

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 29**
WIPIM TAPILA (WESTERN PROVINCE)

AUDIT CONCLUSIONS AND RECOMMENDATIONS:

RESOURCE AND PLANNING ISSUES:

The sustainable timber yield principle has been complied with. Almost all of the forest (98%) is classified by the Office of Environment and Conservation as "fragile". The gross loggable area is over-stated in the FMA document by an estimated 75,000 ha, resulting in a large over estimate of the annual sustainable cut and creating landowner expectations which will not be able to be met. The gross loggable area may also not have taken account of forest losses due to fire. The potential sustainable annual cut is too small to support a conventional stand alone log export project, although log export will not be provided for if this project is developed as an extension of TP 1-06 Oriomo Wimare as directed by the PNGFA Board. The right of the PNGFA to implement conservation set asides (and the consequences) has not been bought forward into the Project Guidelines.

LEGAL COMPLIANCE:

There is no evidence of an application for the project to be treated as an extension. The PNGFA Board decision to grant it as an extension is questionable. The usual concerns about PFMC certification of the Forest Management Agreement are indicated here. There appears to have been a degree of favouritism shown to one purported landowner company. The Project Guidelines do not indicate the aspirations of landowners or the Provincial Government.

LANDOWNER ISSUES:

There has been adequate landowner awareness initially by the Landowner Companies and later by the PNGFA. The ILGs were done by Landowner Companies and later vetted by the PNGFA. There is lack of clarity regarding which ILGs the two competing Landowner Companies represent. The Development Options Study sets out landowner expectations which are very high, and which are not carried forward into the Project Guidelines.

RECOMMENDATIONS (INCLUDING CORRECTIVE MEASURES IF REQUIRED):

- That the PNGFA and Office of Environment and Conservation negotiate a position regarding the harvesting of Fragile Forests for inclusion in the Logging Code of Practice.
- That the PNGFA places negotiations on hold until the above issue is determined.
- That the PNGFA advises the developer who has provided a Project Proposal at the invitation of the Board regarding the above issue.

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

- That the decision to grant the project as an extension should be reconsidered. Proper landowner consultation is required and must involve all representatives of landowner interests.
- That the PFMC certification of the Forest Management Agreement should be revisited, as should the Project Guidelines in order that landowner and provincial Government aspirations can be identified and indicated.
- That the PNGFA re-assess the gross loggable area and if necessary amend the resource estimates set out in the Forest Management Agreement.
- That competing claims by the landowner companies be clarified.
- That there be 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 executed. Development Options Study completed. Project Guidelines completed. Board decision to treat the project as an extension of TP 1-06 Oriomo Wimare. The holder of this permit (Forest Management Services (PNG) Ltd) was invited to submit a proposal which was received in mid-2000. The Oriomo Wimare Timber Permit does not permit log export.
Gross FMA area:	244,000 ha
Gross loggable area:	113,000 ha - but notes in file that significant areas have been burnt and converted to subsistence agriculture.
Net sustainable timber yield:	46,000 m ³ /annum (a) (Note: The Forest Management Services Ltd proposal indicates a sustainable yield of 32,000 m ³ /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

<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>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: 	<p>No. The FMA sets out an unexplained gross loggable area estimate of 187,000 ha. Applying the logging exclusion zones as defined in the PNG Logging Code of Practice indicates a gross loggable area estimate of 113,000 ha. Thus the both the gross and net loggable area statements in the FMA are significantly over-stated. The files indicate significant recent forest area loss due to fire and subsistence agriculture (up to 50% is mentioned) which does not appear to have been taken into account.</p> <p>Forest Research Institute investigated the area and was of the opinion that that the forest will never renew itself without great care and a lot of effort.</p> <p>Yes. FIPS data indicates a gross loggable volume of 23.7 m³/ha and this has been</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>applied in the FMA (and the DOS and Project Guidelines). A standard 15% reduction is applied to estimate the net loggable volume per hectare. The inventory sample is small (0.26%).</p> <p>Yes. But given the overstated net loggable area in the FMA, the stated loggable volume of 2.6 million m³ is also overstated. A corrected estimate based on FIMS and FIPS data is 1.6 million m³. (Note: The proposal submitted by FMS Ltd indicates a total net volume of 1.1 million m³.)</p> <p>No, because there is no agreed position regarding fragile forest areas. An estimated 98% of the gross loggable area within the Wipim Tapila 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>No. Whilst 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, this right (and its potential consequences) has not been carried forward into the Project Guidelines.</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: 	<p>No. The sustainable yield indicated by the resource data in the FMA document (75,000 m³/a) is based on an overstated gross loggable area. For an unexplained reason, the data set out in the Project Guidelines reduces the net volume by a further 15% (to 2.2 million m³), which indicates a potential sustainable yield of 60,000 m³/a. The available FIMS and</p>

