

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: 12 December 2000

Re: **INDIVIDUAL PROJECT REVIEW REPORT NUMBER 7**
VAILALA (MEPORO) - (GULF PROVINCE)

AUDIT CONCLUSIONS AND RECOMMENDATIONS:

RESOURCE AND PLANNING ISSUES:

The estimated sustainable cut is too small to support a financially efficient logging investment or a conventional stand alone log export project. A significant portion (12%) of the gross loggable area is classified by the Office of Environment and Conservation as "fragile".

LEGAL COMPLIANCE:

Due process has not been followed. If the project is to be an extension, then this is a matter for the Board to decide. And in so deciding the current performance of the adjoining operator, China Long Kong Ltd, and the landowner concerns about this company, should be fully considered.

LANDOWNER ISSUES:

Landowner work only just begun. There is much Landowner dissatisfaction in the adjacent Timber Permit areas. Much landowner awareness work needs to be done before acquisition under a Forest Management Agreement work can be contemplated.

RECOMMENDATIONS (INCLUDING CORRECTIVE MEASURES IF REQUIRED):

- That the PNGFA and Office of Environment and Conservation negotiate a position regarding the harvesting of Fragile Forests for inclusion in the Code of Logging Practice.

- That the issue of the project being an extension be referred to the Board together with a full report on the current operations of the adjoining Timber Permit holder and its successive logging contractors.

That where the potential for a sustainable forestry project is confirmed:

- That the PNGFA seek expressions of interest in domestic processing options before consolidation aimed at a large scale log export operation.

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) by PNGFA not yet commenced. Some ILGs work done by Landowner Companies. PNGFA field inventory completed. PNGFA are proposing that this area be an extension of the existing Timber Permit 2-14 (Vailala Block 1 – China Long Kong (PNG) Ltd). Forest Management Agreement not yet drafted.
Gross FMA area (a):	79,000 ha
Gross loggable area (a):	33,000 ha
Net sustainable timber yield (a):	20,000 m ³ /annum (b)

(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>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>Yes – expires January 2000</p> <p>No</p> <p>Yes</p>

<p>2. PROJECT DEFINITION IN FMA DOCUMENT</p>	
<ul style="list-style-type: none"> • Is the gross loggable area properly defined: • Has the total gross merchantable volume been properly estimated: • Has the net merchantable volume been properly estimated: • Have “Fragile Forest Areas” (OEC definition) been considered: • Have environmentally sensitive areas been considered: 	<p>Not yet finalised. FIMS data indicates gross loggable area of 33,000 ha.</p> <p>Not yet estimated. FIPS data indicates a gross loggable volume of 35.4 m³/ha.</p> <p>Not yet estimated. Application of the standard gross volume reduction factor indicates a net loggable volume of 24.8 m³/ha.</p> <p>No, because there is no agreed position regarding fragile forest areas. Exclusion of Fragile Forest Areas from logging would reduce the gross loggable area by 12% to 25,000 ha, and the estimated sustainable yield to 18,000 m³/a.</p> <p>Yes. Large scale Gazetted conservation areas are excluded from the FMA area. Small scale Gazetted conservation areas are identified and</p>

<ul style="list-style-type: none"> • Have conservation set asides been appropriately implemented: 	<p>excluded from the gross loggable area. The Logging Code prohibits logging in defined environmentally sensitive areas which are excluded when the gross loggable area is defined.</p> <p>The standard FMA document reserves the right for the PNGFA to exclude up to 10% of the gross loggable area from logging for conservation purposes.</p>
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<p>3. ESTIMATE OF SUSTAINABLE CUT</p>	
<ul style="list-style-type: none"> • Has the sustainable annual cut been properly calculated: • Is the estimated sustainable yield sufficient to support a financially 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 m³/a guideline set by PNGFA Board): 	<p>Not yet estimated by PNGFA. Preliminary data suggests a sustainable cut of 20,000 m³/ha if Fragile Forest Areas are allowed to be logged.</p> <p>No</p> <p>No</p>

<p>4. CONSISTENCY BETWEEN DOCUMENTS</p>	
<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 documents prepared yet.</p> <p>Non found.</p>

<p>5. ANY OTHER MATERIAL NON-COMPLIANCE REGARDING THE RESOURCE</p>	
<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

- Given that the existing Provincial Forest Plan is about to expire, that the PNGFA proactively assist the Gulf 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 Board test commercial interest in this 20,000 m3/a (or 18,000 m3/a if Fragile Forest Areas are excluded from logging) sustainable yield project by advertising for expressions of interest under s64 before investigating options for consolidation with other project areas.

