

FORESTRY AND CONSERVATION PROJECT

REVIEW TEAM (KIUNGA/AIAMBAK, SIMBALI AND BONUA MAGARIDA)

FINAL REPORT

Executive summary

Findings

The findings of the review team are that –

- (a) There are significant breaches of the *Forestry Act 1993* in relation to all three projects.
- (b) The PNGFA had a copy of TA 08 (stages 2 and 3 of Kiunga Aiambak Road) as far back as January 2002, despite their protestations to the contrary.
- (c) Logging operations are taking place under TA 08, and in fact in September 2002 a letter was drafted (and maybe sent) improperly authorizing logging in that area: -
 - In a corridor of 3 kilometres (when in fact the law permits a corridor of only 40 metres);
 - In an existing FMA area, which contravenes that requirement that this be approved by the Board before an application for a TA is considered; and
 - In Lake Murray Block 2, which breaches all aspects of the lawful process for approving timber operations;
- (d) Contrary to representations made to the Chief Secretary, in the Bonua Magarida project: -
 - The Board never approved the project as an “extension” of the West Gadaisu TRP. At most the Board retrospectively endorsed an amendment to TP 3-29 which was improper, and in breach of the Act.
 - The approval for the amendment of TP 3-29 includes annual log exports.
 - The Central PFMC does not seem to have “endorsed” the Development Option Study. This process seems to have been departed from in July 2002 when highly suspicious paperwork appeared in support of the illegal amendment of TP 3-29.
- (e) In the Simbali area, illegal logging has taken place as follows: -

- Logging is taking place over an area of about 11,700 hectares, when the approval was for a 40 hectare cocoa development;
- More than 34,000 m³ has been exported from Simbali, when the approval was for 1,000 m³;
- There is little evidence of any cocoa development, but there is a full scale logging operation.
- The operators are known to have illegally logged a previous area under the guise of an agriculture project, and during the course of the review have been given endorsement by the ENB PFMC to undertake 4 more small-scale agriculture developments in the adjoining Ilii area. These approvals give rise to clear anticipatory breaches of a similar nature to those occurring in Simbali, and indicate a willingness to support continuing and serious breaches of the law.

Obligations under the FCP Project Agreement

In relation to the obligations arising from the FCP Project Agreement made by the World Bank and the Government of Papua New Guinea on the 20th December 2001 the Review team has declined to make any findings of breach but has noted the following –

- (a) there has been no evidence sighted of any attempt to independently assess any of the three projects prior to their allocation, as contemplated by clause 10 of the Agreement; and
- (b) the imposition of performance bonds in each of the projects is most alarming. The amounts set are of no significance whatsoever and give to the government none of the protection or power that the bonds are intended to achieve.

Recommendations: -

- (a) Action should be taken without delay to order the cessation of operations in all three areas;
- (b) The grant of any future operating rights in these areas should conform to all legal requirements as to the application and allocation processes, and in relation to every aspect of the operations;
- (c) Performance bonds must be reviewed and fixed at realistic levels so as to encourage full compliance with the law, and to facilitate enforcement action in the event of default; and
- (d) The process of registration of forest industry participants should be enhanced by legislative change if necessary, and by the enforcement of a comprehensive code of conduct. Improper practice by companies and their officers should result in de-registration and disqualification from all future participation on the industry.

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FINAL REPORT

February 2003

BACKGROUND

The Government of Papua New Guinea has established the Forestry and Conservation Project (FCP) aimed at improving the sustainability of forest harvests and at implementing a strategy to promote matters associated with the conservation of biological diversity and the equitable rights of resource owners. The project is assisted by the World Bank. This assistance is provided in accordance with an Agreement made between the World Bank and the Government of Papua New Guinea (FCP Project Agreement).