<ul style="list-style-type: none"> • 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>FIPS data indicates a potential sustainable yield of 46,000 m3/a. If the areas classified as Fragile Forest are excluded from logging then there is insufficient volume remaining to form the basis of a forestry project. (Note: FMS Ltd undertook its own field survey work and estimated a sustainable yield of 32,000 m3/a which it viewed as uneconomic).</p> <p>Yes</p> <p>No</p>
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<p>4. CONSISTENCY BETWEEN DOCUMENTS</p>	
<ul style="list-style-type: none"> • Is the area and volume data consistent between the FMA, the Development Options Study and the Timber Project Guidelines. • Any other material inconsistencies regarding the resource: 	<p>No – as set out above.</p> <p>None found.</p>

<p>5. ANY OTHER MATERIAL NON-COMPLIANCE REGARDING THE RESOURCE</p>	
<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 Western 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.
- That the PNG Government direct the OEC and the PNGFA to determine a formal position on whether Fragile Forest Areas (OEC definition) may be logged, and incorporate the agreed position into the Logging Code.

2. PROJECT DEFINITION

- That the PNGFA review and amend if necessary to project resource data, with particular attention to the estimate of the gross loggable area.
- That the PNGFA include in the Project Guidelines it's right to set aside 10% of the gross loggable area (and any resource consequences).

3. CONSISTENCY BETWEEN DOCUMENTS

- That the PNGFA cross-checks and amends as necessary the resource information set out in the FMA, the Development Options Study and the Project Guidelines, and ensure consistency of information.

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:

- The Board's decisions to grant this project as an extension are open to question. There is in fact no evidence of a formal application having been made under the Regulations.
- In other respects due process has generally been observed.
- The usual concerns about the certification of the Forest Management Agreement apply in this case. And the required consultation with resource owners and the Provincial Government concerning the draft Project Guidelines is not clearly evidenced.

- It appears that only one landowner company was invited to attend a relevant PFMC meeting held in Port Moresby even though the interest of the other company should have been well-known.

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

RECOMMENDATIONS REGARDING LEGAL ASPECTS:

1. That the Project Guidelines be re-visited to ensure that the views of resource owners and the Provincial Government are ascertained and incorporated in the document.
2. That the decisions to grant the project as an extension should be re-considered in the light of the constant expressions of dissatisfaction by one landowner company, and also due to the recent amendments to the Act in this regard.
3. That if this landowner company can truly claim to represent a group of resource owners then its representatives must be permitted to play a role in the processes as provided for by the Act. To permit the participation only of the company which has supported the extension, and which has come to an arrangement with the adjoining permit holder, raises doubts as to whether due process has been observed.

C. LANDOWNER ISSUES

RESOURCE ACQUISITION	
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"> • Partial resource survey carried out in 1992. • PNGFA officers carried out an awareness program in 1998 after the drought/fire of 1997 using two teams, explaining to the land owners why the project should be integrated into the existing Timber Permit 1-06 Oriomo Wimare. • Objections on the proposed extension by Peter Tatanu from Koina Wuul Investments Ltd on grounds that the current TP 1-06 logging operator (FMS) has not complied with commitments made under its present agreement. • Tatanu was also concerned that the Oriomo Wimare project agreement was poorly put together and that land owner benefits were

