

**AUDIT OF COMPLIANCE OF THE ALLOCATION OF THE
AMANAB BLOCKS 1-4 FORESTRY PROJECT WITH THE
REQUIREMENTS OF THE FORESTRY POLICY, THE
FORESTRY ACT AND OTHER REGULATIONS
AND GUIDELINES**

Prepared For:

THE GOVERNMENT OF PAPUA NEW GUINEA

**c/- THE CHIEF SECRETARY TO
GOVERNMENT**

Prepared By:

THE 2003/2004 REVIEW TEAM

(Reviewing Current Logging Projects)

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EXECUTIVE SUMMARY

The key audit findings are as follows:

1. That progressing the Timber Permit for Amanab Blocks 1-4 has taken place within a divergence of opinion between two blocs within Government regarding priorities. On one hand there is a bloc who wish to see new forestry projects progressed quickly to support the Government's Export Led Economic Recovery Strategy. On the other hand there is a bloc who, whilst still supporting the development of new forestry projects, wish to see projects progressed in accordance with the Time Bound Action Plan. Implementation of the plan is a condition of the Government's Loan from the World Bank for the Forestry and Conservation Project, and requires (amongst others) consideration and resolution of a number of policy issues. This is viewed by some as an impediment to progress. Implementation of the plan has been directed by the NEC. The two blocs are observed both at the political level, and within relevant Government Departments and Authorities.
2. That NEC Decision 43/2002 is too vague. It endorses the Minister for Forests to process Timber Permits "without any hindrances". It is clear that a number of individuals have chosen to interpret this to mean that permits may be progressed without implementation of the Time Bound Action Plan, and continue to act as if this were the case. This interpretation would mean that the Government had chosen to deliberately breach the Terms and Condition of the Loan from the World Bank, which subsequent Government action has indicated is not the case.
3. That the Timber Permit granted by the Minister for Forests on 21 June 2004 is void by virtue of the failure of Vanimo Forest Products Ltd to lodge a performance bond within 21 days of the grant of the permit. The company had not been made aware by the Minister that the Timber Permit had been granted. The Forestry Act 1991 is however very specific on this point. The Act requires the PNGFA Board to advise the company. It has not yet done so.
4. That by signing the Timber Permit, the Minister, on behalf of the Government of PNG, breached two conditions of the Loan from the World Bank. Given that the Timber Permit is now void, it would seem that the Government is no longer in breach of the agreement.
5. That although not illegal, the Minister for Environment and Conservation approved the Environmental Plan before receiving the considered advice of his Department.
6. Vanimo Timber Products Ltd is in breach of the conditions attached to the Environmental Plan Approval by failing to submit a number of sub-plans within the three months allowed. Under this circumstance, the Environment Act 2000

allows the Director for Environment and Conservation to cancel the approval should he deem it appropriate to do so.

7. The Time Bound Action Plan sets out a number of required actions directly affecting the calculation of the sustainable Annual Allowable Cut (AAC). These actions have not yet been implemented by PNGFA and DEC, and consequently the AAC set out in the Project Agreement and the Timber Permit cannot be considered to be sustainable as required under the National Forest Policy 1991.

Recommendations are made for consideration by Government. These are aimed at:

1. Progressing the project sensibly on the basis of a properly evaluated environmental plan;
2. Re-establishing PNGFA Board and Department of Environment and Conservation control over the project;
3. Ensuring that the Government does not breach the terms and conditions of the World Bank Loan.

