

**AUDIT OF COMPLIANCE OF THE ALLOCATION OF THE EAST
AWIN FORESTRY PROJECT WITH THE REQUIREMENTS
OF THE FORESTRY POLICY, THE FORESTRY ACT
AND OTHER REGULATIONS
AND GUIDELINES**

Prepared For:

THE GOVERNMENT OF PAPUA NEW GUINEA

**c/- THE CHIEF SECRETARY TO
GOVERNMENT**

Prepared By:

THE 2003/2004 REVIEW TEAM

(Reviewing Current Logging Projects)

FEBRUARY 2004

CONTENTS

	Page
Executive Summary	(ii)
1. Introduction and Background	1
2. Forest Resource Issues	1
3. Legal Compliance Issues	3
4. Landowner Issues	4
5. Audit Conclusions and Recommendations	4

Attachments:

1. Findings of the 2000/2001 Review Affecting East Awin
2. Notes on Methodology
3. Notes Regarding the Sustainable Annual Allowable Cut
4. Notes Regarding Legal Compliance

EXECUTIVE SUMMARY

The key audit findings are as follows:

1. The Timber Permit granted by the Minister on 11 September 2003, and formally handed to GL Niugini Ltd at a ceremony on 17 November 2003, is void by virtue of the failure of the company to comply with s98(5) of the Forestry Act (the requirement to lodge a performance bond within 21 days). The Act requires that the PNGFA Board advises the company. It has not yet done so.
2. In the opinion of the Review Team, the Minister for Environment and Conservation erred when he issued an Environmental Plan Approval without the advice of his Department, especially as the instrument also effectively approved the construction and operation of a sawmill, a veneer mill, and a timber treatment plant without adequate environmental consideration.
3. GL Niugini Ltd is in breach of the conditions attached to the Environmental Plan Approval. Under this circumstance, the Environment Act 2000 allows the Director for Environment and Conservation to cancel the Approval.
4. Since the recommendation of the 2000/2001 Review Team that “the PNGFA check the forest resource data and reconfirm the sustainable annual cut estimate”, the net loggable area has been satisfactorily revised. However the recommended additional field inventory work has not been undertaken. Additional information which has become available since 2000/2001 strongly supports the 2000/2001 conclusion that the annual allowable cut for East Awin has been set far too high to be sustainable. In this respect the project does not comply with the sustainability objectives of the National Forest Policy 1991 and the Forestry Act 1991.
5. If it is assumed that 10% of the gross loggable area is set aside for conservation purposes (as provided for in the Forest Management Agreement between the landowners and the State); that “fragile forests” are excluded from logging (pragmatically not an issue at East Awin); and that a cutting cycle is 40 years is applied (as required by the National Forest Policy), then an estimate of sustainable annual allowable cut is 37,500 m³. This is significantly less than the 141,000 m³ allowed under the Timber Permit, or the 70,000 m³ adopted by the PNGFA Board as the minimum for a stand alone log export operation.
6. If this much reduced estimate of the sustainable annual allowable cut is confirmed by additional field work, then GL Niugini may need to be asked whether it is still interested in the East Awin project.

Recommendations are made for consideration by Government. These are aimed at:

1. Progressing the project sensibly on the basis of reliable forest inventory data, and a sound environmental plan;
2. Re-establishing PNGFA Board and Department of Environment and Conservation control over the project; and
3. Dispelling any concept that the environmental impacts of the construction and operation of a sawmill, a veneer plant and a timber treatment plant have been adequately assessed and/or approved.

The recommendations are that:

1. The Board complies with the requirement of s98(5) of the Forestry Act 1991 and advises GL Niugini Ltd that the current Timber Permit is void.
2. The Director for Conservation and Environment uses his powers under the Environment Act 2000 to formally cancel the Environmental Plan Approval.
3. The Board rescinds the recommendation made to the Minister on 8 March 2000 to grant a Timber Permit to GL Niugini Ltd.
4. The PNGFA re-assesses the forest resource description, and in particular undertakes field inventory work to obtain an improved estimate of the net loggable volume per hectare.

Further, following a full and proper re-assessment of the forest resource description, and re-calculation of the sustainable Annual Allowable Cut (and any changes this may require to the Forest Management Agreement, the Development Options Study, the Project Guidelines and the Project Agreement), it is recommended that:

5. The PNGFA enter into discussions with GL Niugini Ltd to ascertain the company's continued interest in the project, and the company's willingness to re-apply for a Timber Permit.

1. INTRODUCTION AND BACKGROUND

THE 2000/2001 REVIEW

During 2000/2001 an independent Review Team undertook an audit of 32 “in process” forestry projects which were being developed by the PNG Forest Authority (PNGFA). None of the projects had yet reached the stage where a Timber Permit had been issued by the Minister. The purpose of the audit was to check that each project was being progressed in proper compliance with the National Forest Policy, the Forestry Act 1991, and other regulations and guidelines.

