

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 27**
TUWAPU (WEST SEPIK)

AUDIT CONCLUSIONS AND RECOMMENDATIONS:

RESOURCE AND PLANNING ISSUES:

The sustainable timber yield principle has been complied with. The project is not in compliance with the Act in that it is not listed in the National Forest Plan for development. The gross loggable area has been significantly over-estimated in the Forest Management Agreement (most of the area has already been logged) resulting in high landowner expectations. The estimated net loggable volume is not sufficient to support a practical sustainable annual cut, and thus falls outside the intent of the National Forest Policy. The project is being progressed as if it will be an extension for TP 10-08 Vanimo, but there is no indication that the permit holder has expressed any direct interest. PNGFA staff are aware that this project is far too small to support a sustainable cut, but it would appear that management has failed to exercise its decision making authority by sensibly rejecting the project as a viable Forest Management Agreement opportunity.

LEGAL COMPLIANCE:

Due process has generally been followed. The usual concerns about PFMC certification of the Forest Management Agreement are indicated here. There are defects in the form of the Forest Management Agreement. The assumption that the project is an extension is unfounded until an application is duly made and approved by the Board.

LANDOWNER ISSUES:

Landowners have been involved with logging operations by Vanimo Timber Products Ltd for a generation. Uncertainty within the PNGFA as to how to handle this small area has

resulted in the inappropriate execution of a Forest Management Agreement over their (mostly) logged land creating confusion and unrealistic expectations.

RECOMMENDATIONS (INCLUDING CORRECTIVE MEASURES IF REQUIRED):

That before the project is allowed to proceed any further, that:

- The PNGFA re-assess the net loggable volume, taking care that areas already logged are not logged a second time, and reviews the sensibility of progressing this project under a Forest Management Agreement.
- That the PNGFA informs landowners of the limited size of the loggable resource.
- The PNGFA ascertain the interest of Vanimo Forest Products Ltd in logging the (re-assessed) resource as an extension of TP 10-08 given the recent amendments to the Act.

If Vanimo Forest Products Ltd is not interested, then:

- That the Forest Management Agreement be cancelled.

If for any reason the project is to proceed under the Forest Management Agreement then:

- That the defects in the agreement must be remedied.
- That the PFMC certification might be revisited.
- That the project should not be considered as an extension until the Board has made a resolution to this effect, taking into account the recent amendments to the Act.

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 (FMA) executed. Development Options Study (DOS) finalised. Project Guidelines drafted and sent to the Board for approval.
Gross FMA area:	6,762 ha
Gross loggable area:	426 ha - According to the FIMS data some 6,200 ha has already been logged (presumably by Vanimo Forest Products Ltd who harvested the adjacent Bewani LFA and Vanimo TRP areas).
Net sustainable timber yield:	219 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 December 1999</p> <p>Yes – Listed as Sossi which makes up part of the area.</p> <p>No</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 non-standard area reduction of 30% to the gross project area to estimate the gross loggable area. The FIMS data indicates a remaining gross loggable area of 426 ha. Hence the gross loggable area in the FMA is significantly overstated.</p> <p>More or less. The FIPS data indicates a gross volume of 30.3 m³/ha. The FMA is based on a figure of 33.3 m³/ha. The PNGFA explains this as “human error”.</p> <p>No. The PNGFA has applied a non-standard volume reduction factor of 15% to derive a net volume of 28.3 m³/ha, and has applied this to the significantly overstated net loggable area to come up with a net loggable volume of 110,000 m³. It would appear that the standard area and volume reduction factors have been</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>mixed up – if they are correctly applied the same estimate of net loggable volume would result. The figure of 110,000 m³ is consistently presented in the FMA, the DOS and the Project Guidelines. Based on the FIMS and FIPS data the net harvestable volume is about 8,000 m³.</p> <p>No, because there is no agreed position regarding fragile forest areas. There are no areas classified as Fragile Forest within the Tuwapu 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>The right for the PNGFA to exclude up to 10% of the gross loggable area from logging for conservation purposes is included as a standard clause in the FMA document, but has not been bought forward to the Project Guidelines.</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 	<p>No. The net loggable area has been significantly overstated, and is used to produce a PNGFA estimate of the sustainable yield of 3,100 m³/a. Based on the FIMS and FIPS data the sustainable yield estimate is 219 m³/ha.</p> <p>No</p> <p>No</p>

m3/a guideline set by PNGFA Board):	
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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>Yes.</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. 	<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 West Sepik 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 PNGFA updates the National Forest Plan.