In November 2002 information was provided by the Eco-Forestry Forum suggesting a failure to observe due process and certain legal obligations in respect of three project areas. These are stages 2 and 3 of the "Trans-Island Highway" in the Kiunga-Aiambak area of Western Province; Bonua Magarida near the border of Central and Milne Bay provinces; and Simbali between Wide Bay and Open Bay in East New Britain Province.

The Government has authorized the appointment of a Review Team to determine the facts concerning these three project areas. The team has comprised a lawyer experienced in matters related to forestry in PNG, and a forester of long standing in this field.

The Review Team has undertaken its assignment over a period of three weeks in early 2003 and submits this Final Report, together with individual reports for the three projects.

TERMS OF REFERENCE

The responsibilities of the Review Team were to:

- Ascertain, depending on the stage of processing, whether the required procedures for the acquisition of timber rights and resources were correctly undertaken and where not, provide details of the nature, and causes of the non-compliance. Where appropriate, the team will recommend remedial actions to bring the processing into compliance, (including prompt project foreclosure, where a project is deemed unable to comply with, or has grossly breached, legal requirements).
- Ascertain whether any agreements made in relation to any of the proposed projects, are in accordance with the legal requirements and spirit of the current

Act and Policy, including the supporting Regulations and requirements, and any other applicable legislation. Where they are not, the consultants should provide details of the nature and causes of the non-compliance.

LEGAL REQUIREMENTS

A summary of the legal requirements applying to both the grant of Timber Authorities and the approval of extensions is contained in Appendix 1 to this Report. This summary includes the requirements under the *Forestry (Amendment) Act 2000* which was certified on 29th January 2001.

FINDINGS

In accordance with the above Terms of Reference the Review Team makes the following findings.

Kiunga-Aiambak

The Team finds that the processing of this matter has not been correctly undertaken and is in breach of the Act and Policy as follows –

1. The purported grant of TA 02-028001 by Ruma Tau on 18 January 2001 was illegal and in breach of the *Forestry Act*. This however was rectified by Minister Ogio, after intervention by the Board in March 2001.
2. The grant of TA 08 to Concord Pacific Limited for stages 2 and 3 of the Trans Island Highway was illegal and in breach of the *Forestry Act* in the following respects: -
 - (a) no prior approval for the application was given by the Board as required by section 90C (2), as its area includes, in part, an existing FMA;
 - (b) the application made on 7 December 2001 was deficient in every respect, and was in no way in compliance with section 90C(3);
 - (c) no aspect of the approval process required by section 90D has been applied to TA 08; and
 - (d) no recommendation was made by the Western PFMC in support of the grant of the TA.
3. Section 90D (22) has been specifically breached by the Managing Director (Mr David Nelson's) letter of 20 September 2002 which indicates his approval for certain conditions that are not consistent with this section, namely: -
 - (a) the purported approval for a three (3) kilometer road corridor exceeds the permissible area of 40 metres by 2,960 metres;

- (b) the purported approval to log in a FMA area contradicts section 90C (2) which requires this approval to be given by the Board **before** the application is considered; and
 - (c) the purported approval to log in "Lake Murray Block 2" is not consistent with any aspect of the current law or forest policy.
4. Attempts by the Board to assert control over this project and to seek court orders to restrain these operations do not appear to have been actioned by the PNGFA. It is by no means clear that the Board has been well served or heeded by the Managing Director.

These findings are qualified by, and should be read in the light of the following matters –

- A. There are numerous instance of the Board acting properly in its attempts to bring some sanity to this mess. These include: -
- A decision in 1995 determining that TA 024 is invalid and that the Minister be advised of this;
 - Support for the PNGFA's attempts to restrain operations under TA 024, and to challenge the court injunctions that permitted these operations to proceed;
 - Prompt action to advise the Minister of the illegality of TA 02-028001, leading to its revocation.
 - The resolution of the Board made at meeting 85, and followed up unsuccessfully at meeting 86, to have TA 08 declared illegal and for operations under it to be stopped.
- B. The Western PFMC at meeting 3/01 (14 December 2001) acted properly to refer the application for stage 2 to the NFS TA unit for "proper assessment and evaluation." The PFMC does not appear to have been a party to the improper grant of TA 08 at any time.
- C. There have been numerous instances since the grant of TA 024 in 1994, and also in relation to TA 08, of PNGFA officers offering the correct advice about the repeated abuses of the process and breaches of the law. The desire to see this operation cease, and for the law to be observed is clear from many quarters of the PNGFA and the NFS.