The 2000/2001 Review Team made a number of project specific recommendations for each of the projects being developed. In addition it made a number of generic recommendations applying to all projects. The generic recommendations are set out in Attachment 1. They were accepted by the National Executive Council, and set out in a time-bound action plan for implementation by the relevant authorities, mainly the PNGFA and the Department of Environment and Conservation (DEC).

EAST AWIN

One of the projects reviewed was East Awin. At the time of the review this project had been progressed to the point that the PNGFA Board had recommended the issuance of a Timber Permit to the Minister; the Minister had invited the proponent to apply for a Timber Permit; and the proponent had submitted an Environmental Plan to the DEC for its consideration (the Forestry Act requires that an approved Environmental Plan is attached to the proponent’s application for a Timber Permit). The 2000/2001 Review Team audit conclusions and recommendations with respect to the East Awin project are also set out in Attachment 1.

In late 2003 the Minister for Forests granted a Timber Permit for East Awin. At the request of the PNG Government¹, the Review Team has undertaken an audit of the balance of the project allocation procedure for East Awin which had not already been audited in 2000/2001. Some notes regarding methodology are set out in Attachment 2.

2. FOREST RESOURCE ISSUES

Notes regarding the sustainable annual allowable cut (AAC) are set out in Attachment 3.

THE LOGGABLE AREA AND THE LOGGABLE VOLUME PER HECTARE

The 2000/2001 Review Team was of the view that the AAC for East Awin (at 141,000 m³) had been over-estimated, and recommended that it be re-assessed. A re-assessment of the AAC requires a check of both the net loggable area and the net loggable volume per hectare. Investigations by the Review Team indicated that:

¹ Letter from Chief Secretary to Government to the Review Team Leader dated 16 December 2003.

- NET LOGGABLE AREA

The PNGFA has satisfactorily revisited and revised the net loggable area estimate using satellite images. Adjustments have been made to allow for areas of forest disturbed by local inhabitants, the Papuan refugee camp, and illegal logging. The re-assessment has resulted in a decrease of the estimate from 151,197 ha to 130,000 ha, a reduction of about 14%.

- NET LOGGABLE VOLUME PER HECTARE

Despite the recommendations of the 2000/2001 Review Team, and subsequent direction by the National Executive Council, the PNGFA has not undertaken any additional field inventory work. Additional data which has become available from other forestry projects in the area, and field inventory work undertaken by GL Niugini Ltd within the East Awin project area, support a net volume per hectare estimate of 15.0 m³. This is a very significant reduction of 54% from the 32.83 m³ set out by the PNGFA's Planning Division in the Forest Management Agreement.

The Timber Permit granted by the Minister in late 2003 reiterates an AAC of 141,000 m³. This AAC is based on the data set out by the PNGFA in the Forest Management Agreement originally prepared and signed in 1996. It is repeated in the Project Guidelines (on which GL Niugini Ltd based its evaluation and project proposal), and again in the Project Agreement between GL Niugini Ltd and the State. The concern regarding the possible over-estimation of the AAC raised by the 2000/2001 Review Team is well known within the PNGFA. Despite this, the conditions of the Timber Permit, which are based on the advice of the PNGFA, continue the perception that East Awin will support an AAC of 141,000 m³.

OTHER MATTERS AFFECTING THE AAC

The 2000/2001 Review Team also recommended that a clear policy statement be articulated regarding:

- The 10% of gross loggable area set-aside provided for in the Forest Management Agreement for forest conservation purposes which the PNGFA had not taken into account in its estimation of the sustainable AAC;
- Forest types which do not grow fast enough to be harvested sustainably based on a 35 year cutting cycle, or which do not have the capacity to regenerate after logging. These "fragile forests" had not been taken into account by the PNGFA in its estimation of the sustainable AAC; and
- The cutting cycle. The PNGFA uses a cutting cycle of 35 years whereas the National Forest Policy requires a 40 year cycle to be used.

The required policies have not yet been clarified.

AN ESTIMATE OF THE AAC

An estimate of the AAC is calculated in Attachment 3. It is 37,500 m³. The calculation allows for a 10% set aside of the gross loggable area, and is based on a 40 year cutting cycle. Fragile forests are not a material issue. The estimate is significantly less than the minimum requirement for a viable stand alone log export operation (70,000 m³ as adopted by the PNGFA Board).

3. LEGAL COMPLIANCE ISSUES

Notes regarding legal compliance issues are set out in Attachment 4.

GRANTING OF THE TIMBER PERMIT

Due process was generally observed. The Minister relied on the Board's recommendation of 8 March 2000 to grant a Timber Permit to GL Niugini Ltd, which has not been rescinded.

