

**Review of Wawoi Guavi**

**Blocks 1, 2 & 3**  
**(Consolidated)**

**Western Province**

**FORESTRY AND CONSERVATION PROJECT**

**INDEPENDENT REVIEW TEAM**

**FINAL PROJECT REPORT**

***WAWOI GUAVI BLOCKS 1, 2 & 3 (CONSOLIDATED)  
WESTERN PROVINCE***

**Project Summary from PNGFA Records**

<b>Timber Permit No.</b>	TP 1-7
<b>Timber Permit Holder</b>	Wawoi Guavi Timber Co. Ltd (FI 053, registered on 24 August 1993 Contractor – Rimbunan Hijau (PNG) Limited (FI 036, registered on 24 August 1993)
<b>Permit Area</b>	Some original agreements were reportedly destroyed in PNGFA fire in 1994/1995 TRP – Block 1 : 14 August 1981 TRP – Block 2: 10 December 1985 TRP – Block 3 : 17 August 1989 (TRPs for Blocks 1 and 3 were not sighted: Dates obtained from the Forestry TRP Register) Permit Area – 420,000 ha
<b>Expiry of TRP (s)</b>	TRP – Block 2: 9 December 2025 (40 year term) TRP for Blocks 1 and 3 are also for 40 years as recorded on the Register
<b>Timber Permit Date</b>	10 April 1992
<b>Expiry of permit</b>	9 April 2002
<b>Application for renewal</b>	12 September 2001 (Forms 33 and 120)
<b>Applicant</b>	Wawoi Guavi Timber Ltd (But see the doubts noted in this Report).
<b>Board Request for PFMC Approval</b>	23 November 2001 (Form 121 signed by Dike Kari, acting Managing Director)
<b>Report of PFMC</b>	28 January 2002 (Form 122)
<b>Recommendation of Board</b>	1 February 2002 (Form 124 – by Thomas Nen, MD as delegate of the Board)
<b>Ministerial Approval</b>	4 February 2002 (Form 118)
<b>Initial Resource Estimate</b>	4,120,029 m <sup>3</sup> (WPFMC Report of 28 Jan 2002)
<b>Log Harvest – 1992 to 1999</b>	2,376,233m <sup>3</sup> (does not include year 2000)
<b>Remaining Resource for Extension</b>	4,000,000m <sup>3</sup>
<b>Annual Allowable cut in the permit</b>	350,000m <sup>3</sup>
<b>Log Exports since 9<sup>th</sup> April 2002 to 5 March 2003</b>	Volume: 155,459m <sup>3</sup> FOB Value: K30,369,115

### Summary of the Team's Findings and Recommendations

Requirement	Compliance	Remarks
Application for Extension or Renewal (Form 120)	Complied	Application submitted on 12 September 2001
Board Request for PFMC Report (Form 121)	Complied	Board requested PFMC Report on 23 November 2001
PFMC Report to the Board (Form 122)	Complied	Western Provincial Management Committee reported to the Board on 28 January 2002
Board Recommendation to the Minister for Extension or Renewal (Form 124)	Uncertain	Form 124 was signed by then Managing Director, Thomas Nen, on 1 February 2002. Did he exercise a delegated power of delegated power of the Board? The last delegation sighted by the Team was on 28 August 1998 and the Team did not find any withdrawal of that delegation. Section 4 of the Forestry (Amendment) Act 2000 does not save any delegation of powers under the former provisions of s. 19 of the Principal Act.
Timber Permit Extension or Renewal by the Minister (Form 118)	Complied	Minister Ogio signed the extension for 10 years on 4 February 2002. If there appears that there was no delegation for the Managing Director to have exercised the Board powers to recommend extension then the extension of the timber permit will be affected.
Social Acceptability, Past Performance of Permit Holder and Resource Availability under section 78(3) of the Act	Not complied	The report of the Western Provincial Forest Management Committee does not satisfy past performance of the Permit Holder and sustainability requirements of the resource under the extended operations.

