

A. BARTLETT  
TALK

LONG EMER. - LAND TENURE

LAP 1/10

MINISTRY OF AGRICULTURE AND LANDS

Compulsory Acquisition of (Customary) Land

For Public Purpose

(ALEX BARTLETT)

Solomon Islands

DEFINITIONS:

"Customary land" means any land, not being registered under the Land & Titles Act, Cap. 93, which is communally, jointly, or individually owned by Solomon Islanders under the 'current Customary usage'. *83% Customary Land - 17% Alienated*

"Solomon Islander" is defined in section 2 as amended in 1977, and 'means a person born in the Solomon Islands who has two grand-parents who were members of a group, tribe or line indigenous to the Solomon Islands'.

"Public Purposes are not specifically defined in our present Act, But there are references in the Constitution as in Chapter II Section 8(1)(a) under the heading "Protection from deprivation of Property". But those definitions are so broad that when applying them one has to be very careful not to over generalise. Chapter XI Section 112(a) under the heading "customary land" states that there must be prior negotiations before compulsory Acquisition.

'Compulsory Acquisition' is the acquiring of land (registered or unregistered) by government for public purposes. Peoples' right to use the land cease as a result.

Under the new Constitution negotiations before Compulsory acquisition are now required e.g., the 'New Georgia Timber Corporation' land on New Georgia <sup>which</sup> was acquired in accordance with Section 112(a), which says that -

"before such land is compulsorily acquired, there shall be prior negotiations with the owner of the land, right or interest".

WHY COMPULSORY ACQUISITION?

Compulsory acquisition is provided for in law because:

- (a) It makes it possible for initial work to begin once land has been acquired (compulsorily) during which time, and after which other negotiations may still continue;
- (b) land may be needed by government for public purposes and because it may be difficult otherwise it has to be acquired by compulsion.
- (c) it allows government to act on the behalf of public interest, to acquire customary land;
- (d) Compulsory Acquisition can be viewed as a last resort, if you like, or on the other hand as an administrative convenience.

Chief Secretary

Published and exhibited at the Public Office of the High Commissioner  
this 8th day of March 1971.

Sgd. A. Ferguson  
for Chief Secretary

COMPULSORY ACQUISITION PROCEDURES

When it appears that land is required for any public purposes, the Minister of Agriculture and Lands may make a declaration to that effect. (During Colonial times it was the High Commissioner).

The declaration shall specify (either by reference to a plan or otherwise) the actual boundaries of the required land, and the general nature of the public purpose for which it is required. People who may own property within the prescribed area have the right to claim compensation.

It is important to note that:

- (a) The Minister does consult Cabinet (but is not required to do so in law) before a declaration is made and so therefore it is more or less a political resolution not administrative.
- (b) Once a declaration has been made to the effect that land is required for a public purpose, ALL interests, rights to use, occupy and enjoy the land cease to exist and such shall at that instance vest in the Commissioner, acting for Solomon Islands Government (SIG).

People have the right to seek independent (i.e non-government) legal advice and any land that is acquired by compulsion be done on lease basis as far as possible - see section 112(b)(c) of the Solomon Islands Constitution.

The Commissioner of Lands makes an offer for compensation. The Clerk to the Province helps claimants to submit their claims. The claimants do not necessarily have to agree with the Commissioner's offer, and if they do not they can appeal to the High Court. The appeal must be within three months as from the date of the publication of the notice. The High Court gives the final decision. Appeal to any court hinders acquisition progress i.e. it is slow! Between 1969-1979 there have been about 10-12 compulsory acquisitions for various purposes. There were also others which were acquired before that period. Some of the examples are:-

- (1) LR 389 (West Honiara) which was compulsorily acquired in 1947 by government from the local landowners.
- (2) LR 636, Mbumburu Ridge, was compulsorily acquired in 1970, for a water tank for Honiara.
- (3) Lots 1 and 2 of LR 657, and LR 631 were compulsorily acquired in 1970, on Rennell, for mining purposes.
- (4) LR 613 (Nusatupe - Western Province) was compulsorily acquired in 1968, "for use as a site for a public aerodrome and for any other general public purpose". Nusatupe aerodrome was registered in 1972. The reason for the delay in registration being that there was an appeal to the High Court for compensation assessment.

