

OFFICE OF THE OMBUDSMAN

PUBLIC REPORT

ON UNLAWFUL OPERATION OF METRO NIGHT CLUB AT FRESHWATER AREA WITHOUT A PERMIT LICENSE

Date: 28 April 2025



REPUBLIC OF VANUATU

OMB24-0026/2025/02

TABLE OF CONTENTS

1. PURPOSE	3
2. SCOPE	3
3. ISSUE	3
4. OUTLINE OF EVENTS	3
5. DISCUSSION	4
6. RESPONSE BY THOSE WITH FINDINGS AGAINST THEM.....	9
7. FINDINGS	11
8. RECOMMENDATIONS	11

1. PURPOSE

The purpose of the investigation is to determine whether the Port Vila Municipal Council (PVMC) has approved the permit for the operation of the Metro Night club at the Freshwota area.

2. SCOPE

The scope of the investigation is;

- a. to look into the process of permit license and determine whether Municipal has approved permit of the night club to operate in a residential area.
- b. To look into the rental agreement and determine whether the owner of the night club complied with its terms and conditions.

3. ISSUES

There is only one (1) issue raised in this matter;

1. To ascertain whether the Municipal Council granted approval for permit operation for the Metro Night club to be operated in a residential area.

4. OUTLINE OF EVENTS

1. On 8th September 1994, an original land lease title no. 11/OF31/092 was signed between the Minister of Natural Resources in accordance with section 8 & 9 of the Land Reform Regulation of 1980 hereinafter referred to as the Lessor and the National Housing Corporation hereinafter referred to as the Lessee.
2. On 27th January 1995, the land lease Title No. 11/of31/092 was transferred from Michaelson Abel to Mr. Anatol Hymak.
3. On 28 December 2021, upon discovering that the owner of the building located on land lease title no. 11/of31/092 intended to operate a night club, Mr. Wari representing the other property owners wrote to the former Lord Mayor Hon. Eric Puyo Festa Di Festa raising their concerns about operating a night club in a residential area. In that same letter they also strongly urged the former Lord Mayor Eric Puyo Festa Di Festa not to approve the business licence permit.
4. A letter dated 28th December 2021 was written on behalf of the Chiefs and, Community leaders, Church leaders, Youth representatives, Mama's and Papa representatives of freshwater 2 area.
5. On 28 December 2021, the Rental agreement was drafted between Mr Anatole Hymak and Sabi Natonga. The Rental agreement provided the conditions to the lessee.

5 DISCUSSIONS

The main issue raised in this matter is whether the Port Vila Municipal Council (PVMC) approved for the permit of Metro Night Club at the Fresh Water area.

Metro Night Club is currently owned by popular businessman, Sabi Natonga. In 2021, the Night club was established at Freshwater. According to the surrounding residents, the building lacks sound prove. It was situated right in the middle of private residences, leading to excessive noise, vulgar language from intoxicated patrons, and instances of drunken individuals trespassing into private yards, causing disturbances and theft. There are different groups of people living near and around the night club building. It includes babies and very young children, school children, elderly, sick people. The night club opens around 8:00pm and closes around 6: am in the morning 7 days a week including Sunday.

The evidence available comes from a number of sources. Firstly from Seule Lipie. She made this statement on the 8th of March 2025. The relevant part of her statement goes as follows;

Mi live long ples ia mo mi grow up long ples ia. Mi gat 3 pikinini we oli stap long secondary school. Since night club I stap open early and close early morning ol pikinini oli no mekem homework blong olgeta from noise from ol trong man, from loud music. Oli swear, and other actions blong ol trong man hemi new long ol pikinini blong mi from oli luk everi night. Mi noticim ol changes ia long ol pikinini blong mi”.

Another evidence comes from George Betty. She made this statement on 3 March 2025. The relevant part of her statement goes as follows;

“Mi confirm se mi live closap long Metro night club. Mifla I live long ples ia since 2007. Bifo night club I kam, ples ia I quite mo milfa I sleep gut. Taem club I move I kam, noise i stap kasem morning. Mifla I nogat fence mekem se ol drong man oli stap kam inside long yard blong mifla I causem fear long mifla everi night. Mifla gat ol pikini mo I gat sick mama blong mi long hao. Mifla I never sleep gut long wan night. Mi confirm se mi gat high blood preasure mo mami blong mi hemi olfala nogut mo hemi stap talem long mi everi day se hemi never sleep gut long night. Mi bin go pas long Doctor mo Doctor I bin askem se mi stap gat inaf rest, be mi talem long Doctor se mifla no stap sleep gut everi night long noise blong ol trong man mo loud music. Doctor I advisem mi blong mi move aot, be bae mi move aot go wea from graon mo hao mo graon ia nao mifla stap long hem”.

