

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: 12 December 2000

Re: **INDIVIDUAL PROJECT REVIEW REPORT NUMBER 8**

KEREVAT PLANTATION (EAST NEW BRITAIN PROVINCE)

AUDIT CONCLUSIONS AND RECOMMENDATIONS:

RESOURCE AND PLANNING ISSUES:

The National Forest Policy requires that "the utilisation of all forest resources shall be subject to government control". The Act sets out acquisition and allocation procedures designed for natural forests. As the Act fails to distinguish plantation forests the procedures for natural forests are inappropriately applied to the development, management and harvesting of plantation forests. This is a significant disincentive to private sector forestry plantation investment.

LEGAL COMPLIANCE:

Serious deficiencies arose in the Provincial Forest Management Committee certification of ILGs. The subsequent flaws in the Forest Management Agreement have led to a disorderly approach to facilitating the harvesting and management of this resource. The initial shortcomings of the Forest Management Agreement and the lack of any corrective action in the 30 months since its signing are inexcusable.

LANDOWNER ISSUES:

Landowner mobilisation is incomplete and confusion and conflict abound. Innovative joint-ventures between domestic processors and individual ILGs could be explored for security of supply.

RECOMMENDATIONS (INCLUDING CORRECTIVE MEASURES IF REQUIRED):

- That the Board consider the requirements of an appropriate legal framework for the establishment, management and harvesting of forestry plantations, and the sale of plantation wood, and submits this to the Minister for his consideration.
- That a consensus decision must be reached concerning the use of the existing timber resource and the future use of the land. Realistic options must be identified and action must be taken without further delay. A limited number of Timber Authorities with appropriate conditions as agreed between the Provincial Forest Management Committee and the landowners may still be a feasible approach. The delays involved in progressing a revised Forest Management Agreement may not assist an orderly, equitable and sustainable use of this resource.
- That if a decision is made to pursue a revised Forest Management Agreement, then much more work needs to be done to complete the ILG work and raise awareness among landowners in order to foster any sense of cohesion among them and partnership with NFS.

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) in progress. Forest Management Agreement prepared about 30 months ago and signed by some ILGs. |
| Gross FMA area (a): | 1800 ha |
| Gross loggable area (a): | 1400 ha |
| Harvestable timber estimate (a): | 400,000 m ³ (b) (56% Teak, 40% Kamarere and 4% others). |

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

(b) As stated in the FMA document.

A. FORESTRY AND PLANNING ASPECTS

The land under the Kerevat plantation is owned by local landowners, and the State has an undefined vested interest in the harvesting of the trees. The Board, at its January 2000 meeting approved a general program of expenditure on existing and new plantation developments, including planting an additional 100 hectares of trees at Kerevat during the year 2000. The Board also approved the purchase of land at Kerevat for a nursery.

NFS, acting on behalf of the State, is trying to put in place an agreement with the landowners under which the State would manage the plantation.

Given that the National Forest Policy states (page 4) that “The utilisation of forest resources shall be subject to government control”, the NFS have progressed the decision by initiating the acquisition process set out in the Act using a standard Board approved FMA document (which meets the requirements of s58 of the Act) which is designed to acquire and manage natural forests. The Act and the standard FMA document does not distinguish forestry plantations from natural forests, and this places some inappropriate requirements on the development and utilisation of plantations, in particular when they are privately financed and owned.

On the surface the application of a number of Timber Authorities would appear to provide a solution. However s87(5) of the Act may place some inappropriate restrictions on the volume that may be harvested.

The situation is complicated by the issuance by the Provincial Forest Committee of a number of Timber Authorities (which must have been consented to by the Board) to landowner companies, and alleged illegal logging. The ongoing lack of clear direction and a clear resolution has allowed a number of potential developers and landowner companies to assert their views on how the plantation should be harvested, thereby only adding to the confusion. In the mean time the resource is being depleted and remains unmanaged.

Countries with extensive plantation resources, both State and privately owned, typically treat plantation forestry as any other agricultural crop. Although there may specific taxation provisions dealing with the deductibility of plantation costs, sale and harvesting arrangements typically are by normal business contracts, and is not subject to direct government control.

The short term solution offering the opportunity for flexible solutions for the Kerevat plantations would seem to be to specifically exempt plantation forests from the Act.

If the Kerevat plantations are to be managed as a long term resource, then it would seem sensible for the joint owners to engage a competent private forest manager. This would be in accord with the current Government’s privatisation policies.

