

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 17**
IOMA BLOCK 5 (ORO PROVINCE)

AUDIT CONCLUSIONS AND RECOMMENDATIONS:

RESOURCE AND PLANNING ISSUES:

The sustainable timber yield principle has been complied with. A significant proportion (19%) 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 the resource information is based is extremely small. The available resource as set out in the FMA document is significantly over-stated. The sustainable annual cut is too small to support a financially efficient logging investment, a conventional stand alone log export project, or the extensive landowner "wish-list" set out in the draft Timber Project Guidelines.

LEGAL COMPLIANCE:

Due process has generally been observed. However there are some deficiencies relating to the conduct of landowner awareness exercises, the certification and the form of the Forest Management Agreement and the lack of consultation concerning the Project Guidelines.

LANDOWNER ISSUES:

Landowner awareness work undertaken by the landowner companies. The Incorporated Land Groups appear satisfactory – these were set up by the landowner companies and were vetted by the PNGFA. There is confusion regarding the representativeness of the Landowner companies. With regard to allocation there have been regular consultation between the PNGFA and the landowner companies, but it is unclear whether the

landowners at large were involved. Landowner benefit expectations are unrealistically high.

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 undertake additional field inventory work and verify the estimated sustainable yield.
- That the PNGFA conducts further awareness of project development options to gain landowner support.
- That the attendance of landowner representatives at future relevant Provincial Forest Management Committee meetings be arranged.
- That defects in the executed Forest Management Agreement be rectified.
- That consultations with resource owners and the Provincial Government take place regarding the draft Timber Project Guidelines.

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

- That the project should proceed with continued efforts to fully involve landowners in informed decision making.

Note: The individual project reports summarise the findings of the Review Team regarding material compliance issues, and present project specific recommendations for the consideration of the Interagency Forestry Review Committee. Separate reports produced at the end of the review process set out in more detail the audit procedures applied, and comments and recommendations regarding existing policies, legal requirements and project development processes.

REVIEW REPORT

SUMMARY PROJECT DETAILS:

Project type:	Forest Management Agreement / Timber Permit
Processing stage:	Formation of Incorporated Land Groups (ILGs) completed. Forest Management Agreement signed and approved by the Minister. Development Options Study completed. Timber Project Guidelines drafted.
Gross FMA area:	227,000 ha
Gross loggable area:	65,000 ha
Net sustainable timber yield:	26,000 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 September 1998</p> <p>Yes</p> <p>Yes</p>

<p>2. PROJECT DEFINITION IN FMA DOCUMENT</p>	
<ul style="list-style-type: none"> • Is the gross loggable area properly defined: • Has the total gross merchantable volume been properly estimated: 	<p>No. The FMA document sets out an unexplained net loggable area estimate of 46,000 ha. Applying the logging exclusion areas defined in the Logging Code of Practice indicates a gross harvestable area of 77,000 ha, and a net harvestable area of 65,000 ha. The area data set out in the FMA is thus a significant under-estimate. (Note: The Development Options Study sets out a revised estimate of the net loggable area as 77,000 ha).</p> <p>No. An initial estimate (57.6 m³/ha) was based on FIMS data and incorporated into the FMA document without field checking. The FMA was approved by the Minister in 1997. Field inventory was undertaken in 1999 resulting in an estimate of the gross merchantable volume of 20.0 m³/ha, although the sample was extremely small (0.07%).</p>

<ul style="list-style-type: none"> • Has the net merchantable volume been properly estimated: • Have “Fragile Forest Areas” (OEC definition) been considered: • Have environmentally sensitive areas been considered: • Have conservation set asides been appropriately implemented: 	<p>No. The gross loggable area was understated, and the gross volume per hectare was overstated. These errors compensate. The net volume estimate set out in the FMA is 1.9 million m³. The corrected figure is 0.9 million m³. (Note: the Development Options Study indicates a net loggable volume of 1.1 million m³).</p> <p>No, because there is no agreed position regarding fragile forest areas. An estimated 19% of the gross loggable area of the Ioma Block 5 project is classified as Fragile Forest. If Fragile Forest is excluded from harvesting then the net harvestable volume effectively reduces to 0.7 million m³.</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 	<p>No. The data presented in the FMA document indicates a sustainable cut of 53,000 m³/a based on an under-stated harvestable area and an over-stated volume per hectare. Based on the FIMS and FIPS data the sustainable cut is 26,000 m³/a, or 21,000 m³/ha if the areas classified as Fragile Forests are excluded from logging. The Development Options Study sets out a sustainable yield of 30,000 m³/a.</p> <p>No</p>