	<p>not clearly defined, allowing the contractor to avoid its commitments.</p> <ul style="list-style-type: none"> • There is evidence of an overall concern by landowners that the existing operations have not benefited the landowners at all.
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"> • Landowner Company (LANCO) Tapila Timber Investments Ltd started up first. It claims that it has carried out ILG work for its members. LANCO Koina Wuul Ltd also claim to have done ILGs for its members. Both claim to have the support of most of the landowners who own most of the resource. PNGFA also claim to have prepared another set of ILGs for this project. Identification of which ILGs own which land and are affiliated to which LANCO has not been determined. Rival LANCOS have made inconsistent claims.
3. Forest Management Agreement	
<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"> • This has been approved and signed by both parties. It is not clear to the Review Team if landowner problems have been adequately sorted out. 60 ILGs have signed the FMA.

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 landowner expectations are fully reported in the DOS but the expectations are extremely high. This is even more so because the drought/fire of 1997/98 may have reduced the resource by 50%. • The DOS is inconclusive as there is no confident recommendation for this project owing to species mix, remoteness and low timber density. • Some landowners (Koina Wuul Ltd) still do not support the project being an extension. They have expressed a desire to have their own operation on small scale.
2. Project Guidelines	
<p>Draft guidelines must be discussed and developed in consultation with the resource owners</p>	<ul style="list-style-type: none"> • The PNGFA Board decided that the project be an extension to Oriomo Wimare which has an under-utilised sawmill capable of sawing 25,000m³ per annum. The Board offered the Project Guidelines to FMS. • Project proposal from FMS then seriously criticised by PNGFA. Partly it is suggested that the project would not be likely to render any benefits to landowners under any circumstances.
3. Project Agreement	
<p>Authority is required to get the written consent of the landowners before entering into Project Agreements according to the terms of the FMA.</p>	<p>Not yet finalised. FMS have submitted a project proposal which is still under evaluation by PNGFA.</p>

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 prepared.

CONCLUSIONS REGARDING LANDOWNER ASPECTS:

- The landowner awareness work was not satisfactory in that the areas purportedly represented by the LANCOS are not clearly defined.
- The PNGFA appears to have recognised the impact of the fire on the extent of the resource but has not amended the Forest Management Agreement, the DOS or the Project Guidelines.
- It is far from clear that there is full landowner support for the project area to be made an extension of the Oriomo Wimare project. One of the LANCOS has threatened to pull out of the Forest Management Agreement completely in opposition to having the project considered as an extension to Oriomo Wimare.
- One of the key objections is the perception that the Oriomo Wimare project (which does not permit log exports) has made a loss for the last few years, suggesting that the more they harvest the more they lose. Landowners consequently question whether they will receive any benefits (other than royalties).

RECOMMENDATIONS REGARDING LANDOWNER ASPECTS:

- That the PNGFA assist to sort out the competing claims of the two LANCOS.
- That the Forest Management Agreement be renegotiated if one major landowner group refuses to work with the operators of the Oriomo Wimare project. They should not be forced to be involved based on so called “majority” wishes.
- That the Development Options Study should provide a more detailed examination of the small scale sawmilling option and the eco-forestry project option.

APPENDIX 1 : CHECKLIST OF COMPLIANCE WITH LEGAL REQUIREMENTS

PROJECT – WIPIM TAPILA

Step	Compliance	Non-Compliance	Not clear
<u>1. Landowner Consultation</u>			
Awareness campaign	October 1998		
Vesting of title	N/A		
ILG incorporation			?
PFMC certificate	9/2/96		
Attendance of landowners at PFMC meeting			?
<u>2. Forestry Management Agreement</u>			
Form and content	Confirmed		
Execution	20/12/96		
Ministerial approval	20/12/96		
<u>3. Development Options Study</u>			
Board to arrange or exemption	11/11/97 Form 81 N/A		
Directions from PFMC	16/10/97 Form 82 5/11/97 Form 83		
DOS given to Minister and PFMC	19/11/97 Form 84		
<u>4. Project Guidelines</u>			
PFMC consults with L/owners and Prov Govt			?
PFMC to prepare draft	Confirmed		
Attendance of landowners at PFMC meeting	See notes		

PFMC to submit draft to the Board	16/1/98 Form 85		
Board issues final guidelines	14/9/99		
<u>5. Advertisement</u>			
Project to be advertised	Exempted 2/10/97 & 29/9/99		
Project proposal received	April 2000		

CHECKLIST NOTES:

1. The usual concerns about the certification of FMAs by PFMC's appear to be indicated here. There is no evidence on headquarters' files that landowner representatives attended the relevant PFMC meeting, or that the PFMC independently verified the ILG incorporations or the willingness of landowners to sign the FMA.