The Minister failed to comply with s73(1) of the Forestry Act 1991 in that he did not grant the permit within 30 days of receiving the application from GL Niugini Ltd. However, the Act does not provide for any consequences, and thus this is not considered to be a material breach.

OBTAINING APPROVAL OF THE ENVIRONMENTAL PLAN

An Environmental Plan Approval was issued by the Minister for Environment and Conservation. Whilst observing the provisions of the Environmental Planning Act 1978, the Minister did not take into account any technical advice from his Department, or the advice of the Secretary that he defer the granting of an approval. The original of the approval cannot be found, casting some doubt on its validity.

It is of significant concern to the Review Team that the activities included under the Environmental Plan Approval are significantly wider than logging and log export. The approval also allows for a sawmill, a veneer mill, and a timber treatment plant. Non of these activities are adequately covered in the environmental plan, yet all have the potential to result in significant environmental impacts, especially the timber treatment plant.

It is clear that the conditions attached to the Environmental Plan Approval are a much less onerous version of the draft conditions prepared by the Department. Many requirements have been reduced or removed. However this does not make the approval illegal.

GL Niugini Ltd has breached the Environmental Plan Approval by not meeting a number of time bound conditions, in particular the submission of sub-plans. The new Environment Act 2000 provides an avenue for the Director of Environment and Conservation to cancel the approval.

LODGING A PERFORMANCE BOND

Due process with regard to the lodgement of a performance bond was generally observed, except that GL Niugini Ltd failed to meet the requirements of s98(5) of the Act that the bond be lodged within 21 days of the grant of the Timber Permit. As a consequence the Act makes the Timber Permit void, and requires the PNGFA Board to advise the proponent. The Act is very clear on this point. Until the PNGFA Board advises GL Niugini Ltd, then the Board itself is in continuing breach of the Act.

4. LANDOWNER ISSUES

All of the landowner issues have already been addressed by the 2000/2001 Review Team. No additional issues were found. It is noted that the PNGFA has not taken any steps to implement the 2000/2001 review recommendation "that the PNGFA apply some effort to resolving the present confusion regarding Incorporated Land Groups and Landowner Companies".

5. AUDIT CONCLUSIONS AND RECOMMENDATIONS

AUDIT CONCLUSIONS

Given that the Timber Permit is void, the main issue with regard to the East Awin forestry project for all stakeholders is the need to verify the resource, in particular the net loggable volume per hectare. A reliable net volume per hectare is required if the project is to be compliant with the sustainability objectives of the National Forest Policy 1991 and the Forestry Act 1991.

Without a reliable forest resource description, there cannot be a sustainable forestry project, a sound commercial development, or ongoing benefits for landowners. Significant and probably excessive expectations have already been raised. It is possible that the forest acquisition and allocation procedure set out in the Forestry Act 1991 may need to be rolled back to an update of the forest resource description contained in the Forest Management Agreement.

It is the view of the Review Team that the Minister for Environment and Conservation erred in not seeking the advice of his Department before issuing an Environmental Plan Approval, and that a proper assessment of the environmental plan needs to be done. It was also highly inappropriate for the Minister to approve the construction and operation of a sawmill, a veneer mill, and a timber treatment plant.

RECOMMENDATIONS FOR CONSIDERATION BY GOVERNMENT

In order that:

- The project may be progressed sensibly on the basis of reliable forest inventory data, and a sound environmental plan; that

- The the PNGFA Board and the Department of Environment and Conservation regain control over the project; and that
- Any concept that the environmental impacts of the construction and operation of a sawmill, a veneer plant and a timber treatment plant have been adequately assessed are dispelled;

then **it is recommended that:**

1. The Board complies with the requirement of s98(5) of the Forestry Act 1991 and advises GL Niugini Ltd that the current Timber Permit is void.
2. The Director for Conservation and Environment uses his powers under the Environment Act 2000 to formally cancel the Environmental Plan Approval.
3. The Board rescinds the recommendation made to the Minister on 8 March 2000 to grant a Timber Permit to GL Niugini Ltd.
4. The PNGFA re-assesses the forest resource description, and in particular undertakes field inventory work to obtain an improved estimate of the net loggable volume per hectare.

Further, following a full and proper re-assessment of the forest resource description, and re-calculation of the sustainable Annual Allowable Cut (and any changes this may require to the Forest Management Agreement, the Development Options Study, the Project Guidelines and the Project Agreement), **it is recommended that:**

5. The PNGFA enter into discussions with GL Niugini Ltd to ascertain the company's continued interest in the project, and the company's willingness to re-apply for a Timber Permit.

ATTACHMENTS:

1. Findings of the 2000/2001 Review Affecting East Awin
2. Notes on Methodology
3. Notes Regarding the Sustainable Annual Allowable Cut
4. Notes Regarding Legal Compliance