

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 March 2001

Re: **INDIVIDUAL PROJECT REVIEW REPORT NUMBER 24**
PONDO (EAST NEW BRITAIN PROVINCE)

AUDIT CONCLUSIONS AND RECOMMENDATIONS:

RESOURCE AND PLANNING ISSUES:

The sustainable timber yield principle has not been complied with (as a consequence of the resource being very small). The TRP either has expired or will expire soon. The project is not in compliance with the Act in that it is not listed in the National Forest Plan for development. Sensible operational procedures have not been complied with in that there has been no field volumetric inventory. The gross loggable area and estimated loggable volume appear to be significantly overstated. The estimated sustainable annual cut is insufficient to support either a financially efficient logging project or a conventional stand alone log export project. In the absence of a Forest Management Agreement there is no provision for 10% of the gross loggable area to be set aside for conservation purposes. It may be sensible to conserve this resource for domestic sawn timber supply for this heavily logged province.

LEGAL COMPLIANCE:

The failure to base this project on a Forest Management Agreement is a breach of due process. There is no sense in granting this project as an extension to the Seraji Extension TRP as that TRP expires in early 2002.

LANDOWNER ISSUES:

There is no certainty that the landowners of the Pondo TRP area are the same as the Seraji TRP as asserted by the PNGFA - the clan lists do not match. There are no indications of landowner concerns having been considered in the Development Options Study.

RECOMMENDATIONS (INCLUDING CORRECTIVE MEASURES IF REQUIRED):

- That this project should not proceed in its current form without a Forest Management Agreement.
- That the idea of granting this project as an extension to the Seraji and Seraji Extension project should be abandoned.
- That consideration be given to proceeding in due course on the basis of a Timber Authority to support domestic sawn timber supply.

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

REVIEW REPORT

SUMMARY PROJECT DETAILS:

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| Project type: | Timber Rights Purchase / Timber Permit |
| Processing stage: | Resource acquired under the old Forestry Act as a Timber Rights Purchase area. Development Options Study completed. Project Guidelines drafted. This project area is intended by the PNGFA as an extension to the existing TP 15-58 Seraji and Seraji Extension held by Nangal Pty Ltd – the underlying TRP for the Seraji project appears to have expired and the TRP for the Seraji Extension area expires in February 2002. |
| Gross TRP area: | 12,000 ha |
| Gross loggable area: | 1,000 ha (a) |
| Net sustainable timber yield: | Not able to be calculated as no inventory undertaken within the project area. Available data suggests an annual sustainable cut of about 1,000 m ³ /a may be possible. Project Guidelines do not set out a sustainable yield estimate but indicates the resource may be cut over 5 years at up to 39,000 m ³ /a. |

(a) Based on area information extracted from the PNGFA Geographic Information System (FIMS).

A. FORESTRY AND PLANNING ASPECTS

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| <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 October 2000</p> <p>No – Pondo Extension is listed but this is a different area.</p> <p>No – Pondo Extension is listed but this is a different area.</p> |
| <p>2. PROJECT DEFINITION IN FMA DOCUMENT</p> | <p>Note: In the absence of a Forest Management Agreement, the Project Definition used to test compliance with the review criteria is that set out in the Development Options Study.</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 DOS document sets out a gross loggable area of 8,000 ha. Applying the logging exclusion areas as defined in the PNG Logging Code of Practice results in a gross loggable area estimate of 1600 ha – applying the standard gross to net reduction factor of 15% results in a net loggable area estimate of 1400 ha. Thus the loggable area set out in the DOS is significantly over stated.</p> <p>No – the PNGFA have not carried out any field inventory in the project area. The gross harvestable volume figure set out in the DOS (32 m³/ha) is a PNGFA estimate. The net volume (24 m³/ha) was also estimated based on inventory data from adjacent project areas. A logging company survey indicated a gross</p> |

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| <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>volume of 54 m³/ha, but PNGFA have doubts as to the quality of this work.</p> <p>No. The DOS applies the net loggable volume to the gross loggable area, and calculates a loggable volume of 195,000 m³. A corrected estimate is 166,000 m³. However applying the net loggable volume per hectare estimate to the net loggable area based on the FIPS data results in a loggable volume estimate of 32,000 m³, indicating that the available volume set out in the DOS is a significant over estimate.</p> <p>No, because there is no agreed position regarding fragile forest areas. There are no areas classified as Fragile Forest within the Pondo project area.</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>In the absence of an FMA, the right for the PNGFA to exclude up to 10% of the gross loggable area from logging for conservation purposes has not been agreed to with the landowners.</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. Given the relative small size of the resource, the DOS and the draft Project Guidelines indicate that the resource may be cut out over a 5 year period at 39,000 m³/a. A corrected figure based on the FIMS data (but retaining the 5 year logging period) would be 6,500 m³/a.</p> <p>No</p> |

