

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 March 2001

Re: **INDIVIDUAL PROJECT REVIEW REPORT NUMBER 23**
RAI COAST (MADANG PROVINCE)

AUDIT CONCLUSIONS AND RECOMMENDATIONS:

RESOURCE AND PLANNING ISSUES:

This project has planned for a sustainable annual cut, but is based on a TRP whose remaining term is insufficient for this purpose. For the planned project the sustainable timber yield principle has been complied with. The planned potential annual sustainable cut is insufficient to support either a financially efficient logging operation or a conventional stand alone log export project. In the absence of a Forest Management Agreement there is no provision for 10% of the gross loggable area to be set aside for conservation purposes.

LEGAL COMPLIANCE:

The TRP may be technically saved by the new Act but in its current form it is an inappropriate basis for this project. The Development Options Study has been properly done.

LANDOWNER ISSUES:

Landowner awareness on the future status of the project has not been adequate. Landowner aspirations and concerns are adequately covered under the Development Options Study.

RECOMMENDATIONS (INCLUDING CORRECTIVE MEASURES IF REQUIRED):

- That consultation takes place with the Madang Provincial Government to check that they support this project being resurrected.

If agreed to by the Provincial Government, then:

- That consultation with landowners take place with a view to abandoning the TRP and basing this project on a Forest Management Agreement with properly constituted ILGs as parties.
- That royalty sharing which has taken place under the cancelled project be taken into account when the sharing of benefits under the new project is negotiated.

If it is decided that the TRP should be the basis for this project, then:

- That section 137(2) be used to vary its terms so as to recognise the role of ILGs and the principles of sustained yield management.

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:	Timber Rights Purchase / Timber Permit
Processing stage:	Resource acquired under the old Forestry Act as a Timber Rights Purchase area. Previous Timber Permit cancelled by the Minister. Development Options Study completed.
Gross TRP area:	76,000 ha
Gross loggable area:	23,000 ha (remaining as at 1996 according to FIMS data). PNGFA year 2000 estimate is 17,000 ha (as set out in DOS).
Net sustainable timber yield:	22,000 m ³ /annum (a). 19,000 m ³ /annum (PNGFA estimate as set out in DOS)

(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 (1983 Forest Inventory Report);
- A standard reduction factor of 15% applied to gross loggable area;
- A non-standard reduction factor of 40% applied to gross volume per hectare (as applied in the Forest Inventory Report); and
- A 35 year cutting cycle.

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 August 1999</p> <p>No – but at the time the Plan was drafted this project was operational and the need to re-allocate it could not have been foreseen.</p> <p>Yes</p>
<p>2. PROJECT DEFINITION IN FMA DOCUMENT</p>	<p>Note: In the absence of a Forest Management Agreement, the Project Definition used to test compliance with the review criteria is that set out in the Development Options Study.</p>
<ul style="list-style-type: none"> • Is the gross loggable area properly defined: • Has the total gross merchantable volume been properly estimated: 	<p>Rather than a gross loggable area, the DOS document calculates a net loggable area of 17,000 ha by deducting non-loggable and previous logged areas from the gross project area. The FIMS area data indicates a higher net loggable area of 23,000 ha but may not allow for the area logged from 1996 to the date the prior permit was cancelled.</p> <p>Unclear. A PNGFA 1983 inventory report indicates a gross volume of 56.0 m³/ha (which intuitively sounds high). There is insufficient data to calculate the sample size. The DOS sets out a gross volume of 44.4 m³/ha - this information is sourced from a 5 Year Working Plan prepared by the logging company. However the PNGFA inventory report applies</p>

<ul style="list-style-type: none"> • Has the net merchantable volume been properly estimated: • Have “Fragile Forest Areas” (OEC definition) been considered: • Have environmentally sensitive areas been considered: • Have conservation set asides been appropriately implemented: 	<p>a 40% reduction factor compared to the 30% factor applied in the 5 Year Plan, resulting in net volume estimates of 33.6 m³/ha and 33.3 m³/ha respectively. These estimates are coincidentally similar.</p> <p>Yes. The net harvestable volume based on the net loggable area set out in the DOS is estimated to be 0.55 million m³.</p> <p>No, because there is no agreed position regarding fragile forest areas. There are no areas classified as Fragile Forest within the Rai Coast 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>In the absence of an FMA, the right for the PNGFA to exclude up to 10% of the gross loggable area from logging for conservation purposes has not been agreed to with the landowners.</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>Yes. Estimated by PNGFA in the DOS as 19,000 m³/a.</p> <p>No</p> <p>No</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>No FMA. Only a DOS prepared by the PNGFA 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 Madang 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

- That the PNGFA check their volume per hectare estimate; undertake volumetric inventory in the field; and amend if necessary the project resource data.

3. 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 are no ILGs and there is no Forest Management Agreement. Reliance is placed on a Timber Rights Purchase which has been “saved” under the new Forestry Act. This may be technically correct but real concerns arise in the context of landowner involvement and the application of sustainable management principles.
- The DOS has been done properly and the appropriate Forms have been used.