2. PROJECT DEFINITION IN FMA DOCUMENT

- That the PNGFA review the resource data, and in particular the estimation of the net loggable area data.

3. ESTIMATE OF THE SUSTAINABLE CUT

- That the PNGFA re-assess their estimate of the sustainable cut and the sensibility of progressing with this project on the basis of an FMA rather than the more appropriate Timber Authority.

4. 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 appears to have been generally followed, but there is insufficient documentation to verify this at every stage. Doubts exist as to the PFMC certification of the Forest Management Agreement. There are defects in the form of the Forest Management Agreement.
- The assumption that the project will be an extension to the nearby Vanimo Forest Products operations is unfounded at this time. No formal application has been lodged by the company, but there are some indications that landowners might be being used to secure the company's position in ways that are not consistent with the Act.
- The Development Options Study seems to be satisfactory.

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

RECOMMENDATIONS REGARDING LEGAL ASPECTS:

If a decision is made to further progress this project under a Forest Management Agreement, then:

1. That the PFMC certification of the Forest Management Agreement should be verified and rectified if necessary.
2. That the defects in the form of the Forest Management Agreement must be addressed.
3. That consultations with resource owners and the Provincial Government must take place before the Project Guidelines are finalised.
4. That the project must not be considered as an extension to the Vanimo TRP project until the Board has formally and properly made such a decision in accordance with the recent (December 2000) amendments to the Act.

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>	<ul style="list-style-type: none"> • Landowners requested PNGFA (2nd August 1999) to include the area into the existing Vanimo TRP. The main reason being that the area is too small to be considered a stand alone project. • Sufficient landowner awareness was carried out by the PNGFA on the 8th Nov.2000. • There appeared to be strong support to include Tuwapu in the Vanimo TRP.
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"> • Tuwapu Enterprise Limited was registered as the Landowner company (LANCO). • There is only one ILG for this area.
3. Forest Management Agreement	
<p>Must Specify:</p> <ul style="list-style-type: none"> • Monetary benefits for the 	<ul style="list-style-type: none"> • FMA signed by the chairman of Tuneri land group (the ILG).

<ul style="list-style-type: none"> • 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"> • FMA has a signed undated Certificate from the PFMC - Schedule 6. • Monetary benefits are outlined in Schedule 7.
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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"> • The LANCO presented landowner aspirations to PNGFA which has failed to take them on board in the DOS document. (ref. Landowner submission 1st August). • Landowner requests are unrealistic given that most of the area is already logged. • DOS recommends that Tuwapu be considered an Extension to Vanimu TRP.
2. Project Guidelines	
<p>Draft guidelines must be discussed and developed in consultation with the resource owners</p>	<p>Draft Project Guidelines were presented to the PNGFA Board by the PFMC for consideration and approval on the 13th of January 2000. The landowners were consulted prior to the Board being handed the submission.</p>
3. Project Agreement	
<p>Authority is required to involve landowners in selection of the “developer” and in negotiation of</p>	<p>Not yet drafted.</p>

<p>the Project Agreements according to the terms of the FMA.</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>Not yet applicable.</p>

Some additional notes are presented in Appendix 2.

CONCLUSIONS REGARDING LANDOWNER ASPECTS:

- Sufficient landowner awareness has been conducted by the PNGFA and the Landowner Company.
- There is only one ILG for the Tuwapu Forest Management Agreement and the same signatures appear in the agreement document.
- The DOS fails to take into account the aspirations and the list of proposed developments presented by the landowners to the PNGFA.

