

PNG FORESTRY REVIEW TEAM

AUDITING FORESTRY PROJECTS CURRENTLY "IN PROCESS" FOR COMPLIANCE WITH THE REQUIREMENTS OF THE POLICY, THE FORESTRY ACT AND OTHER REGULATIONS AND GUIDELINES

To: Government of Papua New Guinea
C/- The Interagency Forestry Review Committee
Office of the Chief Secretary to Government

From: Review Team

Date: 5 February 2001

Re: **INDIVIDUAL PROJECT REVIEW REPORT NUMBER 20**

EAST PANGIA (SOUTHERN HIGHLANDS PROVINCE)

AUDIT CONCLUSIONS AND RECOMMENDATIONS:

RESOURCE AND PLANNING ISSUES:

The harvestable resource has been significantly over-estimated in the FMA document. Whilst the corrected potential sustainable annual cut is sufficient to support a conventional stand alone log export project, its location in the Southern Highlands intuitively does not support this option either financially (cost of getting logs to the coast for export) or socially (an area of domestic sawn timber demand).

LEGAL COMPLIANCE:

Due process is being followed. The project is at a very early stage of development.

LANDOWNER ISSUES:

The ILG work is totally inadequate to support ongoing landowner involvement in the management of their land and forest resources. Detailed clan property lists are missing, and these require proper mapping of clan boundaries, and boundary dispute resolution. There is evidence that a significant number of landowners do not support the project.

RECOMMENDATIONS (INCLUDING CORRECTIVE MEASURES IF REQUIRED):

- That the PNGFA undertakes additional field inventory, and reviews, and if necessary amends the resource data.

- That the PNGFA revisits the ILGs.
- That unwilling ILGs should be excluded from the Forest Management Agreement. If Supplementary Forest Management Agreements are to be prepared then legal advice must be sought and followed. Any Supplementary Forest Management Agreement must be drafted so that it is truly supplemental to the original agreement.
- In view of the policy to promote domestic processing, that the Development Options Study fully consider this option, and if necessary split the resource into two or three lots to accommodate an anticipated lack of landowner co-operation in this location.

That subject to the above, if the potential for a commercially viable and sustainable forestry project is confirmed:

- That the project should proceed with continued efforts to fully involve landowners in informed decision making.

Note: The individual project reports summarise the findings of the Review Team regarding material compliance issues, and present project specific recommendations for the consideration of the Interagency Forestry Review Committee. Separate reports produced at the end of the review process set out in more detail the audit procedures applied, and comments and recommendations regarding existing policies, legal requirements and project development processes.

REVIEW REPORT

SUMMARY PROJECT DETAILS:

Project type:	Forest Management Agreement / Timber Permit
Processing stage:	Formation of Incorporated Land Groups (ILGs) completed. Forest Management Agreement approved by the Board and currently being signed.
Gross FMA area (a):	92,000 ha (c)
Gross loggable area (a):	82,000 ha
Net sustainable timber yield (a):	75,000 m ³ /annum (b)

(a) Anticipated. To be finalised once it is known which ILGs sign the FMA.

(b) Review Team estimate based on:

- Area information extracted from the PNGFA Geographic Information System (FIMS);
- Gross volume per hectare information from PNGFA field inventory work (FIPS);
- A standard reduction factor of 15% applied to gross loggable area;
- A standard reduction factor of 30% applied to gross volume per hectare; and
- A 35 year cutting cycle.

(c) The draft FMA shows a gross area of 99,000 ha.

A. FORESTRY AND PLANNING ASPECTS

<p>1. SECTORAL PLANNING AND CONTROL</p>	
<p><u>PROVINCIAL FOREST PLAN</u></p> <ul style="list-style-type: none"> • PNGFA Board endorsed Provincial Forestry Plan exists: • Is the Provincial Forestry Plan current: • Is the Project listed in the Provincial Forestry Plan: <p><u>NATIONAL FOREST PLAN</u></p> <ul style="list-style-type: none"> • Is the Project listed in the National Forest Plan as required under s54 of the Act: 	<p>Yes</p> <p>No – expired July 1999</p> <p>Yes</p> <p>Yes</p>

<p>2. PROJECT DEFINITION IN FMA DOCUMENT</p>	
<ul style="list-style-type: none"> • Is the gross loggable area properly defined: • Has the total gross merchantable volume been properly estimated: • Has the net merchantable volume been properly estimated: 	<p>Yes and no. The FMA document shows a higher gross FMA area (99,000 ha) and sets out an unexplained gross loggable area estimate of 88,000 ha. The FIMS area data indicates a gross loggable area of 82,000 ha.</p> <p>No. FIPS data indicates a gross loggable volume of 54.3 m³/ha but the sample is very small (0.07%), and the volume per hectare seems high. The FMA document sets out an even higher gross loggable volume per hectare of 63.1 m³/ha. The change is explained by the NFS as “human error”.</p> <p>No. Both the loggable area and the harvestable volume per hectare have been over-stated in the FMA document. The data in the FMA indicates a total net harvestable volume of 3.4 million m³. A corrected figure is 2.6 million m³.</p>