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| <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 Project Guidelines: Any other material inconsistencies regarding the resource: | <p>No FMA. Only a DOS and a draft Project Guidelines prepared by the PNGFA to date. The data between these two documents is consistent.</p> <p>None found.</p> |

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| 5. ANY OTHER MATERIAL NON-COMPLIANCE REGARDING THE RESOURCE | |
| <ul style="list-style-type: none"> Sustainability. | <p>The draft Project Guidelines provide for the resource to be cut over a 5 year period, thus ignoring the sustainability principle. However given the very small size of the resource, sustainability on the basis of a stand alone project may not be a practical option.</p> |

RECOMMENDATIONS REGARDING FORESTRY ASPECTS:

1. SECTORAL PLANNING AND CONTROL

- That the PNGFA pro-actively assist the East New Britain 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. PROJECT DEFINITION

- That the PNGFA check their net loggable area estimate, undertake volumetric inventory in the field, and amend if necessary the project resource data.

B . LEGAL COMPLIANCE

SUMMARY OF LEGAL COMPLIANCE:

- Basing this project on the old TRP is ill conceived. The proposal to consider this as an extension to the Seraji Extension TRP is ill conceived for similar reasons. It is quite possible that the Pondo TRP has already expired. (It certainly seems that no copy of this old Agreement exists.) And the Seraji Extension TRP expires at the end of the year 2001.
- Neither of these TRPs form a sensible basis for this project.
- The DOS appears to have been done with inadequate use of the prescribed Forms.

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

RECOMMENDATIONS REGARDING LEGAL ASPECTS:

1. That the notion of basing this project on the old TRP should be abandoned. All necessary steps under the current Act should be followed. Perhaps a Timber Authority is the most appropriate type of operating right.
2. That the idea of making it an extension to the Seraji Extension TRP should also be abandoned due to the short period left under that Agreement. Indeed the current operations within the Seraji extension are deserving of some enquiry.

C. LANDOWNER ISSUES

| RESOURCE ACQUISITION | |
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| 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> | <ul style="list-style-type: none"> • This is an existing TRP which may have expired (possibly signed in 1941). PNGFA may not be fully aware of this situation. • No indication of landowner awareness by PNGFA to brief resource owners on the future status of the project. |
| 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. | <ul style="list-style-type: none"> • In line with the TRP conditions, a private consulting firm engaged by the Landowner Company (LANCO) Nangal Limited, collected signatures and appointed Agents to represent landowners. • NFS requested the above information to be made available. To date, none has been received, except two ILGs that were recently sent from PNGFA - Keravat. • The two ILGs (Lavakprini and Muachenka) may well be from the Pondo area, but the names do not correspond with the names (Usaurachi, Vualmetki and Bangen Temna clans) recently received from PNGFA. • There is an existing LANCO (Nangal Limited) that was formed for the then planned Seraji TRP/ Pondo TRP consolidation. • There is a question as to whether the landowners from the Pondo area will want to be included in the same LANCO. PNGFA claims that the people from Pondo area and Seraji are the same. Given the physical size of the area, it is doubtful that this is the case. • Clan lists of the Pondo TRP that appear in the DOS are not the same as those that appear in the Seraji TRP document. This |

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| | has been confirmed by the latest information sent in by PNGFA Vudal office. This information lists names that do not appear in the Seraji TRP. |
| 3. Forest Management Agreement | |
| <p>Must Specify:</p> <ul style="list-style-type: none"> • Monetary benefits for the customary group • Area in agreement by map • PFMC certificate as to <ul style="list-style-type: none"> - Authenticity of the tenure of the customary land - willingness of customary owners to enter into FMA • Review level of consultation with landowners | <ul style="list-style-type: none"> • There is no Forest Management Agreement for this project. • Under the TRP, landowner benefits are spelt out in the Timber Permit and the Logging and Marketing agreement. |

| RESOURCE ALLOCATION | |
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| 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"> • DOS has been completed. • The DOS seeks the approval for the Pondo TRP to be considered as an extension to the Seraji TRP. No other option is presented. This has not yet been formally considered by the Board. • There were no clear indications of landowner aspirations and concerns highlighted in the DOS. |
| 2. Project Guidelines | |
| Draft guidelines must be | Project Guidelines have been drafted and are yet |

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| discussed and developed in consultation with the resource owners. | to be discussed with the landowners and considered by the PFMC. |
| 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. | Not yet prepared. |
| 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 applicable. |

CONCLUSIONS REGARDING LANDOWNER ASPECTS:

- There is a general lack of awareness within the PNGFA regarding the history of the TRP acquisition.
- Terms and conditions of TRPs are inconsistent with the objectives and requirements of the Forestry Act.
- Nangal Limited purports to be the representative Landowner Company of both the Seraji TRP and Pondo TRP but there is no evidence to indicate such credentials. There is no evidence on file to prove that landowners from Seraji TRP are the same as those from the Pondo TRP.
- There is no evidence on file to show the quality of the land owner mobilisation carried out by a private consulting firm.
- The DOS does not adequately address the aspirations and concerns of the landowners.