The third evidence comes from Solomon Wari. He made this statement on 3 March 2025. The relevant part of his statement goes as follows.

“Mi live long ples ia since 1998. Since we club I open long ples ia, mi no save sleep. Mi allergic long noise from club I open everi day kasem Sunday. Mi mas pem ear protection mo putum everi night time mi sleep. Noise blong tron man, music, any kaen swear we oli pikinini oli never harem. Building ia hemi no sound proof. Hemi no healthy long ol pikinini, ol olfala man/woman”.

The forth evidence comes from Peter Rio. He made this statement on 3 March 2025. The relevant part of his statement goes as follows;

“Mi live long ples ia since 1979. Mi gat 74 years old. Bifo night club I kam, mifla I enjoyem living blong mifla especially long night. Mi confirm se mi gat high blood preasure, taem tumas noise, mi no save sleep long night. Oli singaot, oli swear, oli fight, noise long music. Mi confirm se ol boy moo I girl oli kam inside long yard blong mi mo gat sex long yard blong mi we hemi no stret blong mifla stap luk”.

The fifth evidence comes from Vanessa Wari. She made this statement on 3 March 2025. The relevant part of her statement goes as follows;

“Since the night club have started, we have had noise from 6pm to 6am Sunday to Sunday. This night club has become a nuisance to our community. The peace we once have is no longer there. Our children cannot sleep well because of this noise and fights from drunkards. We call the police once and they said the night club paid a certain fees to operate until 6am. So that police are not able to help. We see fight happens in front of our eyes, we hear swear and languages that we never heard before”.

The sixth evidence comes from Lady Mayor, Jenny Regenvanu. She made this statement on the 17 of March 2025. The relevant part of her statement goes as follows;

“Mi confirm se mifla ino apruvum any permit blong Metro night club. Mifla no luk any approval long record blong mifla”.

The seventh evidence comes from former Lord Mayor, Erick Festa. He made this statement on 24 March 2025. The relevant part of his statement goes as follows;

“Mi confirm se mi Lord Mayor that time mo mi confirm se inogat any apruvol long permit long time ia. Mi confirm se mi bin talem blong police I stopem be oli no save stopem. Same samting wetem bottle shop long town we inogat any permit blong hem. Mi bin singaotem Chief warden that time, Herve Hopkins blong oli go stopem be response se oli no save stopem from Politic I kam inside. Mi confirm se mi bin risivim phone call from wan politician that time we mi

prefer blong no disclose name blong hem. Hemi talem long mi se bae mi leko Metro night club hemi operate. Request I bin kam be mifla no apruvum permit”.

The eighth (8) evidence comes from Anatole Hymak. Owner of the land title no. 11/of31/092. He made this statement on the 13 March 2025. The relevant part of his statement goes as follows;

“Mi confirm se mi owner blong land we Metro night club I stap long hem. Mi confirm se mi bin drafter wan rental agriment blong Sabi Natonga I signem be hemi never signem. Mi even cautionem hem blong I signem be hemi no wandem. Mi confirm se I stap long agriment se hemi no allow blong mekem any activity we bae causem disturbance long communittee. Taem mi kivim agriment long hem, hemi no wandem signem from hemi wandem operate night club. Mi questionem yet why Municipal I allowem hem blong operate. Mi please long ufla blong stopem.”

Sabi Natonga has failed to provide reasonable reason as to why he failed to sign a rental agreement. The land rent agreement was made on the 28th of December 2021. Under clause 3 (e) & (f) of the agreement, it states as follows;

(e) He shall not create or permit to be created any nuisance to the neighbourhood and shall respect the regulation about the noise i.e not to operate any radio, video, or music or making any other noise between 10pm and 7am.

(f) not to throw or permit to be thrown any fat, ;leaves or other solid matter down any sick, or pipe within or on the lease premises and agrees to carry out his own expenses any repair to the drainage or septic sewage system or sinks of the leased premises caused by reason of neglect to observe this clause.

I have attentively listened to the statements made by Hon. Anatole Hymak and Former Lord Mayor Erick Festa. Based on their remarks regarding the non-signing of the rental agreement, I would like to share my perspective.