2. There are a number of concerns about the Project Guidelines that were approved by the Board in September 1999. These include:
 - There is no evidence that resource owners and the Provincial Government were consulted as required by section 63(1).

 - It is true that landowner representatives appear to have been present at the PFMC meeting held to endorse the draft Project Guidelines, but they were representatives only of Tapila Timbers Limited. In June 1999 Koina Wuul Investments Ltd complained that they had been left out of the meeting. They had good reason to complain as they had regularly written to the PNGFA and the PFMC to state their views on the project. Their interest must have been well known to the NFS and the PFMC. Interestingly Tapila Timbers Ltd had expressed its support for the project to be an extension. Koina Wuul Ltd has steadfastly opposed this since 1996. One might note with suspicion that it was the proponent of the extension that was invited to participate in the process. In any event it simply should not have been allowed to happen in this way.

 - While the development aspirations of the landowners are stated in some detail in the DOS, they have not been included in the Project Guidelines. And in this instance the Guidelines make no reference at all to the contents of the DOS in this respect.

3. Although the Board Minutes indicate that the PNGFA Board played an active role in all stages of this project, its decision to grant this project as an extension to the Oriomo Wimare project must be questioned. In fact the Board made the decision in October 1997 and then again in September 1999. The concerns about this include:

- There is no evidence that a formal (or even an informal) application was ever made. And yet the Board made a decision favouring the adjoining permit holder on not one but two occasions.
 - Landowner opposition to this had been stated in the clearest possible terms since 1996. In October 1997 the Managing Director explained that if the opposition continued then the project would be shelved. This was probably a sensible approach but the allocation process has continued. And Koina Wuul Investments Ltd have remained opposed to the extension.
 - If doubts exist about the bona fides of Koina Wuul Ltd opposing the extension (and some of these doubts are considered later), it must be noted that a NFS report on a land owner awareness campaign conducted in October 1998 reveals that only 26 out of 44 ILG representatives supported the Board's decision. At least one village was totally opposed to the extension. Some villages were divided. The report indicates that two villages supported the extension. And yet the NFS pushed the democratic ideals to the limit and concluded that a majority effectively endorsed the Board's decision. It is a majority that effectively resolves nothing.
 - In April 1998 the adjoining permit holder, Forestry Management Services Ltd, sent an Agreement to the Managing Director that it had made with Tapila Timbers Ltd. It should have been immediately obvious that this would aggravate the divisions amongst the landowners but it provoked no negative response at all. Indeed if it was this revelation that facilitated the involvement of Tapila Timbers Ltd at the PFMC meeting in Port Moresby in June 1999, and the exclusion of Koina Wuul Ltd from that meeting, then one might question whether due process has been compromised.
 - The 2000 amendments to the Forestry Act would now require that the Board re-consider its decision to confirm its view that the project is unable to be operated "as a commercially sustainable forest development project". This is now a formal requirement of section 64(3)(e). Under section 64(6) the Board must also be satisfied that the resource will be "used primarily to sustain an existing processing facility".
4. There is a quite remarkable letter on the file from a Fijian company called Waterbabies Enterprises Ltd. The letter is dated 30 October 1997 and was sent on to the PNGFA by Koina Wuul Ltd. Waterbabies simply asked for a Government Guarantee that it would be given both the Wipim Tapila and the Vailala projects. The guarantee was needed so that it could secure US\$800,000,000 and US\$1,200,000,000 for the two projects. It is not at all to the credit of the purported Chairman of Koina Wuul Ltd that he lent his entire support to Waterbabies Enterprises Ltd.