



THE INDEPENDENT STATE OF PAPUA NEW GUINEA
PUBLIC ACCOUNTS COMMITTEE
FINAL REPORT

REPORT TO NATIONAL PARLIAMENT

**INQUIRY INTO THE NATIONAL MUSEUM AND ART GALLERY
AND THE SALE AND EXPORT OF THE SWAMP GHOST AIRCRAFT**

**Excerpts From PAC Final Report Mentioning
"Board of Trustees" or "Trustees"**

Executive Summary

2.19 The Acting Director and management of the National Museum and Art Gallery intentionally misled the Board of Trustees as to the nature and the effect of the "Contract" between the Museum and Aero Archaeology LLC for the sale of the Swamp Ghost, in that the Trustees were told, inter alia,:

(viii) That litigation would issue against the Trustees personally unless they approved the Contract.

Moreover the Trustees were intentionally misled in that they were **not** told by Museum Management, before the Board of Trustees approved the Contract for sale of the Swamp Ghost that:

(iv) Of the powers of the Museum or the Board of Trustees to enter into or approve such a transaction – which did not exist; or

2.21 Had the Board of Trustees been properly and fully advised, they would not have approved the Contract.

2.22 Combining these failures with the threat to Trustees of personal litigation unless they approved the sale and export of the Swamp Ghost, a concerted subversion of the Independent Board of Trustees becomes clear.

(xii) had threatened the Museum Board of Trustees with personal litigation unless they approved the sale and removal; and

(xv) had no agreement with March Field Museum to store and restore the Swamp Ghost, as stated to the Board of Trustees, the Minister, the NEC and the Prime Minister; and

(xvii) had no intention of returning the aircraft to Papua New Guinea as stated to the Board of Trustees; and

(xx) had actively misled the Museum, the NEC, the Prime Minister and the Board of Trustees into believing, variously, that the aircraft would be owned or part owned by Papua New Guinea and would be returned to Papua New Guinea, whilst also asserting (to the same persons) that the aircraft would be housed and restored at March Field Museum in California; and

2.47 Evidence of threats to and assault of Museum Managers, lies and obfuscation concerning their intentions for salvaged materials and threats to the National Museum and Art Gallery Board of Trustees were received by the Committee.

2.64 A Member of the Board of Trustees of the National Museum and Art Gallery described the institution to this Committee as a "***national disgrace***" and we are inclined to agree. Urgent remedial action is required if the Museum and Art Gallery is to fulfil its statutory obligations.

4. LIST OF ABBREVIATIONS

4.11 The Trustees

The Board of Trustees of the National Museum and Art Gallery of Papua New Guinea.

4.12 The Board

The Board of Trustees of the National Museum and Art Gallery of Papua New Guinea.

4.13 The President

The President of the Board of Trustees of the National Museum and Art Gallery of Papua New Guinea

6. JURISDICTION AND PURPOSE OF THE INQUIRY

PURPOSE OF THE INQUIRY

6.3 The NMAG should be a competently managed custodian of the National heritage. The nature of the organization requires competent staff and managers and a Board of Trustees strong and independent enough to resist political and other pressure which may be brought to bear on the Museum by persons or organizations seeking to obtain valuable or rare items of National Heritage.

22. THE SWAMP GHOST – BACKGROUND FACTS.

22.1 The Committee finds the following facts:.

- In 1996 the Board of Trustees directs that Guidelines for the Consideration of applications for the salvage, removal, export and restoration of war surplus material be prepared
- In 1997 the Board of Trustees again directs that Guidelines for the consideration of applications to deal with War Surplus Material be promulgated.
- On the 19th November 1997 – The State Solicitor’s Office advises the National Museum & Art Gallery that the proposed Guidelines do comply with requirements of law **but** the **National Museum & Art Gallery Act** applies the **Public Finances (Management) Act 1995** to the Board of Trustees – subject to a few modifications which are not relevant to this Inquiry
- On the 28 April 2006 – A Sub-committee of the present Board of Trustees of the National Museum & Art Gallery purported to endorse the decision of an earlier Board of Trustees that the Swamp Ghost be sold and its export be permitted.

23. LEGALITY OF THE SALE, REMOVAL AND ATTEMPTED EXPORT OF THE SWAMP GHOST.

23.4 The Committee received into evidence a number of documents. They were:

- Minutes of Meetings of the Board of Trustees of the PNG National Museum & Art Gallery;

24. THE FIRST DAY OF THE INQUIRY:

24.4 The relevant evidence from Mr Poraituk is summarized below:

- When questioned about the seeming reservation of power to approve removal of War Surplus Materials to the Head of State acting on advice, Mr Poraituk testified that the Board of Trustees were the Head of State – a novel proposition not accepted by this Committee.
- On the 9th of June 2006 a Notice to Produce was issued and sent to Mr Poraituk seeking, inter alia, to obtain copies of any delegation given to Officers of the Museum which would permit the Museum to approve the removal, sale and export of the Swamp Ghost. He was also asked whether there were any conditions imposed by the Head of State on the sale on collection and removal of the Swamp Ghost.

