

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 21**
EAST COLLINGWOOD (MILNE BAY PROVINCE)

AUDIT CONCLUSIONS AND RECOMMENDATIONS:

RESOURCE AND PLANNING ISSUES:

There is no PNGFA Board approved Provincial Forest Plan. The net loggable area has been over-estimated by an estimated 20,000 ha in the FMA document. The corrected estimated sustainable annual cut is too small to support a financially efficient logging investment or a conventional stand alone log export project.

LEGAL COMPLIANCE:

While due process has been followed this project has not progressed in any way since early 1998. There has been no proper consideration given to development options.

LANDOWNER ISSUES:

There is no evidence of any landowner awareness carried out by the PNGFA at the early stages of this project. There is no record in the files of ILG membership, although the names of the ILG chairmen that appear in the registry files are consistent with the signatures shown in the Forest Management Agreement.

RECOMMENDATIONS (INCLUDING CORRECTIVE MEASURES IF REQUIRED):

- That the PNGFA pro-actively assists the Milne Bay Provincial Government to prepare its Provincial Forest Plan for PNGFA Board approval and inclusion in the National Forest Plan.

- That the PNGFA check and amend if necessary the forest resource data.
- That the PNGFA identify development options as a matter of priority. If none appear to be viable then the project should be shelved after consultation with landowners and the Provincial Government has taken place.

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

- That the project should proceed with continued efforts to fully involve landowners in informed decision making.
- That the PNGFA revisit the ILGs to ensure that ILG membership is consistent with the records that are with the Department of Lands.
- That the PNGFA conduct proper landowner awareness regarding the development options for the project.

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:

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| Project type: | Forest Management Agreement / Timber Permit |
| Processing stage: | Formation of Incorporated Land Groups (ILGs) completed. Forest Management Agreement signed and approved by the Minister. |
| Gross FMA area: | 81,000 ha |
| Gross loggable area: | 49,000 ha |
| Net sustainable timber yield: | 24,000 m ³ /annum (a) |

(a) 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.

A. FORESTRY AND PLANNING ASPECTS

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| <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>No. Draft prepared in 1995 but never approved by Provincial Executive.</p> <p>No</p> <p>Yes – listed in draft plan.</p> <p>Yes</p> |

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| <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>No. The FMA document indicates a gross loggable area of 81,000 ha without explaining how this is derived – applying the standard 15% reduction results in the net loggable area estimate of 61,000 ha shown in the FMA. The FIMS area data indicates a gross loggable area of 49,000 ha, and a net loggable area of 41,000 ha. The FMA area data is thus a significant over-estimate. (Note: There are indications that cyclone Justin followed by drought and fire destroyed 3000 hectares of the resource).</p> <p>Yes. The FIPS data is used in the FMA.</p> <p>No. The gross loggable area has been over-stated in the FMA, which indicates a net harvestable volume of 1.0 million m3. A corrected figure is 0.8 million m3.</p> |

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| <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. An estimated 6% of the gross loggable area of the East Collingwood project area is classified as Fragile Forest.</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 slightly over-estimated if they rely on the resource description shown in the FMA. Preliminary data suggests a sustainable cut of 24,000 m3/a, or 23,000 m3/a if the areas classified as Fragile Forests are excluded from harvesting.</p> <p>No</p> <p>No</p> |

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| 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 Milne Bay Provincial Government update and approve 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 IN FMA DOCUMENT

- That the PNGFA checks and amends if necessary the project area and gross volume per hectare information.

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:

- Due process has generally been followed. However it cannot be said that the project has proceeded satisfactorily.
- The failure to identify practical development options is not fair treatment of the landowners who have consented to the FMA.
- The failure to sensibly advance this project is the most likely reason why a landowner company sought to involve a prospective developer at an inappropriate time. It is this type of involvement that most often leads to breaches of due process.

A full checklist and accompanying notes are presented in Appendix 1.

RECOMMENDATIONS REGARDING LEGAL ASPECTS:

1. That the certification given by the PFMC under section 58(f) must be done in a responsible fashion. This must involve a real attempt to ascertain that the ILG incorporation work is bona fide and adequate. The willingness of landowners to enter into the FMA must be genuinely ascertained.
2. That the attendance of landowner representatives at PFMC meetings at which their projects are being considered must be facilitated. And this attendance should be noted on the NFS files held at Headquarters.
3. That when it is known that the project cannot stand-alone as a log export project then this must be made clear to the landowners. It is imperative that the PNGFA take the lead role in determining the other development options. The Development Options Study seems to be regarded as a mere formality. In relation to this project nothing has been done on it at all. For years the landowners have been led to believe that they have a viable project. It is only the PNGFA that can make it viable by determining its proper course. This has not happened. Landowner discontent is therefore inevitable. As is the untimely involvement of prospective developers acting in concert with so-called landowner companies.