## FINDINGS

The Review Team makes the following findings: -

1. Landowners resource rights have not been properly acquired by the State. Court proceedings have been taken out by certain landowners of Block 3 in the Waigani National Court challenging the validity of the Timber Rights Purchase Agreements and the Timber Permit under OS 121 of 2002. This is a serious case that the PNG Forest Authority has yet to respond to.
2. The granting of the Timber Permit 1-7 to Wawoi Guavi Timber Co Limited has deprived the resource owners of any clear and enforceable legal right in relation to the logging operation. Landowner benefits and social and infrastructure needs are totally inadequate and unsatisfactory under the existing timber permit. Calls by landowners for the review of the timber permit have been soundly ignored. The review would have been the opportunity for landowners to negotiate their project development benefits and incorporate them into the permit conditions.
3. The protracted attempts to secure a variation of the terms of the Timber Permit, to meet the legitimate demands of the resource owners, have not achieved an acceptable outcome. The Board has been remiss in not applying the provisions of section 137(2) to vary the terms of both the Timber Rights Purchase Agreement and Timber Permit 1-7 so as to apply appropriate requirements that are consistent with the current law.
4. The rights of the landowners have been overlooked in the processing of the application for the extension of the Timber Permit by -
  - (a) requiring them to leave the PFMC meeting when the Committee made its decision despite them not having the right to vote ;
  - (b) endorsing the grant of the extension before the Timber Permit had been re-negotiated to the satisfaction of the resource owners as the landowners have been critical of the performance record of the permit holder; and
  - (c) granting the extension for a period of ten years, and not imposing the condition set by the PFMC that the Timber Permit must be finally re-negotiated within 6 months.
5. Serious questions arise as to the processing of the application for extension, namely -
  - (a) The report of the PFMC made under section 78(3) does not deal adequately with the sustainability of the resource under the extended operations. It is clear that the resource will be exhausted well within the

period of the extension. No regard has been had at all to the application of a 35 year (or any other) cutting cycle to ensure the sustainability of the resource. The estimated remaining resources have been grossly and negligently over estimated;

- (b) The Board has never recommended the grant of the extension as is required by section 78(4). One day before former Managing Director, Thomas Nen, purported to exercise a delegated power to make the recommendation on the Board's behalf, a Board Paper was withdrawn from consideration by the Board.
  - (c) The Board Meeting No. 79 of 30 January 2002 show that a business paper B4 listed as agenda No. 8 relating to amendments to timber permit No. 1-7 for Wawoi Guavi was withdrawn by the then Managing Director, Thomas Nen. He then proceeded to sign Form 124 on 1 February 2002 purportedly under delegated powers of the Board. The full Board was denied by the former Managing Director of its right to consider the PFMC report and to make its recommendation to the Minister under Form 124. The former Managing Director may have acted without power of delegation under the Forestry (Amendment) Act 2000. Section 4 of the 2000 Amendment does not save any delegation of powers of the Board made by the Minister under the former section 19 of the Principal Act.
6. It cannot be said that the interests of the resource owners or the nation have been secured in relation to the initial grant of the Timber Permit, or its extension. The actions of the permit holder and its affiliate and of former PNGFA Managing Director, Thomas Nen, require a full inquiry.

## OBSERVATIONS

The Review Team makes the following observations: -

### 1. THE CONTRACTUAL RIGHTS OF LANDOWNERS

The Wawoi Guavi landowners do not feature in any of the legal documents or formalities applying to the initial grant of the operating right for this project. This is an extremely disturbing situation. Certain landowners of Wawoi Guavi Block 3 have commenced court proceedings against the PNG Forest Authority and Wawoi Guavi Timber Company Ltd challenging the validity of the timber rights purchase agreements and the timber permit.

Landowners are not privy to any contractual arrangements in the operations of the project. The landowners and the State have not properly executed the TRP agreements and the subsequent supplementary agreement since 1985.