RECOMMENDATIONS REGARDING FORESTRY ASPECTS:

1. That the Board consider the requirements of an appropriate legal framework for the establishment, management and harvesting of forestry plantations, and the sale of plantation wood, and submits this to the Minister for his consideration.

B . LEGAL COMPLIANCE

SUMMARY

- The PFMC certified the incorporation of ILG's and the willingness of landowners at meeting 5/97 in October 1997. This was done without landowner representatives present and apparently no attempt was made to verify the composition of ILG's or the willingness of landowners.
- The ILG work was subsequently described by the Area Manager as flawed. On this basis he recommended that the FMA executed in September and October 1997 be shelved. This is in contrast to his confident assertion in October 1997 that the signing of the FMA was a success.
- There appears to have been recurrent illegal activities by BBL Consultancies under an expired Timber Authority. Other operations under timber authorities are far from satisfactory.

Some additional notes are presented in Appendix 1.

RECOMMENDATIONS REGARDING LEGAL ASPECTS:

1. All PFMC's must attempt to verify ILG composition and the willingness of landowners for the project to proceed before a certificate under section 58(f) is granted.
2. Landowner representatives should be in attendance at PFMC meetings, as is their right under section 28(3), when a decision is made to grant section 58 certification.
3. Clear direction and consistent application are essential in projects where unique problems arise. A decision must be made as to whether this project should proceed by way of Timber Authorities with appropriate conditions, or whether a further FMA is appropriate. This decision should be carefully considered and arrived at by consensus.
4. In the FMA context, real care must be exercised when dealing with prospective developers before the tender has been placed and project proposals received.
5. Proper use should be made of the performance bond lodged by BBL Consultancies if its activities have been unlawful.

C. LANDOWNER ISSUES

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| 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> | <p>NFS has talked the landowners into an FMA but evidence of awareness not seen on file. The usual superficial awareness and readiness to sign up for a project without understanding the implications! Landowners were very much confused by the different TA's that were awarded on the plantation land to different LANCOs some in Joint Ventures with foreign companies.</p> |
| 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. | <p>Ten land groups from the two ethnic areas have been incorporated. Nine from the Tolais and one from the Bainings. Probably the Tolai land groups are really family groups. The Baining Land Group is a clan with sub-clans, complete with clan lists and genealogies but property list relating to this plantation only i.e. not mentioning their other landholdings. This in itself illustrates the lack of understanding of the potential of the LGI Act as explained to the Kairak people.</p> <p>It seems that the land ownership is once again in dispute. The Bainings have stated that they own 95% of the area and that a Local Land Court has recognised this. No paperwork confirming this was available to anyone.</p> <p>Among the Kairak only the Sukparmatka Clan has completed its ILG. The other Kairak, associated with Kairak Investments have not completed their ILG. This is another example of LANCOs impacting mobilisation. Sukparmatka also is involved in a company Sula which is 49% owned by foreign logging interests.</p> <p>At least 3 TA's have been granted over the resource causing confusion all round.</p> |

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| 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 | <p>FMA signed September 1997 but not completed to anyone's satisfaction. Only part of the Kairak group have incorporated e.g. Sukparmatka.</p> <p>Following month one group is questioning the ILGs and FMA legality.</p> <p>FMA was never fully actioned and has remained ineffective to this day.</p> |

NFS affirm that they want to continue the land as plantation forestry, but no Development Options Study has been undertaken (yet). At least two private sector proposals for harvesting and replenishing the plantation are on file but they have not reached any formal system of approval because the FMA is still not complete. Moreover nothing of the sort has been discussed with landowners and there has never been any agreement by the landowners to the future use of the land. The majority want to do forestry and others for want of information as to options want to take back the land to farming.

The long term plan of D-Scan to maintain and expand teak plantings for long term security should be given positive support for long term benefits to landowners. Additional notes are presented in Appendix 2.

CONCLUSIONS REGARDING LANDOWNER ASPECTS:

- This whole scenario indicates an inability by NFS to undertake a thorough commercial development involving detailed land investigations and landowner negotiations thus precluding any long term forest development. In this particular situation after landowners have just had their land handed back to them, it is asking a lot for landowners to sign an FMA without detailed commercial propositions to put to them. This is particularly so in view of the fact that landowner companies are already active in harvesting the resource.

