

PNG FORESTRY REVIEW TEAM

AUDITING FORESTRY PROJECTS CURRENTLY "IN PROCESS" FOR COMPLIANCE WITH THE REQUIREMENTS OF THE POLICY, THE FORESTRY ACT AND OTHER REGULATIONS AND GUIDELINES

To: Government of Papua New Guinea
C/- The Interagency Forestry Review Committee
Office of the Chief Secretary to Government

From: Review Team

Date: 5 February 2001

Re: **INDIVIDUAL PROJECT REVIEW REPORT NUMBER 14**
SEMABO (WESTERN PROVINCE)

AUDIT CONCLUSIONS AND RECOMMENDATIONS:

RESOURCE AND PLANNING ISSUES:

The sustainable timber yield principle has been complied with. However a very high proportion (99%) of the forest is classified by the Office of Environment and Conservation as "fragile". There are significant inconsistencies in the resource information between documents, and the inventory sample on which they are based is extremely small. The sustainable annual cut is too small to support a financially efficient logging investment, or a conventional stand alone log export project.

LEGAL COMPLIANCE:

Due process has been followed. However the Provincial Forest Management Committee appears to not have properly certified the Forest Management Agreement. Also the required consultation relating to the Timber Project Guidelines may not have taken place.

LANDOWNER ISSUES:

Landowner awareness work was undertaken by the landowner companies. The Incorporated Land Groups are flawed in that there is a mis-match between the group and land ownership. Landowner wishes are taken into account in the Development Options Study.

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 Landowner Company which has responded to the advertisement of the resource 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 PNGFA revisits the Incorporated Land Groups.
- That the Provincial Forest Management Committee properly discharges its role in relation to Forest Management Agreement certification, with landowner representatives attending all its meetings.

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 signed and approved by the Minister. Development Options Study completed. Timber Project Guidelines approved by the Board. Project advertised. Three proposals received but the preferred developer withdrew from negotiations. Project subsequently revised and re-advertised as a 100% domestic processing option. One expression of interest received from a Landowner Company. Awaits negotiation of a Project Agreement.
Gross FMA area:	54,000 ha
Gross loggable area:	19,000 ha
Net sustainable timber yield:	20,000 m ³ /annum (a)

(a) Review Team estimate based on:

- Area information extracted from the PNGFA Geographic Information System (FIMS);
- Gross volume per hectare information from PNGFA field inventory work (FIPS);
- A standard reduction factor of 15% applied to gross loggable area;
- A standard reduction factor of 30% applied to gross volume per hectare; and
- A 35 year cutting cycle.

A. FORESTRY AND PLANNING ASPECTS

<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 – Listed as Semabo Extension</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: • Has the net merchantable volume been properly estimated: 	<p>No. The FMA document applies a standard 15% reduction to the gross FMA area to estimate the net loggable area (26,000 ha). Applying the logging exclusion areas defined in the Logging Code of Practice indicates a gross harvestable area of 19,000 ha, and a net harvestable area of 16,000 ha. The area data set out in the FMA is thus a significant over-estimate.</p> <p>Questionable. The FIPS data indicates a gross volume per hectare of 64.2 m³/ha and this is used in the FMA document. However the sample was extremely small (about 0.02%), and intuitively the estimate appears very high for this province.</p> <p>No. The harvestable volume set out in the FMA document (1.7 million m³) is based on the gross FMA area and the gross volume per</p>