Bonua Magarida

The Team finds that the processing of this matter has not been correctly undertaken and is in breach of the Act and Policy as follows –

1. The purported approval of an amendment to Timber Permit 3-29 (on or about 26 July 2002), and its subsequent endorsement by the Board in September 2002, was improper and in breach of the *Forestry Act* in that: -

- (a) it circumvented the requirements of section 64(3) and inappropriately permitted the matter to be dealt with under section 79, despite clear advice from the General Counsel to this effect;
- (b) it appears that the Board did not consider the matter until Meeting 86 in September 2002 despite contrary indications given by Dr Wari Iamo to the Minister in his Brief of 24 July 2002;
- (c) The Minister purported to give his approval under section 81 on 26 July 2002 but at that time the Board had made no recommendation, or conducted any negotiation, as provided for by section 79;
- (d) the Board's subsequent endorsement of the amendment of TP 3-29 in September 2002 has circumvented the requirements for ILG work, a Development Option Study and project guidelines;
- (e) the requirement of section 64(6)(a) that the forest resources in the extended area be used only to sustain existing processing operations has been circumvented;
- (f) the decision to approve the project as an extension could only be made by the Board under section 64(3), and not by the Minister in any event. The Brief of Dr Iamo is highly misleading when it states –

“2. To advise the Minister that the Board has considered the application and it was satisfactory. Therefore, the Board is providing its recommendation to the Minister to approve the application for Amendment”

Indeed the application bears the same date as the Brief!

- 2. There is no evidence of any necessary ILG work having been undertaken. It is in fact suggested on the files that no such work has been done. A letter received by the PNGFA on 23 May 2002 indicates clear landowner dissatisfaction and this appears not to have been responded to at all.
- 3. While the holder of Timber Permit 3-29 is Maisi Trust Company Ltd it is clear that the principal of the intended contractor, Milne Bay Industries, signed the purported application of 24 July 2002. This is signed by Joseph Wong as “public officer” of Maisi Trust Ltd. Mr Wong does not feature in this capacity in the company search conducted in relation to Maisi Trust (The company secretary is named as Joe Timothy). In fact in correspondence dated 7 January 2002, Joseph Wong signs as Managing Director of Milne Bay Industries Ltd.

4. It seems that the DOS was in fact funded initially, and prepared by the intending contractor, Milne Bay Industries. This is not appropriate, even if PNGFA funds are short.

These findings are qualified by, and should be read in the light of the following matters: -

There are clear instances of attempts by officers of the PNGFA to apply the correct process. In particular: -

- (a) advice given by the General Counsel of the PNGFA on 11 February 2002 and again on 24 February 2002 gives the clear direction that an extension must be applied for and the necessary formalities must be complied with;
- (b) This is confirmed by MD Thomas Nen in a letter to Joseph Wong on 18 February 2002, and again in a letter to the Central PFMC on 4 March 2002;
- (c) Appropriate steps were taken to require and initiate the DOS, but these appear to have been thwarted on about 24 July 2002.

Simbali

The Team finds that the processing of this matter has not been correctly undertaken and is in breach of the Act and Policy as follows –

1. TA 15-61, as seen by the team and apparently as approved by the PFMC, permits logging in an area of 40 hectares only, and to a maximum cut of 1,000 m3.
2. By January 2003 in excess of 34,000 m3 has been exported from Simbali by Hugo Sawmilling. The team has also seen in excess of 2,000 m3 on the beachfront ready for shipment. This all indicates the following breaches: -
 - (a) the approved maximum harvest has been exceeded by nearly forty times; and
 - (b) the operation, as it is currently being undertaken, requires approval in accordance with the new sections 90A and 90B. These sections have not been complied with in any respect.
3. The involvement of Kerawara Limited and Hugo's Sawmilling, as sub-contractors, is in breach of section 87(4).
4. The harvesting and sale of logs from roadline clearing areas required a separately approved TA, and the failure to obtain this is in breach of the Act.