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

RECOMMENDATIONS REGARDING LEGAL ASPECTS:

1. That consultations take place with landowners to pursue the following outcome:
 - That the TRP be terminated.
 - That ILGs be incorporated.
 - That an FMA be executed (or a planned series of Timber Authorities be considered).
 - That the other procedural requirements of the Act be observed.
2. That in any event the TRP should not be used as the basis of this project unless its terms are amended to give due recognition to the role of ILGs and to the principles of sustainable management.

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 include general conditions that could be used for all prospective projects.	<ul style="list-style-type: none">• Concerns by Andrew Salel of Gasigu Development Corporation Ltd that true resource owners were not being consulted on the status of the project.• No evidence to show that the resource owners were being made aware of the future status of the project.• Landowner benefits under the cancelled permit were outlined in a Logging and Marketing Agreement (excluding royalties).

<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"> • Two Landowner Companies (LANCOs) exist, Raikos Holdings Ltd (RHL) and Gasigu Development Corporation (GDC). • RHL was the holder of the Timber Permit that has since been cancelled due to non compliance. • GDC is pushing for the Timber Permit to be given to it. • No ILGs have been carried out.
<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 <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"> • Under a TRP the landowner benefits are spelt out in the Timber Permit and the Logging and Marketing Agreements. • There has been a lack of consultation with resource owners on the future development of this project and the future sharing and distribution of royalties in view of the fact that those whose resources are yet to be harvested would have already received some royalties from the previous logging operation.

RESOURCE ALLOCATION	
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. 	<ul style="list-style-type: none"> • The DOS adequately covers most of landowners aspirations. • Some of the proposed options presented by landowners are not realistic and will be difficult to achieve.
2. Project Guidelines	
<p>Draft guidelines must be discussed and developed in consultation with the resource owners</p>	<p>Yet to be done.</p>
3. Project Agreement	
<p>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.</p>	<p>Yet to be done.</p>
4. Environmental Plan	
<p>EP is produced by the preferred developer according to the prescription of the Environmental Planning Act. Evidence of consultation with landowners is important.</p>	<p>Yet to be done.</p>

Additional notes are presented in Appendix 2.

CONCLUSIONS REGARDING LANDOWNER ASPECTS:

- Landowners are not adequately aware of the future prospects for this project given that the Timber Permit has been cancelled.

RECOMMENDATIONS REGARDING LANDOWNER ASPECTS:

1. That the PNGFA facilitate the formation of ILGs to establish landowners within the project area particularly in the areas that are yet to be harvested.
2. That the PNGFA vet the Landowner Company to identify and transfer if necessary ownership to the ILGs.
3. That the PNGFA ensure that future benefits are delivered through the ILGs and not the Landowner Company.

APPENDIX 1 : CHECKLIST OF COMPLIANCE WITH LEGAL REQUIREMENTS

PROJECT – RAI COAST

Step	Compliance	Non-Compliance	Not Clear
<u>1. Landowner Consultation</u>			
Awareness campaign		X	
Vesting of title	N/A		
ILG incorporation		X	
PFMC certificate		X	
Attendance of landowners at PFMC meeting		X	
<u>2. Forestry Management Agreement</u>			
Form and content		X	
Execution		X	
Ministerial approval		X	
<u>3. Development Options Study</u>			
Board to arrange or exemption	1/6/99 Form 81 N/A		
Directions from PFMC	8/6/99 Form 82 14/6/99 Form 83		
DOS given to Minister and PFMC	10/7/00 Form 84		

CHECKLIST NOTES:

1. There is no FMA for this project. A TRP was arranged in 1990. There is no evidence on the files that the process currently being employed has been based upon any considered advice. It appears that a presumption has been made that section 137 of the Act saves the TRP and that this is then a proper basis for the

project to now proceed. Before this is commented upon some further background should be stated.

