

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 16**
KAMULA DOSO (WESTERN PROVINCE)

AUDIT CONCLUSIONS AND RECOMMENDATIONS:

RESOURCE AND PLANNING ISSUES:

The sustainable timber yield principle has been complied with. The project is only partially in compliance with the Act in that only one block of three is listed in the National Forest Plan for development. Sensible operational procedures have not been complied with in that the resource data is based on an extremely low field inventory sample. The estimated sustainable annual cut is sufficient to support a conventional stand alone log export project.

LEGAL COMPLIANCE:

Observance of due process is doubtful. The PNGFA Board decision to grant the project as an extension thus avoiding public tender has cast suspicions on the project. Recent (January 2001) changes to the Forestry Act 1991 now prevent such a decision being made.

LANDOWNER ISSUES:

Landowner awareness work was undertaken by the Landowner Company. Insufficient care has been taken with the formation of Incorporated Land Groups, resulting in part from the lack of PNGFA supervision of the process. There is little evidence of landowner involvement in the allocation process.

RECOMMENDATIONS (INCLUDING CORRECTIVE MEASURES IF REQUIRED):

- That the PNGFA update the National Forest Plan.
- That the PNGFA undertake additional field inventory work and verify the resource data.
- That the PNGFA revisit the ILGs and the FMA and verify consistency between the ILG Committees and the FMA signatories in preparation for PFMC certification.
- That the PNGFA rectify problems concerning the certification of the revised Forest Management Agreement.
- That the PNGFA revisit the Development Options Study.
- That the PNGFA reconsider the Timber Project Guidelines after proper consultation with the resource owners and the Provincial Government.
- That the PNGFA Board formally revoke the decision to grant the project as an extension in line with the recent amendment to the Forestry Act 1991.
- That the project be publicly tendered.

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:	<p>Formation of Incorporated Land Groups (ILGs) completed. Forest Management Agreement (FMA) drafted and submitted to the Board. Development Options Study (DOS) and Timber Project Guidelines (PG) finalised. Decision by the Board (February 1999) that the area is to be an extension of Wavoi Guavi (Timber Permit 1-7) held by Rimbunan Hijau (PNG) Ltd.</p> <p>FMA then considered invalid. New FMA prepared but problems concerning certification by the Provincial Forest Management Committee. DOS and PG to be revisited.</p>
Gross FMA area (a):	791,000 ha
Gross loggable area (a):	585,000 ha
Net sustainable timber yield (a):	319,000 m ³ /annum (b)

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

(b) 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>In part only. Kamula Doso consists of three blocks (Blocks 1 - 3) also referred to as Fly Blocks 11B, 11D and 11E respectively. The National Forest Plan lists Fly Block 11D only under the alternative name of Trans Aramia. Fly Blocks 11B and 11E are not mentioned.</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>The FMA document indicates a gross loggable area of 699,000 ha without explaining how this is derived – applying the standard 15% reduction results in the net loggable area estimate of 594,000 ha as set out in the FMA. The FIMS area data indicates a slightly lower gross loggable area of 688,000 ha, and a net loggable area of 585,000 ha.</p> <p>Yes. The FIPS data is used in the FMA, but it is based on an extremely small sample (0.02%).</p> <p>Yes. The net harvestable volume is estimated to be 11.2 million m3.</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>No, because there is no agreed position regarding fragile forest areas. An estimated 3% of the gross loggable area of the Kamula Doso project is classified as Fragile Forest (being the weighted average of 0%, 7% and 3% for Blocks 1 – 3 respectively).</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: • 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>Not yet estimated by PNGFA. The resource description set out in the FMA indicates a sustainable yield of 322,000 m3/a, only slightly higher than the 319,000 m3/a estimate based on the FIMS and FIPS data. This would reduce only slightly if areas classified as Fragile Forests are excluded from harvesting.</p> <p>Yes</p> <p>Yes</p>

<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>Board endorsed DOS and PG exist, but need to be revisited to ensure consistency with the renewed FMA.</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.

2. 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 project is subject to a Ombudsman Commission enquiry. The report is not yet a public document.

- There are real doubts concerning the observance of due process in this case.
- The certifications given by the PFMC have been found to be defective. Doubts arise concerning the convening of PFMC meetings and the discharge of the Committee's obligation to verify matters concerning ILG incorporations and the willingness of all landowners to sign the FMAs.
- The Supplementary FMA is deficient in some matters relating to form. The date of the Ministerial approval for the original FMA has been crossed out and a new date inserted. This is not good practice.
- In the context of the draft Timber Project Guidelines there is no evidence of consultation by the PFMC with resource owners and the Provincial Government.
- The Board's decision to grant the project as an extension has aroused suspicions which would have been wholly avoided had the usual and transparent public tender process been permitted to apply. None of the Forms required by the Regulations for an application for an extension, or for the approval of an application, have been sighted.