5. The four new applications for Timber Authorities in the adjoining Ilii suggest further anticipated breaches of the Act, and the team notes the following matters of concern: -
- (a) the applications have been processed by the PNGFA and referred to the PFMC by the Managing Director before the outcome of this review has become known, and after clear abuses in the Simbali area have been documented on a number of occasions;
 - (b) the applications, we are told, only came to the notice of the Acting Area Manager on 3 February 2003, but by that time they were already on the PFMC agenda;
 - (c) officers of the PNGFA, including the team's liaison contact, have made their way to East New Britain to attend the PFMC meeting at which these applications are to be discussed; and
 - (d) there appears to have been no attempt by the PNGFA to advise the Chairman of the PFMC or the provincial minister, of the known abuses in the Simbali area.
6. Our visit to the logging area in the vicinity of Tol Plantation has revealed the following facts: -
- (a) there is little evidence of the proposed cocoa development and it is, at best, a side issue to the logging operations that have been taking place for about seven months;
 - (b) the logging activity has passed the proposed cocoa area by at least 12 kilometres of roadline clearing, and associated harvesting;
 - (c) in addition to the more than 34,000 m³ already harvested from the area and exported, there is more than 2,000 m³ of logs at the beach, apparently ready for shipment;
 - (d) between 7 and 8 shipments have already been made from this project; and
 - (e) what has been presented as a modest agriculture development is in fact proceeding as a full scale logging operation, with all associated activities and camp developments.
7. At the time of writing this Report, and applying a benefit of the doubt, it is concluded that the consideration and approval of this Timber Authority has not been a serious breach of process. (This is however subject to our finding that the project should not have been sub-contracted, and the roadline clearing should have been separately approved).

This conclusion however will dramatically change if: -

- (a) the TA document is found and reveals an improper approval to log the entire Simbali Extension area;
- (b) the four new applications in the Ilii area are approved and permitted to proceed in the same manner as the Simbali operation;

- (c) no action is taken to stop the Simbali operations forthwith and to recover, as monies owing to the State, the full value of the illegally harvested logs.

Note: On the last day of our review the team was informed that the ENB PFMC approved the four TA applications in the Ilii area. We have been told that the NGO representative and the Sinivit LLG representative spoke against the applications. There is now little doubt that wrongdoing is involved in this process, and most likely was involved from the start in relation to the processing of the Simbali application. These four new applications may now provide a real test as to whether due process is being observed in any respect. If they are finally approved and become operational then there is no longer any room for doubt. It can only be considered that the process has become irretrievably compromised. It reflects extremely badly on the remaining members of the PFMC and certain PNGFA officers involved in processing these applications.

These findings are qualified by, and should be read in the light of the following matters –

- A. There has been a proper use of the Forms required by the Regulations and a clear understanding demonstrated by officers of the PNGFA of the relevant procedural requirements under the Act and the Regulations;
- B. There have been numerous instances of due and proper inquiries being made by PNGFA officers overseeing different aspects of the process;
- C. There has been a high degree of professionalism demonstrated by certain PNGFA officers tasked with the responsibility of investigating this project; and

THE FCP PROJECT AGREEMENT

The Review Team is mindful of the implications of its findings in the context of the FCP Project Agreement. The specific allegations prompting this review make reference to the effect of the alleged breaches in relation to these contractual obligations.

