

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 February 2001

Re: **INDIVIDUAL PROJECT REVIEW REPORT NUMBER 22**

ASENGSENG CONSOLIDATED (WEST NEW BRITAIN PROVINCE)

AUDIT CONCLUSIONS AND RECOMMENDATIONS:

RESOURCE AND PLANNING ISSUES:

The project is only partially in compliance with the Act in that only one block of three making up the consolidated project (Asirim) is listed in the National Forest Plan for development. The FMA document for the Asengseng Block is incomplete with regard to resource information, despite having been approved by the Minister. The estimated sustainable annual cut is sufficient to support a conventional stand alone log export project.

LEGAL COMPLIANCE:

For both the pre-consolidated and consolidated projects, due process was not observed.

LANDOWNER ISSUES:

Satisfactory landowner awareness work was undertaken by PNGFA. The Incorporated Land Groups are flawed. Whilst landowner wishes are taken into account in the Development Options Study, there is evidence that landowners require to be better informed of the consolidation, and their agreement obtained.

RECOMMENDATIONS (INCLUDING CORRECTIVE MEASURES IF REQUIRED):

- That the PNGFA update the National Forest Plan.

- That the PNGFA Board decision made at meeting No 51 to defer further consideration of this project should apply until all legal non-compliance matters identified in Appendices 1A and 1B are rectified.
- That the PNGFA revisits the ILGs.
- That the PNGFA inform the landowners of the consolidation and obtain their assent.
- That the PNGFA complete all particulars in the Forest Management Agreement document for Asengseng.

That subject to the above, if the potential for a sustainable forestry project is confirmed:

- That the project should proceed with continued efforts to fully involve landowners and their true representatives in informed decision making.

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. Three separate Forest Management Agreements signed and approved by the Minister for each of the three areas which make up the consolidated area (Asengseng, Agulu and Asirim). Awaits preparation of DOS for consolidated area (a DOS for the Asengseng area had been prepared prior to consolidation).								
Gross FMA areas:	<table><tr><td>Asengseng</td><td>43,000 ha</td></tr><tr><td>Agulu</td><td>57,000 ha</td></tr><tr><td>Asirim</td><td>47,000 ha</td></tr><tr><td>Total</td><td><u>147,000 ha</u></td></tr></table>	Asengseng	43,000 ha	Agulu	57,000 ha	Asirim	47,000 ha	Total	<u>147,000 ha</u>
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Gross loggable area:	<table><tr><td>Asengseng</td><td>11,000 ha</td></tr><tr><td>Agulu</td><td>52,000 ha</td></tr><tr><td>Asirim</td><td>41,000 ha</td></tr><tr><td>Total</td><td><u>104,000 ha</u></td></tr></table>	Asengseng	11,000 ha	Agulu	52,000 ha	Asirim	41,000 ha	Total	<u>104,000 ha</u>
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Net sustainable timber yield (a):	<table><tr><td>Asengseng</td><td>11,000 m³/annum</td></tr><tr><td>Agulu</td><td>48,000 m³/annum</td></tr><tr><td>Asirim</td><td>37,000 m³/annum</td></tr><tr><td>Total</td><td><u>96,000 m³/annum</u></td></tr></table>	Asengseng	11,000 m ³ /annum	Agulu	48,000 m ³ /annum	Asirim	37,000 m ³ /annum	Total	<u>96,000 m³/annum</u>
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Total	<u>96,000 m³/annum</u>								

(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 August 1999</p> <p>Only the Asengseng component.</p> <p>Only the Asirim component.</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: 	<p>No. The FMA document for the Asengseng area contains no area information, despite having been approved by the Minister. The FMA documents for the Agulu and Asirim areas are consistent with the FIMS data.</p> <p>Yes. The FIPS data is used in the FMA documents for all three areas.</p> <p>No. The gross loggable area has been overstated in the FMA documents for the Agulu and Asirim areas. No data is presented in the FMA for the Asengseng area and the consolidated net merchantable volume is thus unable to be verified.</p> <p>No, because there is no agreed position regarding fragile forest areas. None of the three areas include any areas classified as Fragile Forest.</p>

<ul style="list-style-type: none"> • Have environmentally sensitive areas been considered: • Have conservation set asides been appropriately implemented: 	<p>For the Agulu and Asirim areas - Yes. Large scale Gazetted conservation areas are excluded from the FMA areas. 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 FMA documents reserve 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 it would be over-estimated if they rely on the resource description shown in the FMA documents for the Agulu and Asirim areas. Preliminary data suggests a sustainable cut of 48,000 m3/a and 37,000 m3/a respectively for these areas.</p> <p>Yes</p> <p>Yes</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: 	<p>Only FMAs prepared to date.</p>

<ul style="list-style-type: none"> Any other material inconsistencies regarding the resource: 	None found.
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<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. 	The National Forest Policy specifies a 40 year cutting cycle. In practice a 35 year cycle is applied. No explanation is available.