<ul style="list-style-type: none"> • Have “Fragile Forest Areas” (OEC definition) been considered: • Have environmentally sensitive areas been considered: • Have conservation set asides been appropriately implemented: 	<p>hectare estimate without making it clear that this is not the net volume. Applying the standard reduction factors reduces this to 1.0 million m³. However, the net harvestable area is also over-estimated (see above) - based on the FIMS data the net harvestable volume is 0.7 million m³.</p> <p>No, because there is no agreed position regarding fragile forest areas. An estimated 99% of the gross loggable area of the Semabo project area is classified as Fragile Forest. If Fragile Forest is excluded from harvesting then the net harvestable volume effectively reduces to zero.</p> <p>Yes. Large scale Gazetted conservation areas are excluded from the FMA area. Small scale Gazetted conservation areas are identified and excluded from the gross loggable area. The Logging Code prohibits logging in defined environmentally sensitive areas which are excluded when the gross loggable area is defined.</p> <p>The standard FMA document reserves the right for the PNGFA to exclude up to 10% of the gross loggable area from logging for conservation purposes.</p>
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<p>3. ESTIMATE OF SUSTAINABLE CUT</p>	
<ul style="list-style-type: none"> • Has the sustainable annual cut been properly calculated: 	<p>No. The data presented in the FMA document (after application of the standard reduction factors) indicates a sustainable cut of 28,000 m³/a based on over-stated harvestable area. Based on the FIMS data the sustainable cut is 20,000 m³/a.</p> <p>In preparing the Development Options Study and the Project Development Guidelines (both approved by the Board) the Resource Development Division of the NFS reduced the estimated gross volume per hectare to 20.0 m³ as being more representative of logging yields in the province. These documents set</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>out a sustainable yield estimate of 10,000 and 11,000 m³/a respectively.</p> <p>If areas classified as Fragile Forests are excluded from harvesting then the sustainable yield reduces to zero.</p> <p>No</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 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 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.
- 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 IN FMA DOCUMENT

- That the PNGFA checks and amends if necessary the project area and gross volume per hectare information. This should include additional inventory work within the project area.

3. ESTIMATE OF SUSTAINABLE CUT

- That the PNGFA recalculates and amends as necessary the permitted annual sustainable cut for inclusion in the Timber Project Guidelines.

4. 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 Timber Project Guidelines, and ensure consistency of information.

5. ANY OTHER MATERIAL NON-COMPLIANCE REGARDING THE RESOURCE

- That the PNGFA either base their sustainable cut calculations on a 40 year cutting cycle (as required under the National Forest Policy) or provide justification for adopting a 35 year cutting cycle.

B . LEGAL COMPLIANCE

SUMMARY OF LEGAL COMPLIANCE:

- Due process has been generally observed.
- It appears that landowner representatives may not have attended relevant meetings of the PFMC. It is doubtful that the PFMC independently verified the ILG incorporations and the willingness of landowners to sign the FMA.
- It appears that consultation may not have taken place with landowners or the Provincial Government when the Project Guidelines were originally formulated or

when they were revised for the second tender. These are significant departures from due process.

- Not all necessary documentation appears on the files.
- The revised Timber Project Guidelines may have been issued under a delegated power but this is not clear from the files and there is no record of the Board having been advised of the exercise of its delegated power.

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

RECOMMENDATIONS REGARDING LEGAL ASPECTS:

1. Landowner representatives are to be present at meetings of the PFMC that affect their project and their attendance must be noted on NFS files. The PFMC must independently verify the ILG incorporations and the willingness of landowners to sign the FMA.
2. Meaningful consultation relating to the Project Guidelines must be had with resource-owners and the Provincial Government.
3. Whenever the Managing Director exercises a delegated power a note of its exercise must appear on the files and the Board should be informed of the decision.
4. A real effort must be made to keep a file for each project that records each and every approval and other formality. The records for this project contain many gaps even though in some instances it would appear that the necessary step was taken. A common file containing evidence of the proper exercise of the responsibilities and powers of the PFMC, the NFS, the NFB, the Managing Director and the Minister should be readily accessible.

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>	<p>From all the files and documents sighted there are no indications that land owners are being made aware of all the circumstances surrounding the proposed development of their resources. However at the same time there are clear indications that the Land Owners Company (LANCO) is doing everything it can to represent the interests of the landowners. It is assumed that landowners are being made aware through the LANCO.</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>There are 36 ILGs incorporated by the land owners with assistance from the LANCO. The ILGs appear to have been done with a lot of effort but with little adequate guidance. Some individuals are in many ILGs. The ILGs do not seem to fit the group to the ground. The present ILGs would not be a very good basis for management, for decision making or for benefit distribution.</p>
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 	<p>The FMA has been signed by 35 land groups. Only one group has not officially signed the document.</p> <ul style="list-style-type: none"> • Land owner benefits are specified in Schedule 7 of the FMA.