The High Court decision was in favour of Claimants.

APPEAL AGAINST PUBLIC PURPOSE/COMPENSATION

Any person or group whose interests have ceased to subsist as a result of the declaration may within six months apply to the High Court for an order to quash the declaration. But so far there has never been any appeal against such acquisition that the purposes for which they were acquired were not in fact public purposes.

There are two kinds of appeals: \*

- (a) if the purpose of the acquisition is not in fact for a public purpose and
- (b) if the Commissioner's offer for compensation is not accepted claimants may appeal to the High Court for assessment.

The period for appeal for (a) is six months and for (b) is three months from the date of the offer. Appeals must go to the High Court

- (a) has never been tested but
- (b) has two or more known cases e.g., Nusatupe and Rennell where in both cases appeals have been assessed in favour of the claimants.

Basically then, the procedures are:

- (a) Minister makes a declaration
- (b) All rights and use cease  
*c/L - makes offer for Compensation*
- (c) People may seek legal advice (before as well as during acquisition if possible)
- (d) Clerk to Provincial Assembly helps claimants submit compensation claims
- (e) Rights to appeal against
  - (i) compensation offers and
  - (ii) that purpose is not a public purpose
- (f) Compensation is paid either by
  - (i) instalments or
  - (ii) in a lump sum
- (g) Both registered and unregistered (Customary) land can be compulsorily acquired
- (h) Compulsorily acquired land becomes registered
- (i) Compulsory acquisition of land for public purposes has been used as an administrative expedient for very necessary projects.

Chief Secretary

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this 8th day of March 1971.

Sgd. A. Ferguson  
for Chief Secretary

EXAMPLES

There were three significant compulsory acquisitions in the 70's in the Solomons, namely,

- (1) The Oil Palm Project on Guadalcanal Plains (~~40,000 ha~~ <sup>3,600 ha</sup>)
- (2) Mining on Rennell (26,000 ha) and
- (3) The North New Georgia Timber Corporation (40,000 ha)

The three above mentioned have all been successful except Rennell mining which still awaits further research. North New Georgia Timber Corporation is yet to be extracted but one which at present looks promising.

SIXTH DEVELOPMENT PLAN

Compulsory acquisition of land on Rennell was the outcome of the Sixth Development Plan 1971-1973, where the overall objective was to try to substantially reduce external dependence in this decade and to promote internal development and progress - The Introduction to the Plan said:

"The Sixth Development Plan sets the pace for a major transformation of the economy of the British Solomon Islands Protectorate (Now Solomon Islands). During the seventies there will be increased participation in such responsibility for policy formulation by the Protectorate's own citizens, investment in major new projects in agriculture, forestry and mining and the achievement of an educational system designed to produce the manpower needed to sustain and expand the economy as well as to attain a high degree of localisation of posts presently held by expatriates".

Chapter 7: of the GDP dealt quite specifically with the Rennell situation, "During the plan period the first major mine will be constructed to mine bauxite on Rennell Island."

DISCOVERY OF MINERAL ON RENNELL

The initial testings in 1967 and 1968, by Geological Surveys Department found that there was a substantial bauxite deposit in West Rennell. The deposit was offered out on tender. A proposal by Mitsui Mining and Smelting Co to prospect was accepted by government and soon after prospecting operations were underway in 1969. During the initial phase the Company constructed an unsurfaced road and other prospecting roads. The company also constructed the airstrip at Tingoa at the same time.

Prospecting operations

During the operation period, Mitsui cut lines through most of West Rennell and established probable bauxite deposits which were then thought to amount at about 26-30 million tons. Before and during the prospecting operations, numerous meetings were held with the Rennellese by various government officials to explain what the company was going to do and possible future outcome of the operations. Discussions were made with the people concerning compensation to be paid. Their agreement to the prospecting operations was obtained. In 1970 these prospecting operations were completed.

Memorandum of Understanding

Negotiations between a government team, with the assistance of UK Specialist advisers, and Mitsui took place in Honiara and in Tokyo in the first part of 1970. A Memorandum of Understanding between Mitsui and the government was signed by the then Financial Secretary, Mr Tom Russell and the management of Mitsui. Pressure was put on government by Mitsui that a Mining Project must be undertaken in the near future. Meanwhile further negotiations continued between government and the people of Rennell. The MOU merely laid down the general mining, trading, and Company procedures which were to be carried out and observed by both Company and government.