B . LEGAL COMPLIANCE

SUMMARY OF LEGAL COMPLIANCE:

- There is no evidence that an application was properly made for this project area to be considered an extension to the adjacent Timber Permit area, or that any such decision has the Board’s approval. The clear assumptions that it will be an extension and that it will be granted to China Long Kong (PNG) Ltd are a serious and unwarranted departure from due process.
- There is no evidence on the file that the landowners will favour the project being treated as an extension. In fact there are some notable representations from landowners alerting the PNGFA to matters that would seem to dis-entitle the permit holder to seek an extension. There are clear and admitted failings on the company’s

part in its current operations. Landowners have called for the permit to be revoked and it is difficult to see why their representations should be ignored.

Some additional notes are presented in Appendix 1.

RECOMMENDATIONS REGARDING LEGAL ASPECTS:

1. There are no valid grounds for this project to proceed as an extension.
2. That in the event that any operator in the vicinity of the project applies for the project to be an extension of an existing operation, then a thorough check of that operation should be undertaken. Indeed a Commission of Inquiry may be warranted in relation to the manner in which Vailala Blocks 2 and 3 were acquired in 1995.

C. LANDOWNER ISSUES

RESOURCE ACQUISITION	
1. Landowner Awareness	
The Review Team was looking for evidence of an awareness package containing information explaining the purpose, benefits and otherwise to be expected from the project. This could include general conditions that could be used for all prospective projects.	NFS team dispatched to conduct awareness for Meporo area in 1995. Present proposal is to include the Meporo area into the adjacent Timber Permit.
2. Landowner Mobilisation	
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:	A Landowner Company (LANCO) offered to do ILG work in 1995. Correspondence on the files indicates that the PNGFA has commenced it's ILG work, but no ILG files were located.
<ul style="list-style-type: none"> • Recognition that the resources are owned by individual land groups and not collectives of land 	

<ul style="list-style-type: none"> • groups • The formation of representative bodies for project consultations and negotiations. 	
<p>3. Forest Management Agreement</p>	
<p>Must Specify:</p> <ul style="list-style-type: none"> • Monetary benefits for the customary group • Area in agreement by map • PFMC certificate as to <ul style="list-style-type: none"> - Authenticity of the tenure of the customary land - Willingness of customary owners to enter into FMA • Review level of consultation with landowners 	<p>FMA not yet drafted.</p>

This project is not yet at a stage where the resource allocation process has been initiated. Consequently no landowner issues relating to the allocation process have yet arisen.

Additional notes are presented in Appendix 2.

CONCLUSIONS REGARDING LANDOWNER ASPECTS:

- It is too early to evaluate the ILG work. The work done over the years in other Vailala blocks shows confusion, conflict and uncontrolled operation of LANCOs.
- There has been total disregard for the concerns raised by landowners with respect to the permit (2-14) holder of Vailala. Landowners in this area are agitating to get away from the present non-performing operator and to put a local operator in who will be able to produce sawn lumber for sale both locally and overseas. Given this situation it would not seem appropriate to progress Vailala (Meporo) as an extension.

RECOMMENDATIONS REGARDING LANDOWNER ASPECTS:

1. Detailed landowner work is needed to create awareness and to embrace land group incorporation as a vehicle for project participation.
2. The Development Options Study should take into account the interests of the landowners.

APPENDIX 1 : NOTES ON LEGAL ASPECTS

Project Background

This proposed project is close to a number of existing operations. It is in its very early stages of ILG work but correspondence indicates that it is clearly earmarked to be an extension to Vailala Block 1 held by China Long Kong (PNG) Industry Pty Ltd. There is no indication on the file that attempts have been made to gauge the willingness of landowners to the grant of a further permit to the company.

