

## **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***

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**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 32**

### **HEKIKO (SOUTHERN HIGHLANDS PROVINCE)**

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#### **AUDIT CONCLUSIONS AND RECOMMENDATIONS:**

##### **RESOURCE AND PLANNING ISSUES:**

The sustainable timber yield principle has been complied with. Sensible operational procedures have not been complied with in that the resource data is based on a very low field inventory sample. The gross loggable area has been over stated in the Forest Management Agreement by about 20,000 ha, and does not take into account two potential Wildlife Management Areas apparently agreed to by the PNGFA. The estimated sustainable annual cut is too small to support a conventional stand alone log export project.

##### **LEGAL COMPLIANCE:**

The PFMC certification of the Forest Management Agreement was a breach of due process given that all landowners subsequently refused to sign the Agreement.

##### **LANDOWNER ISSUES:**

Landowner awareness work has been very satisfactory, but has not been successful in progressing a workable forestry project. The ILG work was very satisfactory, but over time some bogus groups may have emerged which have not been screened out by the Registrar of Titles. Very comprehensive landowner requirements have been determined through a 1994 Landowner Company led consultation. Landowners produced their own Forest Management Agreement but this was rejected by the PNGFA. Landowners refused to sign the PNGFA prepared Forest Management Agreement twice. A Landowner/PNGFA forum resulted in an agreement to disagree.

RECOMMENDATIONS (INCLUDING CORRECTIVE MEASURES IF REQUIRED):

That if the project is to proceed;

- That the PNGFA may need to demonstrate a willingness to negotiate a Forest Management Agreement in a form other than the approved one. If this is not considered acceptable the project should be 'shelved'.
- That the legal status of the Integrated Conservation and Development Project agreement between the State and an NGO be determined and its impact on a potential forestry project clarified.
- the PNGFA undertake proper volumetric inventory and re-evaluate the gross loggable area taking into account any potential Wildlife Management Areas which are being pursued by the Office of Environment and Conservation.

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**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.

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## **REVIEW REPORT**

### **SUMMARY PROJECT DETAILS:**

Project type:	Forest Management Agreement / Timber Permit
Processing stage:	Formation of Incorporated Land Groups (ILGs) completed. Forest Management Agreement drafted and in the process of being signed.
Gross FMA area (a):	199,000 ha
Gross loggable area (a):	50,000 ha (subject to two proposed Wildlife Management Areas the PNGFA appear to have agreed to exclude from logging).
Net sustainable timber yield (a):	34,000 m <sup>3</sup> /annum (b) (subject to two proposed Wildlife Management Areas the PNGFA appear to have agreed to exclude from logging).

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

(b) Review Team estimate based on:

- Area information extracted from the PNGFA Geographic Information System (FIMS);
- Gross volume per hectare information from PNGFA field inventory work (FIPS);
- A standard reduction factor of 15% applied to gross loggable area;
- A standard reduction factor of 30% applied to gross volume per hectare; and
- A 35 year cutting cycle.

## **A. FORESTRY AND PLANNING ASPECTS**

<p><b>1. SECTORAL PLANNING AND CONTROL</b></p>	
<p><u>PROVINCIAL FOREST PLAN</u></p> <ul style="list-style-type: none"> <li>• PNGFA Board endorsed Provincial Forestry Plan exists:</li> <li>• Is the Provincial Forestry Plan current:</li> <li>• Is the Project listed in the Provincial Forestry Plan:</li> </ul> <p><u>NATIONAL FOREST PLAN</u></p> <ul style="list-style-type: none"> <li>• Is the Project listed in the National Forest Plan as required under s54 of the Act:</li> </ul>	<p>Yes</p> <p>No – expired July 1999</p> <p>Yes</p> <p>Yes</p>