RECOMMENDATIONS REGARDING LANDOWNER ASPECTS:

1. That the PNGFA need to conduct a proper awareness campaign to explain the situation to the landowners.

APPENDIX 1 : CHECKLIST OF COMPLIANCE WITH LEGAL REQUIREMENTS

PROJECT – TUWAPU

Step	Compliance	Non-Compliance	Not clear
<u>1. Landowner Consultation</u>			
Awareness campaign			?
Vesting of title	N/A		
ILG incorporation			?
PFMC certificate	6/5/99 see notes		
Attendance of landowners at PFMC meeting			?
<u>2. Forestry Management Agreement</u>			
Form and content	see notes		
Execution	Not dated		
Ministerial approval	8/6/99		
<u>3. Development Options Study</u>			
Board to arrange or exemption	15/7/99 Form 81 N/A		
Directions from PFMC	22/7/99 Form 82 25/7/99 Form 83		
DOS given to Minister and PFMC	17/11/99 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

13/1/00 Form 85		
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CHECKLIST NOTES:

1. The usual concerns about the PFMC certification of FMAs apply here. There is no evidence that landowner representatives were in attendance at the PFMC meeting. And there is no confirmation that the PFMC sought to independently verify the incorporation of the sole ILG or the willingness of that ILG to sign the FMA.

Indeed there is a suggestion on the files that the process of certification was done in a very cavalier fashion. On 3 May 1999 the Manager Acquisitions wrote a Minute to the Provincial Forest Officer directing that he arrange the Chairman of the PFMC to sign the certificate in Schedule 6 to the FMA. Three days later this was signed. The correct request was for the PFMC to meet and to perform its statutory function. One is left to hope that this had been done properly, but there is nothing on the PNGFA files to indicate this.

2. There are defects in the form of the FMA. It is not dated and the important details have not been inserted into Schedule 1.
3. The DOS was done satisfactorily and gives some details of the development aspirations of the landowners. A copy of the draft Project Guidelines was sighted.
4. It seems to be assumed by all that the project would be given as an extension to the adjacent area in which Vanimo Forests Products Ltd operates. In mid-1999 Vanimo Forest Products seems to have attempted to obtain some right to operate by making application for a Licence on Form 177. This was an entirely inappropriate application to make, and was properly returned by the Managing Director on 14 July 1999. Soon after that there are a number of letters from a landowner company, which had not been involved in the project before that time, endorsing VFP and asking for the processes to be short-circuited. If VFP had any part in this then its activities must again be seen as inappropriate. Interestingly, VFP appears to have never formally applied for the Board to approve the project as an extension. It may be that they favoured encouraging landowners to speak for them. Until an application is made and approved by the Board, there are no grounds upon which a presumption can be made that the project will be an extension.
5. There are reasons to think that the advice offered by the Acting Divisional Manager – Forest Planning on 22 January 2000 is sound. His suggestion was for the “FMA (to) remain intact and the developer to extend its operations into the FMA area but through the normal allocation process”. However it is up to VFP to pursue the normal process and not become involved in questionable attempts to by-pass it.

APPENDIX 2: NOTES ON LAND OWNER ASPECTS

- Vanimo TRP was acquired in 1967 for 40 years and therefore should expire in 2007.
- It is claimed by PNGFA and the landowners (correspondence to MD on the status of Tuwapu, 13th November 2000) that Tuwapu was always part of the Vanimo TRP and as such the FMA is redundant. Advice from the PNGFA General Counsel is that the Vanimo Block 6 Timber Area boundary does not include the Tuwapu Timber Area.
- A landowner dispute between the Tuneri and Sossi land groups was resolved on the 27th of March 2000.
- The loggable area may be far smaller than the original estimate and landowners expectations on financial benefits are based on the wrong volume estimates.