C. LANDOWNER ISSUES

| RESOURCE ACQUISITION | |
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| 1. Landowner Awareness | |
| <p>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 include general conditions that could be used for all prospective projects.</p> | <ul style="list-style-type: none"> • Degree of land owner awareness and understanding of the issues at land owner level are difficult to determine. • Some land group enlisted the support of ICRAF lawyers to halt large scale logging. • In October 1996 PNGFA teams carried out awareness relating to ILGs and FMA. |
| 2. Landowner Mobilisation | |
| <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"> • Daga Maiwa Holdings is set up as the Landowner Company (LANCO). • 71 ILGs are completed plus 9 more in the grassland. • Some ILGs had to be cancelled as they were claiming the same land. This is an indication of poor mobilisation, but indicates a degree of self checking by the LANCO. |
| 3. Forest Management Agreement | |
| <p>Must Specify:</p> <ul style="list-style-type: none"> • Monetary benefits for the customary group | <ul style="list-style-type: none"> • FMA signed on 6th April 1998. • FMA document includes, Monetary Benefits, detail specification of the area to be harvested, Certificate from the PFMC. |

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| <ul style="list-style-type: none"> • Area in agreement by map • PFMC certificate as to <ul style="list-style-type: none"> - authenticity of the tenure of the customary land - willingness of customary owners to enter into FMA • Review level of consultation with landowners | <ul style="list-style-type: none"> • Kapurida Landgroup ILG No.3824 abstained from signing the FMA. • LANCO requests NFS to facilitate downstream processing and reforestation activities. • LANCO nominates Deegold P/L as the preferred developer. • LANCO intervention indicates that at least there is an understanding of the issues involved in developing the project at the LANCO level. |
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| RESOURCE ALLOCATION | |
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| 1. Development Options Study | |
| <p>The Review Team was looking to see if the Development Options Study:</p> <ul style="list-style-type: none"> • Catered for landowner concerns and aspirations and if • All options presented for the resource development had a realistic chance of being pursued. | Development Options Study not yet prepared as PNGFA plan to consolidate with nearby resources for a stand alone log export project. |
| 2. Project Guidelines | |
| Draft guidelines must be discussed and developed in consultation with the resource owners | Not yet drafted |
| 3. Project Agreement | |
| Authority is required to involve landowners in selection of the “developer” and in negotiation of the Project Agreements according to the terms of the FMA. | Not applicable at this stage |

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| 4. Environmental Plan | |
| EP is produced by the preferred developer according to the prescription of the Environmental Planning Act. Evidence of consultation with landowners is important. | Not yet applicable |

CONCLUSIONS REGARDING LANDOWNER ASPECTS:

- Many mistakes were made during the original ILG work indicating insufficient skilled facilitation.
- Efforts to correct early mistakes are very commendable.
- Empowerment of ILGs is not really apparent.

RECOMMENDATIONS REGARDING LANDOWNER ASPECTS:

1. That the PNGFA revisits the ILGs and ensure that ILG memberships are consistent with Department of Lands records.
2. That the PNGFA undertakes proper landowner awareness regarding the development options for this project.

APPENDIX 1 : CHECKLIST OF COMPLIANCE WITH LEGAL REQUIREMENTS

PROJECT – EAST COLLINGWOOD

| Step | Compliance | Non-Compliance | Not Clear |
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| <u>1. Landowner Consultation</u> | | | |
| Awareness campaign | Sept/Oct 96 | | |
| Vesting of title | N/A | | |
| ILG incorporation | Dec 96 | | |
| PFMC certificate | 17/11/97 | | |
| Attendance of landowners at PFMC meeting | | | ? |
| <u>2. Forestry Management Agreement</u> | | | |
| Form and content | Confirmed | | |
| Execution | 6/4/98 | | |
| Ministerial approval | 6/4/98 | | |

CHECKLIST NOTES:

1. In April 1996 it was noted that more ILG work was required. It appears that this was undertaken before the PFMC certification was given. While this may indicate that the PFMC performed its certification role in a responsible manner, there is little on the files to confirm that the PFMC did check that the ILG work was correct and that the landowners were in favour of the project.

When the FMA was taken to the area for signing in late 1997 6 ILGs were deleted from the project. 1 refused to sign in order that a conservation area be protected. This suggests that the PFMC certification did not accurately reflect the willingness of landowners.

2. As far back as April 1996 it appears that the area was considered to be insufficient for the project to stand-alone. A landowner company was given this advice by the Managing Director in July 1998. Up until that point it would seem that landowners were entitled to believe that the project was progressing. It was not.

By April 1999 the landowner company was advocating Deegold (PNG) Ltd as its “preferred developer”. While the NFS promptly advised the company that its direct dealings with the landowners may constitute a breach of the Act, it must be said that the failure of the NFS to advance the project in a responsible and realistic manner was probably the reason why the landowner company formed its relationship with the prospective developer. This is a recurring theme.

3. The NFS should have responded to the need to identify realistic development options as far back as August 1998 when the landowner company clearly indicated that it favoured a sawmilling operation with reforestation rather than a log export project. The NFS response to this largely ignored the company’s sensible suggestion. Indeed the matter was referred back to the Provincial Forest Officer to identify more areas. Some suggestions concerning a cross-border project involving the West Collingwood area are then mentioned by the NFS in later correspondence.

By April 1999 ICRAF was involved and it suggested that the NFS should assist the landowners to pursue a project that does not involve large-scale logging. There is no indication that this was acted on in any way. Indeed to date the Development Option Studies stage has not advanced at all.