

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 9**

MOROBE SOUTH COAST (DZIA FOR) (MOROBE PROVINCE)

AUDIT CONCLUSIONS AND RECOMMENDATIONS:

RESOURCE AND PLANNING ISSUES:

The net loggable volume data set out in the Draft Forest Management Agreement has been significantly overstated. The estimated sustainable annual cut is insufficient to support a conventional stand alone log export project. Whilst the Review Team supports the concept of providing existing domestic processing facilities with resource security, instruments such as the so called Morobe South Coast Project Agreement are not considered appropriate for this purpose due to the inconsistencies that arise with the processes under the Forestry Act.

LEGAL COMPLIANCE:

Until the Board resolves that the project be treated as an extension then it should not be regarded as one. The so called Morobe South Coast Project Agreement is not a Project Agreement under the Forestry Act. Due process at all stages must be followed.

LANDOWNER ISSUES:

Landowners are involved and empowered. They are critical of the performance of PNG Forest Products Ltd in the adjoining Morobe Coast project area. This company would be the logical operator if the area is processed as an extension.

RECOMMENDATIONS (INCLUDING CORRECTIVE MEASURES IF REQUIRED):

That the project be progressed subject to the following recommendations:

- That the NFS check and amend if necessary the estimate of net loggable volume.
- That the NFS address landowner concerns.
- That the issue of the project being an extension be referred to the Board for its informed decision.

If the Board decides not to progress this project as an extension:

- 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) completed. PNGFA field inventory work done. Forest Management Agreement drafted. The project area is planned by PNGFA as an extension to the existing Morobe Coast project operated by PNG Forest Products Ltd under the so called Morobe South Coast Project Agreement.
Gross FMA area (a):	68,000 ha
Gross loggable area (a):	46,000 ha
Net sustainable timber yield (a):	36,000 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>No – expired August 1999</p> <p>Yes</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 	<p>No. Determined by applying a 30% reduction factor (instead of the standard of 15%) to the gross FMA area resulting in a gross loggable area estimate of 49,000 ha. Applying the correct FIMS data would have indicated a gross loggable area of 46,000 ha.</p> <p>Field inventory data used, but sample small and estimate reduced by 15% rather than the standard factor of 30%. FMA sets out 2.8 mill m3 – the corrected net volume is 1.9 mill m3.</p> <p>No. Based on gross FMA area rather than gross loggable area.</p> <p>No, because there is no agreed position regarding fragile forest areas. There are no Fragile Forest areas within this project area.</p> <p>Yes. Large scale Gazetted conservation areas</p>

<p>areas been considered:</p> <ul style="list-style-type: none"> • Have conservation set asides been appropriately implemented: 	<p>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 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, but net loggable volume set out in draft FMA indicates a sustainable annual cut of 79,000 m³/a. An estimate corrected by the Review Team indicates 36,000 m³/a.</p> <p>Yes</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>Only a draft FMA prepared at this stage.</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

- That the PNGFA pro-actively assist the Morobe 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.

2. PROJECT DEFINITION

- That the PNGFA checks and amends if necessary the determination of the gross loggable area, and the estimation of the net loggable volume.
- That the PNGFA Board test commercial interest in this 36,000 m3/a sustainable yield project by advertising for expressions of interest under s64 before investigating options for consolidation with other project areas.

B . LEGAL COMPLIANCE

SUMMARY

- There appears to have been an attempt to undertake proper ILG work.
- The project is not an approved extension and it is not correct to regard it as one.
- There has been an unfounded presumption that the project (and others in its vicinity) will be allocated to PNG Forest Products South Coast Limited.

Some additional notes are presented in Appendix 1.

RECOMMENDATIONS REGARDING LEGAL ASPECTS:

1. The acquisition and allocation processes should not be compromised due to the existence of the Morobe South Coast Project Agreement. This is not a project agreement within the meaning of the Forestry Act.
2. The PNGFA cannot be said to breach its “best endeavour” obligations if the provisions of the Act are complied with and if the project is tendered (or properly exempted from tender) and assessed in the ordinary way.