In the absence of a proper project agreement the Timber Permit is the only operating document for the project. The landowners have openly expressed dissatisfaction of the performance of the Permit Holder and called for the review of the timber permit. The PFMC recommendation for a six months extension and to compel satisfactory review of the timber permit conditions had not been considered at the Board level. The Minister acting on the recommendation of the former Managing Director, Thomas Nen, proceeded to extend the Timber Permit No. 1-7 for 10 years.

Timber Permit 1-7 is held by Wawoi Guavi Timber Co Limited. This company is also the applicant for the extension of the Permit. It should not be thought that this is a landowner company. It is entirely a Rimbunan Hijau company.

There is no substantive aspect of this project that gives any recognition to the rights of the landowners. They are entirely at the mercy of Rimbunan Hijau, which holds all legal rights relating to the project, and to the timber resource.

While amendments have been sought to the Timber Permit, it is by no means clear that this drawn out process has achieved any positive outcome, or that it will do so. The landowners have justifiably voiced their concerns and they demanded that no extension be granted until a more appropriate legal arrangement was finally negotiated. These demands have been listened to by the PFMC and the PNGFA, but the situation has not materially altered.

The PNGFA has been seriously remiss in not applying the provisions of section 137(2) in a more pro-active and effective manner.

## 2. DENYING THE RIGHTS OF LANDOWNERS

There are other instances of landowners being denied their legal rights in relation to the processing of the application for the extension of the Timber Permit. These include –

- (a) While the two landowner representatives did attend the PFMC meeting held on 14 December 2001, and were permitted to state their views, they were not permitted to remain in the meeting when the final decision of the PFMC was made. Section 28(3) denies them the right to vote at the meeting but in the interests of transparency they should be permitted to remain when the decision is taken.
- (b) In fact the decision taken by the PFMC did not reflect the firmly held views expressed by the landowners representatives. They had stated without equivocation that no extension should be granted until the permit was re-negotiated to their satisfaction. The PFMC endorsed the grant of the extension, subject to the amendments being finalized within 6 months.

- (c) The Form 118 signed by the Minister on 4 February 2002 does not include any condition relating to the amendment of the Timber Permit. The reasonable wishes of the landowners in this respect have been wholly ignored.
- (d) It is clear that as at 21 August 2002 no final agreement had been reached as to the variation of the Timber Permit. Had the wishes of the landowners, and the condition stipulated by the PFMC, been accommodated then action could have been taken quite simply to bring the extended Timber Permit to an end.

### 3. SUSTAINABILITY OF THE EXTENDED OPERATIONS

The considerations applying to the PFMC Report required by section 78(3) in relation to the sustainability of the available resource are noted in the "CONSIDERATIONS" part of this Report.

The PFMC Report (Form 122) prepared in relation to this extension and dated 28 January 2002 notes the following –

- (a) the initial estimate of the resource was 4,120,029 m<sup>3</sup> (based upon the company's working plans of a density of 17 m<sup>3</sup> per hectare);
- (b) the logs harvested from 1992 to 1999 are in an amount of 2,376,233 m<sup>3</sup> (note: this does not seem to include the log harvest for year 2000);
- (c) on the basis of these figures the Report concludes that the remaining resource as at the date of the extension is about 4,000,000 m<sup>3</sup>. It concludes that this "is sufficient resource base to sustain the operation for the next ten year period".

### OBSERVATIONS

- There is a fundamental flaw in the calculation. To deduct the 2,376,233 m<sup>3</sup> of logs harvested from the base figure of 4,120,029 m<sup>3</sup> would leave a total of 1,743,796 m<sup>3</sup>. And this of course does not include the log harvest for the whole of the year 2000.
- The Report does not give any indication that the principles relating to sustainability were given any real consideration or appraisal. On the basis of the figures noted in these Observations, and applying the total annual allowable cut of 350,000m<sup>3</sup> in the timber permit, the resource itself would be totally depleted within 5 years of the extension.