<ul style="list-style-type: none"> • 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"> • Description of the forest area in Schedule2, and a map outlining the proposed area to be harvested. • Certificate from the PFMC in order (but see comments under Legal Compliance).
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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"> • 11,000 cubic meters sustainable cut • Proposed downstream processing for local and Australian markets • This project has the support of the PNGFA Board for downstream processing.
2. Project Guidelines	
<p>Draft guidelines must be discussed and developed in consultation with the resource owners</p>	<p>No evidence of any discussions.</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>This yet to be drafted and negotiated.</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.	This yet to be drafted.

CONCLUSIONS REGARDING LANDOWNER ASPECTS:

- That the ILGs as presently constituted are not suitable for project management purposes.
- That there is no evidence on the files to indicate that the shareholding of the LANCO represents the landowners in the project area.
- That the LANCO which has expressed interest in the project appears to have complied with NFS conditions.

RECOMMENDATIONS REGARDING LANDOWNER ASPECTS:

1. That the ILGs should be revised without duplication of whole clan segments in many ILGs.
2. That the representativeness of the shareholding of the LANCO be verified.

APPENDIX 1 : CHECKLIST OF COMPLIANCE WITH LEGAL REQUIREMENTS

PROJECT – SEMABO FMA (PRELIMINARIES AND FIRST TENDER)

Step	Compliance	Non-Compliance	Not Clear
<u>1. Landowner Consultation</u>			
Awareness campaign			?
Vesting of title	N/A		
ILG incorporation	April 95		
PFMC certificate	3/10/95		
Attendance of landowners at PFMC meeting			?
<u>2. Forestry Management Agreement</u>			
Form and content	Confirmed		
Execution	14/2/96		
Ministerial approval	14/2/96		
<u>3. Development Options Study</u>			
Board to arrange	Jan 96		
or exemption	N/A		
Directions from PFMC			?
DOS given to Minister and PFMC	March 96		
<u>4. Project Guidelines</u>			
PFMC consults with L/owners and Prov Govt			?
PFMC to prepare draft			?
Attendance of landowners at PFMC meeting			?
PFMC to submit draft to the board			?

Board issues final guidelines			?
<u>5. Advertisement</u>			
Project to be advertised	Closed 18/10/96		
Expressions of interest received	Tender 96-22 (3) Oct 96		
<u>6. Feasibility Studies</u>			
Application by registered person	N/A		
<u>7. Project proposals</u>			
Proponents must be registered Under section 105	2 registered 1 not- excluded		
Placed in tender box	Confirmed 21/10/96		
Proper as to form and content			?
Referred to PFMC	11/11/96 Form 18		
Attendance of landowners at PFMC meeting			?
Evaluated with assistance of NFS	Confirmed		
Invitation for further information	N/A		
Evaluation of further information	N/A		
PFMC reports and recommends	24/3/97 Fm 91 - 9/7/97		
Attendance of landowners at PFMC meeting			?
Board consults Minister	Confirmed		
Minister gives views	Confirmed		
<u>8. Negotiations</u>			
Board directs PFMC as to proponent For further negotiations	26/11/97		
Board and PFMC set parameters	17/12/97		

PFMC negotiates agreement

Commenced but failed - 15/4/98		
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CHECKLIST NOTES