RECOMMENDATIONS REGARDING FORESTRY ASPECTS:

1. SECTORAL PLANNING AND CONTROL

- That the PNGFA update the National Forest Plan.
- That the PNGFA pro-actively assist the West New Britain 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.

2. PROJECT DEFINITION IN FMA DOCUMENT

- That the PNGFA complete the Asengseng FMA document by adding area and volume information.
- That the PNGFA checks and amends if necessary the project area and gross volume per hectare information.

3. ESTIMATE OF SUSTAINABLE CUT

- That the PNGFA recalculates and amends as necessary the permitted annual sustainable cut for inclusion in the Development Options Study.

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:

- Both the Asengseng and the Asengseng Consolidated projects are characterised by a failure to observe due process. To a large extent this has arisen from the involvement of a former Forest Minister and his associates in landowner companies whose actions have compromised these projects at a number of stages.
- Documentation on PNGFA files is not adequate. This may be due to the fact that some important steps have been overlooked or short-circuited.
- The Provincial Forest Management Committee has acted without due diligence on occasions. These shortcomings include:
 - The failure to facilitate the attendance of landowner representatives at nearly every relevant PFMC meeting.
 - The apparent failure to verify the ILG incorporations and the willingness of landowners to sign the FMAs before certification was given.
 - The involvement of landowner company representatives at meetings when the presence of more appropriate landowner representatives was indicated.
 - Permitting an “involved” member of the PFMC to manipulate the committee’s proceedings. The PFMC appears to have become committed to the interests of one company and this has compromised its integrity and the processes in which it plays an integral part. The notion of a “pre-commitment” to Gasmata Holdings should have been squashed from the start. This company is now in liquidation.
- ILG work seems to have been done solely by landowner companies. This must be treated with the gravest suspicion.
- At the pre-consolidation stage the files do not indicate compliance with most steps concerning the Development Options Study, Project Guidelines and the Project Proposals.

A full checklist and accompanying notes are presented in Appendix 1A and 1B for Asengseng pre-consolidation and Asengseng Consolidated respectively.

RECOMMENDATIONS REGARDING LEGAL ASPECTS:

1. That the Board’s decision made at Meeting 51 should be applied. There should be no further action until all aspects of the acquisition and allocation processes are regularised.
2. The ILG work should be re-visited and verified by the NFS.
3. That the certification of the FMAs must be re-confirmed after proper enquiries are made.

4. That the DOS should take into account the options that exist other than those that would see the involvement of companies that have already played a questionable role in the exploitation of the province's forest resources and the manipulation of its resource owners. If there are no options of this nature then the project might best be shelved for some time. A more orderly approach to the development of this project might then be achievable.
5. That the composition of the PFMC should be reviewed and its further deliberations in relation to "high profile" projects such as this should be closely scrutinised.

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.	There is no evidence of any awareness material sighted on file. NFS had very little input because the project was promoted and developed by the landowner companies. There are no records of information that might have been communicated to the landowners on the status of the project. NFS conducted an awareness campaign on the project in 1997.
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 	<ul style="list-style-type: none"> • NFS was not involved in the ILG process. Eagleton Forestry (PNG) Pty Ltd assisted with the formation of the ILGs. • It appears that landowners were assisted in compiling the ILGs and NFS conducted a verification exercise before it recognized the ILGs. • There was a dispute as to whether Asengseng Ltd or A.J.Timber Development Ltd was representing the interest of the landowners and there is some evidence that the former is. • No documents sighted on the shareholding

<p>project consultations and negotiations.</p>	<p>distribution of the Landowner Company.</p> <ul style="list-style-type: none"> • ILGs are family groups rather than clan groups. • There is no evidence of clan property lists.
<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 	<ul style="list-style-type: none"> • Monetary benefits spelt out in Schedule 7 in the FMA document. • PFMC certificate in place (but see notes on legal compliance). • Area in agreement is identified in a map attached to the FMA document. • The FMA has been signed by the representatives of the 27 ILGs.

