the Grantor.	836/04	2004	12	20	Grant and s.132(3) of the L. & T. Act, (Cap 133).	
2.	MARKWARTH OIL LIMITED, C/O P O Box 177 Honiara.					Grant Premium: \$34,000-00.	
3.	CAVEAT: BY GRP & Associates Limited, P.O. Box 1289 Honiara.	58/05	2005	2	17	See Application	
4.	GRP & ASSOCIATES LIMITED, P O Box 13, Gizo, Western Province.	357/06	2006	5	17	Transfer. Consideration: \$1,000,000-00	
5.	RESTRICTION: no subdivision, lease, transfer, surrender or charge is to be registered without the written consent of the owner of the charge registered at Entry 2 in Part C.					Charge and s.168(1) (d) and s.169 of L. & T. Act, (Cap 133).	

PART C - INCUMBRANCES SECTION

FIXED - TERM ESTATE REGISTER

PARCEL NUMBER... 097-003

Entry No.	Nature of Incumbrance	Application Number and Date of Presentation				FURTHER PARTICULARS	Signature of Registrar	Surrenders, Cancellations etc.
		Number	Y	M	D			
1.	Obligations incident to estate	836/04	2004	12	20	The covenants, obligations, liabilities etc. contained or implied in the Instrument of Grant.		
2.	Charge	357/06	2006	5	17	Date: 9th May 2006. Chargee: National Bank of Solomon Islands Limited. Subject to further advance \$10,130,000-00.		
3.	Transfer of Charge	1079/07	2007	11	6	Date of instrument: 23rd October 2007. Transfer Charge registered at entry 2 to Bank of South Pacific Limited.		

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097-003-92
November 2007

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ANY ENTRIES STRUCK THROUGH IN RED ARE NO LONGER SUBSISTING



HONIARA LAND REGISTRY

FIXED - TERM ESTATE REGISTER

PARCEL NUMBER 098-011

PART A - PROPERTY SECTION

PARCEL NUMBER 098-011-36

EASEMENTS APPURTENANT ETC.

Edition

Grantor: COMMISSIONER OF LANDS

Grantee: SOLOMON ISLANDS PORTS AUTHORITY

1
Term: 50 years From: 1/1/98 Rent: \$3,160-00 a year (includes other parcels)

Opened 11/4/2000 Area (approx.): 39.3745 ha. Survey/Field Plan No: UL 015902

Date of Grant: 20th March 2000

Mutation Number: -

Superseded Parcels: -

Current Parcels: -

PART B - OWNERSHIP SECTION

Name, Description and Address of Owner and Restrictions affecting Right of Disposition

Application Number of Presentation Y M D

Observations (Nature of Instrument; Consideration, etc.)

Signature of Registrar

1. RESTRICTION: no subdivision, lease, sublease, transfer or charge is to be registered without the written consent of the Grantor.

717/99

1999

8 10

Grant and s.132(3) of L. & T. Act (Cap 133).

2. SOLOMON ISLANDS PORTS AUTHORITY, P O Box 307, Honiara.

3. CAVEAT: By Clement Base, Premier, Western Province.

244/2002

2002

6 18

Grant. Premium: \$30,800-00 (includes other parcels). See Application.

FTB
10/02

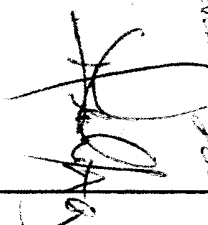

1/15

L
098-011-36
New contract 2001

PART C - INCUMBRANCES SECTION

FIXED - TERM ESTATE REGISTER

PARCEL NUMBER 098-011-

Entry No.	Nature of Incumbrance	Application Number and Date of Presentation				FURTHER PARTICULARS	Signature of Registrar	Surrenders, Cancellations etc.
		Number	Y	M	D			
1.	Obligations incident to estate	717/99	1999	8	10	The covenants, obligations, liabilities etc. contained or implied in the Instrument of Grant. 10/00 FTS 11/14 2 098-011-30 Newman 0201 		

ANY ENTRIES STRUCK THROUGH IN RED ARE NO LONGER SUBSISTING



HONIARA LAND REGISTRY

FIXED - TERM ESTATE REGISTER

PARCEL NUMBER 098-012-426

PART A - PROPERTY SECTION

PARCEL NUMBER 098-012-426

EASEMENTS APPURTENANT ETC.

Edition 1
 Grantor: **COMMISSIONER OF LANDS**
 Grantee: **OBA TRADING LIMITED**
 Term: 50 years From: 1/1/2003 Rent: \$500.00
 Area (approx.): 0.5873 ha, Survey No: UL 012892
 Date of Grant: 10th May 2004
 Mutation Number: _____
 Superseded Parcels: _____
 Current Parcels: _____

Number of pages in this Register.
 2


Entry No.	PART B - OWNERSHIP SECTION		Application Number and Date of Presentation			Observations (Nature of Instrument, Consideration, etc.)	Signature of Registrar
	Name, Description and Address of Owner and Restrictions affecting Right of Disposition	Y	M	D			
1.	RESTRICTION: no subdivision, lease, sublease, transfer or charge is to be registered without the written consent of the Grantor.	275/04	2004	5	11	Grant & s.132(3) of the L.T.Act. (Cap. 133). Grant Premium: \$5,000.00	
2.	OBA TRADING LIMITED , P.O. Box 1175, Honiara.						
3.	CAVEAT , by Lawrence Teibi Timeline, P O Box 1251, Honiara.	336/10	2010	6	29	See Application.	

1
 FRE
 10:00
 11
 098-012-426
 November 2011
[Signature]

PART C - INCUMBRANCES SECTION

FIXED - TERM ESTATE REGISTER

PARCEL NUMBER, 098-012-11

Entry No.	Nature of Incumbrance	Application Number and Date of Presentation		D	FURTHER PARTICULARS	Signature of Registrar	Surrenders, Cancellations etc.
1.	Obligations incident to estate	225/04	2004-5	11	<p>The covenants, obligations, liabilities etc. contained or implied in the Instrument of Grant.</p> <p style="text-align: center;">FINE ID: 00 11</p> <p style="text-align: center;">2 098-012-426 November 2011</p> <p style="text-align: right;"><i>[Signature]</i></p>		

ANY ENTRIES STRUCK THROUGH IN RED ARE NO LONGER SUBSISTING

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