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Is Konebada Petroleum Park Authority a scam? Is National Gazette No. G76/2017 another Government-sanctioned scam?

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The use of State-established instruments and institutions to legitimise scams is becoming an increasing trend in Papua New Guinea (PNG). Recently, the Manumanu land deal has become a national scandal for the current government. Two past examples with similar outcomes are the Special Agriculture and Business Leases (SABL) and the Taurama Valley. In both cases, State instruments and institutions have been used to legitimise land grabbing at the expense of landowners and developers alike: SABL by the Department of Lands and Physical Planning (DLPP) and Taurama Valley by the Office of Urbanisation.

In this article, we want to bring to the attention of the public another possible large scale scam that affects land belonging to the customary landowners of Tatana, Baruni, Roku, Kouderika, Porebada, Boera, Papa, and Lealea, and the business community along the Fairfax Harbour, starting with Puma at Napanapa on the West and ending with Motukea and the Edai Township towards the PNG LNG Site.

Through National Gazette No. G76 dated 07 February 2017, the Minister for Lands and Physical Planning has declared over 23,000 hectares (starting at Fairfax Harbour and ending at the PNG LNG Site) to fall within the administrative authority of the Konebada Petroleum Park Authority (KPPA). The declared area covers sea, land, the villages named above (except for Tatana and Baruni), and all businesses within the declared area.

At the outset, it should be noted that there is a serious problem with the new boundary. The zone, as gazetted, does not exclude the LNG Project Area. Given that the 'Schedule' excludes Waypoint No 9, the gazetted 'Zone' is null and void. If this cannot be done properly then what else are they not doing properly?

Questions abound...

The declaration of this new boundary raises many questions, including the following:

1. What is the KPPA?
2. What has the KPPA done so far?
3. Why did the Minister for Lands and Physical Planning (Minister for Lands henceforth) re-zone the area of the Konebada Petroleum Park?
4. On what basis and what development plan?
5. Have the leaseholders and traditional villagers been consulted? Is there a legal process and has it been followed?
6. What implications are there for the village communities within the declared area?
7. What implications are there for the businesses that operate within the declared area?