- The Team notes a separate PNGFA figure of 3,377,744 m<sup>3</sup> as the total log harvest volume for the period between 1992- 2002. When applied against the initial available resource of 4,120, 029m<sup>3</sup>, the remaining volume will be 742,285 m<sup>3</sup>. Then to log this volume at the annual allowable cut of 350,000 m<sup>3</sup> the resources will be depleted in only 2 years, not over a 10 year extended permit period.
- There does not appear to have been any consideration given to the issues or any allowance made for conservation set-asides. These matters might further have reduced the loggable area, thus the allowable cut.
- There has been no consideration of the appropriate cutting cycle so as to ensure the sustainability of the resource, as opposed to the sustainability of the project.
- The PFMC had preferred to rely on the information and figures of the company to compile its report for the extension. There appears little or no coordination between the PFMC and the PNGFA when the Report was prepared for the extension.

#### 4. USE OF THE DELEGATED POWER

The National Forest Board never recommended that the extension be granted for TP 1-7. When the Minister signed the Form 118 to approve the extension he did so on the basis of a Board Recommendation (Form 124) that was signed by former Managing Director, Thomas Nen purportedly exercising a delegated power. The full Board was denied of its right to consider the PFMC report and to make its recommendation to the Minister under Form 124. The former Managing Director may have acted without power of delegation under the Forestry (Amendment) Act 2000. Section 4 of the 2000 Amendment does not save any delegation of powers of the Board made by the Minister under the former section 19 of the Principal Act.

Even if the Managing Director acted on the delegated powers, the following concerns about the manner in which this power was exercised in this instance are noted:

- (a) The Board was due to consider this matter on 30 January 2002 but the Managing Director withdrew the Board Paper. This Paper correctly stated the view of the PFMC that the extension not be granted until the Timber Permit had been amended;
- (b) The next day the former Managing Director purported to use his delegated power to make a recommendation on the Board's behalf;



- (c) On the same day a "Board Paper" is prepared and signed by the General Manager, Goodwill Amos, for presentation to the Board. But it is clear enough that it was never intended to be presented to the Board as the paper was prepared for the Managing Director a day after the Board meeting of 30 January 2002 on 1 February 2002, the same day the Managing Director recommends to the Minister for the extension of the timber permit.

The Board has been entirely excluded from the process and they have been denied the right to consider the application for the extension in the light of the views of the PFMC and the landowners.

## RECOMMENDATIONS

1. As a matter of policy the National Forest Board should direct that extensions or renewals under section 78 will not be entertained in relation to Timber Permits saved by reason of section 137 (1). Section 137(1A) of the Act does not allow extension or renewal of timber permits saved from the repealed Forestry Act.
2. The National Forest Board should exercise its powers under section 137 (2) to vary Timber Permit 1-7 to achieve compliance with the provisions of the *Forestry Act 1991 (as amended)*. The required variations could relate to -
  - (a) a variation to the TRP(s) to require the finalization of Incorporated Land Groups for all areas within a specified time;
  - (b) a requirement that a Development Option Study and Project Guidelines be formulated and applied to the project within a specified time, with appropriate variations to the Timber Permit;
  - (c) a variation of the TRP to impose a requirement that the project be advertised under section 64; and
  - (d) a variation to the Timber Permit to ensure that the allowable cut is consistent with principles of sustainable yield with immediate effect.

**NOTE:** If the Timber Permit holder indicates that these variations are not acceptable then the permit shall lapse (section 137(2)(f)). Action should then be taken accordingly.
3. The National Forest Board should revoke any delegation to the Managing Director that would permit the exercise of any power to make a recommendation to the Minister under section 78(4) in relation to the extension or renewal of a Timber Permit.

4. Former Managing Director, Thomas Nen should be called upon to explain his actions in withdrawing Board Paper B4 from Meeting 79, and then proceeding next day to exercise a delegated power of the Board.

## CONSIDERATIONS

### Forestry and Planning Issues

The Report required from the PFMC by section 78(3) must include a consideration of –

- “(c) the amount of the forest resource available in the vicinity of the project area in accordance with sustained yield management practices”.

