

# INTERNAL AUDITS

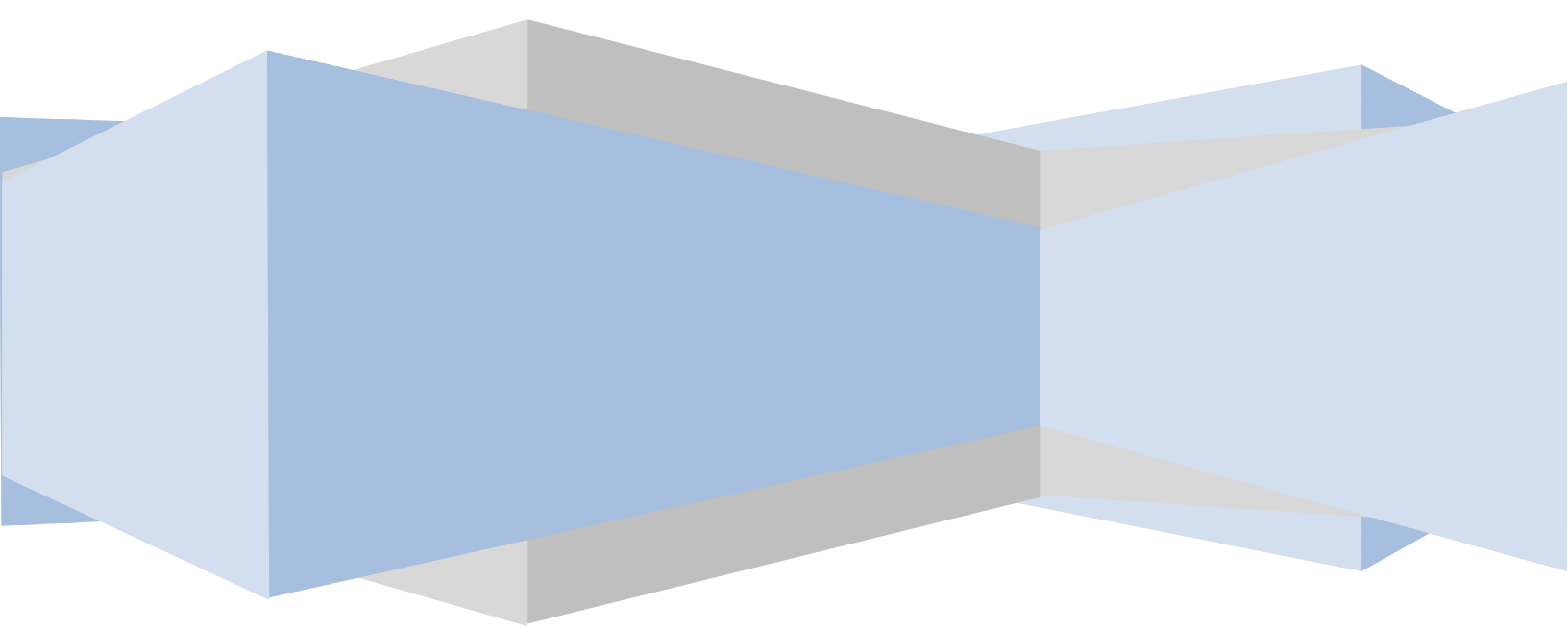
PRIVATE & CONFIDENTIAL

## INTERNAL AUDIT REPORT – ULTRA VIRES

A Prima Facie case

THIS INTERNAL AUDIT REPORT WAS WRITTEN FOR THE CONSUMPTION OF THE NCDC INTERNAL AUDITS COMMITTEE, THE OMBUDSMEN COMMISSION, And THE FRAUD SQUAD OR TO ANY PERSON OF INTEREST AND TO WHOM IT MAY CONCERN...

**David Conn**



# Internal Audit Report – Ultra Vires

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## 1.0 **PURPOSE**

1.1 The purpose of this report is to spell out the gross mismanagement of the NCDC Financial approval process by the Governor, Powes Parkop.

In light of this the report based on first impressions (prima facie) that the action of the Governor Powes Parkop, and the City Manager Mr. Leslie Alu and the Executive Management Committee have acted in *ultra vires*, and by their actions whilst holding office with the National Capital District Commission.

1.2 Furthermore the purpose of this report is to highlight that the Governor has neglected totally to abide by the rules and regulations of the PUBLIC FINANCE MANAGEMENT ACT (2005 as amended).