The **recommendations** made for consideration by Government are that:

1. The Board complies with the requirement of s98(5) of the Forestry Act and advises Vanimo Forest Products Ltd that the Timber Permit granted by the Minister on 21 June 2004 is void.
2. The Director of Environment and Conservation re-examines the Environmental Plan and either confirms the acceptability of the plan and the approval conditions, or uses his powers under the Environment Act 2000 to formally cancel the Environmental Plan Approval (now deemed a Permit) in which case a new Environmental Permit under the Environment Act 2000 will be required.
3. That the PNGFA and DEC implement those aspects of the Time Bound Action Plan which have the potential to impact on the AAC, and that the ACC be recalculated accordingly.
4. That the Board rescinds the resolutions made at its meeting 92 in May/June 2003 regarding the "in principle" approval of the Amanab Blocks 1-4 project, and the recommendation that the Minister grants a Timber Permit to Vanimo Forest Products Ltd. Further that the Board rescinds the outcome of the circular resolution of 3rd December 2003 that the Board agrees that the Project Agreement be executed.
5. In future Board approvals should only be given when all outstanding issues have been dealt with and resolved to the satisfaction of the Board.

Provided the re-assessed AAC exceeds 70,000 m³, then it is **further recommended** that:

6. The Board negotiates a change to the Project Agreement to incorporate the revised AAC.

7. That the Board (rather than the Minister for Forests) obtain the Minister for Treasury and Finance's approval to re-execute the Project Agreement, and subject to receiving approval, does so.
8. In future the Minister for Treasury and Finance avoids granting conditional approvals, and only grant approval when all outstanding issues have been dealt with and resolved to the Minister's satisfaction.
9. That once all issues have been resolved to the satisfaction of the Board, that the Board recommends to the Minister that he invite Vanimo Forest Products Ltd to re-apply for a Timber Permit.

1. INTRODUCTION AND BACKGROUND

THE 2000/2001 REVIEW

During 2000/2001 an independent Review Team undertook an audit of 32 “in process” forestry projects which were then being developed by the PNG Forest Authority (PNGFA). None of the projects had yet reached the stage where a Timber Permit had been issued by the Minister. The purpose of the audit was to check that each project was being progressed in proper compliance with the National Forest Policy, the Forestry Act 1991, and other regulations and guidelines.

The 2000/2001 Review Team made a number of project specific recommendations for each of the projects being developed. In addition it made a number of generic recommendations applying to all projects. The generic recommendations are set out in Attachment 1. These were accepted by the National Executive Council (NEC), and set out in a Time Bound Action Plan for implementation by the relevant authorities, mainly the PNGFA and the Department of Environment and Conservation (DEC).

AMANAB BLOCKS 1-4

One of the projects reviewed was Amanab Blocks 1-4. At the time of the 2000/2001 review this project had been progressed to the point where the Project Guidelines had been approved by the PNGFA Board; the project had been advertised; and a number of proposals had been received. These were awaiting evaluation. The 2000/2001 Review Team conclusions and recommendations specific to Amanab Blocks 1-4 are also set out in Attachment 1.

As at the time of this current audit (August 2004), the PNGFA Board has executed the Project Agreement with the selected developer (Vanimo Forest Products Ltd), and the Minister for Forests has granted the Timber Permit on 21 June 2004. The Audit Team understands that the Minister did not advise Vanimo Forest Products Ltd that he had granted the permit until on or about 6 August 2004.

METHODOLOGY

Some notes regarding the methodology adopted for this audit are set out in Attachment 2.

2. FOREST RESOURCE ISSUES

Notes regarding the sustainable annual allowable cut (AAC) are set out in Attachment 3.

MATTERS AFFECTING THE AAC

The 2000/2001 Review Team recommended that a clear Government policy statement be articulated regarding:

- The 10% of gross loggable area set-aside provided for in the Forest Management Agreement for forest conservation purposes which the PNGFA had not taken into account in its estimation of the sustainable AAC;
- Forest types which do not grow fast enough to be harvested sustainably based on a 35 year cutting cycle, or which do not have the capacity to regenerate after logging. These “fragile forests” had not been taken into account by the PNGFA in its estimation of the sustainable AAC; and
- The cutting cycle. The PNGFA uses a cutting cycle of 35 years whereas the National Forest Policy requires that a 40 year cycle is to be used.

Although directed to do so by the NEC through the Time Bound Action Plan (NEC Decision 188/2001 by the previous Government, and NEC Decision 170/2003 by the current Government), the PNGFA and DEC have not yet forwarded their submissions on the above issues to the NEC. As a consequence the required policies have not yet been clarified.