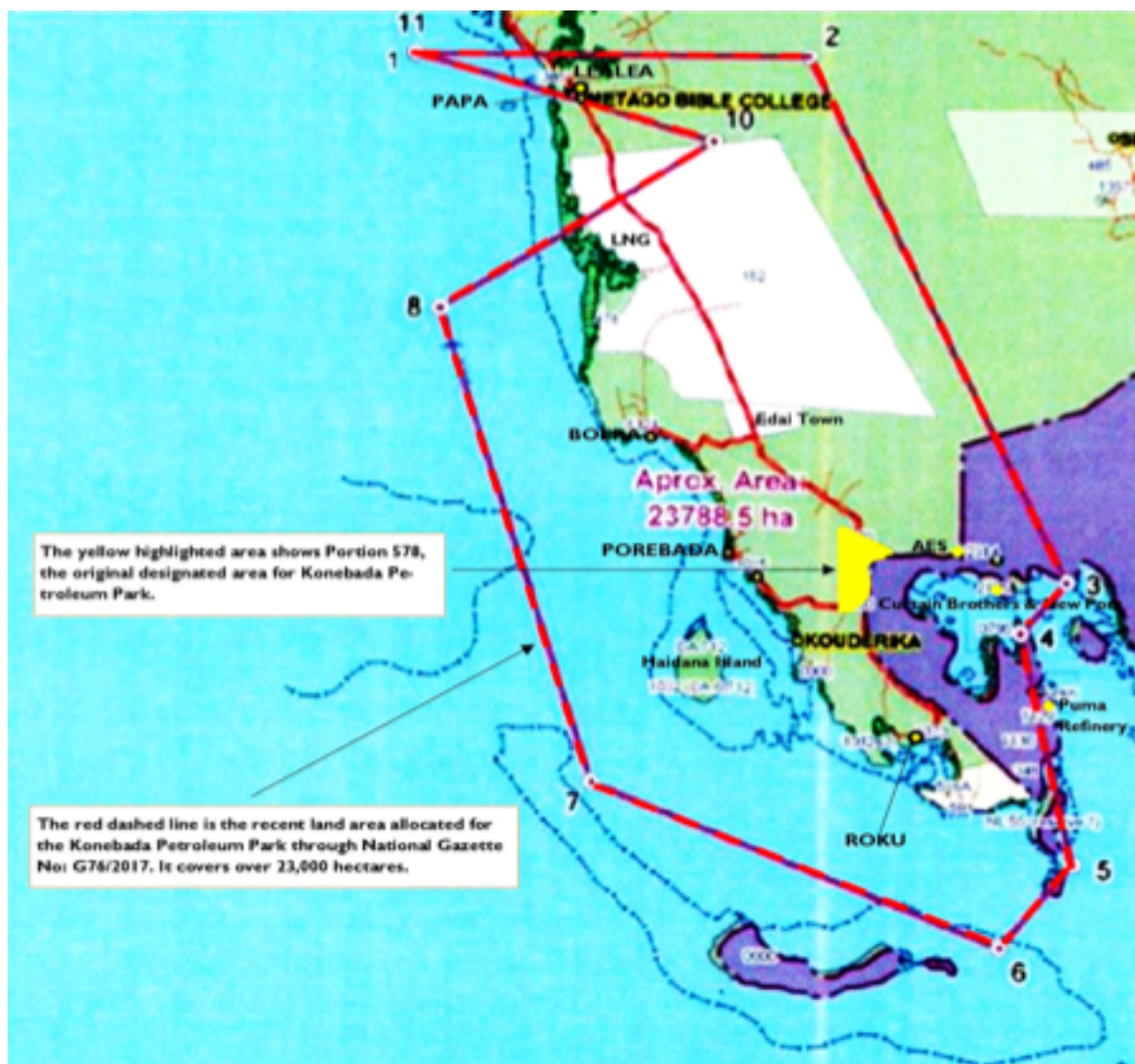
The list of questions are indeed endless. As a general rule of thumb, it is reasonable to assume that the more questions there are, the more fishy developments of this nature become.

Is this decision simply another scam by powerful individuals at the expense of traditional customary landowners and good corporate citizens?

What has the Minister for Lands done?

Government Gazette No. G76/2017 extended the land area from Portion 578 (200 hectares) to a massive 23,000 hectares. This covers the coastline from Motukea to Napanapa to Boera, minus PNG LNG, and comes back into Motukea over the land along the ridge. It covers the Motuan and Koitabuan villages of Roku, Kouderika, Porebada, Boera, Papa, and Lealea. Business houses in the vicinity of the new Port at Motukea, Curtain Brothers, AES, and Puma's oil refinery are included. The land newly declared land covers land largely under customary ownership.

Map showing the new gazette boundary of Konebada Petroleum Park



The Minister for Lands, whether knowingly or unknowingly, has exercised powers purportedly granted by Section 3(4) of KPPA Act 2008 (as amended) which states: "The area of the Park shall be as defined by notice published by the Minister responsible for Lands and Physical Planning matters in the National Gazette from time to time, but such a notice may not include in that area the area of any land that is within the LNG Project Area and to the extent that is within the LNG Project Area the notice will by force of this Subsection (4) be deemed to be void and of no force or effect."

Evolution of the Konebada Petroleum Park Authority

Although the KPPA was established in 2008 through an Act of Parliament to oversee the development of the Konebada Petroleum Park (KPP), it has a long history.

It appears that the lapse in focus between the time when the idea of a petroleum park was first mooted, and the establishment of the authority, has provided fertile grounds for scammers to emerge and take root.

The idea of a petroleum park first surfaced when consultations around the Papua New Guinea (PNG) Queensland Gas Pipeline Project were being mooted prior to 2004. The Petroleum Park was to accommodate a gas-based petrochemical industry.

The legislative process to create the authority was a prolonged one. In order to progress, a company was incorporated in March 2005 under the name Konebada Petroleum Park Authority Limited (KPPAL), as a vehicle to start the process of creating the petroleum park.