1.3 That the Governor has also breach certain provisions of the NCDC ACT (2006 as amended).

1.4 That the Governor , Powes Parkop by not complying (intentionally or not) with the provisions of the PUBLIC FINANCE MANAGEMENT ACT has subsequently breached the provisions of the Organic Law on Leadership, specifically section 27 and the provision of law therein contain.

1.5 That the Governor, Hon. Powes Parkop by not complying with the provision of the NCDC ACT has (whether intentionally or otherwise) subsequently breached the provisions of the Organic Law on Leadership code, specifically the Section 27 and the provision of law therein contain.

## 2.0 **FACT & FIGURES**

2.1 **Annexed exhibits attachment marked as “A”, “B”, “C”, “D”, “E”, “F”, “G” “H”, “I”, and “J”.**

2. 1.1 Attachment exhibit annexed marked as - “A”.

Based on facts and figures that the attachment exhibit annexed marked as - “A” shows all payments done to Kitoro # 33 and PNG Gardener for works done on Mini Parks and Courts, Waterslide and the Zoo.

# Internal Audit Report – Ultra Vires

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Following are the amounts paid for:-

2.1.1a	Mini Park	-	K 2,089,300.00
2.1.1b	Water Fountain	-	K 306,582.00
2.1.1c	Waterslide & Zoo	-	K 289,299.99
2.1.1d	Animal Farm	-	K 326,700.00

2.1.2 **Attachment exhibit annexed marked as – “B”**

Based on facts and figures that the attachment exhibit annexed marked as – “B” shows all payments that were done to HG Quarries Limited for the renovation and work done to the Netball Courts at Kasio Drive, adjacent to the Gerehu roundabouts.

2.1.2a Total payment done is K 188,760.50

2.1.3 **Attachment exhibit annexed marked as – “C”**

Based on facts and figures attachment exhibit annexed marked as – “C” shows all payments done to Welo Investments and hire cars to Briqueline Car Hire and the engagement of a Sunshine Security Services for the Buai (Betelnut) Ban Operation in and around the Pom City.

2.1.3a the total amount paid is K 979,887.28

2.1.4 **Attachment exhibit annexed marked as – “D”**

Based on facts and figures the attachment annexed marked as – “D” show all payments done to Gele Contractors, Tiya Wandipe Investments, Maku Contractors, MJP Buildings Maintance & Contractors, Shorncliffe (PNG) Limited, Strength Construction, Galmua Management & Consultant, and Mackond Investments. While the following individuals were paid, and they are, APA John, Erap Luai, and Wilson Tiagopa, for the re-location of Boina Tuna Market.

2.1.4a the total amount of money paid is-

## Internal Audit Report – Ultra Vires

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K 837,582.70

2.1.5 **Attachment exhibit annexed marked as – “E”**

Based on facts and figures the attachment exhibit annexed marked as – “E” shows all payments done by various including MJP Building & Maintenance Construction, Nixon Enterprises, and Mt. Wilhelm Organic Farming, for the relocation of Hohola Market to the new site, next to the Hohola Sports fields and top of the old rubbish dump site.

2.1.5a the total amount paid is K 265,923.45

2.1.6 **Attachment exhibit annexed marked as – “F”**

Based on facts and figures the attachment exhibit annexed marked as – “F” shows payment done to security enforcement teams for the market vendors to start using the newly installed market sites. Payment were shown done to the following contractors, Waglane Contractors, Sonix Building Construction, Tongis Car Hire and the following individuals, Henry Aivo, Anthony Aitsi and including the Governor Powes Parkop political adviser, Executive Officer and Special Projects Co coordinator, Mr. Ned Gong.

2.1.6a the total payment done is K 145,400.00

2.1.7 **Attachment exhibit annexed marked as – “G”**

Based on facts and figures the attachment exhibit annexed marked as – “G” shows the payments done to the following contractors for the School Bus Management Services, a failed initiative of the Governor, Hon Powes Parkop. Payments were made to the following business house such as, Agility Limited, 15 Mile Smash Repairs, and Autozeal.

It is believed that the Agility Limited, Autozeal, and 15 Mile smash Repairs are owned by Indian Nationals who are the acquaintances of the NCDC’s super consultant and financial advisor, Mr. Augustine Ravi.