RECOMMENDATIONS REGARDING LANDOWNER ASPECTS:

1. The landowner side of the issue must be re-examined. There must be detailed landowner awareness and discussion of development options. As usual LANCOS are a problem so there is need to monitor their ownership and their relationship to

ILGs. Joint ventures between D-Scan and individual ILGs could be another way to maximise ILG returns.

APPENDIX 1 : NOTES ON LEGAL ASPECTS

Project Background

Following the completion of ILG work an FMA was signed in late September and early October 1997. The FMA included a PFMC certificate under section 58(f).

The FMA was never submitted to the Board due to concerns expressed as to the adequacy of its provisions for the management of the Kerevat Plantation.

Later it became apparent that problems existed with the original ILG work and the Area Manager recommended that the FMA be put on hold. He raised the possibility of the project best proceeding by way of the grant of not more than two Timber Authorities.

His recommendation was ignored. The first response was to explore the possibility of a joint venture between one Landowner Company and a contractor. This was looked into and a sensible recommendation was made that a further FMA be concluded and that the matter be tendered.

It appears that another attempt to conclude a FMA will be made. In the meantime landowners' tempers are rising, the resource is being slowly diminished and various developers are eyeing the possibilities.

The PFMC Certificate

The certificate of the PFMC was approved at meeting 5/97 on 14 October 1997. The Minutes indicate that no landowner representatives from Kerevat were present. Section 28(3) was not complied with. There is no evidence of a check by the PFMC as to the willingness of landowners or as to the correctness of their ILG's. The subsequent deficiencies in the ILG's were probably inevitable.

The FMA

The FMA was signed by ILG's in late September and early October 1997. Its signing was hailed by the Area Manager as a success. It was not. The FMA was never submitted to the Board. It was felt that further provisions were needed to cater for the plantation aspects of the project. No real attempt was made to make these changes. These matters should have been thought of before the FMA was presented to landowners for their signature. It is difficult to imagine anything more frustrating and aggravating for landowners than to see such prevarication.

For a considerable time no action was taken to see this important project proceed in an orderly and sensible fashion.

Options for developing this project

A letter from the Bitagunan landowners in August 1998 raised the fact that they require the land for purposes other than forestry. They are experiencing all the problems associated with a shortage of land for a growing population. Their concerns and problems have been ignored.

In March 1998 the Area Manager noted that there were deficiencies in the ILG work and he recommended that the project might best proceed under not more than two Timber Authorities. This would have accommodated the concerns that were subsequently raised by the Bitagunans. There is no evidence that the recommendation was given any consideration. It was certainly not endorsed.

In February 1999 the Managing Director proposed that a joint venture be incorporated under the PNGFA's auspices between one landowner company and a contractor. An officer was sent to Rabaul to facilitate this. He sensibly reported back suggesting that a further FMA was a pre-requisite and that the public tender process be followed.

At the time of the moratorium the project was to be taken back to the FMA stage. This was about 30 months after the first FMA was signed. No progress on any aspect of this difficult project has been made in that time. Relations between the PNGFA and some landowners are cool. It is difficult to imagine how they could be otherwise.

Recent Operations

After waiting nearly 18 months United Wood Processing was finally granted a Timber Authority in April 1999. Its operations failed within 3 months. It has recently sought permission to retrieve felled logs and re-commence operations.

A Timber Authority held by BBL Consultancies expired in March this year but the company continued to log. They were ordered to halt after an inspection in September! Complaints of illegal logging against this company in compartments 5 and 12 had also been made in October 1999. These activities should dis-entitle this company to any further rights. Its performance bond of K40, 000 may provide some avenue for redress.

Sukpramartka Land Group has expressed their dissatisfaction with the operations of Sula Timber which apparently is logging under a Timber Authority. They complain that the company, in which they are supposed to hold a majority share, has been dominated by another company called Lee and Song Resource Co. They complain that foreigners are holding positions for which qualified nationals are available. They are dissatisfied with monetary returns and cite an example whereby they received only K5, 620 from a K150, 000 sale. This all requires some further inquiry.

Prospective Developers

In the absence of a definite and consistent approach to the development of this project there have been regular approaches made by foreign companies interested in securing this resource.

Some of these companies have directed their approach through certain officers of the PNGFA. In February 1999 there was mention of an Indonesian company seeking a "letter of interest", whatever that may be. According to a note on the file, this was sought after a visit to Indonesia by the Managing Director.