AN ESTIMATE OF THE AAC

Based on allowing for a 10% conservation set-aside, the exclusion of fragile forests from logging, and a 40 year cutting cycle, then the estimate of the AAC is 17,500 m³. Details are set out in Attachment 3. This compares to the ACC of 94,000 m³ set out in the Project Agreement and the Timber Permit. The main reason for the difference is that 74% of the loggable area for Amanab Blocks 1-4 is made up of forest types identified as “fragile”.

An AAC of 17,500 m³ is significantly less than the minimum required for a viable stand alone log export operation (70,000 m³ as adopted by the PNGFA Board).

OBSERVATION OF DUE PROCESS

With the exception of the failure to ensure that a national policy was determined regarding the 10% conservation set-aside, fragile forests, and the cutting cycle (as required by the Time Bound Action Plan), and applying the policies to the estimation of the AAC for Amanab Blocks 1-4, due process for determining the AAC has generally been followed.

3. LEGAL COMPLIANCE ISSUES

Notes regarding legal compliance issues are set out in Attachment 4.

NATIONAL FOREST PLAN

The development of the Amanab Blocks 1-4 forestry project does not comply with s54 of the Forestry Act which requires that:

Forest resources shall only be developed in accordance with the National Forest Plan.

The National Forest Plan of May 1996 makes no mention of Amanab Blocks 1-4. There is only a generic reference to "Amanab" in the map of Sandaun Province under the heading "Potential Areas For Future Development". In the opinion of the Audit Team this is not sufficient for the development of Amanab Blocks 1-4 to be considered "in accordance with the National Forest Plan".

The 2000/2001 Review Team identified that Amanab Blocks 1-4 was not covered by the National Forest Plan in 2001, and a recommendation to the PNGFA that the National Forest Plan be updated was made. To date this recommendation has not been complied with.

EXECUTION OF THE PROJECT AGREEMENT

Under the Public Finance (Management) Act, execution of the Project Agreement by the Board requires approval from the Minister for Treasury and Finance. The Minister's permission was given with stated conditions attached. The conditions were not met before the agreement was signed.

GRANTING OF THE TIMBER PERMIT

With the following exception, due process was generally observed.

The Minister failed to comply with s73(1) of the Forestry Act 1991 in that he did not grant the permit within 30 days of receiving the application from Vanimo Forest Products Ltd. However the Act does not provide for any consequences, and thus this is not considered to be a material breach.

OBTAINING APPROVAL OF THE ENVIRONMENTAL PLAN

An Environmental Plan approval was issued by the Minister for Environment and Conservation on 29th December 2003. Whilst observing the requirements of the Environmental Planning Act 1978, the Minister did not wait until DEC had evaluated the Environmental Plan and provided its advice to the Minister.

The Secretary DEC erred in not making the Minister aware of the fact that 74% of the loggable area is classified as fragile, and that there are NEC Decisions in place which require appropriate policy decisions to be made.

Vanimo Forest Products has breached the Environmental Plan Approval by not meeting a number of time bound conditions, in particular the submission of sub-plans. Under these circumstances the Environment Act 2000 provides an avenue for the Director of Environment to cancel the approval, and thus require that the provisions of the Environment Act be applied instead.

LODGING A PERFORMANCE BOND

Vanimo Forest Products Ltd has breached the Forestry Act 1991 (s98(5)) by failing to lodge a performance bond within 21 days of the grant of the Timber Permit. The Act is specific that under these circumstance the Timber Permit is void, and that the PNGFA Board is required to advise the proponent accordingly. Until the PNGFA Board does so, then the Board itself is in continuing breach of the Act.

It is acknowledged that after granting the Timber Permit on 21 June 2004 the Minister did not release the permit document to the proponent until more than 21 days had elapsed. Consequently the proponent was not aware that the time limit prescribed by the Act was running out.

A number of PNGFA officers have argued that the 21 day time limit should apply from the date that the proponent receives formal advice that the permit has been granted. Whilst this interpretation may be practical and more fair, the Act clearly refers to the granting of the permit, which occurs when the Minister signs and dates the document.