## Internal Audit Report – Ultra Vires

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2.1.7a the total amount paid is K 596,609.04

2.1.8 **Attachment exhibit annexed marked as – “H”**

Based on facts and figures the attachment exhibit annexed marked as – “H” shows payments done to the following company’s Kitoro # 33, Ginigoada Business Development Foundation, FIFL (a subsidiary of Agility Limited), Airways Motel, Leisure Travel Services, Driftwood Limited, Regency Limited, Hiritano Electricals, HG Quarries, ESCO, and individuals such as Augustine Ravi and Lillian John. The payments were various projects including water fountain, Zoo, and statue erections on the roundabouts.

2.1.8a the total payment done is K 673,985.43

2.1.9 **Attachment exhibit annexed marked as – “I”**

Based on facts and figures the attachment exhibit annexed marked as – “I” shows various payments done to the following company FIFL (a subsidiary of Agility Limited), PNG Gardener, Agility Limited, and Jurgens Transport, for the erection and construction of the waterslide situated at the animal farm.

2.1.9a the payments totaled K 901,211.86

2.1.10 **Attachment exhibit annexed marked as – “J”**

Based on facts and figures the attachment exhibit annexed marked as – “J” shows payment done to the following company’s FIFL, Kitoro # 33, Agility Limited, Leisure Holidays & travel, and the following individuals including the Governor Powes Parkop, Wari Iamo, Leslie Alu, Augustine Ravi, and a cash payment for visa application .

These payments were done to for the introduction of the animal farm or the Zoo, and a touring party was organized for the travel to China.

2.1.10a Payments done were totaled K 517,867.28

## Internal Audit Report – Ultra Vires

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2.2. Based on the facts and figures it is noted there are two (2) notable special accounts & vote numbers establish under the NCDC's budget as per the NCD Governor, Powes Parkop's instructions.

2.2.1 These are as follows:-

2.2.1a The first accounts is called the "Centrally Controlled Funds" with the following vote # 6100-6102-2240.04, 6100-6102-2250.05, 6100-6102-2250.00, 6100-6102-1350.00, 6100-6102-2240.00, 6100-6102-1280.03, 6100-6102-1350.27, 6100-6102-1350.08, 6100-6102-1359.34

The funds under these vote numbers are strictly controlled by the Governor himself.

He is the authorizing officer the usage of these funds.

2.2.1b the second is called the "Special Project Funds" with the following vote # 4100-4105-1430.03, 4100, 4102.1280.01, and 4100-4105-2250.03

The funds under these vote numbers are controlled by the Governors political officer under the stewardship of Mr. Ned Gong who is known as the Special Projects Officer.

These funds are controlled by the Governor himself.

He is the authorizing officer.

2.2.2 Based on facts and figures it shows that all payments done by NCDC and as shown on Attachment exhibit annexed marked as – "A", "B", "C", "D", "E", "F", "H", "I"

## Internal Audit Report – Ultra Vires

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and “J” were paid out of this two notable accounts namely, Centrally Controlled Funds and the Special Projects Funds.

- 2.2.3 Based on facts and figures it shows that the approval process done or followed for all the above payments were done by the COE or the Certificate of Expediency only.
- 2.2.4 Based on facts and figures it shows that for all the payments done, it is noted that no company or contractor did provide any quotation for scope of work, and more importantly, neither did the NCDC tried to or made any attempt to obtain any three (3) separate quotations from any three (3) separate company’s so that a determination can be ascertain as to which quotation will be judged as the best value for money.
- 2.2.5 Based on facts and figures it is noted that there was no Tender advertised or accepted for amount of money a contract exceeding K 500,000.00 done.
- 2.2.6 Based on facts and figures it is noted that financial officers or section 32 officers breached their financial delegations.
- 2.2.7 Based on facts and figures it is noted that NCDC did not and to date has not sought and obtain approval from the National Finance Department through its Internal Audit division for any person NCDC to be given or be recognized as section32 officers or as Financial Officers, especially the NCD Governor Powes Parkop, his special Projects Officer, Ned Gong and Ravu Frank.
- 2.2.8 No tender – Kitoro # 33 & PNG Gardener payments.
- Based on facts and figures Justin Thcthenko has been paid the total sum of K 3011,881.99 through the two companies he owns, namely the Kitoro # 33 and PNG Gardener, without tender.
- 2.2.8a the total amount is K 3,011,881.99

## Internal Audit Report – Ultra Vires

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- 2.2.8b According to the PFMA (Public Finance Management Act) any payment exceeding K 500,000.00 must be done through a tender process.
- 2.2.8c there is no advertising calling for Tender.
- 2.2.8e there is no evidence of the screening of the Tender paper from interested parties.
- 2.2.8f there is no evidence of any submissions done by the full Board of Commission. There were no minutes and no resolutions to indicate the approval of such a contract.