It appears that Mr Sabi Natonga intended to establish a nightclub but has not complied with the legal requirements. He was clearly aware of the terms outlined in the rental agreement, particularly sections 3 (e) and (f). Despite this, he has chosen to establish and continue operating the nightclub.

I have taken a closer look into his approach as mentioned by the Lady Mayor as follows;

“Hemi wan kaen man we hemi no stap respectem law”.

Erick Festa further confirmed that;

“Hemi stap operate bottle shop long town without approved permit”.

This suggests that he may not be adhering to legal standards. He exhibits a sense of entitlement or arrogance by ignoring the rules and laws, believing that the consequences do not apply to him.

The final evidence comes from Sabi Natonga, Owner of Metro Night Club. He made this statement on the 17 March 2025. The relevant part of his statement goes as follows;

“Mi confirm se mi ownem Metro Night club. Mi confirm se mi no signem rental agriment”.

The Ombudsman Office has requested for a copy of his permit approval but nothing was provided.

Now I come to the law;

Physical Planning Act

“PHYSICAL PLANNING, section 1 -7

To provide for controlling the development of land.

1. Interpretation

In this Act, unless the context otherwise requires –

“Council” means Municipal Council or Local Government Council;

“development” means the carrying out of building or other operations in, on, over or under the land or the making of any material change in the use of buildings or land, or the subdivision of any land;

“material change of use” means any change of use of a building or land which so alters the character of the building or land such that the new use lies outside the use class of the former or existing use, the use classes being

CLASS 1 Retailing any commodity other than those defined in Classes 2, 3, and 4.

7 Light industry for any purpose which would not affect the amenities of a residential area.

8 General industry for any purpose which would not seriously affect the amenities of a residential area.

9 Special industry for any purpose which by virtue of the materials used or stored, or the hours of operation would seriously affect the amenities of a residential area.

6. Application for outline permission

If an applicant wishes to apply for general permission for development subject to details being later agreed by the Council, he may apply for outline permission to develop land subject to the subsequent grant of permission by the Council for those details, but the grant of permission by the Council in respect of those details shall be required before any development is begun.

7. Powers of the Council to deal with applications

(1) Where application is made to the Council for permission to develop, the Council may grant permission either unconditionally or subject to such conditions as it thinks fit, or may refuse permission, and in dealing with any such application the Council shall have regard to the plan in force and any other material considerations.

(2) Any permission granted under this section shall lapse on the expiration of 24 months from the date of its grant, or, where permission has been granted following an appeal, the date of determination of such appeal, unless the permitted development has been completed to the satisfaction of the Council.

(3) Any permission granted under this section to an outline application under section 6 shall lapse at the expiration of 12 months from the grant thereof, or, where permission has been granted following an appeal, from the date of the determination of such appeal unless, in the case of those matters which are the subject of a later application, application for permission is made to the Council.

(4) The Council may, on application, extend the time of permissions under subsections (2) and (3) at its discretion.

(5) The Council may grant permission for the retention on land of any buildings or works constructed or carried out thereon before the date of the application or for the continuance of any use of land instituted before that date.

(6) The Council may grant permission to develop for a limited period only.

(7) Where any development has been commenced but not completed before the coming into operation of this Act, then if any permission required for the carrying out

of that development had been duly granted, permission shall be deemed to have been granted in respect of the completion of that development”.

The provisions cited above clearly requires permission from the Council for all proposed developments in the Council area.

This concludes that the operation of the Metro night club at Freshwota area was unlawful due to the absence of an approved permit from the Port Vila Municipal Council.

RESPONSE BY THOSE WITH FINDINGS AGAINST THEM.

Before starting this investigation, the Ombudsman notified all people or bodies complained of and gave them the right to reply. Also, a working paper was provided prior to preparation of this Public Report to give the individuals mentioned the opportunity to respond.