4. THE LOAN AGREEMENT WITH THE WORLD BANK

Whilst the Loan Agreement between the Government of PNG and the World Bank for the Forestry and Conservation Project (FCP) is not strictly a component of the Government's policies, laws, regulations and guidelines, the conditions of the loan set out requirements which have a direct impact on the calculation of the sustainable AAC for new Timber Permits. With respect to Amanab Blocks 1-4 it must be noted that when signing the Timber Permit the Minister for Forests, acting on behalf of the Government of PNG, breached two conditions of the agreement. The relevant conditions (Schedule 5) require that:

(Clause 8): The Borrower [Government of PNG] shall: (a) adopt a time-bound action plan and shall thereafter carry out such action plan and (b) approve logging permit applications submitted after November 30, 2001, in accordance with the relevant provisions of such action plan.

(Clause 10): To determine the status of compliance with the Forestry Act the Borrower [Government of PNG] shall review all logging permit applications submitted after the date of this agreement [20 December 2001]

At the time that the Minister granted the Timber Permit (21 June 2004), neither condition had been complied with. However, both the Decisions made by the NEC, and the Loan Agreement, require that this be done before any Timber Permit is granted. Given that the Timber Permit for Amanab Blocks 1-4 is now void (see Section 3 above), it would seem

that the Minister and the PNG Government are no longer in breach of the Loan Agreement.

5. AUDIT CONCLUSIONS AND RECOMMENDATIONS

AUDIT CONCLUSIONS

Given that the Timber Permit granted by the Minister on 21 June 2004 is void, in order that the project be progressed in full compliance with the Government's policies, acts, regulations and guidelines, a number of steps will need to be undertaken:

1. Those requirements of the Time Bound Action Plan which potentially impact on the AAC for Amanab Blocks 1-4 will need to be actioned.
2. The PNGFA will need to prepare an updated National Forest Plan which includes Amanab Blocks 1-4 as a project to be developed, and the Minister for Forests will need to table the plan in Parliament (s47(3)).
3. The PNGFA will need to recalculate the AAC taking into account the national policies which are to be determined under the Time Bound Action Plan. If the AAC is sufficient to support a viable logging operation (more than 70,000 m³ per annum), the Board will need to negotiate appropriate changes to the Project Agreement. Changes to the agreement will require the approval of the Minister for Treasury and Finance under the Public Finance (Management) Act.
4. The Minister for Forests will need to ask Vanimo Forest Products to re-apply for a Timber Permit, and provided the application is in order, grant the permit within 30 days of receiving the application.
5. Vanimo Forest products Ltd will need to put in place the performance bond within 21 days of the granting of the permit.

The above steps, if followed, will mean that the conditions of the World Bank loan are not breached when the Minister signs the Timber Permit document. If the Government is prepared to breach the conditions of the World Bank loan, then steps 1 and 3 above might be omitted. Under this scenario it would be appropriate for the NEC to formally rescind Decisions 188/2001 and 170/2003. This, however, is a political question with much wider implications than only the forestry sector. It is not an issue for which it is appropriate that the Audit Team should make a recommendation.

RECOMMENDATIONS FOR CONSIDERATION BY GOVERNMENT

Based on the assumption that the Government does chooses to not breach the conditions of the World Bank loan, then it is **recommended** that:

1. The Board complies with the requirement of s98(5) of the Forestry Act and advises Vanimo Forest Products Ltd that the Timber Permit granted by the Minister on 21 June 2004 is void.

2. The Director of Environment and Conservation re-examines the Environmental Plan and either confirms the acceptability of the plan and the approval conditions, or uses his powers under the Environment Act 2000 to formally cancel the Environmental Plan Approval (now deemed a Permit) in which case a new Environmental Permit under the Environment Act 2000 will be required.
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8. In future the Minister for Treasury and Finance avoids granting conditional approvals, and only grant approval when all outstanding issues have been dealt with and resolved to the Minister's satisfaction.
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