2.2.3 Based on facts and figures on Attachments exhibit annexed marked as – “A”, “B”, “C”, “D”, “E”, “F”, “G”, “H”, “I”, “J” that the engagement of the following companies.

1. Kitoro # 33
2. PNG Gardener
3. Welo Investments
4. HG Quarries Limited
5. Agility Limited.
6. FIFL
7. Sunshine Security Services Limited
8. Briqueline Hire Cars
9. MJP Building Maintenance & Construction
10. Strength Construction
11. Galmua Management & Construction
12. Mackond
13. Nixon Enterprise

## Internal Audit Report – Ultra Vires

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14. Mt. Wilhelm Organic Farming
15. Waglame Construction
16. Sonix Build Construction
17. Tongis Hire Car
18. Autozeal International
19. 15 Mile Smash Repairs
20. Ginigoada Business Development Foundation
21. Airways Hotel
22. Leisure Holiday & Travel
23. Regency Limited
24. Hiritano Electricals
25. Esco Limited

2.2.4 Based on facts and figures the following individuals were also paid without the source documents:-

1. Powes Parkop
2. Wari Iamo
3. Augustine Ravi
4. Lillian John
5. Ned Gong
6. Anthony Aitsi
7. A. John
8. Erap Wai
9. Wilson Tiagopa.

### 2.3 **Breach of Fundament Principles.**

## Internal Audit Report – Ultra Vires

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According to Public Finance Management Act Part 11 – Procurement – Framework & Principles, it states that there are (5) five fundamental principles of the procurement and they are as follows:-

### 2.3.1 “Value for money.”

Value for money involves obtaining goods and services that best meets the Governments needs at the lowest total cost.

The main objectives is obtain value for money in the acquisition of goods and services using ethical, transparent processes whilst promoting open and effective competition.

All decision makers in the procurement must satisfy themselves that a proposed contract will make effective use taxpayers money.

### 2.3.2 Transparency.

Transparency involves the clear and public documentation of procurement processes and decisions. All processes used and decisions made should be able to withstand independent review and scrutiny.

### 2.3.3 Effective Competition.

Effective competition is the key operating principle that must be applied if value for money is to be achieved.

Competition that is effective will see a number of independent companies bidding to provide goods and services to the Government of PNG, through the procurement process. Creating effective competition involves publicly requesting tenders and quotes from suppliers, providing timely and adequate information to suppliers, and ensuring that new entrants and small suppliers are able to participate.

### 2.3.4 Fair and ethical dealing.

The Government of PNG in spending taxpayer's money has a special responsibility to avoid waste, act honestly and impartially, and to be accountable for procurement actions.

The central principles underpinning fair and ethical dealing include-

- a) Treating potential and existing suppliers with equality and fairness.
- b) Not seeking personal or family gain
- c) Treating suppliers and potential suppliers with respect and confidentiality
- d) Where conflict interest occurs it must be declared

### 2.3.5 Efficiency

It is important not only that all staff involved in major procurement must follow this principles but also they must be seen at all times to follow this principles. Failure to follow undermines the provisions of this of the Public Finance Management Act and the credibility of the Government of Papua New Guinea.

## 3.0 **FINDINGS - (Prima Facie findings)**

### 3.1 **Conflict of Interest – under NCDC Act (2006 as amended)**

Based on the first impressions it is the findings of this report that the Governor Powes Parkop has failed to inform the NCDC Full Board of Commission and declared his interest,

thus by his actions he has contravene and breached section 18 of the NCDC under the segment “Conflict of Interest.

### 3.2 **No evidence of any declaration of Conflict of Interest.**

A search was conducted on the minutes and resolutions of all the

NCDC’s Full Board of Commission meetings held thus far and determination has been concluded that no such declarations have made according to the provisions of the NCDC Act (2006) as amended and there is no such record of a declaration that has been kept as evidence that a declaration.

Based on first impressions therefore it is the findings that a declaration of Conflict of Interest was never made.

### 3.3 **Breach of the Organic Law on Leadership Section 27.**

Based on first impressions, it is the findings of this ultra vires and inadvertently breached the Organic Law on Leadership Code section 27, where amongst other provisions it clearly states that as a member of national parliament of PNG, Hon. Powes Parkop is under obligation and to make a declaration of “Conflict of Interest” and declare his interest.

### 3.4 **Justin Thcthenko and Powes Parkop are political allies.**

Based on first impressions, it is the findings of this ultra vires Internal Audit report that the Governor of NCDC, Powes Parkop, and the owner of the company PNG Gardener and Kitoro # 33 are political allies and friends.