<ul style="list-style-type: none"> • Have “Fragile Forest Areas” (OEC definition) been considered: • Have environmentally sensitive areas been considered: • Have conservation set asides been appropriately implemented: 	<p>No, because there is no agreed position regarding fragile forest areas. There are no Fragile Forests in the East Pangia project area.</p> <p>Yes. Large scale Gazetted conservation areas are excluded from the FMA area. Small scale Gazetted conservation areas are identified and excluded from the gross loggable area. The Logging Code prohibits logging in defined environmentally sensitive areas which are excluded when the gross loggable area is defined.</p> <p>The standard FMA document reserves the right for the PNGFA to exclude up to 10% of the gross loggable area from logging for conservation purposes.</p>
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<p>3. ESTIMATE OF SUSTAINABLE CUT</p>	
<ul style="list-style-type: none"> • Has the sustainable annual cut been properly calculated: • Is the estimated sustainable yield sufficient to support a financially efficient logging investment (min 30,000 m3/a): • Is the estimated sustainable yield sufficient to support a stand-alone log export operation (min 70,000 m3/a guideline set by PNGFA Board): 	<p>Not yet estimated by PNGFA, but it would be over-estimated if they rely on the resource description shown in the FMA. Preliminary data suggests a sustainable cut of 75,000 m3/a.</p> <p>Yes</p> <p>Yes</p>

4. CONSISTENCY BETWEEN DOCUMENTS	
<ul style="list-style-type: none"> • Is the area and volume data consistent between the FMA, the Development Options Study and the Project Guidelines: • Any other material inconsistencies regarding the resource: 	<p>Only an FMA prepared to date.</p> <p>None found.</p>
5. ANY OTHER MATERIAL NON-COMPLIANCE REGARDING THE RESOURCE	
<ul style="list-style-type: none"> • The standard cutting cycle assumed in the sustainable annual cut calculation. 	<p>The National Forest Policy specifies a 40 year cutting cycle. In practice a 35 year cycle is applied. No explanation is available.</p>

RECOMMENDATIONS REGARDING FORESTRY ASPECTS:

1. SECTORAL PLANNING AND CONTROL

- That the PNGFA pro-actively assist the Southern Highlands Provincial Government update their Provincial Forest Plan (s49), and facilitate the inclusion of the updated Provincial Forest Development Programme (s49(2)(b)) into the National Forest Development Programme (s47(2)(c)(ii)) as required under the National Forest Policy (Part II (3)(b)) as the basis for the PNGFA's acquisition and allocation programme.

2. PROJECT DEFINITION

- That the PNGFA check the resource data, including additional field inventory, and if necessary amend the resource estimates set out in the FMA document before this is transferred to the Development Options Study.

3. ESTIMATE OF SUSTAINABLE CUT

- That the PNGFA recalculates and amends as necessary the permitted annual sustainable cut for inclusion in the Development Options Study.

4. ANY OTHER MATERIAL NON-COMPLIANCE REGARDING THE RESOURCE

- That the PNGFA either base their sustainable cut calculations on a 40 year cutting cycle (as required under the National Forest Policy) or provide justification for adopting a 35 year cutting cycle.

B . LEGAL COMPLIANCE

SUMMARY OF LEGAL COMPLIANCE:

- There is ample evidence on the files that the PNGFA has followed due process and intends for it to be followed in the later steps.
- The ILG work was commenced in mid-1996 and there has been genuine intent that it be done thoroughly and properly.
- The ILG work has been extensive but may not be complete. There is an expressed intention to include further ILGs in additional or supplementary FMAs. This is not a decision to be taken lightly and the implications of it will have to be well considered.

Some additional notes are presented in Appendix 1.

RECOMMENDATIONS REGARDING LEGAL ASPECTS:

1. Legal advice will have to be sought in relation to the finalisation of the involvement of ILGs in this project. If the project does not have the support of landowners in parts of the proposed project area then those parts will have to be excluded. If other groups express their willingness to join the project later then a Supplementary FMA that truly supplements the original FMA in every respect will have to be executed. Care must be taken in this regard.
2. Officers of the PNGFA should avoid giving advice of a commercial nature to landowner groups unless that is their designated function and is within their particular field of expertise.