This provision is taken directly from the relevant statement in the National Forest Policy and no other guidance as to its precise meaning, or the way in which it is expected to be applied, is to be found in either the Policy or the Act.

It would seem that at the very minimum this part of the Report should make an attempt to give –

- (a) a description of the gross loggable area;
- (b) an appraisal of the areas already logged;
- (c) an estimation of the gross merchantable volume in the remaining areas, and the means by which this was determined;
- (d) an estimation of the net merchantable volume, and the means by which this was determined;
- (e) allowance for the environmentally sensitive areas and conservation set asides in the area; and
- (f) a final appraisal of the principles of sustainable yield by basing the annual allowable cut on the total net loggable volume spread over a cutting cycle of sufficient length to ensure that the forest can be harvested sustainably.

It may be inevitable that all PFMC's will find such considerations a little difficult to come to terms with. It is imperative that the NFS play its necessary supportive and advisory role. The difficulties of this task are no reason at all for it to be overlooked or relegated to a matter of lesser importance.

### **Landowner Issues**

The Report required from the PFMC by section 78(3) must include a consideration of –

- “(a) the social acceptability of the holder of the timber permit in the project area.”

This provision is also taken directly from the relevant statement in the National Forest Policy and no other guidance as to its precise meaning, or the way in which it is expected to be applied, is to be found in either the Policy or the Act.

It would seem that at the very minimum this part of the Report should make an attempt to give –

- (a) an accurate account of the views of landowners, and a description of the means by which these were ascertained;
- (b) an account of any disputes arising from the presence of the operations in the area, including the reasons for the disputes and the means by which they were resolved (if in fact they have been);
- (c) an account of any undesirable practices or affects of the operations, including the incidence of rape, prostitution and other criminal or undesirable activities that may be associated with the presence of a development in a village based community;
- (d) an assessment of environmental impacts from the project;
- (e) an appraisal of the community benefits that have resulted from the project, including an assessment of any related economic opportunities that have been available to the landowners by reason of the project; and
- (f) an assessment of the permit holder’s compliance with infrastructure requirements and other social obligations applying to its operations to that time.

These are not matters about which “mere lip-service” may be paid. If necessary the operator itself should be required to commission an independent socio-economic impact analysis, to be undertaken by a person and in accordance with procedures that are acceptable to the landowners. The landowners’ participation in the project operations and their bargaining power has been removed and weakened by being left out of the TRP and Timber permit processes. Their demand to extend the permit for six months to ensure

compliance by the company and appropriate amendments to the Timber Permit has been ignored by the manner in which the extension process was administered.

### Legal Issues

#### *Issue 1. The application of section 78 to saved permits*

##### *The Forestry Act 1993*

Under section 2 a “timber permit” is defined so as to include any timber permit granted under the repealed *Forestry Act (Chapter 216)* and saved by virtue of section 137(1A).

It is important to note that section 137(1A) only saves valid and current permits issued under the repealed Act “for the term for which they were granted or entered into or until they sooner expire or are revoked according to law as if the Act under which they were granted or entered into had not been repealed”.

There is no mention in either section 2 or 137 of the right to extend or renew a saved timber permit. To apply section 78 to a saved timber permit is to extend the period in which the provisions of the current Act will have no application to that project.

##### *The National Forest Policy 1991*

The section of the Policy dealing with Timber Permits (section 7 of Part II Forest Management – Strategies) states –

“(d) A permit may be extended or renewed subject to local social acceptability of the operator, satisfactory and consistent performance by the operator, and resource availability in the vicinity of the permit area in accordance with sustained yield management practices”.

This statement appears in the policy provisions applying to permits granted under the proposed new regime. The status of permits granted under other laws (i.e. those to be repealed by the current Act) is noted quite separately from the above, as follows –

“(h) All timber permits and additionally all dealings under the *Forestry (Private Dealings) Act (Chapter No. 217)* current at the time this policy takes effect will be subject to the requirements of the new forestry legislation, and permits and dealings that are inconsistent with this policy will be subject to renegotiation or termination as required.”