The owner of Kitoro # 33 and PNG Gardener Mr. Justin Thcthenko is reported to have appointed as the fundraising Chairman of the political party aptly named as the Peoples Social Democratic Front which is founded by the Governor of NCD, and Regional Member for the National Capital District, Powes Parkop.

It is the findings of this ultra vires Internal Audit report that Mr. Justin Thcthenko has organized two fundraising dinners in the conjunction with PNG Orchid Society, and raised

money well over a K1 million for People Social Democratic Front and the intended usage of the money raised for the National General Elections in 2012.

Furthermore by Justin Thcthenko and Powes Parkop are related by marriage.

Justin Thcthenko's wife is from Manus, and the Governor Parkop is also from Manus. Powes Parkop older sister is married to a man named Julius who is related to Mr. Justin Thcthenko's wife.

Julius works for Powes Parkop as his personal assistant at his office in the Parliament House.

### 3.5 **The Governor personally approved the payments to Justin Thcthenko.**

Based on first impressions the Governor of NCD personally approved the moneys budgeted under the "Centrally Controlled Funds" under his care and authority through the Certificate Of Expediency (a process only during State of Emergency and Natural Disasters) to make payments to Kitoro # 33 and PNG Gardener.

This two companies are owned and operated by the Governor' Powes Parkop's political ally Mr. Justin Thcthenko.

The total amount paid is K 3,011,811.99

### 3.6 **Hierarchy of Laws – PFMA is superior to NCDC ACT.**

Based on first impressions, it is the findings of this report that according to the principles the commonly ethical practice it is only proper to appreciate the existences of the hierarchy of Laws.

In essences this ethical principle suggest that when there are two laws in existences governing a set of circumstances or an individual person, there must be an establishment to decide which law is superior to the other.

Upon that establishment it is imperative the superior law prevails and therefore that laws must be practiced or adhered to or obeyed.

Therefore based on first impressions it is the findings of this report that the Public Finance Management Act is superior to the NCDC ACT in terms of governing public monies and therefore the Governor and the City Manager and his executives are indeed obligated to abide by the provisions of law as contain the Public Finance Management Act.

In the management of public monies the Public Finance Management Act is therefore superior to the NCDC ACT.

Based on first impressions it is the finding of this report that the Governor Powes Parkop cannot use the provisions of the NCDC ACT to empower his authority or to legitimize his authority over the dispensation of public monies through the NCDC.

3.7 **As a Member of Parliament the Governor is not a section 32 Officer.**

Accordingly in terms governing the public monies, the Public Finance Management is deliberately silent on the Authority or power in as far as Members of Parliament are concern, except the Minister for Finance who is a Member of Parliament.

It is generally accepted that the PFMA only empowers the "Head of Department" which in this absolute case refers specifically to the City Manager.

The understanding therefore is that by its silence the PFMA does not give approval the Governor, who is Member of Parliament to handle monies, except the City Manager who is the Head of the Department and is a Public Servant.

In essence based on first impressions, it is the findings of this report that the Governor by his conduct has erred in literally handling the public monies especially the said "Centrally Controlled Funds" and the "Special Projects Funds" of which he has established himself as the authorize person make approvals.

### 3.8 **Gross misconduct in office by the Governor, Powes Parkop.**

Based on first impressions by his actions to personally approve payments using COE's for which the details are enclosed in the attachment exhibit annexed marked as – "A", "B", "C", "D", "E", "F", "G", "H", "I", "J", his actions therefore ultra vires.

office by personally approving payments exceeding the required financial delegation of the City Manager, which is K 100,000.00, and the Public Tender, which is K 500,000.00.

### 3.9 **City Manager is an accessory to misconduct by the Governor.**

The incumbent City Manager has not objected or gives notice to his objection at the Full Board of Commission, and by ignoring the actions of the Governor has indirectly become an accessory to the charges of gross misconduct by the Governor.

The City Manager Mr. Leslie Alu and his Executive Management Committee have advised the Governor properly in the terms his (the Governor) of financial responsibility or lack of it thereof.

As per the Public Finance Management Act, the City Manager is the Head of Department and the only person allowed dispensing the public monies as per the guidelines, rules and laws under the provisions of the PFM.

The City Manager has therefore by his action become and accessory to the abuse of financial powers within NCDC.

