

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 March 2001

Re: **INDIVIDUAL PROJECT REVIEW REPORT NUMBER 26**
CLOUDY BAY (CENTRAL PROVINCE)

AUDIT CONCLUSIONS AND RECOMMENDATIONS:

RESOURCE AND PLANNING ISSUES:

The sustainable timber yield principle has been complied with. Sensible operational procedures have not been complied with in that the resource data is based on a very low field inventory sample. A significant proportion (23%) of the forest is classified by the Office of Environment and Conservation as "fragile". The estimated sustainable annual cut is sufficient to support a conventional stand alone log export project (unless "fragile" forests are excluded from logging).

LEGAL COMPLIANCE:

Due process has generally been observed. The usual concerns about PFMC certification of Forest Management Agreements are indicated here. The supplementary Forest Management Agreement referred to in the files has not been sighted.

LANDOWNER ISSUES:

Landowner awareness over the years has been sufficient with the PNGFA playing an active role. The ILGs have been adequately documented with complete membership lists and some even providing landholding maps. Landowner concerns have been dealt with extensively in the Development Options Study.

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 Logging Code of Practice.
- That the PNGFA undertake additional field inventory work and verify the resource data.

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

- That the project should proceed with continued efforts to fully involve landowners in informed decision making.
- That the PFMC certification of the Forest Management Agreement and the Supplementary Forest Management Agreement may need to be redone.
- That landowner representatives must be present at relevant meetings of the PFMC.
- That the Supplementary Forest Management Agreement (which has not been sighted) must be drafted so as to truly supplement the original Forest Management Agreement.

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. Forest Management Agreement executed. Development Options Study completed. Project Guidelines approved by PFMC and submitted to the Board.
Gross FMA area:	148,000 ha
Gross loggable area:	91,000 ha
Net sustainable timber yield:	82,000 m ³ /annum (a)

(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>Yes – expires April 2002</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: 	<p>Yes. The gross loggable area in the FMA is stated to be 94,000 ha and is based on the logging exclusion areas set out in the PNG Logging Code of Practice 1996. The FIMS data indicates a similar estimate of 91,000 ha. Applying the standard 15% reduction factor indicates a net loggable area of 77,000 ha and 80,000 ha respectively.</p> <p>No. The FIPS data indicates a gross loggable volume of 52.9 m³/ha but the sample is very low (0.08%). The FMA document uses a figure of 54.9 m³/ha. PNGFA explains the difference as human error.</p> <p>Yes. Both the FIMS/FIPS data and the data in the FMA indicates a total net harvestable volume of 2.9 million m³.</p>

<ul style="list-style-type: none"> • Have “Fragile Forest Areas” (OEC definition) been considered: • Have environmentally sensitive areas been considered: • Have conservation set asides been appropriately implemented: 	<p>No, because there is no agreed position regarding fragile forest areas. An estimated 23% of the gross loggable area of the Cloudy Bay project is classified as Fragile Forest.</p> <p>Yes. Large scale Gazetted conservation areas 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>Yes – estimated to be 82,000 m3/a, or 63,000 m3/a if areas classified as Fragile Forests are excluded from logging. The DOS and the Project Guidelines present a figure of 75,000 m3/a.</p> <p>Yes</p> <p>Yes</p>

4. CONSISTENCY BETWEEN DOCUMENTS	
<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>The DOS and Project Guidelines set out a reduced net loggable area (68,000 ha) and consequently a reduced sustainable annual cut (75,000 m³/a).</p> <p>None found.</p>
5. ANY OTHER MATERIAL NON-COMPLIANCE REGARDING THE RESOURCE	
<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 Central 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 IN FMA DOCUMENT

- That the PNGFA checks the resource data and if necessary amend the FMA document, ensuring consistency with the data in the DOS and the Project Guidelines.

3. 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:

- Due process has generally been followed, and there has been a proper use of the prescribed forms.
- However there are real problems concerning the PFMC certification of both the initial FMA and the proposed supplementary FMA. It seems that the PFMC did not independently check the incorporation of the ILG's and the consent of the landowners to the project.
- The landowner awareness campaign that is to be conducted by the NFS is an essential foundation for the entire process. In this case it appears that prospective developers "got the jump" on the NFS.
- There is no evidence that landowner representatives were in attendance at relevant PFMC meetings.

A full compliance checklist and some additional notes are presented in Appendix 1.

RECOMMENDATIONS REGARDING LEGAL ASPECTS:

1. That the process of PFMC certification of an FMA (and all supplementary FMAs) must involve a genuine attempt to establish that the ILG incorporation work is bona fide and adequate. The willingness of landowners to sign the FMA must also be genuinely ascertained. The practice of PNGFA Headquarters preparing the submission to the PFMC relating to its certification should cease. It is for the PFMC to play the pro-active role in determining the matters about which it will give its certification.
2. That the attendance of landowner representatives at relevant PFMC meetings must be facilitated.
3. That great care must be taken when preparing a Supplementary FMA and proper legal advice must guide such a process from the start.