It is therefore –

- By no means clear that the Policy anticipated that the right to seek extension or renewal of timber permits applied to saved permits; and

- Quite clear that the policy anticipated that action would be taken to ensure that operations carried out under saved permits would be made consistent with the requirements of the proposed new Act (i.e. the *Forestry Act 1993*).

## CONCLUSIONS

- It is not clear that the section 78 should be applied to saved permits. To do so is contrary to the spirit of the Act as it extends the period of time in which the new Act will not apply to the relevant project.
- The National Forest Policy also indicates that there is a distinction to be drawn in this regard between timber permits issued under the Act and those that pre-date the Act and are saved by it.
- The Board would be well advised to adopt a policy that would prevent section 78 being applied to saved permits, and should ensure that all PNGFA officers are aware of this resolution

### *Issue 2. The requirement for saved permits to comply with the current Act.*

This expectation was clearly stated in the National Forest Policy (see above excerpt).

This is also reflected in section 137 of the current Act as follows –

“(2) Where the Board is of the opinion that any term or condition of any –

... (b) permit, licence, timber rights purchase agreement or other authority granted under the Forestry Act (Chapter 216); ...

is at variance with the provisions of this Act to an extent which makes it unacceptable, it shall by written notice –

- (d) advise the ... holder of the permit, licence or other authority or parties to the agreement or timber rights purchase agreement, as the case may be, of the term or condition that is unacceptable; and
- (e) specify the variation in the term or condition required to ensure compliance with this Act; and”
- (f) (specify a date upon which the variation shall apply, or if the person so notified indicates that the variation is unacceptable then the permit etc shall then cease to have effect.)

## CONCLUSIONS

- In addition to the policy recommended in relation to Issue 1, the Board should take action under section 137(2) to review all saved TRP's and the timber permits issued under them, to ensure that full compliance with the provisions of the current Act is achieved.

### *Issue 3. The specific requirements and conditions of section 78.*

Under section 78 a timber permit may be extended or renewed if –

- (a) the holder of the permit applies to the Board;
- (b) the application is lodged with the Managing Director in the prescribed form and is accompanied by the prescribed fee;
- (c) the Board has obtained a report from the PFMC on the social acceptability of the permit holder in the project area, the past performance of the holder of the permit and the amount of resource in the vicinity of the area in accordance with sustainable yield management practices.

If the reports are satisfactory the Board shall recommend to the Minister that the extension or renewal be made. Only where a Board recommendation is made, can the Minister grant an extension or renewal.

Under the Forestry Regulations 1998, the following Forms were required in relation to the application under section 78 –

- Form 118* - Timber Permit Extension or Renewal of Term  
To be signed by the Minister.
- Form 120* - Application for Extension or Renewal of Term of Timber Permit  
Must include a cheque for the prescribed application fee
- Form 121* - Board Request to PFMC for a Report on Timber Permit Extension or Renewal
- Form 122* - Report to the Board by a PFMC on an application for an Extension or Renewal of a Timber Permit
- Form 123* - Rejection by Board of Application for Extension or Renewal of Term of a Timber Permit; or
- Form 124* - Recommendation by Board to the Minister for Extension or Renewal of Timber Permit