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

RECOMMENDATIONS REGARDING LEGAL ASPECTS:

1. That the irregularities that have been identified in relation to the FMAs must be rectified.
2. Once this has been done the PNGFA Board may –
 - Re-affirm the DOS if it is still appropriate for the project as it will then stand;
 - Re-visit the Timber Project Guidelines after the PFMC has discharged its obligation to consult under section 63(1); and
 - Formally revoke its decision to grant the application for extension (in order to be consistent with the recent amendments to the Act) and arrange for the project to be advertised.

C. LANDOWNER ISSUES

RESOURCE ACQUISITION	
1. Landowner Awareness	
The Review Team was looking for evidence of an awareness package containing information explaining the purpose, benefits	Tumu Timber Ltd company is a Landowner Company (LANCO). Kamula Doso Timber Resources Ltd another LANCO. Wawoi Tumu Holdings Ltd did the ILGs.

<p>and otherwise to be expected from the project. This could include general conditions that could be used for all prospective projects.</p>	<p>Certificates signed Feb 1997.</p> <p>These LANCOs have been very active in the project area presumably raising awareness at the same time.</p>
<p>2. Landowner Mobilisation</p>	
<p>Landowners are required to be mobilised by means of the Land Groups Incorporation Act. The Review Team was looking to find evidence of full participation by landowners in the ILG process particularly with regard to:</p> <ul style="list-style-type: none"> • Recognition that the resources are owned by individual land groups and not collectives of land groups • The formation of representative bodies for project consultations and negotiations. 	<p>LANCO (Tumu Timber Development Corporation Ltd) claims 52 clans; 38 ILGs purport to sign the FMA. PNGFA validated the ILGs in Nov 1996.</p> <p>Kamula Doso Ltd withdrew the ILGs submitted to Registrar of Title by them as being incorrectly done in favour of the ILGs done by Wawoi Tumu Holdings Ltd which represents the majority of interests in the area.</p> <p>Many ILGs are not clan groups but single family groups.</p> <p>No indication that there is any form of empowerment by ILG process.</p> <p>LANCOs appear to be active and effective for project consultation.</p>
<p>3. Forest Management Agreement</p>	
<p>Must Specify:</p> <ul style="list-style-type: none"> • Monetary benefits for the customary group • Area in agreement by map • PFMC certificate as to <ul style="list-style-type: none"> - authenticity of the tenure of the customary land - willingness of customary owners to enter into FMA • Review level of consultation with landowners 	<p>38 ILGs sign on 9/2/98. 14 more sign 19 Feb 1998.</p> <p>Deficiencies noted by PNGFA Legal Counsel resulted in a spate of statutory declarations to try to clear up the lack of consistency between ILGs and the FMA. There is no indication that this form of FMA sanitation has any more validity than the previous version since the people in the villages have not been involved.</p> <p>Description and map of forestry area, Certificate from PFMC and the Schedule of Monetary Payments are attached.</p>

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. 	A DOS has been prepared, but may need to be redone given that the FMA is being redone.
2. Project Guidelines	
Draft guidelines must be discussed and developed in consultation with the resource owners	A set of Project Guidelines has been prepared, but may need to be redone given that the FMA is being redone.
3. Project Agreement	
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.	Yet to be drafted and negotiated.
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.

Additional notes are presented in Appendix 2.

CONCLUSIONS REGARDING LANDOWNER ASPECTS:

- There is clear indication that the ILGs are inconsistent, some being based on family groups and some possibly on clan groups.
- The remoteness of the area resulted in little involvement of the PNGFA in the ILG process. This has left awareness building to the LANCOS and has resulted in little or no empowerment of the landowners by the ILG process.
- The lack of consistency between the ILG applications, the ILG committee members and the signatures to the FMA document indicate a poor level of supervision of the process by the PNGFA.

RECOMMENDATIONS REGARDING LANDOWNER ASPECTS:

- 1 It is recommended that the PNGFA revisit the ILGs.

APPENDIX 1 : CHECKLIST OF COMPLIANCE WITH LEGAL REQUIREMENTS

PROJECT – KAMULA DOSO FMA

Step	Compliance	Non-Compliance	Not clear
<u>1. Landowner Consultation</u>			
Awareness campaign			?
Vesting of title	N/A		
ILG incorporation			?
PFMC certificate	(1) 28/8/97 (2) 16/1/98		
Attendance of landowners at PFMC meeting			?
<u>2. Forestry Management Agreement</u>			
Form and content	(1) see notes (2) see notes		
Execution	(1) 9/2/98 (2) not dated		
Ministerial approval	(1) 19/2/98 (2) 19/2/98		
<u>3. Development Options Study</u>			
Board to arrange	18/8/98 Form 81 Not signed		
or exemption	N/A		
Directions from PFMC	15/4/98 Form 82 No Form 83		
DOS given to Minister and PFMC			?
<u>4. Project Guidelines</u>			
PFMC consults with L/owners and Provincial Govt			?
PFMC to prepare draft	Confirmed		
Attendance of landowners at PFMC meeting			?