### 3.10 **NCDC Financial Consultant failed his duties.**

Based on first impressions that it is the findings of this report that despite fact that NCDC has engage a highly qualified Expatriate Financial Accountant, namely Mr. Augustine Ravi, who is seemingly highly paid it seems, the NCDC Governor has not been properly advised by the consultant as to what is the proper process, according to the provisions of the Public Finance Management Act.

The Financial Consultant Mr. Augustine Ravi therefore failed in his duties to provide the proper and correct advice to Governor, the City Manager, and the Executive Management Committee.

**3.11 NCDC Financial Consultant may have colluded with the Governor.**

In fact based on first impressions the Financial Consultant Mr. Augustine Ravi maybe have collaborated and colluded with the Governor Powes Parkop in formation and inclusion of the “Centrally Controlled Funds” and the “Special Projects Funds” in the NCDC Budget specifically for the Governors own usage upon his own personal discretion.

Therefore based on first impressions that it is the intention of this report to raise suspicion that the Financial Adviser Mr. Augustine Ravi may by his action did collaborate and collude with Governor and has become an accessory to the gross misconduct in office whether deliberately or otherwise.

**3.12 Breach of Procurement of less than K 100,000.00**

Based on first impressions it is the findings of this report that the Governor Powes Parkop, City Manager Leslie Alu and the NCDC Executive Management Committee as breached the process procurement of goods and services for amounts less than K 100,000.00 by obtaining (3) three quotes, thus breaching the provisions of the Public Finance Management Act Part 11, and Part 12 on procurement.

**3.13 Breach of Procurement of more K 100,000.00 by Public Tender.**

Notwithstanding the established on NCDC Financial ceilings but according to the Public Finance Management Act all amounts for procurements of goods and service over and above K100,000.00 should be done by Public Tender.

Based on first impressions it is the findings of this report that for all payment approved by the Governor were not done, through or by Public Tender.

## Internal Audit Report – Ultra Vires

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Instead, all the payments were done through the COE, thus breaching the PFMA.

### 4.0 **SUMMARY**

In summation, and based on first impressions is the findings of this report that the Governor Powes Parkop has appointed himself the Chief Accounting Officer by instructing the NCDC Management to observe the instruction that any payment beyond K 10,000.00 must in the first instance be approve by him.

Furthermore, the Governor also took away the votes, which are generally under the Community and Social Services and diverted in into a new account vote, which is called the Centrally Controlled Fund and the Special Projects Funds. Monies from these votes are used at the Governor Powes Parkop's discretion.

Hence, it is assumed that without proper procurement process in appointing PNG Gardener and Kitoro # 33, the Governor has personally taken upon himself to engage this companied which are owned by his family member, and political ally for his own benefit.

He has conflict of interest, used his position as the Governor to issue, and appoints contracts worth millions of Kina for his own private use.

It is the findings of this report that the Governor has committed a gross misconduct in office.

### 5.0 **RECOMMENDATION**

Based on the first impressions of the findings in this report the offence committed are ultra vires, and are therefore very serious in nature.

Therefore with the powers conferred by the Public Finance Management Act 2005 as amended we make the following recommendation and due to the fact this is a qualified Internal Audit report thereby ensues that all recommendation must be complied forthwith:-

- 5.1 That the National Government should suspend the powers of the Governor and the National Capital District Commission for a period of six (6) months.

## Internal Audit Report – Ultra Vires

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- 5.1.1 Immediately after the suspension the National Government should appoint a Caretaker Administrator the Term of Reference.
  - 5.1.2 The National Government a Term of Reference to investigate the all Financial Records from 1999 to date.
  - 5.2 that the Governor of NCD and Chairman of the NCDC Full Board of Commission should referred immediately to the Ombudsmen Commission for further investigation for possible breaches of the Constitution, the Organic Law on the Leadership code 27, and the NCDC Act 2006 (as amended)
  - 5.3 That the City Manager Leslie Alu be referred to the Ombudsman Commission for a possible breach of the Organic Law on Leadership Code section 27.
  - 5.3 That the City Manager Leslie is suspended immediately and he be referred to the Royal Papua New Guinea Constabulary for possible criminal investigations.
- 6.0 **CONCLUSION**

In essence and indeed based of first impression (prima facie) the Governor actions are ultra vires.

The Governor is, as a Member of Parliament must be subjected to the laws of the Public Finance Management Act.

Therefore in conclusion we believe that the recommendation enclosed is fair and appropriate.

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# Internal Audit Report – Ultra Vires

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David Conn

Chair – NCDC Internal Audit Committee