The Natural Resource Committee(Kausimae Committee) 4th September 1970

On 4th September 1970, a large meeting was held on Rennell attended by the then Chairman of the Natural Resource Committee, Hon. David Kausimae, together with the Rev. Peter Thompson (MP), Dr Thompson (Chief Geologist) and a Mr Ferguson. A formal offer was put by the government to the Rennellese. It was written in English and in the people's language (the English version being the authentic one if any doubts arose). This offer incorporated the result of various previous discussions and negotiations and laid down what government would be prepared to pay the Rennellese if a mining project were to commence. A further meeting was held (again by the Kausimae Committee) in October, of the same year, on Rennell as regards payment of Compensation at which the Rennellese voted to accept the offer by 117 votes to 16.

COMPULSORY ACQUISITION

On First December, 1970, under Section 70(1) of the Land and Titles Act, a declaration (Declaration That Land Is Required For A Public Purpose) was issued and signed by the then Chief Secretary, Tom Russell. It was published on 8th March, 1970. The then Commissioner of Lands, J B Twomey also issued a public notice on 10th March, 1970, to say that all interests in the land ceased to subsist as a result of the declaration and by Virtue of Section 74 of the Land and Titles Act. Compensation claims were provided for under Section 73 (see appendices A-C for examples). Survey work which began in 1970, was completed on 28th July, 1972. On 16th October, 1972, the Compulsorily acquired areas on West Rennell were registered in the Land Registry - referenced:-

298-001-2	-	Part of Lot 1 of LR 657	=	99	ha
298-002-2	-	Part of Lot 1 of LR 657	=	191	ha
298-003-1	-	Part of Lot 1 of LR 657	=	6,755	ha
291-001-1	-	Part of Lot 1 of LR 657	=	10,724	ha
290-002-1	-	Part of Lot 1 of LR 657	=	7,124	ha
290-002-2	-	Lot 2 of LR 657	=	423	ha
				<u>Total</u>	<u>25,316</u> ha

West Rennell was acquired with the understanding that at the end of the mining period the land would be returned to the people. At present government still holds the perpetual estate.

Chief Secretary

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this 8th day of March 1971.

Sgd. A. Ferguson  
for Chief Secretary

## NO AGREEMENT - VACATION!

It is important to note that there was no formal agreement signed between Solomon Island Government and Mit-Sui for the mining of bauxite on Rennell. Mit-Sui vacated her mining prospects and occupation on Rennell and left in 1972. The bauxite situation is still unsolved.

### THE OIL PALM PROJECT

Talks <sup>on</sup> ~~about~~ a possible oil palm scheme began in 1969, between government/the Commonwealth Development Corporation (CDC). /and

One of the very first official meetings between the High Commissioner, Senior Officers and representatives of the Commonwealth Development Corporation was held at Government House on 7 July 1969.

Besides other matters it was agreed at this meeting that land between the Ngalibiu and Metapona rivers - and probably Metapona/Berande (now CDC 3) be acquired and allocated for an Oil Palm Project.

A series of meetings were held in 1970, between government and the Plains people to try and locate the various land holding groups (Mamatas).

### Compulsory Acquisition

On 6th July 1970, a declaration was issued, signed by L M Davies, Chief Secretary, and was published by S Pitakaka (Senior Executive Officer). The Commissioner of Lands, J B Twomey, on 13 July 1970, published a notice that land was required for a public purpose (similar to that at App B).

The total estimated area in the declaration was 4,215 hectares. But the actual cultivated (oil palm) area is 3,335 hectares. The total allocated area for oil palm is 3,635 hectares.

### Formal Agreement

An agreement was made in 1973, where the following are some of the conditions laid down and carried out:-

- (1) Land was acquired (compulsorily) on 6 July 1970, with the consent of the people, as public land.
- (2) Compensation was paid to those who had claims.
- (3) Land was acquired on lease basis and title was to be transferred to the landowners. This land was leased to SIPL for 75 years and renewable.
- (4) Landowners could have shares at the rate of \$1.00 rent to thirteen \$1.00 shares if they were interested.
- (5) Yearly rents were payable to the people through Government (Commissioner of Lands).
- (6) A member of the trustees was to be appointed on the Board of Directors.