<p>efficient logging investment (min 30,000 m³/a):</p> <ul style="list-style-type: none"> Is the estimated sustainable yield sufficient to support a stand-alone log export operation (min 70,000 m³/a guideline set by PNGFA Board): 	No
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4. CONSISTENCY BETWEEN DOCUMENTS	
<ul style="list-style-type: none"> Is the area and volume data consistent between the FMA, the Development Options Study and the draft Project Guidelines: Any other material inconsistencies regarding the resource: 	<p>No – as set out above.</p> <p>None found.</p>

5. ANY OTHER MATERIAL NON-COMPLIANCE REGARDING THE RESOURCE	
<ul style="list-style-type: none"> The standard cutting cycle assumed in the sustainable annual cut calculation. 	The National Forest Policy specifies a 40 year cutting cycle. In practice a 35 year cycle is applied. No explanation is available.

RECOMMENDATIONS REGARDING FORESTRY ASPECTS:

1. SECTORAL PLANNING AND CONTROL

- That the PNGFA pro-actively assist the Oro 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 gross loggable area estimate and the volume per hectare information.

3. ESTIMATE OF SUSTAINABLE CUT

- That the PNGFA recalculates and amends as necessary the permitted annual sustainable cut for inclusion in the Development Options Study and 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 and the Development Options Study, and ensures 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 generally been observed.
- There are doubts concerning compliance in relation to the following areas –
 - The conduct of an effective landowner awareness campaign.
 - The certification of the FMA by the PFMC.
 - The form of the FMA.
 - Consultation with resource owners and the Provincial Government concerning the Project Guidelines.

It should be noted that delays in progressing this project have been inordinately long and this has encouraged the involvement of a prospective developer in an inappropriate fashion and at an undesirable time.

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

RECOMMENDATIONS REGARDING LEGAL ASPECTS:

1. A proper landowner awareness campaign must be conducted and a record of it should appear on the NFS files held at headquarters.

2. The PFMC must facilitate the attendance of landowner representatives at relevant PFMC meetings. A record of this attendance should appear on NFS files held at headquarters. And the PFMC must independently verify the ILG incorporations and the willingness of landowners to sign the FMA.
3. Care must be taken to ensure that all formalities concerning the execution of FMAs are completed. FMAs must be dated, all Schedules must be duly completed and an ink stamp corporate seal is preferable as it will be immediately visible on copies of Agreements.
4. Consultation with resource owners and the Provincial Government must be undertaken in relation to the draft Project Guidelines.
5. The Development Options Study should have been completed expeditiously. There is every reason for its contents to be contemplated in advance of the signing of the FMA. The development options are the foundation of the entire project.
6. Court actions that impede the progress of projects should be addressed as a matter of absolute priority. Interim injunctions should be tested without delay. If external lawyers are used then they must be properly instructed and urged to resolve matters with urgency.

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 and otherwise to be expected from the project. This could include general conditions that could be used for all prospective projects.	There is no evidence on file to show the level of awareness that has been conducted with landowners. NFS held meetings with certain landowners to resolve boundaries that were being disputed. Land owner awareness was generally implemented by the Landowner Company (LANCO).
2. Landowner Mobilisation	
Landowners are required to be mobilised by means of the Land Groups Incorporation Act. The	<ul style="list-style-type: none"> • 75 ILGs were formed to represent land owners. • The ILGs were conducted by the LANCO and