The Eco-Forestry Forum has suggested that the respective allocations “clearly breach the loan agreement, dated 20th December 2001, between the Government of Papua New Guinea and the World Bank for the Forest and Conservation Project”. In particular the Forum has referred to an obligation under the FCP Project Agreement that an independent Probity Commissioner or consultant must review all new logging permit applications, (including Timber Authorities and extensions to existing permits) for compliance with the *Forestry Act*. It is suggested that rights have been given to log in the three areas without any such reviews having taken place.

The relevant terms of the FCP Project Agreement

Schedule 5 – Implementation Program

3. The Borrower shall, by not later than June 30, 2002, issue and thereafter enforce regulations requiring any person who is engaging in the harvesting of timber under a timber permit, timber authority or timber licence or any other form of timber permits, except persons harvesting timber from plantation forests, to post a performance bond with the PNG Forest Authority for an amount representing not less than 40% of the estimated average annual operating costs for the operation in question, at minimum production levels, or such other amount as the Borrower and the Bank otherwise agree, with such bonds subject to forfeiture for non-compliance with the provisions of the Logging Code of Practice.

10. To determine the status of compliance with the Forestry Act, including the Logging Code of Practice, the Borrower shall, through the PNGFA, review all logging permit applications submitted after the date of this Agreement (ie 20th December 2001) under their arrangements satisfactory to the Bank. To assist PNGFA in this undertaking, PNGFA shall employ and retain consultants with qualifications, terms of reference and terms and conditions of employment satisfactory to the Bank, until the Borrower establishes and maintains a Probity Commissioner to carry out forest resource allocation processes under the Project, on terms and conditions satisfactory to the Bank... For the purposes of this paragraph the term “logging permits” means Forest Management Agreements, Timber Permits, Timber Authorities and geographic extensions to Timber Permits.

It is for the parties to the FCP Project Agreement to form their own views at this stage as to whether material breach has occurred, and the Review Team ventures no opinion in the regard. However the team notes the following matters in this context.

1. There has been no evidence sighted of any attempt to independently assess any of the three projects prior to their allocation as contemplated by clause 10 of the Agreement; and
2. The imposition of performance bonds in each of the projects is most alarming. The amounts set are of no significance whatsoever and give to the government none of the protection or power that the bonds are intended to achieve.

RECOMMENDATIONS

The Review Team makes the following recommendations: –

A. Project Reports

In relation to each of the projects, the team makes the following recommendations:

Kiunga-Aiambak

1. That the National Forest Board resolve to overrule the additional “terms” (which are in fact harvesting rights) imposed by the Managing Director in his letter of 20 September 2002 (if it was in fact sent), and that Concord Pacific be advised accordingly.
2. The following actions might then be taken: -
 - (a) final investigations into any breach by the operators of the application requirements, the TA conditions and the Logging Code of Practices should be undertaken;
 - (b) an order suspending the rights under the Timber Authority should be made by the Managing Director under section 85; and
 - (c) the Provincial Minister should be advised to cancel the Timber Authority under section 90.

Bonua Magarida

1. That the Board overrule the apparent decision of its former Chairman to amend Timber Permit 3-29, and re-consider the subsequent Board endorsement to this effect, and that Maisi Trust and Milne Bay Industries be advised accordingly;
2. That the Board resolve that this matter may only proceed as an extension to the West Gadaisu TRP if all the requirements of the amended section 64 are complied with. (The team notes that the export of all logs will not be permissible, an existing processing facility will have to process most of the logs harvested);
3. That the Board requires Milne Bay Industries to explain the actions of Joseph Wong in relation to the applications that he purported to sign on behalf of Maisi Trust on 24 July 2002; and
4. That the Board satisfy itself that Mr. Wong and Milne Bay Industries will not engage in improper activities of this nature in the future. If the company cannot so satisfy the Board, then its further participation in this project should be ruled out, and it should be advised accordingly. (Mr. Wong’s personal attendance before the Board may be appropriate).