## SEQUENCE OF EVENTS

- 12 September 2001 Letter from Wawoi Guavi Timber Co. Ltd
- (Note: the company's telephone number is listed as 325 7677. This number was rung on 4 March 2003 and is a Rimbunan Hijau number.)
- Encloses Form 33 and Form 120 and K3,000 (including Vat.)
- 12 September 2001 Form 33 – Application for Extension or Renewal of Timber Permit  
(Note: This is an obsolete Form).  
Application made in the name of Wawoi Guavi Timber Ltd.  
Refers to Timber Permit 1-7  
Signed by Ivan Lu as Assistant General Manager
- 12 September 2001 Form 120 – Application for Extension or Renewal of Term of Timber Permit  
(Note: This is the Form required by the Regulations).
- Application made in the name of Wawoi Guavi Timber Ltd.  
Refers to Timber Permit 1-7  
Signed by Ivan Lu as Assistant General Manager  
There is a four page submissions as required by Form 120.
- 19 November 2001 Letter from Brunton Lawyers
- Noted that they act for 26 named clan representatives.
- The letter notes the following –
- Any review should be done independently of PNGFA.
  - A report prepared by Dr Peter Erskine has already identified serious operational breaches.
  - The landowners oppose any extension.
  - The landowners contest the validity of the TRP in Block 3.
  - Lawyers must be present when any further discussion on the review takes place.
  - Legal proceedings will be commenced if it is not confirmed that the Board has no intention of renewing or extending.
- 23 November 2001 Form 121 – Board Request to PFMC for Report on Timber Permit Extension or Renewal
- 27 November 2001 Letter to Chairman WPFMC from A/MD

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- accepted. Nineteen (19) years of operation in the area has not done any good for the resource owners.” Solomon Kosa
- “Landowners are not aware of anything that the Company did for the resource owners.” Solomon Kosa
  - “Land owners took the lead themselves to initiate the amendments three (3) years ago. Where do the landowners stand if we are going to give them an extension? We will keep on doing the same thing they have done some 20 years ago. Landowners are going to miss out altogether. Why was the review not started earlier when landowners complained?” Rex Deregi
  - “Company has to be penalized for having to re-enter logged over areas for re-logging”. Rex Deregi

The landowner representatives left the meeting when the matter was discussed by the PFMC

The following motion was moved by the Provincial Forest Officer (Ivara Lavarita) –

“Moved that an extension be granted but subject to the following conditions –

- that within the six (6) months the amendments are negotiated and finalized. It is further resolved that if negotiations on the amendments fail, then the permit lapses at the end of six (6) months commencing as of 24 April 2002.”

All in favour.

“Resolution 2 That the Western PFMC give an extension of 10 years on the condition that within the six (6) months the amendments are negotiated and finalized. It is further resolved that if negotiations on the amendments fail, then the permit lapses at the end of six (6) months commencing as of the 29 April 2002.”

The landowner representative (N. Pivini) then observed –

“Stated that the company has a bad reputation. Should therefore not rush to grant the extension. Should also consider the side of the landowners as well”.

28 January 2002

Form 122 – Report to the Board by a PFMC on an Application for an Extension or Renewal of the Term of a Timber Permit

The Report covers all necessary aspects as required by section 78(3).

It notes the concerns of landowners and indicates their desire to see the permit amended, preferably before the grant of the extension.

The Report suggests that the company's performance is "satisfactory" but in the attached *Compliance Report* many items are noted as not being complied with.

Resource figures are provided and the conclusion is drawn that there is sufficient resource for a ten-year extension. There is however no indication that an assessment based on sustainable management principles was attempted.

30 January 2002

Board Paper (B4) for Meeting 79

At paragraph 15 it is stated as follows –

"The developer has lodged an application for an extension of the said permit TP 1-7, being the subject of the amendments. The resource owners through the Western PFMC may have strongly indicated that such application should not be granted as yet until the current process is concluded."

It paragraph 12 it is noted that the landowners have expressed an intention to shut down the operations should negotiations not be satisfactorily concluded.

**NOTE:** The Minutes of the Meeting reveal that the Paper was withdrawn "by the Managing Director" (Thomas Nen).

1 February 2002

Exercise of MD's Delegated Power

This is signed by Thomas Nen and purports to be the exercise of a delegated power to recommend the grant of the extension to the Minister on behalf of the Board.

1 February 2002

Board Paper

This was not drafted for presentation to the Board but purports to be in support of the exercise of the MD's delegated power.