<p>RESOURCE ALLOCATION</p>	
<p>1. Development Options Study</p>	
<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. 	<p>Development Options:</p> <ul style="list-style-type: none"> • Consolidate concession with adjoining forest areas to increase annual volume to be harvested and commercial viability • Investigate the option of small scale saw milling with landowner participation <p>Each option has its own merits and problems and these should be taken into account in the final analysis.</p> <p>There is preference for downstream processing by the landowners, but attracting an investor to go into a joint venture with land owners is a task</p>

	that is not so easy to achieve.
2. Project Guidelines	
Draft guidelines must be discussed and developed in consultation with the resource owners	Yet to be completed, however it is important that the landowners are consulted during the process before the document is finalised for presentation to the PNGFA Board.
3. Project Agreement	
Authority is required to involve landowners in selection of the “developer” and in negotiation of the Project Agreements according to the terms of the FMA.	Not yet drafted or negotiated.
4. Environmental Plan	
EP is produced by the preferred developer according to the prescription of the Environmental Planning Act. Evidence of consultation with landowners is important.	There is no environmental plan as yet, but there was a concern raised by some members of the PNGFA Board (Feb. 1995) that the development of the project may have some impact on the bio diversity of the Whiteman’s Range. This concern was to be clarified by DEC.

Additional notes are presented in Appendix 2.

CONCLUSIONS REGARDING LANDOWNER ASPECTS:

- That it is important to verify and confirm to all stakeholders the areas that are now included in the Consolidated project area. In particular the ILGs must be fully informed of the new shape of the project and the implications for them before the project can be put to tender.
- The ILGs are based on family groups. This is likely to lead to disputes when harvesting starts as several families will have claims to cash payments from each harvesting area.

RECOMMENDATIONS REGARDING LANDOWNER ASPECTS:

1. That ILGs be revisited and based on clan groups rather than the current family groups.
2. That changes to the project resulting from consolidation must be explained to the landowners and receive their assent before the project proceeds.

APPENDIX 1 : CHECKLIST OF COMPLIANCE WITH LEGAL REQUIREMENTS

APPENDIX 1A

PROJECT – ASENGSENG PRE-CONSOLIDATION

Step	Compliance	Non-Compliance	Not Clear
<u>1. Landowner Consultation</u>			
Awareness campaign			?
Vesting of title	N/A		
ILG incorporation	Feb 1994 see notes		
PFMC certificate	12/9/95 see notes		
Attendance of landowners at PFMC meeting		X	
<u>2. Forestry Management Agreement</u>			
Form and content			? See notes
Execution	14/2/96		
Ministerial approval	14/2/96		
<u>3. Development Options Study</u>			
Board to arrange	Confirmed		
or exemption	N/A		
Directions from PFMC			?
DOS given to Minister and PFMC			?
<u>4. Project Guidelines</u>			
PFMC consults with L/owners and Prov Govt			?
PFMC to prepare draft			?
Attendance of landowners at PFMC meeting			?

PFMC to submit draft to the Board			?
Board issues final guidelines			?
<u>5. Advertisement</u>			
Project to be advertised			?
Expressions of interest received	(4) Aug 96		
<u>6. Feasibility Studies</u>			
Application by registered person			
<u>7. Project proposals</u>			
Proponents must be registered Under section 105	Confirmed		
Placed in tender box			
Proper as to form and content			?
Referred to PFMC	11/11/96		
Attendance of landowners at PFMC meeting	Confirmed see notes		
Evaluated with assistance of NFS			?
Invitation for further information	N/A		
Evaluation of further information	N/A		
PFMC reports and recommends			?
Attendance of landowners at PFMC meeting	Confirmed see notes		
Board consults Minister			?
Minister gives views			?
<u>8. Negotiations</u>			
Board directs PFMC as to proponent For further negotiations	April 97		
Board and PFMC set parameters			?

PFMC negotiates agreement	Failed July 97		
PFMC submits final draft to the Board	N/A		

CHECKLIST NOTES (Asengseng Pre-consolidation)

1. The processing of the Asengseng project at the pre-consolidation stage was wholly unsatisfactory. The documentation on the files is totally insufficient. It must be concluded that many stages of the allocation process were overlooked or treated in an irresponsible manner.
2. The NFS properly advised the PFMC on at least two occasions that the attendance of landowner representatives at PFMC meetings must be arranged. This appears to have been done when the project proposals were assessed but it is not evidenced at any other stage. Even at the meeting held in October 1996 when the project proposals were under consideration the landowner representatives were the office holders of the so-called landowner company. The involvement of these people in every aspect of the project to date should have been known. Some attempt should have been made to consult with the ILGs to determine who would be the most appropriate landowner representatives at these meetings.
3. The ILG work appears to have been done by one landowner company. There must be doubts about the bona fides of this work. There is no evidence that the NFS sought to verify it in any meaningful way.
4. There do not appear to have been any landowner representatives present when the PFMC gave its certificate. The certificate preceded the signing of the FMA by 5 months. There must be real doubts that any attempt was made to assess the validity of the ILG incorporations or the willingness of landowners to sign an Agreement that was not in fact signed for many months.
5. The involvement of certain people through landowner companies seems to have compromised the process. Many of these people appear to hold office in one of the proponent companies, and to have close links to others. One person was a member of the PFMC while holding office in one of the proponent companies.
6. Negotiations failed because the project was never viable in the first place. The annual cut would have been as low as 14,000 cubic metres
7. Some recognition of the Board's sensible position should be noted. The Board's approval for the FMA was given in January 1996 on the basis that consideration be given to the high bio-diversity of the area and the presence of the KGDIP and the EU project. DEC was to be consulted. The files do not indicate that any sufficient regard was had to these observations. They were valid and had they been explored then the debacle might have been avoided. The final response was to consolidate a number of areas. This was no solution.