2. Under the TRP a Timber Permit was issued to a landowner company, Rai Coast Holdings. Super Mahogany Ltd was engaged as contractor under a Logging and Marketing Agreement and operated for more than 5 years. In 1997 and 1998 a number of performance audits were undertaken by the NFS. On each occasion substantial non-compliance was identified. This related to an insufficient level of both log export and domestic processing, and also to many deficiencies in the provision of infrastructure and services. The permit was cancelled by the Minister on 12 October 1998. Super Mahogany Ltd made many attempts to have a permit issued to them and enlisted some support for this. Another so-called landowner company, Gasigu Development Corporation Ltd, agitated for a permit also.
3. The NFS response was to prepare a Development Options Study. They propose to complete Project Guidelines and then proceed to tender. The DOS has been properly prepared and the correct use of Forms is in clear evidence.
4. The question remains as to whether this is a proper course of action. It is true that TRP Agreements are saved under the Act. It is not clear why this is so. Presumably it is to avoid any undesirable consequences flowing from a wholesale termination of all TRPs. That is to say, they are saved in order that those operations may proceed and litigation over contractual rights may be avoided. In this case however there is now no operation under the TRP and no contractual rights, other than those held by the State in relation to ownership of the resource. It is far less likely that section 137 saves TRP Agreements so that they may replace the ILGs and FMAs as a basis for current projects. If the TRP Agreement is used as the foundation of a project, as is intended in this case, then the most critical aspects of the forestry reforms are rendered ineffective. These are the replacement of dubious landowner companies with incorporated land groups representing the entire project area, and the application of principles of sustainable management.
5. The problems that must inevitably arise are already manifesting themselves in the early stages of this project. Gasigu is determined to get the permit. Its status as a representative landowner company cannot be determined from information on the files. It must be doubted. The DOS recommends, as the preferred option, that the project proceed on an unsustainable basis for the remainder of the term of the TRP. There is a commendable frankness in this finding but it is in conflict with every basis upon which projects are supposed to now proceed.
6. Gasigu has raised an interesting question in this context. It has made application for a Timber Permit under the repealed Act. It has argued that section 137 saves the TRP Agreement "as if the Act under which (it) was granted or entered into had not been repealed". This may be wrong in law but it is an interesting argument and introduces a great many implications that have hitherto not been considered. That is to say, does the old regime apply in a case such as this? The section does permit the Board to require changes to be made so that compliance with the new Act is achieved, but this is limited to changes to provisions in the actual Agreement only.

7. Consideration must be given to the following possibilities –

- That the TRP be terminated.
- That ILGs be done for this project.
- That an FMA be finalised.
- That the project then proceeds as planned.

Of course consultations with landowners must be undertaken at the outset.

8. If the above recommendation does not find favour, then the following amendments to the terms of the TRP Agreement might be sought pursuant to section 137(2):

- A provision should be included requiring adherence to principles of sustainable management.
- Arrangements should be made for the recognition of ILGs and for a requirement that all landowner monetary benefits under the Agreement be channelled through them.

But it must be noted that sustainability might not be achievable as the TRP Agreement will expire prior to the expiration of a 35 or 40 year period.

9. It should be noted that in 2000 the PNGFA Board properly applied the requirement for sustainability when it considered and rejected a request by the PFMC to increase the annual allowable cut.

10. There are two procedural matters that deserve comment. The first relates to the decision to cancel the Timber Permit. It took some time to bring the matter to the Minister but this was finally done and a proper decision was made to cancel it on 12 October 1998. The holder was not however informed of it until 30 November 1998 and the contractor was kept in the dark until 16 December. This delay in communication is unfathomable. And then it must be noted that after the permit was cancelled the Managing Director, acting on the advice of NFS officers in the province, gave his approval on 30 November, to the contractor's logging plan for the next year!

The second matter concerns the refund of the performance bond lodged under the permit. While a small sum was withheld to cover outstanding royalties the balance was refunded to Super Mahogany in January 2000. This followed a concerted effort from NFS officers in the province to secure the refund. It must be stressed that the bond was lodged to secure the performance of the Timber Permit. It is not greatly relevant that it was in fact lodged by the contractor. The permit was cancelled on clear grounds of non-compliance. It makes no sense whatever to refund the bond on the basis that there was near total compliance. A part of the bond was due to the government to cover lost revenues from insufficient log exports. And a part was due to landowners for the failure to provide infrastructure and services.

APPENDIX 2: NOTES ON LAND OWNER ASPECTS

- 13 Aug 90 Rai-kos Holdings held the Timber Permit. Samuel Pariwa MP is the Chairman while Saban Enterprise P/L seem to be the logging contractor.
- 16 Oct 90 Harry Sakulas from Wau Ecology Institute complained that permit has been issued without an Environmental Plan.
- 2 Feb 95 At this time Super Mahogany was the logging contractor.
- 24 Apr '97 Show cause notice was issued by PNGFA for non-compliance with the Timber Permit. A project audit was carried out by NFS.
- 3 Apr 1998 NFS recommended termination of the Timber Permit for non-compliance.
- 17 Jul 98 MD recommended another field appraisal owing to the delay since the audit was carried out.
- 29 Sep 98 MD, Thomas Nen, advised the Minister to cancel the Timber Permit.
- 8 Oct 98 Gasigu Development Corporation Ltd was pushing to have the permit cancelled effective 12 Oct 1998.
- 9 Jan 99 Super Mahogany (PNG) Ltd blamed the LANCO and asked for extension.
- 20 Jan 99 Gasigu Development Corporation applied for a Timber Permit in lieu of Rai-Kos Holdings Ltd.
- 4 Mar 99 The DOS was undertaken and normal allocation procedures followed. Advice given by NFS to extend the area to get a threshold volume for harvest.
- 26 Jul 99 Gasigu Development Corporation requested to have Super Mahogany de-registered.
- 1 Aug 99 Super Mahogany requested the refund of bond.
- 12 Oct 99 Gasigu Development Corporation ordered Super Mahogany to remove their equipment.