A company search on the Investment Promotion Authority (IPA) website (on Tuesday 14 March 2017), revealed that Konebada Petroleum Park Authority Limited was established on 17 March 2005. The company name history showed that from 7 May 2004, the date of incorporation, to 16 March 2005, the company was known as Magico Limited. Currently, there are two directors of the company, both appointed in July 2005, one of whom is also the only listed shareholder of the company (being appointed in September 2005). Further, one of the two directors is a former Secretary of the Department of Petroleum and Energy. The last annual return filed was in June 2008.

The legal mechanism used to establish the company is unclear. Section 8(1) of KPPA Act 2008 states "The Authority may, subject to prior approval of the Minister responsible for finance matters, incorporate one or more authority subsidiaries, which shall have all the powers of a company under the Companies Act 1997". This grants powers to the Authority to incorporate a company. The company, however, was established in 2005, three years prior to the establishment of the Authority in 2008.

Actions were obviously taken in reverse-order. Were these actions legal? Further muddying the waters is that the relationship between the registered company and the KPPA is unclear. What happened to the assets and liabilities of the company at the time the KPPA was established by an Act of Parliament? Given that the company appears to be operating as per the IPA records, what is the status of this company and how does it fit into the operations of the KPPA?

The Act that established the authority was finally passed by Parliament in 2008 - almost three years following the establishment of the company.

The role of the KPPA, as stipulated under the Act, is to facilitate, regulate and manage the park. This includes planning and coordinating development through engagement of current and future stakeholders and bringing in investment. The KPPA Act was amended in 2009 to incorporate changes after the signing of the PNG Liquefied Natural Gas Agreement. The amendment excluded the land occupied by the PNG LNG project at Caution Bay from the control of the KPPA.

The main point to note from this analysis is that Konebada Petroleum Park Authority Limited was incorporated to obtain title over available parcels of State owned land for the legitimate purposes of the project.

What has Konebada Petroleum Park Authority done?

The physical location was going to be Portion 578, comprising some 200 hectares on State land (see map attached). An urban development lease (UDL) was created and the title was granted to Konebada Petroleum Park Authority on 11 April 2007. A comprehensive master plan was developed for a fully-integrated township plan with provisions for a secondary school and shopping complex, along with the Petrochemical-related activities. This township would also have served the needs of the local villages including new activities proposed under the petroleum park developments.

The government provided funding for the operations of the KPPA under the annual budget cycle over these years. Unfortunately, nothing much is on the ground to show for the funding provided by the State. No township nor any kind of development occurred over Portion 578 and the lease expired on 11 April 2012.

A Parliamentary Accounts Committee report released in 2010 provides a damning report on the operations of the company and the associated lack of financial accountability. No actions have been taken to penalise those implicated. As in many cases of abuse and corruption in PNG, the perpetrators remain free.

Given this brief background, the discussions that follow focus on two specific issues:

1. Status of the original UDL

The original UDL over Portion 578, totalling about 200 hectares, expired on 11 April 2012. At the time of expiry, developments using the funding were negligible. This is a strong ground for forfeiture of the UDL. On 23 March 2012, one month prior to the expiration of Konebada Petroleum Park Authority Limited's UDL, three Business (Light Industrial) Leases were issued over Portions 2669, 2670 and 2671, where 2671 was the proposed site of a new Redscar High School.

Each of the three leases were in the favour of the Konebada Petroleum Park Authority and each for terms of 99 years, commencing at the time of issuance. How did this happen when the aforementioned company was all but non-existent, given that its last return to IPA was filed in 2008?

It is possible to conclude that each of the three titles finally registered on 24 August 2016 have since been transferred to others. Who paid what to whom remains anyone's guess. From a technical point of view, the events are quite extraordinary, but not unexpected if what we are discussing here is in fact a scam. What seems clear is that what has transpired is a prime example of the abuse of due and proper process supported and abated by the DLPP.