APPENDIX 1B

PROJECT – ASENGSENG CONSOLIDATED (ASENGSENG, AGULU AND ASIRIM)

Step	Compliance	Non-Compliance	Not clear
<u>1. Landowner Consultation</u>			
Awareness campaign	Aug 97 (?) See notes		
Vesting of title	N/A		
ILG incorporation	18/3/99 and 3/5/99 see notes		
PFMC certificate	3/3/99		
Attendance of landowners at PFMC meeting		X	
<u>2. Forest Management Agreement</u>			
Form and content	Confirmed		
Execution	Not dated		
Ministerial approval	8/6/99		
<u>3. Development Options Study</u>			
Board to arrange or exemption	1/6/99 (Form 81) N/A		
Directions from PFMC	7/7/99 (Form 82) 28/7/99 (Form 83)		
DOS given to Minister and PFMC	Not complete		

CHECKLIST NOTES (ASENGSENG CONSOLIDATED)

1. It seems that the NFS abrogated its role concerning ILG incorporation and verification. There is clear evidence that incorporations were arranged by landowner companies in the most questionable circumstances. One of these is noted below. The Area Manager in October 1998, when questioned about some lost ILG certificates, stated that "NFS personnel never performed the task".

2. There are real doubts concerning the PFMC certification of the Agulu and Asirim ILGs and the willingness of landowners to sign the FMA. There appears to have been no landowner representatives at the meeting in May 1999. By this time the PFMC had been advised by the Managing Director on a number of occasions to facilitate their presence at relevant meetings. There is no evidence of any attempt to independently verify the incorporated groups or the willingness of landowners. In fact some of the ILGs were not in fact incorporated at the time of certification!
3. The FMAs for Agulu and Asirim are not dated.
4. By far the greatest impediment to an orderly acquisition and allocation of this resource is the involvement of certain companies. The common theme is the involvement of former Forest Minister, Andrew Posai, in Gasmata Holdings Ltd and Asirim Timbers Ltd. He appears to be the Chairman of the former and the Managing Director of the latter. Isidore Teli is a member of the PFMC and has been an office-holder in Gasmata Holdings. He has played a prominent role in this project. Some features of the involvement of these two people and their companies are:
 - In April 1998 Andrew Posai, as Chairman of Gasmata Holdings, requested exemption from advertising the Asengseng project and for it to be allocated to Gasmata Holdings.
 - This request appears to have received PFMC endorsement at Meeting 3/98 in May 1998 when the PFMC supported an exemption from advertising for the “Gasmata – Asirim” consolidated project.
 - At PFMC meeting 3/99 in August and September 1999, Gasmata Holdings further secured its position when Isidore Teli noted that Asengseng had been “pre-committed” to Gasmata Holdings. This is a total departure from due process and raises the question of a conflict of interest.
 - In 1997 Gasmata Holdings signed a Management Agreement with Pacific Capital Pty Limited which at that time was not a registered Forest Industry Participant.
 - In June 1998 Andrew Posai, as Managing Director of Asirim Timbers, noted that the company had arranged the ILGs and that the certificates had been given to their “financiers”. He claimed that Gasmata Holdings comprised the major landowners of Asirim and Agulu. This harks back to the former TRP days.

The Board responded to this alarming situation by determining at Meeting 51 in October 1998 that no consideration of the allocation of this project was to be done by the PFMC until all acquisition and allocation procedures had been followed.

5. In November 1999 the Managing Director informed Gasmata Holdings that it would need to make formal application to undertake a feasibility study. The company gave an assurance that an application would be made. There is no record of it.

APPENDIX 2: NOTES ON LAND OWNER ASPECTS

1. Asengseng went through the allocation process as a stand alone project, but with a sustainable yield of only 13,500 m³/a there was no commercial interest. Gasmata Holdings Ltd wanted it along with the others to make up a consolidated project area.
2. 23 Dec 99 Gasmata speak of conducting a feasibility study for consolidated area on approval from NFS.
3. A J Timber Development Pty Ltd and Arup Timbers Pty Ltd are two other companies set up in the project area.