RECOMMENDATIONS REGARDING LANDOWNER ASPECTS:

1. That given the frequency of landowner disputes with regards to resource ownership, the PNGFA carry out its own investigation to verify land owning groups, including the facilitation of ILGs.
2. If there is a project, then that the PNGFA reviews the DOS to ensure landowner aspirations and concerns are taken on board.

APPENDIX 1 : CHECKLIST OF COMPLIANCE WITH LEGAL REQUIREMENTS

PROJECT – PONDO TRP

| Step | Compliance | Non-Compliance | Not clear |
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| <u>1. Landowner Consultation</u> | | | |
| Awareness campaign | | X | |
| Vesting of title | N/A | | |
| ILG incorporation | | X | |
| PFMC certificate | | X | |
| Attendance of landowners at PFMC meeting | | X | |
| <u>2. Forestry Management Agreement</u> | | | |
| Form and content | | X | |
| Execution | | X | |
| Ministerial approval | | X | |
| <u>3. Development Options Study</u> | | | |
| Board to arrange | | | ? |
| or exemption | N/A | | |
| Directions from PFMC | | | ? |
| DOS given to Minister and PFMC | 17/5/00 Form 84 | | |
| <u>4. Project Guidelines</u> | | | |
| PFMC consults with L/owners and Prov Govt | | | ? |
| PFMC to prepare draft | Confirmed | | |
| Attendance of landowners at PFMC meeting | | | ? |

PFMC to submit draft to the Board

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| 7/7/00 | | |
| Form 85 | | |

CHECKLIST NOTES:

1. The files indicate a poor use of prescribed Forms.
2. The PNGFA Board Minutes suggest that the Board has exercised no authority in relation to this project. This indicates that nothing has been done to keep the NFB advised of its progress. The only reference to this project in the Board Minutes is at Meeting 17 in March 1995 when it was resolved that the project would be “expedited”. It cannot be said that this was achieved.
3. This project purports to be based on a former TRP. There is no evidence on the files to indicate that it has been guided by any clear legal advice. It has been suggested in the notes to the Rai Coast project (Individual Forestry Review Report No 23) that proceeding on the basis of former TRPs may be misguided. This is because the essential elements of the new system, i.e. the replacement of landowner companies with ILGs and the application of principles of sustainable management, will be avoided. It is suggested in those notes that TRPs are saved under section 137 to avoid a wholesale extinguishment of the contractual rights that they create, and not for them to replace the FMA procedure as a basis for projects that are not in operational mode.
4. In this case however, there are particular reasons why the project cannot be based upon the TRP. They include –
 - The TRP may not in fact be saved by section 137. The date of the TRP is not certain but it appears to be some time in 1941 or 1945. Section 137 only saves TRPs that were “granted” under the Forestry Act (Chapter 216). This TRP must have been granted under a former colonial Ordinance.
 - Even if the TRP was saved, then it appears that it may have expired in 2001 (if it was purchased on 26 March 1941 as suggested by the Assistant Secretary in a letter dated 24 January 1989), or that it will expire in 2005 (if the PFMC was correct in ascribing that year as its final year in Decision 5/2000 at Meeting 2/2000 held on 22 June 2000). Either way it indicates that the TRP is an entirely inappropriate basis for this project.
 - No copy of the TRP seems to exist. If it was signed in 1941 then it probably did not survive the Japanese invasion of Rabaul. If it was signed in 1945, which seems unlikely, then it may not have survived the more recent inferno at PNGFA headquarters. In either event it should be regarded as of no effect and a proper procedure under the current Act should be applied. As the annual allowable cut would only be 500 cubic metres more than that which would be permissible under a Timber Authority then that procedure remains a realistic alternative to a FMA.

5. The notion of granting the project as an extension to the Seraji operations is also misguided for similar reasons. The Seraji Extension TRP is for a term of 20 years commencing 1 January 1982. It has only 11 months to run and therefore should not be considered as a basis for the proposed operation of the Pondo project as an extension. The application submitted by the adjoining permit holder should not be entertained.
6. There is another matter of concern that should be noted also. The landowner company holding the Timber Permit under the Seraji Extension TRP, Nangal Limited, had experienced troubles with its contractor, Deegold. The contractor walked off the project in early 1998 and then sometime later attempted to re-start operations. Deegold decided to avoid further confrontation with the resource owners by suggesting that they would agree to terminate their Logging and Marketing Agreement if a new Agreement was signed with Everwell Limited. The landowners appear to have accepted this and sought approval for the new Agreement in 1999. It should not come as a surprise that Deegold and Everwell are, for all intents and purposes, the same. The details of registration for both companies are identical. Yii Ann Hii is recorded as the sole shareholder of both. Nancy Seo and Joyce Lee are directors of both, and in both companies hold the designation of Financial Controller and General Manager respectively. Addresses and telephone numbers for both companies are identical. Somebody seems to have pulled something over somebody else's eyes.