The point to note here is that people have direct participation in the company whereas in the Rennell situation people did not.

## Conclusion

A few remarks are worth consideration as we conclude.

Most of the compulsorily acquired lands in the Solomons have all been strictly acquired in accordance with the procedures laid down in law, very often with the people's consent. The real essence of the term "compulsory acquisition has in fact only been used four times, three times against expatriates and once against Solomon Islanders:-

- |     |                |                   |                           |
|-----|----------------|-------------------|---------------------------|
| (1) | Fera Airfield  | R C Symes         | <i>Out Right Purchase</i> |
| (2) | Ballalae       | Deceased Estate   |                           |
| (3) | Munda Airfield | Mission           |                           |
| (4) | West Honiara   | Solomon Islanders |                           |

Compulsory acquisition therefore, should not be regarded as a problem solver because it does not solve the problems that we encounter in acquiring customary land but it does provide one of the means to acquire land..

## Discussion

- (a) Compulsory Acquisition is often considered just another government "bully system" devised to "grab" land from people. Is that a justifiable comment?
- (b) What other alternatives can we substantiate to rectify some of the compulsory acquisition laws and procedures, if any?
- (c) Compulsory Acquisition should be left in the hands of Administrators not politicians to determine. Discuss.

Chief Secretary

Published and exhibited at the Public Office of the High Commissioner  
this 8th day of March 1971.

Sgd. A. Ferguson  
for Chief Secretary

APP A

47

THE LAND AND TITLES ORDINANCE 1968

(No. 6 of 1968)

DECLARATION THAT LAND IS REQUIRED FOR A PUBLIC PURPOSE

IN exercise of the powers conferred by section 70(1) of the Land and Titles Ordinance, and after consultation with the Governing Council, the High Commissioner hereby declares that the land described in the First Schedule is required for the public purpose specified in the Second Schedule hereto.

FIRST SCHEDULE

All these two parcels of land situate on the western side of the island of Rennell described as -

- (i) Lot 1 of L.R. 657 in extent 25,865 hectares (63,914 acres) more or less being unregistered land (held under customary tenure) which is delineated and edged red on Plan No. 1747A held in the office of the Commissioner of Lands and Surveys, Honiara BUT EXCLUDING the undermentioned parcels of land -
- (a) an area of 818 hectares (2021 acres) more or less being unregistered land (held under customary tenure) situate west of Tinggoa Airfield as delineated and edged green on Plan No. 1747A;
  - (b) an area of 8.35 hectares (20.63 acres) more or less being unregistered land (to be held under lease by the Munggaba - Mungiki Council) comprising Tinggoa Airfield L.R. 631 as delineated and edged blue on Plan No. 1747A; and
  - (c) an area of 0.204 hectares (0.516 acres) more or less being unregistered land (to be held under lease by the Munggaba - Mungiki Council) comprising a rural health clinic site L.R. 599 situate at Te Auamaunggu as delineated and edged green on the inset attached to Plan No. 1747A.
- (ii) Lot 2 of L.R. 657 in extent 410 hectares (1,013 acres) more or less being unregistered land (held under customary tenure) which is delineated and edged red on Plan No. 1747A held in the office of the Commissioner of Lands and Surveys, Honiara.

SECOND SCHEDULE

For mining development including port works and the establishment of a mining town and for any general purpose related thereto.

MADE at Honiara this first day of December 1970.

BY COMMAND,

Sgd. T. Russell  
Chief Secretary

Published and exhibited at the Public Office of the High Commissioner this 8th day of March 1971.

Sgd. A. Ferguson  
for Chief Secretary



APP B

[Prescribed]

Form CA.1

46

BRITISH SOLOMON ISLANDS PROTECTORATE  
THE LAND AND TITLES ORDINANCE, 1968  
(No 6 of 1968)

(Section 70(3))

Lot 1 and 2 of L.R. 657  
L.R. ....

Rennell Island  
.....