Simbali

1. If the TA clearly authorizes the harvesting of logs for a 40 hectare agriculture development, then the following action should be taken without delay: -
 - (a) an order should be issued requiring the logging at Simbali to stop;
 - (b) no further export approval should be given and the logs currently at Simbali should be seized under section 123; and
 - (c) an action for damages under section 127 should be commenced against Kerawara Limited and Hugo Sawmilling for the full value (with no deductions) of all logs illegally harvested.

2. If the TA is found to permit operations in excess of the 40 hectare cocoa development site, and the maximum cut of 1,000 m³, then the following actions should be taken: -
 - (c) final investigations into any breach by the operators of the application requirements, the TA conditions and the Logging Code of Practices should be undertaken;
 - (d) an order suspending the rights under the Timber Authority should be made by the Managing Director under section 85; and
 - (e) the Provincial Minister should be advised to cancel the Timber Authority under section 90.

3. No approval should be given to the four new applications by Hugo Sawmilling in the Ilii area. Appropriate action should be taken to hold the Kerawara group of companies to account for their actions. This might include prosecution, and de-registration under section 112.

B. Performance Bonds

The team has noted that the performance bonds imposed in relation to these projects have been in the following amounts: -

- (a) Kiunga Aiambak – K 10, 000.
- (b) Bonua Magarida – K nil.
- (c) Simbali – K 1, 600

These are wholly inadequate and deprive the government of an effective means of deterring breach and quick enforcement.

The team recommends that the application of condition 3 of the Loan Agreement no longer be deferred.

C. Registration of forest industry participants

In this regard the team has noted the following matters: -

- (a) Sir Hugo Berghuser remains a shareholder of two companies associated with the operations at Simbali notwithstanding the very clear findings against him in the Barnett Report;
- (b) Joseph Wong has purported to sign an application as "public officer" of Maisi Trust when he is in fact the Managing Director of that company's contractor, Milne Bay Industries;
- (c) In the Simabli project three related companies appear to be involved in the project when the legal approval relates only to one other unrelated company. The three companies operating there without legal right are SSG PNG Services Limited, Kerawara Limited and Hugo Sawmilling Limited.

The team considers that each of these instances would warrant de- registration and disqualification from further participation in the industry.

If necessary amendments should be made to the Act to enforce these registration requirements more effectively. This should be further backed up by the adoption of a comprehensive Code of Conduct applying to all logging companies, and their officers.

APPENDIX 1

SUMMARY OF LEGAL REQUIREMENTS TIMBER AUTHORITIES AND EXTENSIONS

Part A TIMBER AUTHORITIES (less than 50 ha. or 12.5 kilometres)

These are the general requirements applying before the amendments made in 2000, and after that date to projects which involve: -

- (d) the removal of less than 50 hectares of trees for agriculture or other land use development; and
- (e) the removal of trees for less than 12.5 kilometres of roadline.

Power to Grant

- PFMC to recommend (Reg 172 Form 170)
- Board to consent (Reg 173, 174 Forms 171, 172)
- Chairman of Provincial Committee responsible for forestry to grant

Exempt Procedures (section 87(4))

A Timber Authority may be granted without: -

- A Development Option Study
- Project Guidelines
- Advertisement for tender
- Other procedures in section 61 to 65

A Timber Authority is not transferable

Applications (section 88)

- Applicant must be a registered forest participant (section 105 Reg 208 Form 209)
- Application to be lodged with Managing Director in the prescribed form –
 - Reg 160 – Domestic Processing of less than 5,000m³ (Form 156)
 - Reg 162 – Roadline Clearing (Form 158)
 - Reg 164 – Agriculture and other land use (Form 160)
 - Reg 166 – Other forest produce (Form 162)
 - Reg 168 – Plantation material (Form 164)
- Must have a map, details of project and of agreement for sale of logs harvested (Reg 160 Form 166)
- Must have verification of ownership and written consent of landowners (Reg 160 Form 165)

Referral to PFMC (section 89)