C. LANDOWNER ISSUES

RESOURCE ACQUISITION	
1. Landowner Awareness	
The Review Team was looking for evidence of an awareness package containing information explaining the purpose, benefits and otherwise to be expected from the project. This could	<ul style="list-style-type: none"> • Lack of awareness or sufficient time to carry out awareness on ILGs (ref. Michael Melleeter to PNGFA 6th Feb. 1997.) In the Highlands where land and property ownership is a major issue a lot more time is needed to carry out project and ILG

<p>include general conditions that could be used for all prospective projects.</p>	<p>awareness.</p> <ul style="list-style-type: none"> • Disputes on property listing by one particular group against another indicates lack of consultation amongst land groups during the ILG process. • 17TH December 1996 PNGFA carried out a general awareness on the status of the project and the steps that needed to be taken before the project is implemented.
<p>2. Landowner Mobilisation</p>	
<p>Landowners are required to be mobilised by means of the Land Groups Incorporation Act. The Review Team was looking to find evidence of full participation by landowners in the ILG process particularly with regard to:</p> <ul style="list-style-type: none"> • Recognition that the resources are owned by individual land groups and not collectives of land groups • The formation of representative bodies for project consultations and negotiations. 	<ul style="list-style-type: none"> • Breaking up of the main clans into smaller ILGs indicate that the formation of ILGs are often family units rather than clan groups. • The combination of several clan groups into one ILG could cause problems in the future when it comes to the distribution of benefits. • Clan groups still do not fully understand the purpose of forming the ILGs. • Frequent changes to the number of ILGs (from 376 to 421) indicates instability in the land group formation. • Major clan land disputes occurred immediately the certificates were issued. There is no indication that the land groups have been provided with advice as to solving the problems. These problems should not have arisen because before the certificates are given there is ample time to raise objections and even prevent unnecessary (bogus) ILGs ever getting incorporation. There seems to be evidence of corrupt practices on the part of non-landowners to stake a claim based on land owned by other groups.
<p>3. Forest Management Agreement</p>	
<p>Must Specify:</p> <ul style="list-style-type: none"> • Monetary benefits for the customary group • Area in agreement by map • PFMC certificate as to - authenticity of the 	<p>Signing of the FMA has been aborted pending lifting of the moratorium.</p> <ul style="list-style-type: none"> • No indication as to whether the landowners have been informed of the benefits that the various land groups will be entitled to. • Only those ILGs that have been legally

<p>tenure of the customary land</p> <ul style="list-style-type: none"> - willingness of customary owners to enter into FMA • Review level of consultation with landowners 	<p>registered will sign the FMA.</p> <ul style="list-style-type: none"> • Further ILGs will sign as they are legally registered. These will be registered under a supplementary list.
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This project is not yet at a stage where the resource allocation process has been initiated. Consequently no landowner issues relating to the allocation process have yet arisen.

Two timber projects have failed in this project area partly as a result of landowner dissatisfaction.

CONCLUSIONS REGARDING LANDOWNER ASPECTS:

- ILGs have raised many concerns as to project size, land ownership and awareness. It will be a challenging task to weld such diverse and assertive landowners into working together for one project.
- That regular disputes are likely unless the ownership of the ILGs and property list are properly resolved.
- A great deal of project development awareness will need to be conducted before the FMA and future Project Agreements can be meaningful.

RECOMMENDATIONS REGARDING LANDOWNER ASPECTS:

1. That the ILGs are vetted and remedial action taken in particular to:
 - Ensure that what appears to be family units incorporated as ILGs have distinct land in the project area; and that
 - That the existing ILGs are genuine representatives of the land the landowners.
2. That landowners' interests are considered in the DOS.

APPENDIX 1 : NOTES ON LEGAL ASPECTS

Project Background

Extensive ILG work has been carried out since mid-1996.

A FMA has been signed by a significant number of ILGs. In the files it is said to be about 90%. In the overview of projects given to the Review Team by the PNGFA it is said to be about 50%.

Inclusion of other ILGs

After nearly 4 years of ILG work it seems that not everything was completed. A letter from the Managing Director in November 1999 indicates that there may be 3 FMAs for this project. A further letter in June 2000 notes the possibility of a “supplementary FMA”. It would be wise to proceed in this regard on the clearest legal advice.

Possible Landowner Corporate Structures

There is a quite remarkable letter to a landowner company from a former Managing Director in early 1997 that talks of possible corporate arrangements for landowner involvement. It describes a corporate structure in diagram form. It seems to propose a corporate arrangement comprising the ILG, a company, a “holding company”, an “umbrella company” and a business group. It then makes the revelation that more than one of these structures is anticipated to “cover the entire East Pangia proposed FMA”. The letter was not written on April Fool’s day.

Matters of this nature are best left for qualified experts. It is not appropriate to talk in these terms until project guidelines are finalised and project proposals have been submitted for consideration.