The KPPA had never developed a township, nor developed the 200 hectares of land allocated in the past. So why has this non-functioning Authority been given more land over large portions of existing businesses, as well as long established traditional customary land and villages?

2. Actions of the Minister for Lands are questionable

The Minister for Lands faulted in his due diligence responsibilities on several fronts, including the following three:

i. Track Record of KPPA

What is the real mandate of the KPPA? Does it really operate and function as intended? What are its achievements to date? Does it need the land mass covered in the Gazette? Basic due diligence should demonstrate that the KPPA has a bad track record in failing to develop Portion 578, and failed to account for the taxpayers money made available for its use. The Minister erroneously allowed the expired UDL to be illegally renewed and granted as mentioned earlier, and failed to seek clarification on the status of the funding following the Parliamentary Accounts Committee Report.

A responsible and accountable State minister should exercise such due diligence. Instead, this is an example of a case of abuse of Ministerial powers. If there really is a need for a petroleum park, the justification for the existence and operations of the KPPA is no longer relevant as there is sufficient State land adjacent to the PNG LNG area. The land currently under Gazette is therefore not suitable for the purpose.

Put simply, there is no need for declaring land of this size, 23,000 hectares, to fall under the ambit of KPPA.

ii. Impact on Customary Landowners

The declared land is encroaching on the traditional villages of Roku, Koudrika, Porebada, Boera, Papa, and Lealea. Not only is the land the inheritance of these landowners, but threatens their

very survival, as the villages fall within the declared land of the Authority.

The customary owners use of and access to their land and sea are now subject to the control of this authority. This is irresponsible on the part of the Minister for Lands, who appears to have signed the gazette documents blindly. What does the future hold for the traditional inhabitants? The Minister for Lands needs to provide a response to this question to the people of Roku, Kouderika, Porebada, Boera, Papa and Lealea.

iii. Impact on Business

The declared area includes businesses that have been built over many year under difficult circumstances, and which are now worth hundreds of millions of Kina. These include Motukea, AES, Puma's refinery along the Fairfax Harbour, and Edai Town next to the PNG LNG site. It is a blatant abuse of power and office with significant neglect to subject these businesses and their operations to a questionable institution such as the KPPA when it comes to dealing with the land upon which their businesses are established. Will these businesses be forced to deal with another bureaucratic monster? Will the value of their investments be undermined? Will this whole affair further undermine business confidence, and willingness to invest, in these challenging economic times?

The Minister for Lands needs to justify his actions to the businesses concerned, the Parliament, and the wider public.

Conclusion

This article is informed by the preliminary information so far gathered. PNG NRI is committed to further investigating the KPPA, and to protecting the land under the POM LNG Corridor in the interests of protecting customary landowners, businesses with interests there, and for the orderly promotion and development of PNG's land for the benefit of generations into the future.

Given the potential impacts on businesses and traditional villages within the declared area, the intent of this article is to clearly expose the KPPA as a State-sanctioned scam. Whether knowingly or otherwise, it is a scam that creates avenues for land grabbing facilitated by the Minister for Lands and Physical Planning. It sits ingloriously among past scams, such as Manumanu land and the Taurama valley.

The Time to Act is NOW

The government must intervene immediately and stop this scam, before it becomes a monster that kills businesses and facilitates land grabbing - a repeat of Taurama and Manumanu experiences within the Port Moresby LNG Corridor. The Port Moresby LNG Corridor is a prime piece of real estate which can be developed into a township that benefits the villagers, Central Provincial Government, the National Capital District (NCD), and businesses and visitors to Port Moresby.

Unless corrective actions are taken immediately to retract the Gazette and abolish the KPPA, the government will have institutionalised a process for land grabbing and the killing for business interests, and instead promoted disorderly development.

The parallels between Manumanu and the KPPA saga are obvious. As it did with Manumanu, the government should take a strong and unequivocal stance. Those responsible, including those in the management and boards of the KPPA and KPPA Limited, the Minister for Lands and Physical Planning, and technical staff within DLPP, should be thoroughly investigated and, if necessary, charged.

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