First, I say thank you to Jenny Regenvanu, Lady Mayor of the Port Vila Municipal Council (PVMC) for her response to the working paper. Her response goes as follows;

1. *As lady Mayor, I concur with your recommendations.*
2. *The Council will act on the first recommendation with immediate effect.*
3. *Let me reassure the Office of the Ombudsman that the Port Vila Municipal Council will closely monitor and submit report (s) on any detected political interference in its decision-making process*

Secondly, I say thank you to Anatole Hymake, Member of Parliament for Malekula constituency and Owner of land title # 11/of30/092 where the Metro night club was operated. He reviewed his statement on the working paper by deleting and inserting the following:

“Mi confirm se mi owner blong land we Metro night club I stap long hem. Mi confirm se mi bin drafter wan rental agriment blong Sabi Natonga I signem be hemi never signem. Mi even cautionem hem blong I signem be hemi no wandem. Mi confirm se I stap long agriment se hemi no allow blong mekem any activity we bae causem disturbance long communittee. Taem mi kivim agriment long hem, hemi no wandem signem from hemi wandem operate night club. Mi questionem yet why Municipal I allowem hem blong operate. Mi please long ufla blong stopem.”

Thirdly, I say thank you to Solomon Warri for his comment and review as follows;

OUTLINE OF EVENTS

3. On 28 December 2021, upon discovering that the owner of the building located on land lease title no. 11/of31/092 intended to operate a night club, Mr. Wari representing the other property owners wrote to the former Lord Mayor Hon. Eric Puyo Festa Di Festa raising their concerns about operating a night club in a residential area. In that same letter they also strongly urged the former Lord Mayor Eric Puyo Festa Di Festa not to approve the business licence permit.

[Delete] Mr Warri representing the other property Owners.

6. [Insert] subparagraph 4 “A letter dated 28th December 2021 was written on behalf of the Chiefs and, Community leaders, Church leaders, Youth representatives, Mama’s and Papa representatives of freshwater 2 area”.

Page 6. First line . [delete] eaves [insert] leaves. [delete] latter [insert] matter

Mi jes raetem one leta dated 11 December 2024 I go long Lady Mayor long behalf long mifla

I stap kam clear nao long mifla long wanem nao cause blong suffering blong mifla mo since January 2022 casem naoia I gat trifala council mayors be inogat one emi directly deal wetem issue ia. Sapos mifla ino lodgem complaint I kam long ofis blong yu bae issue emi continue mo gavman emi continue long lusum revenue we hemi shud collectem long business ia.

“Mi fully sapotem recommendations blong working paper ia”.

Fourthly, I say thank you to Sabi Natonga, owner of Metro night club, for dropping additional documents as evidence of the permit. After going through the documents, I found the following documents;

1. Copy of business license for metro night club at fresh water with the Department of Customs & Inland Revenue;
2. Copy of certificate of registration of metro night club with the VFSC;
3. Copy of permit approval for metro night club operated at Yao Building;

There was no permit approval of certificate for metro night club at fresh water.

8. FINDINGS

Finding 1: The Port Vila Municipal Council has not granted a permit license to Mr Sabi Natonga to operate a Night Club at Freshwater area.

Mr Sabi Natonga has not been granted a permit license by the Port Vila Municipal Council to operate a nightclub at Freshwater area. The Metro Night Club was operating without an approved permit, making it illegal.

Finding 2: Sabi Natonga contradict section 5 of the Physical Planning Act

By disregarding the lawful process of obtaining a permit prior to any development on the physical planning area, the action of Sabi Natonga contracted section 5 of the Physical planning Act.

Finding 3: Sabi Natonga has failed to sign the rental agreement.

By disregarding the rental agreements with conditions, the operation of the Metro Night club at Freshwota was in contradiction to the terms and conditions of the rental agreement.

Finding 4: Breach of terms and conditions of land lease title 11/OF31/092.

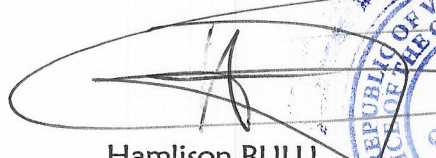
Clause 3 (a) of the terms and conditions of lease title 11/OF31/092 is to be used for residential purposes only. Clause (4) of the same agrees to not use or permit the use of the leased land for any noxious or offensive act, trade business or occupation or calling or in any such manner as to cause annoyance, nuisance or inconvenience to occupiers or owners of adjacent premises or the neighbourhood.

9. RECOMMENDATIONS:

I make the following recommendations:

1. The Port Vila Municipal Council must act swiftly to shut down the Metro Night club at Freshwater without delay;
2. Hon. Atatole Hymak is required to immediately terminate his tenant due to the failure to sign a rental agreement.
3. The Municipal Council must immediately inform the Ombudsman upon detecting any interference in its decision-making process.

Dated 28 April 2025


Hamlison BULU
OMBUDSMAN OF THE REPUBLIC OF VANUATU

