

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 4**

KULU DAGI TIMBER AUTHORITY (WEST NEW BRITAIN PROVINCE)

AUDIT CONCLUSIONS:

RESOURCE ISSUES:

Resource issues are adequately provided for in the standard terms and conditions for a Timber Authority, as added to by NEC decisions.

LEGAL ISSUES:

Due process has been followed.

LANDOWNER ISSUES:

Insufficient consultation with landowners has taken place.

RECOMMENDATIONS (INCLUDING CORRECTIVE MEASURES IF REQUIRED):

- The Timber Authority may be issued by the “Chairman of the Provincial Forestry Committee”.
 - Landowner disputes might be avoided if the contractual arrangements are reconsidered with sound advice being given to the landowners.
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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.

REVIEW REPORT

SUMMARY PROJECT DETAILS:

Project type:	Timber Authority – Forest clearing for oil palm development.
Processing stage:	Consented to by the PNGFA Board by virtue of their non-response under s89(6). Awaits granting by the Chairman of the Provincial Forestry Committee.
Gross area:	Not applicable
Gross loggable area:	Not applicable
Potential sustainable timber yield:	Not applicable

A. FORESTRY AND PLANNING ASPECTS

The clearing of forested land for agricultural development does not require the application of the same sectoral planning and control measures as are required for long term sustainable forestry projects under the National Forest Policy, the Forestry Act and the National Forestry Guidelines. The key issues for land clearing Timber Authorities are:

- To ensure that the proposed agricultural development is viable in its own right, and is not being driven by or dependent on the cash flow from the forest clearing operations;
- To ensure that the forest clearing is undertaken in a progressive manner in accordance with the agricultural development programme, thus protecting as much of the forest as is possible against the potential non-performance of the agricultural developer; and
- That the forest clearing is undertaken in an environmentally responsible manner.

Guidance on these key issues is provided by NEC Decisions 113/96, 15/97 and 84/2000, and the mechanism by which the guidance is applied are the terms and conditions of the Timber Authority. These are specified in the Forestry Regulations, and are added to by NEC decisions 15/97 and 84/2000.

RECOMMENDATIONS REGARDING FORESTRY ASPECTS:

- That provided the terms and conditions of the Timber Permit are those specified in the Forestry Regulations as added to by NEC Decisions 15/97 and 84/2000, the Timber Authority may be issued.

B . LEGAL COMPLIANCE

SUMMARY:

- Each necessary step has been taken.
- Proper forms have been used.

Some additional notes are presented in Appendix 1.

RECOMMENDATIONS REGARDING LEGAL ASPECTS:

1. A Timber Authority may be issued but only by the “Chairman of the Provincial Forestry Committee” under the 1996 amendments to the Act. (There are some concerns about the wording of the amendments as they apply in this respect. These concerns will be stated in a further report. It seems that it is viewed that the “Chairman of the Provincial Forestry Committee” is the provincial member holding the position of chairman of a committee established by the Provincial Executive Council and responsible for provincial forestry matters.)
2. The current attitude of the landowners to their contractual entitlements as they now stand under the agreements applying to the Timber Authority should be ascertained prior to operations commencing.
3. The signing of landowner consents permitting access to timber resources in the context of proposed large-scale agricultural projects on their land should be considered as problematic. This is particularly the case where landowners are not assisted to access independent legal and commercial advice.