Mr Poraituk did not know of any such delegation and did not claim that any delegation had been made.

Evidence given on this subject was as follows:

"Honourable Acting Chairman –

Just hold it it Mr Poraituk. We have asked you to write to us and tell us what Statutory provisions and power the Board of Trustees? Under which Act? What I am saying is that you didn't tell us what provisions of the Act."

Mr Simon Poraituk

It's the National Museum & Art Gallery Act of 1992.

Acting Chairman:

But what Statutory provisions that we ask? You've not complied. Is it true you didn't comply? Just say yes or no.

Mr Simon Poraituk

No

Acting Chairman

"In paragraph 13 – 14 can you also conclude that you didn't put any public tender for the wreck of the Swamp Ghost?"

Mr Simon Poraituk

No sir."

- Mr Poraituk stated that the Swamp Ghost aircraft was not transferred to the NMAG, nor was it declared as national cultural property. Therefore, no power over the wreck was given under the ***National Cultural Property Preservation Act***
- The witness failed to produce and did not rely on any Ministerial authority to sell or export the wreck, nor could he produce any statement of reasons or conclusions by the Board of Trustees approving the sale and removal.
- Mr Poraituk stated that the National Museum and Art Gallery was subject to the terms of the ***Public Finances (Management) Act***, but clearly did not understand the process of disposal of unwanted or obsolete State property under that Act and the Financial Instructions. He was unable to tell the Committee what a Board of Survey was or whether any assessment had ever been performed by such a Board before the Swamp Ghost aircraft was "sold".

- Mr Poraituk could not explain why this “valuation” was put to the Board of Trustees or why he relied upon it at all, while no attempt was made at all to obtain an independent valuation or show the Trustees a truly independent Report and evaluation of the Swamp Ghost which was in the possession of the Museum.

24.7 Examples of these misleading representations are:

- A statement to the Board of Trustees that the aircraft would, after export, be jointly owned by the State and Aero Archaeology LLC. Clearly this was known to be false as the witness had acknowledged that the contract sold all the States right, title and interest. There could be no joint ownership.
- Further, at Para 3.6 of the Submission, the Minister states:

“the actions of the Board of Trustees were within the legal framework consistent with the National Museum and Art Gallery Act 1992 and the War Surplus Materials Act Chapter 331 of 1952 as amended”....

and further

“....the approval granted to Aero Archaeology to purchase, salvage, export and restore the B17 aircraft must be treated as legal and binding”.

This statement is false and in making it the Museum ignored advice received from the Office of the State Solicitor which correctly stated that the **Public Finances (Management) Act** applied to the Museum and to the disposal, salvage or sale of War Surplus Materials.

Mr Poraituk told this Committee that no legal advice was sought on the transaction. How an assurance of legal compliance could be given to the NEC in such circumstances is unclear.

It is further notable that at the end of this submission, the Minister acknowledges that the Swamp Ghost was sold – which contradicts other statements put to the NEC which suggest that ownership remains with the State.

- **If the applicant wishes to visit the area, he or she must be accompanied by Officers from the Department of Modern History at the applicant's cost.**

The Committee is satisfied that visits did occur, but the Landowners were also contacted directly by the purchaser or its representatives.

- **Within two weeks of the site visit the Officers from the Department of Modern History will produce a report on the visit including their views on the feasibility of the proposal and the expressed concerns of the people on whose land the war surplus materials are located; and**
- **Following the site visit and completion of the report by Officers from the Department of Modern History, the application will again be reviewed by the Director, the Assistant Director for Science and Research, the Chief Curator of Modern History and Officers of the Department of Modern History who have carried out the site visit. That review will take place within one month of the completion of the site visit. The purpose of this meeting is to recommend to the Board of Trustees that the application be approved or rejected; and**
- **A formal submission including the recommendation will then be prepared for the Board of Trustees by the Chief Curator of Modern History; and**
- **If there is a need, and within the resources of the National Museum, a physical inspection of the applicant's facilities may be required; and**

- **The submission from the Chief Curator of Modern History will be included in the agenda of the next meeting of the Board of Trustees; a**

The evidence shows that these reports were either not made or were sparse and inadequate. Mr. Poraituk stated to the Committee that the material was not placed before the Board of Trustees on any occasion. This evidence was corroborated by the Trustees to the Committee.

- **The decision of the Board of Trustees is communicated to the applicant.**

This was apparently done.

24.12 The Committee heard evidence from the Board of Trustees of the National Museum and Art Gallery.

24.21 This type of threat by foreigners to a statutory Board of Trustees is utterly unacceptable and was clearly intended to intimidate the Board. The evidence from Board Members showed that the threat was effective. It robbed the Trustees of the opportunity for any independent deliberation and decision.