<p><b>2. PROJECT DEFINITION IN FMA DOCUMENT</b></p>	
<ul style="list-style-type: none"> <li>• Is the gross loggable area properly defined:</li> <li>• Has the total gross merchantable volume been properly estimated:</li> </ul>	<p>No. The FMA sets out an unexplained estimate of 61,000 ha. The FIMS data, which provides for the logging exclusion areas defined in the PNG Logging Code of Practice indicates a gross loggable area of 42,000 ha. Thus the estimate set out in the FMA is overstated. It is unclear as to the location or extent of two Wildlife Management Areas which the PNGFA appear to have agreed to exclude from logging.</p> <p>The project area is subject to an Integrated Conservation and Development Project agreement between the State and an NGO. As this is not gazetted, it's status is unclear.</p> <p>Uncertain. FIPS data indicates a gross loggable volume of 80.4 m<sup>3</sup>/ha, but the PNGFA felt this was too high and reduced it by 50% to 40.2 m<sup>3</sup>/ha. The sample was</p>

<ul style="list-style-type: none"> <li>• Has the net merchantable volume been properly estimated:</li> <li>• Have “Fragile Forest Areas” (OEC definition) been considered:</li> <li>• Have environmentally sensitive areas been considered:</li> <li>• Have conservation set asides been appropriately implemented:</li> </ul>	<p>extremely small (0.03%).</p> <p>No. The FMA document sets out a net merchantable volume of 2.4 million m<sup>3</sup>. However it is based on gross volume and the gross area. Correcting for this results in a net volume estimate of 1.4 million m<sup>3</sup>. Based on the FIMS area data, the net volume would be 1.2 million m<sup>3</sup>.</p> <p>No, because there is no agreed position regarding fragile forest areas. An estimated 9% of the Hekiko (Southern Highlands) gross loggable area is classified as Fragile.</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>It would appear that the PNGFA have agreed to exclude two areas which have been proposed as Wildlife Management Areas.</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><b>3. ESTIMATE OF SUSTAINABLE CUT</b></p>	
<ul style="list-style-type: none"> <li>• Has the sustainable annual cut been properly calculated:</li> <li>• Is the estimated sustainable yield sufficient to support a financially efficient logging investment (min 30,000 m<sup>3</sup>/a):</li> </ul>	<p>Not yet estimated by PNGFA. Based on FIMS area data and the 40.2 m<sup>3</sup>/ha applied by the PNGFA, the sustainable cut would be 34,000 m<sup>3</sup>/a. If Fragile Forest areas are excluded from logging then this would reduce to about 31,000 m<sup>3</sup>/a.</p> <p>Yes</p>

<ul style="list-style-type: none"> <li>Is the estimated sustainable yield sufficient to support a stand-alone log export operation (min 70,000 m<sup>3</sup>/a guideline set by PNGFA Board):</li> </ul>	No
<p><b>4. CONSISTENCY BETWEEN DOCUMENTS</b></p>	
<ul style="list-style-type: none"> <li>Is the area and volume data consistent between the FMA, the Development Options Study and the Project Guidelines:</li> <li>Any other material inconsistencies regarding the resource:</li> </ul>	<p>Only an FMA prepared to date.</p> <p>None found.</p>
<p><b>5. ANY OTHER MATERIAL NON-COMPLIANCE REGARDING THE RESOURCE</b></p>	
<ul style="list-style-type: none"> <li>The standard cutting cycle assumed in the sustainable annual cut calculation.</li> </ul>	<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 Southern Highlands Provincial Government update 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

- That the PNGFA check and amend if necessary the resource information for this project. This should include field volumetric inventory, clear definition of the proposed Wildlife management Areas, and a re-assessment of the gross loggable area.

## 3. ANY OTHER MATERIAL NON-COMPLIANCE REGARDING THE RESOURCE

- That the PNGFA either base their sustainable cut calculations on a 40 year cutting cycle (as required under the National Forest Policy) or provide justification for adopting a 35 year cutting cycle.