If the preferred path is to secure a further FMA then it is not appropriate to engage with any prospective developer until the project is tendered and project proposals have been

submitted. This is the approach taken by a former General Manager to a request made by a prospective developer to meet with him in December 1997.

APPENDIX 2: NOTES ON LAND OWNER ASPECTS

Background

- 1 Land planted up by the Administration beginning in the 1950's going on to 1970's under a certificate of occupancy. 1845 ha planted up to Teak, Kamarere, Terminalia and Balsa. 600 ha occupied by squatters.
- 2 Land Titles Commission handed it back to two clans after a land dispute hearing in 1994. Trees vested in the landowners and State jointly.
- 3 People are harvesting and NFS now wants an FMA over the area with the idea of securing it as a plantation for long term.
- 4 Fire intervened and devastated the Kamarere. NFS, because of the extremely poor ILG work, is not able to cope with the conflicting demands by the various landowner groups. One group wants to sell Teak to D-Scan and another does not.
- 5 Delayed action to purchase land for nursery. This could have been factored into an overall redevelopment and or reforestation plan.
- 6 Kairak Investments Ltd is a so called landowner company that was in operation under a TA over some land near the plantation in Vudal. When the court awarded the plantation land to the landowners they jumped into the situation and began to harvest on the plantation. Forestry tried to stop them unsuccessfully. Forestry tried to place the plantation under an FMA but the hurried work apparently left some people confused. Mr Elias Kamara an adopted son of Sukparmatka Clan
- 7 When D-Scan entered the picture it seems that conflict again arises.
- 8 The line of authority dealing with issues affecting Kerevat plantation needs to be clearly defined for the sake of all stakeholders. Conflicting advice to developer relating to royalty rates applicable illustrate mild anarchy in the service.

Meeting at Kerevat Forest Office Saturday Nov 18, 2000

Present: Tony Power and Lukis Romaso from Forest review Team
Conrad Maumau, Francis Vilamur from NFS
Demas Rongis Sukparmatka ILG
Joel Puipui “
Kalai Tau “
Pinia Sakiat “
Apisai Simar “
Philipo Kasar “
Kaim Toiar “
Benedict Porono Bitagunan
Tobe Paulias Bitagunan
Tonny Toinara Bitagunan
Lepan Lia Kopki Clan

Meeting discussed the ILG program. The good work done in this area with Sukparmatka was the result of the efforts of Francis Vilamur. The other Kairak element that has not yet submitted their ILG work claimed that it was somewhere and not approved by Registrar Of Titles. Francis says that it has not been done. The Sukparmatka is a sub-clan of the Kairak group

As far as the implications for taking an FMA over the plantation land the landowners were in no way able to measure the pros and cons of FMA or other forms of business development perhaps involving Joint ventures with D-Scan for example.

Kairak Investments Limited has a history. There was no evidence relating to the ownership of Kairak Investments and what role they may be playing in interfering with the remainder of the Kairak ILG work but it is suspected. The other Bitagunan LANCO BBL is causing problems also.

The Sukparmatka group were very interested in the possibility of them working on the plantation for rehabilitation after harvesting. They are keen to understand the dimensions of a long term plan for the area and the benefits that might accrue to them. Do far the FMA does not meet this and there was no evidence of a DOS. Landowners have already approached D-Scan and there is an opportunity for a fruitful relationship there with or without an FMA.

Meeting with D-Scan Friday 17 2000

Present: Tony Power and Lukis Romaso Forestry Review Team
Stephen McScimming from D-Scan

The corporate philosophy of D-Scan was explained for our benefit. They want security of resource in a long term sustainable fashion and having secured that they are prepared to continue to invest to take their development right to the stage of the finished product.

The operation is absolutely first class and is the very thing that PNG has been waiting for.

Meeting with Pacific Heritage Foundation at Ulatoa Plantation Saturday 18 November 2000

Present: Tony Power and Lukis Romaso from Forest Review Team
Max Henderson and Wesley Wat from Pacific Heritage Foundation.

We received a briefing as to the activities of the Pacific Heritage Foundation. They are actively involved in timber plantation with a well grown balsa woodlot. They have an interest in plantations and helping landowners to develop their resources in a sustainable manner. They were particularly interested in the D-Scan story and advised us that they would assist the landowners to develop some kind of relationship with D-Scan with or without an FMA in order to secure the plantation for permanent teak growing.

They were also keen to do deals with D-Scan for development of new teak plantations for long term security for the business.