PFMC to submit draft to the board	Confirmed		
Board issues final guidelines	4/2/99		
<u>5. Advertisement</u>			
Project to be advertised	N/A		
Approved as extension	4/2/99		

CHECKLIST NOTES

1. The common concerns about the PFMC certification apply in relation to the first attempt to secure an FMA and the Supplementary FMA. These are –
 - There is no evidence that landowner representatives attended either of the meetings at which the certification was approved. Their attendance must be arranged and a note of it must appear on the file kept by the NFS at headquarters. (And this applies to all PFMC meetings at which the project is considered).
 - There is no evidence that the PFMC, on either occasion, independently verified the ILG incorporations or the willingness of landowners to sign the FMA. Subsequent events have highlighted these deficiencies.

2. Care must be taken to ensure that all formalities concerning the execution of FMAs are attended too. The date of the Minister’s approval for the first FMA has been altered. This should be avoided. The Supplementary FMA is not dated and the particulars of Schedule 1 concerning the term of the Agreement have been overlooked. Real care must be taken to ensure that Supplementary FMAs truly supplement the original FMA in every respect.

3. The PNGFA has received detailed legal advice on two occasions from its in-house counsel concerning the validity of the initial FMA and the certification of the revised FMA. In essence the advice was –
 - That on its face the initial FMA was invalidly executed by persons other than those stated in the document, being persons without legal authority to contract on behalf of a significant number of the ILGs; and
 - That the PFMC meeting held to certify the revised FMA was invalidly constituted in that certain persons present were not members of the Committee and also because no landowner representatives were present as is required by law. There were also issues of natural justice raised.

There have been no convincing arguments put to counter the essential elements of the advice given to the PNGFA by its legal advisers.

4. There is no evidence of consultation by the PFMC with resource owners and the Provincial Government concerning the drafting of the initial Timber Project Guidelines.

5. Legal advice has been given by the PNGFA General Counsel that the invalidity of the initial FMA affects the DOS and Project Guidelines. Private lawyers representing certain landowners have urged that negotiations take place regardless. This view has been sensibly ignored by the PNGFA.

If the project details remain the same after the signing of the revised FMA then it will not be difficult for the original DOS to be ratified. The Project Guidelines however should be re-visited so that effective consultation can take place as is required by section 63(1). The problem identified in paragraph 4 of these notes may then be rectified.

6. There is real concern about the decision of the NFB made at its Meeting No. 54 to approve this project as an extension. These concerns are –

- This was directly contrary to the advice given by the NFS that the project should be advertised. This advice had been consistently stated as the view of the NFS and had always been supported by convincing argument.
- There was clearly sufficient resource for the project to be a stand-alone one.
- The views of some landowners and of the Provincial Government did not favour an extension.
- None of the forms required by the Regulations concerning the application for an extension, or its approval, have been sighted.
- There seems to be an unsettling determination on the part of one or two Board members, and a number of NFS officers, to see the project proceed as an extension.
- The NFB has exposed itself to claims of impropriety by departing from the usual and transparent process of public tender.

7. As the project now stands there is still no valid FMA and so technically there is no “forest development project” under the Act. Once the FMA is properly executed then it will be possible for the NFB to “clear the air” by –

- Re-affirming the DOS if its contents are considered to be appropriate;
- Re-visiting the Project Guidelines after the PFMC has consulted with the resource owners and the Provincial Government; and
- Formally revoking the decision to approve the project as an extension and arranging for its advertisement.

It should be noted that the most recent amendments to the Forestry Act would not permit the project to be an extension. It is simply too big. The NFB and the adjoining permit holder should show a proper degree of respect to the clear wishes of the National Parliament.

There is every reason to anticipate that the adjoining permit holder will submit a very competitive tender. All the considerations that the Board was urged to take into account at Meeting No. 54 can still be taken into account when project proposals are assessed. The doubts that have arisen about the activities of the applicant and the apparent allegiances of certain Board members and some officers of the NFS could then be laid to rest.

APPENDIX 2: NOTES ON LAND OWNER ASPECTS

- 1 JV Company set up between Tumu Timber Development Ltd and Asia Pacific Capital Development Services Ltd to try to secure the Timber Permit.
- 2 Financier which has 51% shareholding claims to be nationally owned. LANCO owns 49%. JV agreement is structured in such a way that the non-landowner partner has the ability to take over the LANCO should the latter default.
- 3 K56 million has been located by the project proponents.
- 4 4 Nov 97 Wavoi Tumu Holdings Pty Ltd supporting Wavoi Guavi Timber Co Ltd to get the Kamula Doso project as an extension! WGTC helped with the ILG formations!
- 5 21 Sep 98 - Sime Darby propose a 16,000 ha oil palm development.
- 6 20 Apr 99 – PNGFA Legal Counsel states that the FMA must go back to be resigned as signatories do not match the ILGs they purport to represent.
- 7 25 Nov 98 - Wiko Holdings Ltd, Wiwa Korowi enter the fray pushing Paradise Natural Resources Ltd for “major downstream processing” alleging that “ plans have gone to government”. No such plans sighted.
- 8 Secretary for the Office of Environment and Conservation (and member of the PNGFA Board) Wari Iamo fully supports Kamula Doso as an extension for to the Wavoi Guavi Timber Permit area (Rimbunan Hijau) after making a field visit.