## B . LEGAL COMPLIANCE

### **SUMMARY OF LEGAL COMPLIANCE:**

- The certification of the willingness of landowners to sign the draft Forest Management Agreement by the PFMC was a breach of due process. The landowners have clearly never been willing to sign it and in the four years since certification not one signature has been obtained.
- In other respects due process has generally been observed. The PNGFA appears to have undertaken to recognise two Wildlife Management Areas but these are not marked on the maps in the draft Forest Management Agreement, and are not otherwise provided for.
- Meaningful consultation with landowners has been attempted and properly reported upon. There has been no attempt to “brow beat” the landowners into signing the Forest Management Agreement.

A legal compliance checklist and some additional notes are presented in Appendix 1.

### **RECOMMENDATIONS REGARDING LEGAL ASPECTS:**

1. That the PNGFA should consider accommodating the wishes of the landowners in relation to the inclusion of certain provisions into the Forest Management Agreement. There is no reason why the Board’s endorsement of certain unique terms cannot be sought. The landowners should be accorded the right to negotiate a Forest Management Agreement in an ordinary commercial way. However the PNGFA may well be justified in taking a firm view in relation to matters such as demands for up-front payments.
2. That the contract negotiation capacity of the PNGFA should be considered by management and the Board.
3. That the Forest Management Agreement should note the existence of the two proposed Wildlife Management Areas.

## C. LANDOWNER ISSUES

RESOURCE ACQUISITION	
1. Landowner Awareness	
<p><b>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.</b></p>	<p>Very detailed meetings were held with the villages in the entire Hekiko (Gulf and Southern Highlands) area. These meetings were organized by a lawyer and covered the following agenda:</p> <ul style="list-style-type: none"> <li>• Development needs</li> <li>• Local Business Development</li> <li>• Sub-division of the forest project area</li> <li>• Proposals for corporate structure</li> <li>• Land Groups Incorporation</li> <li>• Lists of clans and members.</li> </ul> <p>The awareness however was undertaken at a time when there was no clear project concept Hekiko project, or how to deal with a trans-provincial project.</p> <p>The PNGFA conducted awareness in the Southern Highlands area in September 1997. The landowners requested a project Forum (a concept adopted from the oil sector).</p> <p>Landowners were totally dissatisfied with what they saw at the Wawoi Guavi project (TP 1-07) - "The livelihood of the inhabitants of these project areas are (sic) not taken into consideration by the developers".</p> <p>A landowner/PNGFA Forum was held in October 1997. There is evidence of considerable miscommunication.</p>
2. Landowner Mobilisation	
<p><b>Landowners are required to be mobilised by means of the Land Groups Incorporation Act. The Review Team was looking to find</b></p>	<p>ILGs for some land groups in Fogomaiyu were facilitated by oil company Chevron. Meetings conducted by lawyer, Dennis Hauka, identified many other land groups. Hauka was probably</p>

<p><b>evidence of full participation by landowners in the ILG process particularly with regard to:</b></p> <ul style="list-style-type: none"> <li>• <b>Recognition that the resources are owned by individual land groups and not collectives of land groups</b></li> <li>• <b>The formation of representative bodies for project consultations and negotiations.</b></li> </ul>	<p>retained by Suagesi Ltd, a Landowner Company (LANCO) from the Oil Project. The sample checked was well done with complete clan lists and five generation genealogies and meaningful property lists. There were 10 ILGs from Kakademaïyu and 30 ILGs from Fogomaïyu. These are Fasu speaking people.</p> <p>Landowners under the guidance of their lawyer organized group ILGs to take into account tribal divisions in the forest area. In addition to this they formed LANCOs to prepare for business spin-off with an umbrella company, Hekiko Forests Ltd (90% owned by the Yeungs Group).</p>
<p><b>3. Forest Management Agreement</b></p>	
<p><b>Must Specify:</b></p> <ul style="list-style-type: none"> <li>• <b>Monetary benefits for the customary group</b></li> <li>• <b>Area in agreement by map</b></li> <li>• <b>PFMC certificate as to</b> <ul style="list-style-type: none"> <li>- <b>authenticity of the tenure of the customary land</b></li> <li>- <b>willingness of customary owners to enter into FMA</b></li> </ul> </li> <li>• <b>Review level of consultation with landowners</b></li> </ul>	<p>There is a draft unsigned and undated FMA document that contains a map, signed certification from PFMC, but no term and payment schedule for landowner benefits.</p> <p>The ILG list and signatories seem to be consistent with early ILG and awareness work done in 1994 by lawyer, Dennis Hauka. A few extra ILGs may have surfaced since 1994.</p> <p>A 1994 study clearly anticipated that there would be one project but two FMAs (one for each province) and one permit holder, being the Yeungs Group.</p> <p>October 1997 - two attempts by PNGFA to get the landowners to sign FMA failed.</p>