<p>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>verified by NFS.</p> <ul style="list-style-type: none"> • There are 5 ethnic groups, each forming a LANCO • The ILGs appear to have been carried out thoroughly though without any full empowerment of the groups by the process. • No certificates were found in the files, as they were all in the Lands Department • Ioma Block 5 Development Corporation has been registered as a LANCO representing all the landowners in the area. This umbrella company was formed as a negotiating company that would lapse once the project went ahead.
<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 	<ul style="list-style-type: none"> • This has been signed by the 65 ILGs • Schedule 7 in the FMA document lists the monetary benefits. • Schedule 6 is the Certificate from the Oro PFMC • Court injunction by one of the land groups against the project was dissolved. • A detailed description of the area is in Schedule 2 of the FMA document. No map was attached. • Assumption is made that regular consultation is being done through the LANCO. • Town based landowner representative is member of PFMC

<p>RESOURCE ALLOCATION</p>	
<p>1. Development Options Study</p>	
<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 	<p>Development Options:</p> <ul style="list-style-type: none"> • Stand alone downstream processing • Consolidation with adjoining forestry projects • Landowners are pressing NFS to increase the annual cut from 30,000 to 70,000 cubic meters.

<ul style="list-style-type: none"> and if All options presented for the resource development had a realistic chance of being pursued. 	<ul style="list-style-type: none"> The concept to supply Ambogo sawmill with logs from the project area has been presented by NFS for consideration by the developer. No indication that NFS is prepared to assist in promoting anything other than log export. Landowner aspirations cited in the DOS are not treated as if they constitute part of any plan and most will not be achieved. Many are at variance with NFS policy or experience.
<p>2. Project Guidelines</p>	
<p>Draft guidelines must be discussed and developed in consultation with the resource owners</p>	<p>Draft copy has been made available to the PFMC for comments. It includes a very extensive landowner “wish-list” for infrastructure, which is unlikely to be supported by project cash flow.</p>
<p>3. Project Agreement</p>	
<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>Yet to be executed</p>
<p>4. Environmental Plan</p>	
<p>EP is produced by the preferred developer according to the prescription of the Environmental Planning Act. Evidence of consultation with landowners is important.</p>	<p>Yet to be prepared</p>

CONCLUSIONS REGARDING LANDOWNER ASPECTS:

- That the shareholding of the LANCOS be investigated to ensure that they are representing different ILGs and not overlapping groups. Landowners should be made aware that under the FMA, LANCOS will not be allowed to receive benefits on behalf of the people.

- It is also important landowners are made aware of the project options available and the implication for the long term. This is particularly true since there is no alignment between PNGFA and the Landowners view of development for this project.
- The Landowner wish-list is unlikely to be supported by this small sustainable yield project, in particular as the project has been advertised as a domestic processing option thus precluding the application of the standard Project Development Levy (which is based on FOB payments).

RECOMMENDATIONS REGARDING LANDOWNER ASPECTS:

1. It is recommended that the PNGFA make further efforts to undertake awareness work, with particular reference to achieving realistic landowner benefit expectations.

APPENDIX 1 : CHECKLIST OF COMPLIANCE WITH LEGAL REQUIREMENTS

PROJECT – IOMA BLOCK 5 FMA

Step	Compliance	Non-Compliance	Not Clear
<u>1. Landowner Consultation</u>			
Awareness campaign			? see notes
Vesting of title	N/A		
ILG incorporation			?
PFMC certificate	9/1/97		
Attendance of landowners at PFMC meeting			?
<u>2. Forestry Management Agreement</u>			
Form and content	see notes		
Execution	Not dated		
Ministerial approval	25/4/97		
<u>3. Development Options Study</u>			
Board to arrange or exemption	1/6/99 Form 81 N/A		
Directions from PFMC	22/4/99 Form 82 22/1/00 Form 83		
DOS given to Minister and PFMC	16/5/00 Form 84		
<u>4. Project Guidelines</u>			
PFMC consults with L/owners and Prov Govt			see notes
PFMC to prepare draft	Confirmed		
Attendance of landowners at PFMC meeting			?