1. The common concerns about certifications given to FMAs by PFMCs arise here. They are –
 - There is no evidence that landowner representatives attended the PFMC meeting (or at any later relevant PFMC meeting).
 - There is no evidence that the PFMC independently verified the ILG incorporations and the willingness of landowners to sign the FMA.
 - Indeed the above appears most unlikely as the certification was given nearly 4 months before the FMA was approved by the Board.
2. As far back as 1993 the PNGFA was notified that a landowner company, Semabo Timbers Business Group, had been formed and was processing timber within the proposed FMA. In 1995 the PFMC endorsed the company's operations and advised the NFB to permit it to operate under a TA until the FMA procedures could be finalised. The NFB endorsed this submission at Meeting 20 in July 1995. However Semabo Timbers did not submit a tender in October 1996 when this project was first advertised. There may be reason to think that the NFS should have encouraged and facilitated a tender by the landowner company at this time. Certainly had that happened, then very many years would not have been wasted in processing this project. At this time a joint venture proposal including the Semabo Timbers is the only response to the second tender.
3. There is no evidence of consultation with landowners and the Provincial Government concerning the formulation of the Project Guidelines. This is a serious oversight if consultation did not in fact take place.
4. The negotiation process arranged by the NFS deserves commendation, even if its outcome was less than spectacular. The negotiating team was an appropriate mix of NFS staff, PFMC members and landowner representatives. The negotiations were scheduled to take place in Daru. The Board set the parameters for negotiations. The Board properly resolved to terminate negotiations when it became clear that the selected proponent would not participate.
5. The files are deficient in many respects. Much of this stage of the project was processed before the Forestry Regulations (and the many forms required by them) came into force. The subsequent use of forms has been extremely helpful in tracking the necessary approvals and other formalities on the files. For this stage it has not been possible to verify that all necessary steps have been followed. The deficiency of information relating to the Project Guideline stage is a clear illustration of this.

PROJECT – SEMABO FMA (SECOND TENDER)

Step	Compliance	Non-Compliance	Not Clear
<u>1. Landowner Consultation</u>			
Awareness campaign			?
Vesting of title	N/A		
ILG incorporation	Already		
PFMC certificate	Already		
Attendance of landowners at PFMC meeting			
<u>2. Forestry Management Agreement</u>			
Form and content	Already		
Execution			
Ministerial approval			
<u>3. Development Options Study</u>			
Board to arrange	Already		
Or exemption			
Directions from PFMC			
DOS given to Minister and PFMC			
<u>4. Project Guidelines</u>			
PFMC consults with L/owners and Prov Govt			?
PFMC to prepare draft		X	
Attendance of landowners at PFMC meeting		X	
PFMC to submit draft to the board			?

Board issues final guidelines	21/3/00 Form 86 see notes		
<u>5. Advertisement</u>			
Project to be advertised	17/4/00 T. No 2000-03		
Expressions of interest received	(1)		
<u>6. Feasibility Studies</u>			
Application by registered person	N/A		
<u>7. Project proposals</u>			
Proponents must be registered Under section 105	Confirmed		
Placed in tender box	(1) Confirmed 4/7/00		

CHECKLIST NOTES

The major problems at this stage of the project centre on the Project Guidelines. These were revised when the Board determined that the project would be entirely a stand-alone domestic processing project.

These problems are –

- There is no clear evidence of consultation with landowners and the Provincial Government as required by section 63(1). This is a recurring and significant oversight.
- The Guidelines appear to have been formulated by the NFS even though the responsibility for their preparation lies with the PFMC.
- There is no evidence that they were reviewed and issued by the Board. This may have been done under the delegated powers but if it was done in this way then the files should clearly indicate this, and the Board should have been advised of the exercise of its delegated power.

Representatives of Semabo Timbers have regularly written to state their dissatisfaction with the delays in progressing this project. It is true that some delays appear to be unwarranted. However the complaints concerning the nearly seven month period in which the revised Project Guidelines remained in the formulation stage must be considered in the light of the fact that never before had a project been determined to be solely a domestic processing one. Elizabeth Helali constructively pointed out that the standard project guidelines applied financial arrangements that related to the export of logs, and which had no application in the revised project requirements of this case. The Project Guidelines were then re-formulated.