Some additional notes are presented in Appendix 2.

**CONCLUSIONS REGARDING LANDOWNER ASPECTS:**

- The landowner mobilisation work was of a high standard reflecting the advances in the community in the Kutubu Petroleum Development project area.

**RECOMMENDATIONS REGARDING LANDOWNER ASPECTS:**

1. That given that the PNGFA attempts to acquire the forest resources in this area have twice been rejected by landowners, that the PNGFA should not pursue the project further in this form.

**APPENDIX 1 : CHECKLIST OF COMPLIANCE WITH LEGAL REQUIREMENTS**

**PROJECT – HEKIKO (Southern Highlands Portion)**

<b>Step</b>	<b>Compliance</b>	<b>Non-Compliance</b>	<b>Not Clear</b>
<b><u>1. Landowner Consultation</u></b>			
Awareness campaign	23/10/97 and 16/3/00		
Vesting of title	N/A		
ILG incorporation	1996		
PFMC certificate	25/6/96		
Attendance of landowners at PFMC meeting			?
<b><u>2. Forestry Management Agreement</u></b>			
Form and content	Incomplete		
Execution	Not yet		
Ministerial approval	Not yet		

**CHECKLIST NOTES:**

1. The PFMC certification of the draft FMA was not proper. There is no evidence on the files at headquarters that the incorporation of the ILGs was verified by the PFMC. It is clear beyond doubt that the landowners are not willing to sign the FMA despite the PFMC's certification as to their willingness. This is an important part of the process and forms the basis of the entire project. It should not be treated by PFMC's in such a cavalier fashion.
2. The landowners have sought independent legal advice and have submitted a draft FMA of their own choosing. This contains many specific guarantees relating to the provision of infrastructure and landowner equity participation. It also requires an up-front payment of K500, 000. The PNGFA has consistently refused to negotiate in relation to these demands. It must be said that they have attempted to consult in a meaningful fashion. The Provincial Forest Officer has done this well and has submitted commendable reports on the attempts that he has made.

The position of the PNGFA is understandable. They take the view that such negotiations are properly to be done with the developer when the Project Agreement is being drafted. If proper consultation is had at the DOS and Project Guideline stages then these demands can be considered and accommodated within the process as it currently applies.

The demand for the up-front payment may well justify the shelving of this project until the landowners signal their wish to execute the FMA. However if that is simply a case of “traim tasol” then the NFS should accept that the landowners are entitled to negotiate an FMA in a form that is acceptable to them. The NFS should consider making some attempt to accommodate their demands even if it is done on a “best endeavours” basis. While it is true that the Board has endorsed the standard draft of the FMA this should not preclude the negotiation of alternative provisions. These can then be referred back to the Board for approval before the FMA is executed.

This indicates the need for the NFS to increase its contract negotiation capacity. There is no project lawyer on the staff. However it must be conceded that when there was a lawyer employed by the NFS in such a position its negotiating capacity was not much different from what it has now.

## **APPENDIX 2: NOTES ON LAND OWNER ASPECTS**

A very comprehensive study on “Options for Landowner Participation” for Hekiko was conducted by lawyer, Dennis Hauka, possibly retained by Suagesi Ltd a Chevron LANCO from the Gulf area in the project. The study attempted to undertake many of the steps in the forest development process in an attempt to speed up project implementation. The study did not distinguish between the Gulf and Southern Highlands portions of the project assuming that there would be developed under one project.