- It was signed by the then General Manager Goodwill Amos.
- 1 February 2002 Form 124 – Recommendation by Board to the Minister for Extension or Renewal of Timber Permit.
- It was signed by then Managing Director Thomas Nen.
- 1 February 2002 Brief for the Minister of Forests by MD Thomas Nen
- This Report states most matters faithfully. It discloses the fact that the MD is purporting to be exercising a delegated power on behalf of the Board.
- 4 February 2002 Form 118 – Timber Permit Extension or Renewal of the Term
- This grants an extension of 10 years and seems to be signed by Minister Ogio.
- 3 April 2002 Board Paper for Meeting 82
- The Paper is not numbered and may not have been presented. It is in identical terms to Board Paper B4 prepared for meeting 79 on 30 January 2002 as noted above.
- At paragraph 15 it is stated as follows –
- “The developer has lodged an application for an extension of the said permit TP 1-7, being the subject of the amendments. The resource owners through the Western PFMC may have strongly indicated that such application should not be granted as yet until the current process is concluded.”
- (Note: By that time of course the process had been well and truly concluded).
- 21 August 2002 PFMC Meeting 01/2002
- Acting Area Manager advises “that the review team submitted its counter proposal to Rimbunan Hyau (sic) group of Companies and the negotiation should commence sometimes in October”.

## OTHER INQUIRIES

### The Companies involved

#### *Wawoi Guavi Timber Ltd*

This is the holder of TP 1-7 and was the applicant for the extension of the permit.

A search of the company was arranged and this revealed the following: -

- The company was incorporated on 17 August 1981 with 1,248,986 issued shares.
- Its registered office is at Lot 1 Section 479 Kennedy Road Gordons (P. O. Box 102 Port Moresby).
- Its directors are James Sze Yuan Lau, Ik King Tiong, Thai King Tiong, Kiew Chiong Tiong, Hiew King Tong and Ivan Su Chiu Lu.
- The shareholders are Rimbunan Hijau (PNG) Ltd of Lot 1 Section 479 Kennedy Road Gordons (1,248,985 shares) and Hiew King Tong of 11 Mission Road Sibul Sarawak Malaysia (1 share).

#### *Rimbunan Hijau (PNG) Limited*

This is the operating company. This company is noted on the export records kept by SGS in relation to this project.

A search of the company was arranged and this revealed the following: -

- The company was incorporated 3 March 1986 with 3,000,005 issued shares.
- Its registered office is at Lot 1 Section 479 Kennedy Road Gordons (P. O. Box 102 Port Moresby)
- Its directors are Kiew Chiong Tiong, James Sze Yuan Lau, Hiew King Tiong, Thai King Tiong, Ivan Su Chiu and Ik King Tiong.
- The shareholders are Rimbunan Hiau Sdn Bnd of 11 Mission Road, Sibul Sarawak Malaysia (360,000 shares), Habacus Trading Pte Ltd of 11 Collyer Quay The Arcade Singapore (360,000 shares), Gotcha Company Ltd of 1501 Hutchinson House Hong Kong (2,280,000 shares), Hiew King Tiong (1 share), Ik King Tiong (1 share), Thai King Tiong (1 share), Yung King Tiong (1 share) and Thomas Bruce Gall of 20 Churchill Street Mont Albert Victoria Australia (1 share).

Forest Industry Participants records show that both Wawoi Guavi Timber Co. Ltd and Rimbunan Hijau (PNG) Limited were registered on 24 August 1993.

## OBSERVATIONS

- As already noted in this Report, landowner benefits have been denied in this project, or indeed in relation to its forest resource. There is no Forest Management

Agreement applying to this project. The poor performance of the Permit Holder and the lost opportunity in the review and re-negotiation of the timber permit conditions has left the landowners in a worse off position.

**Log Exports since the Extension of the Timber Permit**

Records maintained by SGS were reviewed and revealed the following figures relating to the export of logs since 9 April 2002 –

- 155,459 m<sup>3</sup> of logs have been exported.
- Their FOB value has been listed as K 30,369,115