CHECKLIST NOTES

1. This project is one of many where there is no clear evidence of a landowner awareness campaign having been conducted. Indeed the evidence suggests that it was not in fact undertaken, or at least that it was not done effectively. When the former Manager Acquisitions was asked to approve a patrol to obtain some outstanding landowner signatures she replied by saying that the initial refusal by these ILGs “reflects on our own inadequate ‘awareness’ of the proposed timber project”. This observation was made in early 1997 but there is no later evidence that it was seriously considered.
2. The common problems associated with the PFMC certifications of FMAs apply in this case. These are:
 - There is no evidence that landowner representatives attended the PFMC meeting. Their attendance must be facilitated and a note confirming it should appear on NFS files at headquarters.
 - There is no evidence that the PFMC independently verified the ILG incorporations and the willingness of landowners to sign the FMA. The certificate was given more than 4 months before the Board approved the FMA. While this may not be a fundamental irregularity in itself, certification so far in advance of approval and execution raises doubts as to whether the PFMC truly discharged its important vetting role.
3. Care must be taken to ensure that all formalities relating to the execution of FMAs are observed. The copy of the FMA that was sighted had the following defects –
 - It is not dated.
 - Schedule 1 relating to the term of the Agreement was not completed.
 - The corporate seal does not appear on the copy.
4. There is an indication that the Project Guidelines are still in the draft stage. There is however no evidence that the Provincial Government or the resource owners have been consulted about the content of them. This is an important requirement of section 63(1) and it must not be overlooked. As the project is to be a purely domestic processing one it has been observed that the standard Project Development Levy provisions will have no application. Acceptable alternatives will have to be carefully considered. This will require even more detailed consultation with resource owners and the Provincial Government.
5. The Development Options Study was finalised more than 3 years after the FMA was approved. As the DOS is likely to establish the entire framework for the project it must be undertaken expeditiously and as close to the finalisation of the FMA as possible. (Common sense might in fact suggest that it should be done before the FMA is signed and landowner awareness is undertaken). This project is a good example of this need. In 1995 the Ambogo sawmill claimed to be running short of resource and sought this project as an extension. This application was refused to allow all formalities to be attended too. Five years later the DOS recommended that the project be a 100% domestic sawmilling one.

This may have been exactly what Ambogo was seeking and yet nothing was done to facilitate such an allocation. If it was not done by extension it should at least have been made possible by an expeditious allocation by ensuring that delays at each stage were avoided. It is true that a court injunction may have interfered with this and the next note makes reference to this.

6. A court injunction in October 1997 stayed all action on this project. Interim injunctions should be tested in court within days of their grant. Often there are technical grounds upon which application can be made for their immediate dissolution. At the very least the basis upon which they are granted should be thoroughly tested. In this case the injunction was permitted to run until March 1999. This is almost inconceivable. It may have been that the private lawyers engaged on behalf of the PNGFA did not act with due diligence, or it may be that they did not receive instructions from in-house counsel at a time or in a manner that permitted them to take the appropriate action. In any event it should never be permitted to happen again. It seems that the injunction was in fact finally dissolved unopposed!
7. It is a common scenario that delays lead to the undesirable involvement of prospective developers that enlist the aid of landowner companies. By April 1999, with the project not progressing at all, a landowner company notified the PFMC and the PNGFA that it had selected Deegold (PNG) Pty Ltd as its preferred developer. It later claimed that the PFMC had accepted its submission and endorsed Deegold. This was entirely inconsistent with due process under the Act. It then became apparent that Deegold had advanced K37, 000 to expedite the DOS, which was then languishing somewhere within the PNGFA. More than 1 year after Deegold's involvement was known to the PNGFA the Managing Director wrote to the landowner company directing them to refrain from any dealings with Deegold. No correspondence appears to have been directed to the Deegold itself even though it was a registered forest industry participant. This is a further illustration of the need for a Code of Practice to apply to all registered parties and for processes of de-registration which could be applied to recalcitrant companies.
8. There is a real feeling of lethargy pervading this entire project.