C. LANDOWNER ISSUES

RESOURCE ACQUISITION	
1. Landowner Awareness	
<p>The Review Team was looking for some 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 indication that an awareness program was carried out but landowners would have had a lot of opportunity to see what was happening around them in existing oil palm developments and TRPs over part of the area to be developed. Lists of names for so called Agency Agreement are on file relating to Stettin Bay application for TA.</p>
2. Landowner Mobilisation	
<p>Landowners are mobilised by means of Agency Agreements. The Review Team was looking to find evidence of full participation by landowners in the process.</p>	<p>There seems to be two initiatives to align the landowners. Stettin Bay collected a lot names in so called Agency Agreements to back up the TA application. Next there was a lease lease-back arrangement organised by AKT and Associates resulting in 4 ILGs representing 3 villages. One ILG had group of 7 lineage segments but there is no indication as to how these made up one ILG. There is no indication as to how they will manage to share the benefits from the project. This would be an internal matter for the ILG but experience shows that it must be addressed before actual cash for sharing arrives.</p>
3. Timber Authority	
<p>The Review Team examined the Timber Authority to assess:</p> <ul style="list-style-type: none"> • Monetary benefits for the customary group • Review level of consultation with landowners 	<p>The TA seems to be biased in favour of the Stettin Bay Lumber Company who will get much of the benefit from cutting the timber. It appears that landowners were not represented in any of the negotiations. The comment was heard that “The Kulu Dagi TA project must be recalled and re-examined. The proposal is totally unfair to the landowners.”</p>

RESOURCE ALLOCATION	
1. Project Proposal	
The Review Team assessed the Oil Palm Project Proposal for meaningful landowner participation.	<p>The development planned is first class and New Britain Palm Oil would certainly be able to deliver their part of the bargain based on their present performance.</p> <p>There is no attempt to empower the landowners to participate directly in the development e.g. by operating a wokabout somil to produce lumber for their own use and for sale. Also there is no mention of reserves for future lumber and even firewood for the landowners. One has to assume that the landowners have other tracts of land to take care of these requirements. In the same vein it is not evident from the documents that maintenance of the Land Groups from the point of view of secure gardening into the future has been addressed. The Project agreement is good in scope and vision but returns tend to favour the developer, New Britain Palm Oil to the disadvantage of the landowners. This may not be a good strategy for long term development.</p>
2. Environmental Plan	
EP is conducted by the preferred developer according to the prescription of the Environmental Act. Evidence of consultation with landowners is important.	An OEC approved Environmental Plan exists.

CONCLUSIONS REGARDING LANDOWNER ASPECTS:

Project is a well planned development that would result in 4000 ha oil palm a highway a port and a town as well as extend oil palm development down to the south of WNB. Unfortunately the planning is deficient in both parts of the project in that there is no genuine involvement of the landowners. The logging operation is in favour of SBLC and the oil palm project is in favour of NBPO.

RECOMMENDATIONS REGARDING LANDOWNER ASPECTS:

- A multi-lineage ILG should have an MOU negotiated to identify sharing mechanism for the future when benefits flow in order to pre-empt conflict when the project begins.
- Landowners should be given the chance to review the contractual arrangements with the assistance of independent legal and commercial advice.
- See also general report regarding use of ILGs by Forestry.

APPENDIX 1 : NOTES ON LEGAL ASPECTS

A. Deeming of the Board's Consent

On 25 September 2000 a notification on Form 171 was given to the Board indicating that the PFMC had approved the grant of the Timber Authority.

In the absence of a response, section 89(6) operates to deem the Timber Permit as having been consented to.

This may constitute a technical breach of the moratorium but has the force of law.

The Timber Authority however does not become finally effective until issued by the "Chairman of the Provincial Forestry Committee" under section 87(1) (as amended in 1996). It might be argued that the Chairman is now obliged to issue the Timber Authority as the section states that the Chairman "shall" issue it if it is recommended by the PFMC and then consented to. These two pre-requisites have been met.

B. Landowner Entitlements

There are strong indications in the province of landowners being unhappy with the agreements signed by them relating to the logging and marketing of timber under this proposed Timber Authority. It has been suggested that they were not given independent legal and commercial advice concerning the sale of their trees.

It might have transpired that these agreements were executed in order that the Oil Palm project would proceed. With the benefit of hindsight the logging arrangements might now be considered as being unacceptable. They have been described as "inequitable" but no opinion in that regard is expressed here.