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>	<p>No evidence in the file that PNGFA have undertaken any awareness work, but the fact that the landowners group made a good job of the ILGs indicates that they have had outside assistance.</p>
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 	<p>The FMA document shows 41 ILGs.</p> <p>Well documented ILGs showing complete clan lists and even maps of clan boundaries.</p> <p>No clear understanding of meaning of property lists.</p> <p>PNG Forest Products collaborated with the landowners and the Forest Officers to do the ILGs.</p> <p>One clan has objected to another ILG on the grounds that that ILG has claimed ownership of land that they have been using by permissive occupancy. In effect that ILG is a group whose ground is elsewhere from where they came. This</p>

<p>negotiations.</p>	<p>objection now comes long after the defendant ILG has been incorporated instead of at the time of the Incorporation. Perhaps the plaintiff was not aware that the user group was claiming ownership of the land. The matter is to go to court. The user ILG may still be legitimate but they will not have a claim on forest revenue from the disputed land if the plaintiff is upheld.</p>
<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>Draft FMA is being distributed for comment.</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.

CONCLUSIONS REGARDING LANDOWNER ASPECTS:

- Involvement of an existing logging operator in mobilising new areas by assisting with ILG work gets the work done but creates expectations regarding allocation of the resource, and the Landowner Companies (LANCOs). It also causes confusions among landowners, for example having landowner representative bodies being paid sums of money which later comes off the landowners share reduces ILG benefits without their approval of the benefit going to LANCO officers.
- There are landowner problems with the adjacent Morobe Coast project area, which could easily spill over into the planned Morobe South Coast (Dzia For) area. It would make sense for the PNGFA to look into this situation as part of its landowner awareness work.

RECOMMENDATIONS REGARDING LANDOWNER ASPECTS:

1. That the PNGFA and the landowners in the planned Morobe South Coast (Dzia For) FMA area seriously discuss the issues which have caused the adjacent Morobe Coast timber project to close.
2. That there be a clear recommendation made in the Development Options study as to which is the priority option.
3. That the outstanding land disputes be resolved.

APPENDIX 1 : NOTES ON LEGAL ASPECTS

Project Background

From early 1998 there appears to have been a real intent to undertake the ILG work thoroughly and properly. Some of this work was done in mid-1998.

From that time the work has slowed. This is in spite of the many offers by PNG Forest Products Ltd to fund and facilitate this work. The practice of involving companies in ILG work well in advance of offering a project for tender must be avoided.

This is not the case if the project is approved by the Board to be an extension. If it is an approved extension then no tender need be advertised (section 64(3)).

In this case however there appears to never have been an application by PNG Forest Products Ltd on Form 89 for the project to proceed as an extension. The company may have overlooked this due to the rights that it claims to have under the Morobe South Coast Project Agreement signed on 10 May 1996.

The Morobe South Coast Project Agreement

This Agreement is not a project agreement under the Forest Act and in no way should it be regarded as such.

The Agreement is subject to the provisions of the Forestry Act and forms no basis upon which any step required by the Act can be avoided or short-circuited.

The existence of the Agreement appears to have been a considerable influencing factor on officers of the PNGFA. These influences appear in the following manifestations –

- (a) there is a clear willingness to involve the company in the ILG work;
- (b) the project is regularly regarded as an extension when no such decision appears to have been made;
- (c) the eventual allocation of the project to the company is regarded as a fore-gone conclusion.

The PNGFA may well be contractually bound by the Agreement. Its obligations are to use its “best endeavours”, consistent at all times with the Act, to facilitate the company to obtain operating rights to the Morobe South Coast areas specified in the Agreement.

It goes without saying that the only way in which the PNGFA can ever use its “best endeavours” is to ensure total compliance with the Act and the regulations, and all supporting policies and guidelines.

The project can only be regarded as being the company’s if the ILG work is done and an FMA is signed, and then if –

- (a) it is truly and properly determined to be an extension; or
- (b) if the company submits the tender most favourably looked upon; and

(c) the company enjoys the support of landowners, the Provincial Government(s), the PFMC(s) and the Minister at every relevant step of the process.

This project should proceed in accordance with the Act and no conclusions as to the outcome should be drawn.