There may be a project agreement with China Long Kong that gives rise to the presumption of a favourable grant to the company. If such a project agreement exists then it must be noted that it is not a project agreement under the Forestry Act. No copy of such an agreement is on the files.

The provisions of the Act have full application.

Treatment of the Project as an Extension

In September 1996 the Managing Director replied to China Long Kong and quite properly noted that its "request for an extension will be considered on its merits by the NFS later". There is no evidence of an application on Form 89 for the project to be treated as an extension. There is no evidence of the Board's approval for advertisement to be waived for this project. A NFS Minute in February notes that the "Managing Director after an audience with China Long Kong directed we undertake acquisition process as soon as possible".

The project should proceed in the ordinary way. Full landowner consultation is essential. All development options must be explored. A public tender cannot be properly avoided.

The following reasons are advanced –

- (a) China Long Kong has not operated its existing project to anybody's satisfaction, not even its own. The company is quick to blame its contractors, the weather and the landowners for its poor record. It has ceased operations at times and in September this year it's contractor walked out. It owes arrears of levies and admits it's debts. There is no evidence of a satisfactory arrangement being made to repay it's debts.
- (b) Landowner discontent is growing. Even if the PNGFA adopts a flexible attitude to the company's shortcomings it appears that some landowners are foreseeing that the situation will "explode into major confrontation and stoppage". In August this year a letter from landowner representatives made the following indictments –
 - that the company has never submitted financial reports;
 - that no infrastructure has been built and notes company promises to build:
 - a road from Petoe to Ihu (all weather)
 - an aid post
 - a school
 - a church
 - water tanks

- “that China Long Kong has totally failed to keep its empty promises”.

The Managing Director responded by asking the company to involve the landowners in its sawmilling operations. The company pointed out that its operations had in fact stopped as its contractor had walked out. It might be presumed that the landowners will not find this explanation acceptable.

- (c) China Long Kong might have found an answer to its problems by retaining Niugini International Limited as its new contractor. Niugini International is a company that is said to be related to Frontier Holdings which operates in Vailala Blocks 2 and 3. The nature of this relationship is not clear. A company search reveals no common share-holding but there are directors who hold office in both companies. The addresses section 60 lot 5 Koani Street Gordons and section 479 lot 1 Kennedy Road Gordons appear in both company searches.

The manner in which Frontier Holdings obtained its right to operate in Blocks 2 and 3 is the subject of some controversy. The company is said to have produced a Timber Permit signed by a former Minister, now deceased. There was no FMA or any other supporting document to show that any requirement of the Act had been met. Subsequent court proceedings were settled by consent in circumstances that aroused dissatisfaction within the PNGFA. The Timber Permit attained some legal validity but no great acceptance by some officers or by certain landowners who have other plans for their land. A Commission of Inquiry may be the only means of determining the issues giving rise to this controversy. It is a means that has some historical precedent in the forestry sector.

The share-holding of both Frontier Holdings and Niugini International should be commented on. Frontier Holdings has only 10,000 issued shares. Niugini International is a K2 company. If such companies are permitted to operate in the forestry sector then it becomes imperative that performance bonds are properly lodged and reviewed. It is preferable that companies with such limited backing not be permitted to play a role in the sector at all. The exposure of government, landowners and commercial contractors to the prospect of unsatisfied debts is not acceptable. The major share-holder of Frontier Holdings is a company registered in the British Virgin Islands. Taxation implications may be in issue also.

APPENDIX 2: NOTES ON LAND OWNER ASPECTS

The original Vailala TRP consists of three blocks (1,2,3) currently allocated as TP 2-14 Vailala Block 1 (China Long Kong Ltd) and TP 2-17 Vailala Blocks 2&3 (Frontier Holdings Ltd). Proposed for purchase in 1988 by Secretary Komtagorea. NEC expressed desire to negotiate with Shisei from China in 1989.