- MD to be satisfied as to form
- MD refers to PFMC for consideration and evaluation in accordance with sub-section (2) (Reg 170 Form 168)
- (Under section 87(2)(f) the PFMC may set conditions for a TA)
- PFMC to make recommendations to "Provincial Minister" (Reg 172 Form 170)
- Chairman of PFMC to notify Board of intended grant (Reg 173 Form 171)
- Consent of the Board may or may not be given (Reg 174 Form 172) but it will be deemed to have consented 4 weeks after notification (sub-section (6))

Performance Bond (section 87(2)(e))**Form of Timber Authority**

- Domestic processing of less than 5,000m³ (Reg 159 Form 155)
- Roadline Clearing (Reg 161 Form 157)
- Agriculture and other land use (Reg 163 Form 159)
- Other forest products (Reg 165 Form 161)
- Plantation material (Reg 167 Form 163)

Conditions

- Section 87(2)(f) PFMC may set conditions
- Section 87(3) Conditions may be stated in the Timber Authority
- Section 153(1) Regulations may prescribe forms and set conditions

Part B TIMBER AUTHORITIES (more than 50 ha. or 12.5 kilometres)

The full requirements applying to Timber Authorities which exceed 50 hectares of agricultural development or 12.5 kilometres of roadline clearing are contained in the new sections 90A – 90 E.

These appear in the printed version of the amendments to the *Forestry Act*, effective from 29 January 2001. In brief outline these provide as follows: -

- (a) The application required the prior approval of the Board as it is within an existing TRP or FMA – section 90A (2).
- (b) Under section 90A(3) the application was required to contain –
 - A detailed development plan, an evaluation report and a certificate from the Secretary of Agriculture;

- A copy of relevant land tenure documentation;
- An implementation schedule for a Board appointed independent contractor to carry out the operations;
- Details of costs of the agriculture project and bank certification of the ability of the applicant to finance the project;
- Verification of clan ownership and consent;
- Supporting letters from other government departments;
- DEC approval; and
- Details of equipment and manpower needed for the agriculture project and past experience in such ventures.

(c) Under section 90B, the Board must –

- Confirm that the application contains all necessary particulars;
- Consult with relevant government agencies;
- Arrange for public hearings; and
- Prepare a report on the Board's consultations;
- Give notice of the application and of the required consultations in the National Gazettes and newspapers;
- Refer the result of the consultations to the PFMC, which must evaluate the application as against stated criteria;
- Receive the recommendation of the PFMC and refer it to the Minister, who must seek endorsement from the NEC;
- Call for tenders from independent operators (excluding the applicant);
- Assess the tenders and invite an applicant to carry out the clearing operations;
- Ensure that the selected tenderer enters into a prescribed Sales and Purchase Agreement with the resource owners; and
- Grant a TA in the prescribed form with the prescribed conditions.

(d) In relation to the road clearing operations, sections 90C and 90D contain similar requirements to those stated above.

Under section 98(7) (as amended), the Board must fix the amount of the performance bond to be lodged in respect of this TA.

PART C EXTENSIONS

The amendments made in 2000 to section 64 of the *Forestry Act 1993* permit the Board to approve a project to be an extension of one of the existing approved timber permit operations if: -

- (a) it is contiguous with the existing operation, and the operator has a record of satisfactory performance in the industry and compliance with contractual obligations under its timber permits;

- (b) a Development Option Study has been carried out;
- (c) final project guidelines have been issued by the Board;
- (d) it is consistent with the National Forest Development Programme; and
- (e) the Board considers it to be so small as to be unable to operate as a commercially sustainable forest development project.

All adjoining Timber Permit holders must be invited by the Board to submit project proposals.

An extension can only be granted on the basis that: -

- (a) the forest resources will be used to sustain an existing processing facility; and
- (b) both areas shall be consolidated under the one timber permit and the consolidated timber permit area shall be managed and harvested on a sustainable yield basis.