NOTICE  
COMPULSORY ACQUISITION OF LAND

TAKE NOTICE that:

(1) The High Commissioner, in exercise of the powers conferred by section 70(1) of the Land and Titles Ordinance, 1968, has made a declaration dated the ~~8th~~ <sup>8th</sup> ~~day of December~~ <sup>July</sup> ~~March~~ 1970. 2  
(a copy of which is attached hereto) to the effect that the land specified in the said declaration is required for the public purpose therein described.

(2) With effect from the date of publication of the said declaration, namely the 8th day of March 1971, all interests in the said land ceased to subsist by virtue of section 74 of the Land and Titles Ordinance, 1968, subject only to the provisions of sections 75 and 77.

(3) Any person who claims any interest which, by virtue of section 74 of the Ordinance, ceased to exist, may claim compensation from the Commissioner of Lands. Every claim for compensation should be sent to the Commissioner of Lands, Honiara, either direct or through the District Commissioner, and an acknowledgment of receipt obtained.

(4) Under section 75 of the Ordinance, any person or group of persons having an interest which ceased to subsist by virtue of section 74, may within six calendar months from the date of publication of the declaration, apply to the High Court of the Western Pacific for an order quashing the declaration in so far as it applies to the land subject to or affected by the interest.

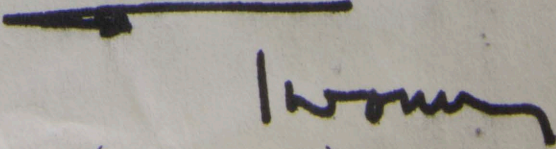
(5) Under section 77 of the Ordinance, any person who, immediately before the publication of the declaration, was lawfully occupying any land or lawfully exercising any right affecting any land specified in the declaration as required for a public purpose, may continue to occupy the land or exercise the right until he is ordered in writing by the Commissioner of Lands to cease from so doing; if there in on the land any building in occupation, a notice (Form CA4) will be served on the occupier requiring him to vacate the building within a period not exceeding four months;

BUT such person or persons continuing to occupy land or buildings under section 77 SHALL NOT carry out any development of the land or buildings except with the written consent of the Commissioner of Lands on such terms as he thinks fit.

(6) Any person wanting help in drawing up or submitting any claim for compensation for any interest or right in the land specified in the declaration, or an application to the High Court, should contact the District Commissioner who will give him all the help he can.

10 March 1971

Date

  
(J. B. Twomey)

Commissioner of Lands

I, James L.O. Todd (name)

of Honolulu (address)

Administrative Office (office or occupation)

hereby certify that I have this 20th day of

March 1971 posted the above notice on or near the

boundaries of the land specified in the Declaration attached to the  
said notice.

Signature: James L.O. Todd

NOTE: This notice must be completed in triplicate -  
the original posted on or near the boundaries of the land;  
the duplicate sent to the Commissioner of Lands;  
the triplicate retained at the District Commissioner's office.