24.26 The Management of the Museum had a duty to advise the Board of Trustees fully, honestly and correctly. Certainly the Museum Director could advise a certain course of action to the Trustees, but not fabricate, obfuscate and mislead to obtain a particular decision or course of action.

24.26 Further, this Committee finds that the Trustees had no power or need to consider or approve the sale and export of the aircraft. As we have stated (*supra*) the sale of State property is a matter governed by the **Public Finances (Management) Act** and **Financial Instructions** and does not require the approval of the Trustees of the Museum.

24.28 So far as this Committee can ascertain, the removal and salvage of War Surplus Materials remains a matter for decision by the Head of State acting on advice – not the Museum and therefore, not the Board of Trustees of the Museum.

24.29 The Public Accounts Committee gave Directives to the Museum to co-operate with its Board of Trustees – particularly in the area of budgeting and preparation of Budget Statements. There appears to be very clear conflict between Management of the Museum and the current Board of Trustees.

24.30 This Committee concludes the current Board of Trustees are intent on reforming the National Museum & Art Gallery and in ensuring that the Management of the Museum acts in all respects, in accordance with law.

24.31 The Management of the Museum seem to have no clear idea of the role of the Board of Trustees – and the Board also seems to have a little idea of its powers, immunities or responsibilities.

24.32 This Committee concludes that the Board of Trustees should retain expert legal advice in order that it can learn the true nature of its role, which, like all Trustees, carries onerous duties of care.

25. THE SECOND DAY OF THE INQUIRY.

25.1 The following advice was received:

(i) (iii) The Agreement with Aero Archaeology LLC is not effective as a contract of sale or to pass title to the aircraft, for the following reasons:

a) The Museum can acquire things described as "exhibits" which are defined as including **"antiquities, utilitarian objects, natural history specimens, objects of antiquity or works of art"**.

A specimen can include a **"war relic"** within the meaning of the **War Surplus Materials Act Ch. 331**". No such thing as a **"war relic"** is known under the **War Surplus Materials Act** so that part of the definition of **"specimen"** is a nonsense.

Further, if War Surplus Material can be established as constituting an **"exhibit"** under Section 15 of the **National Museum and Art Gallery Act 1992**, the Minister may **"transfer to the Trustees any**

exhibit that is the property of the State and the exhibit vests in the Trustees.”

The Committee requested the Museum to produce a statement of all Ministerial transfers of items formerly owned by the State but which were now vested in the Museum or the Trustees. No such material was produced and Mr. Poraituk gave evidence that no such transfers had occurred.

Therefore, upon the evidence before this Committee, the Swamp Ghost was and still is, the property of the State.

(iv) The Museum is not an agent of the State.

Section 247 of the ***Constitution of the Independent State of Papua New Guinea*** provides that the State may hold, dispose of and contract in accordance with an Act of Parliament.

The **Public Finances (Management) Act** and the delegated legislation which goes with that Act, is the Act implementing Section 247.

That Act requires that State property can only be sold in a particular manner – and then by public tender unless exemption is given. Further, a contract for the sale of the aircraft, if the value was less than USD 5 million, requires Ministerial approval by the Minister for Finance.

The contract records that the aircraft is the property of the State, but it is signed in the name of the Museum, by the former Director, Mr. Seroe Eoe.

The Museum had no proprietary interest in the aircraft and no power, right or entitlement to sell it – and therefore, nothing to sell. It follows that, as a seller can give no better title or more perfect interest to a buyer than it has at law, the Contract with Aero Archaeology LLC is ineffective and unlawful. Aero Archaeology LLC has no enforceable contract at all.

- (iv) The Contract is further ineffective because it is not dated. The Contract records that title to the aircraft will pass on the date of execution, but no such date exists. Title would not and could not pass to the buyer.
- (v) The fact of Assignment of the Contract from MARC to Aero Archaeology LLC is ineffective to change the position of either the State or the buyer. MARC had an unenforceable and ineffective contract and Aero Archaeology LLC has received the same by assignment.
- 25.2 Therefore, in the absence of any empowering delegation to the Museum, the situation appeared to the PAC to be:
- (p) That the Board of Trustees had ratified an illegal Contract as a result of threats and duress; and
- 25.3 On the Second Day of the Inquiry the Committee asked Mr Poraituk the following question:

Acting Chairman:

"The Export Permit for the Swamp Ghost, signed by you, recites that:

"I Simon Poraituk, as an Officer delegated by the Board of Trustees of the Papua New Guinea National Museum & Art Gallery ..."

When was that delegation given? We have asked for a copy of all delegations but we have not received any. Where is it and why have you not given it to us? Is it a written delegation? What power is delegated and what Statute gives the Trustees or yourself the power in the first place?

PUBLIC ACCOUNTS COMMITTEE

SALE AND EXPORT OF THE SWAMP GHOST

AIRCRAFT AND WAR SURPLUS MATERIALS