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>In 1992 Forest Minister Genia declared the Robinson River area as an LFA. No development took place. PNGFA was advised that the project must progress under the new Act. In 1995 a Landowner Company (LANCO) conducted a detailed and comprehensive awareness campaign. Already there were several LANCOs representing their own areas.</p> <p>In 1996 PNGFA conducted a detailed awareness campaign followed by a resource inventory.</p> <p>Nemea Landowners Association was formed to represent all of the Cloudy Bay landowners.</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 negotiations. 	<p>Gwalna Resources Development, a purported LANCO conducted ILG work identifying 35 land groups. This company then ran into a lot of opposition from land groups claiming misuse of the Gwalna clan name etc. Other land groups also complained including substantive accusations of misuse of the Land Groups Incorporation Act. Gwalna changed name to Abau Forest Products Ltd. ILGs reportedly finished by 1997.</p> <p>There are obvious concerns by landowners about the involvement of outsiders with vested interest in the affairs of the landowners. Landowners are concerned that future payments may go through the LANCO instead of the individual ILGs.</p> <p>The ILGs appear to have been compiled correctly, with membership and property list and</p>

	<p>some with maps outlining the clan boundary. Despite that, there are claims that certain clans have used names and listed properties that belong to others. Further claims state that creek names and property names are being used as registered clan group names.</p> <p>All ILGs finally agreed that Cloudy Bay Development Ltd be recognised as the representative body. Most LANCOs are in default of the Companies Act and due for de-registration. Based on the documentation the ILGs are very satisfactory.</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>FMA signed by 6/10/1997.</p> <p>Part 2 certified in March 1999.</p> <p>Form of the FMA has been complied with respect to term, landowner payments and certificate of authenticity regarding tenure and willingness to participate in the project.</p>

RESOURCE ALLOCATION	
1. Development Options Study	
<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>Landowner concerns and forestry options are dealt with extensively in the DOS. The infrastructure requested by the landowners is extensive. They also want to be involved in spin off business including some agricultural development.</p> <p>The DOS suggests that the species mix could support a combined log export and downstream processing operation.</p>
2. Project Guidelines	
Draft guidelines must be discussed and developed in consultation with the resource owners.	Draft Project Guidelines contain no reference to the landowners requirements.
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.	Yet to be drafted.
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.	Yet to be drafted.

Some additional notes are presented in Appendix 2.

CONCLUSIONS REGARDING LANDOWNER ASPECTS:

- The long drawn out progress of this project has resulted in registration of 10 companies involving landowners. Many have been de-registered for non-compliance with the Companies Act. Cloudy Bay Development Ltd finally demonstrated representation of all ILGs in the project area.
- There are a number of complaints from land groups regarding the operations of a LANCO. The PNGFA does not appear to have made any attempts to clarify the situation, stating that it is a problem for the Lands Department.

RECOMMENDATIONS REGARDING LANDOWNER ASPECTS:

1. That the PNGFA continue to liase with landowners to remove any doubts regarding ILG property and land ownership before the project is advertised.
2. That the PNGFA continue to liase with landowners to safeguard the interest of the landowners by ensuring that the right people are being consulted.
3. That the PNGFA continue to liase with the landowners in preparing Project Guidelines as there is potential for high expectations not being realised.

APPENDIX 1 : CHECKLIST OF COMPLIANCE WITH LEGAL REQUIREMENTS

PROJECT – CLOUDY BAY

Step	Compliance	Non-Compliance	Not Clear
<u>1. Landowner Consultation</u>			
Awareness campaign			?
Vesting of title	N/A		
ILG incorporation	Sept 96		
PFMC certificate	24/4/97		
Attendance of landowners at PFMC meeting			?
<u>2. Forestry Management Agreement</u>			
Form and content	Confirmed		
Execution	6/10/97		
Ministerial approval	6/10/97		
<u>3. Development Options Study</u>			
Board to arrange	22/6/99		
or exemption	N/A		
Directions from PFMC	30/7/99		
DOS given to Minister and PFMC	30/5/00		
<u>4. Project Guidelines</u>			
PFMC consults with L/owners and Prov Govt			?
PFMC to prepare draft	Confirmed		
Attendance of landowners at PFMC meeting			?

CHECKLIST NOTES:

1. There has been a proper use of all relevant forms.
2. There are disturbing indications of early involvement by a number of prospective developers. These include Concord Pacific, Kaly Investments (now de-registered) and Well Trust Enterprises. The NFS appears to have adequately controlled their involvement.
3. In March 1997 there was an attempt by the Minister to “fast track” the project. This was not acted upon and the NFS correctly pointed to the fact that the Provincial Forest Plan had not been formulated.
4. There is no indication on the file that the PFMC certification was done properly. Indeed it appears that the PFMC submission was drafted by the NFS in Port Moresby. The PFMC must make some attempt to independently verify the ILG incorporations and the consent of the landowners to the project.
5. There is no indication on the file confirming the attendance of landowners at the PFMC meeting at which the certification was approved.
6. The initial deficiencies in the certification process appear to be confirmed by the mention in 1999 of the need for an additional FMA to include ILG’s that were previously overlooked. This additional FMA appears to have been certified by the PFMC before the landowners were asked to sign it. There is no documentation on the files relating to the proposed additional FMA.

APPENDIX 2 : NOTES ON LANDOWNER ASPECTS

- 17/6/92 Robinson River declared LFA with LANCO Cloudy Bay Development Ltd ready to develop the project.
- March 1996 Forest Engineering Consultants Ltd prepared a detailed project proposal for Welltrust Enterprise Ltd. NFS advised that this was premature and outside the allocation process.
- 16/1/97 Gwalna Ltd decided to change its name to Abau Forest Products Ltd.
- 17/10/97 Vavili Timbers Ltd a new LANCO surfaced.
- 14/3/97 NFS internal memo displayed very poor understanding of LANCOs and relationship between ILGs and LANCOs.
- 13/6/97 NFS responded to Gwalna Ltd stating correctly that NFS would recognise the LANCO that represents all ILGs that sign the FMA.
- August 1999 All ILG Chairmen sign an agreement that they support Cloudy Bay Development Ltd.
- 29/5/2000 Cloudy Bay Development Ltd advised NFS of alleged fraud by Vavili Limited in claiming 48 ILGs when they only had support from about 12.