APP C

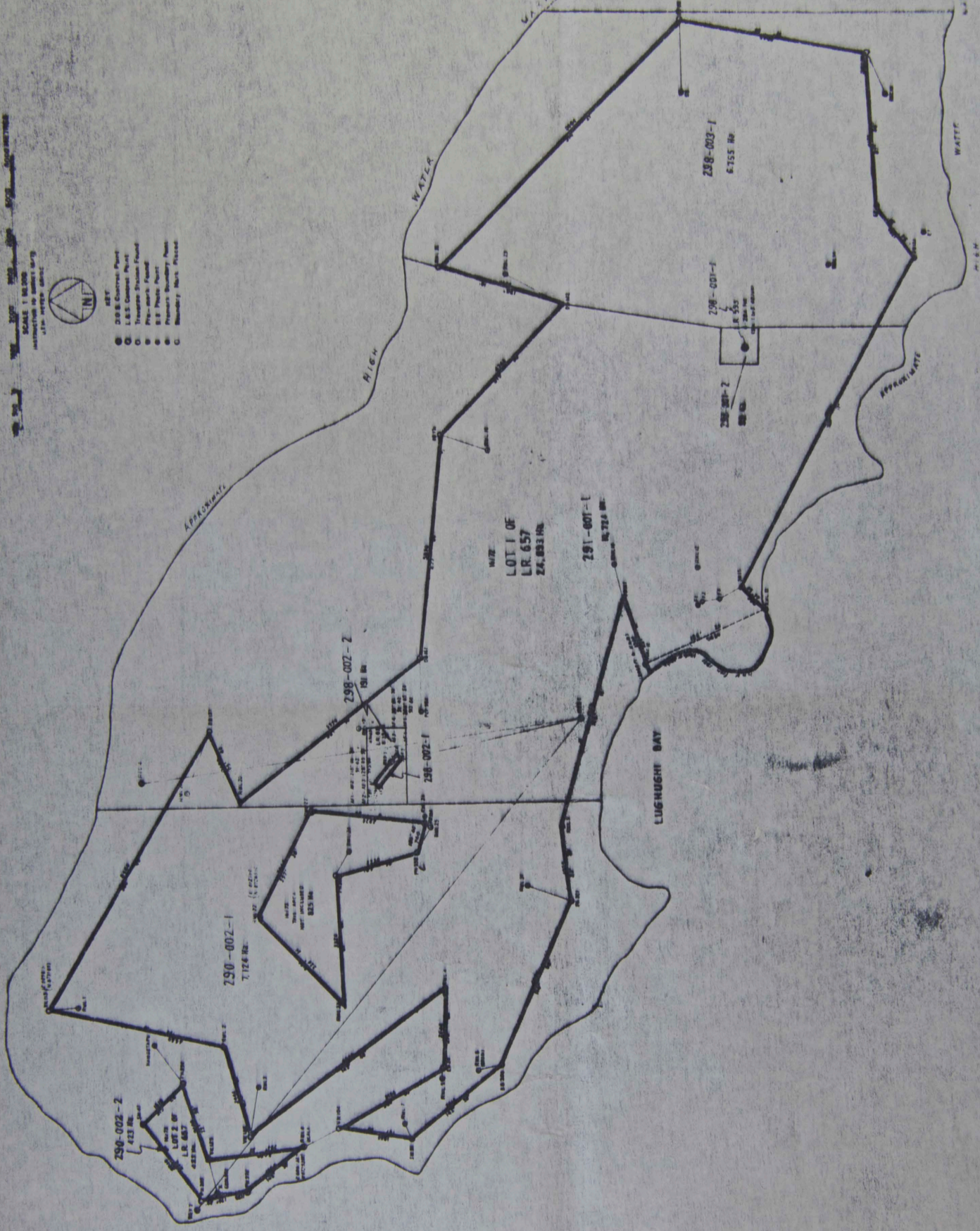
L.R. 657 - RENNELL MINING ACQUISITION  
RENNELL ISLAND

1869

SCALE 1 INCH = 100 FEET  
CONVERSION TO METERS  
1:25,000



- DSB Control Point
- L.S. Control Point
- Transfer Station Point
- B.P. Bench Mark
- Primary Boundary Line
- Secondary Mark Point



Surveyed by me, *Richard* Date 27th July 1978  
 This survey has been conducted under my personal and  
 authority  
 Date ... *R. P. J. E.* ...  
*Richard*  
 Surveyor

SUMMARY

My summary shall be brief. My conclusion, and I think this would be the view of most Pacific countries, is that there must be some element of compulsion applied and provided for in law as circumstances and other contributing factors may from time to time prove it to be expedient.

How compulsion is applied is probably the most relevant question that demands substantial clarity. Any understanding landowners would not, in my opinion, withhold land from government if the transactions are fair and reasonable.

Conditions which are highly recommended are:-

- (a) there must prior negotiation between government and people (landowners);
- (b) lease is preferred rather than outright purchase;
- (c) payment in the form of compensation must be fair and acceptable;
- (d) "public purpose" must be clearly defined to the simple (thinking) landowners;
- (e) all other conditions within the transaction must be explained to the people to avoid misunderstanding;
- (f) any grievances on the part of the people must be carefully looked into and be dealt with in all fairness.

Compulsory acquisition should only be used as a last resort. Other alternatives should not be overlooked if their application can still be as effective. Acquisition by compulsion in practice is not a "short cut" as people at times believe it to be because there are in fact a lot of dealings involved content wise. Any other methods which can be devised to effective implimentation are preferred to

.../2

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Sgd. A. Ferguson  
for Chief Secretary