

**COMPLIANCE AUDIT OF PART OF THE PROJECT
ALLOCATION PROCESS FOR THE ASENGSENG
CONSOLIDATED FORESTRY PROJECT**

Prepared For:

THE GOVERNMENT OF PAPUA NEW GUINEA

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

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EXECUTIVE SUMMARY

This audit examines compliance of the project allocation process for the Asengseng Consolidated forestry project with the requirements of Government as set out in the National Forest Policy 1991, the Forestry Act 1991 and its Regulations, the relevant environmental legislation, and other regulations and guidelines. The 2000/2001 Review of "In Process" Forestry Projects examined compliance to the stage of Project Guidelines being developed. The current audit examines compliance from the Project Guidelines being developed to the negotiated Project Agreement being presented to the Board for execution. It also examines the degree to which the recommendations for remedial action made by the 2000/2001 Review Team and endorsed by the National Executive Council (NEC) have been implemented by the relevant Government agencies (in particular the National Forest Service (NFS) and the Department of Environment and Conservation (DEC)).

The key audit conclusions are as follows:

CONCLUSIONS AFFECTING ALL FORESTRY PROJECTS

- There has been a major change in the process for the allocation of forestry projects due to the requirements of the new Environment Act 2000 which came into force on 1 January 2004. The Act requires an extensive process involving an Environmental Impact Assessment and an Environmental Impact Statement before the activity being planned can be approved (or declined) by the Director for Environment, and subsequently the Minister, and before an Environment Permit may be issued.

Asengseng Consolidated falls short of being an "existing activity" under the Act, and to the Audit Team it appears that the full procedure for obtaining the required Environmental Permit must be observed. The Minister for Forests cannot entertain an application for a Timber Permit until an Environment Permit is approved.

- The current Government through the NEC has made confusing decisions. On one hand through Decision 43/2002 (November 2002) it "*endorsed the Minister for Forests to process timber projects without any hindrances¹*" yet on the other hand through Decision 170/2003 (August 2003) it has "*approved the revised Time Bound Action Plan*". A clarifying direction from Government is required. The key question to be answered is whether the Government wishes to continue with the World bank loan funded Forestry and Conservation Project (FCP) or not.

¹ Although not stated, it is clear that the "hindrances" referred to are the Forestry and Conservation Project (FCP) and the Time Bound Action Plan, both of which are seen as an impediment to progressing timber projects.

- The Board and staff of the PNGFA continue to fail to implement the Time Bound Action Plan endorsed by the NEC. The Government is contractually bound to do so under the terms and conditions of the World Bank loan. The issues intended to be resolved by implementation of the plan are typically either trivialised or ignored.
- The Audit Team agrees with the view of the PNGFA Board (Meeting 102 of June 2004) that *“complacency and lack of technical and managerial capacity exists within the Divisions and Branches [of the National Forest Service] which are directly or indirectly responsible for resource allocation”*. A lack of professionalism is evident, especially with regard to the poor quality of the forest resource descriptions which underpin new forestry projects, and which despite recommendations made four years ago, have not yet been improved.

CONCLUSIONS REGARDING THE ANNUAL ALLOWABLE CUT (AAC)

- That due process has not yet been observed. Mainly:
 1. There is still no reliable forest resource description. Through the Time Bound Action Plan the NEC directed that Asengseng Consolidated was *“to be progressed subject to proper forest resource descriptions”*; and
 2. The Time Bound Action Plan endorsed by the NEC under the current Government has still not been implemented, and consequently a policy decision regarding the logging of fragile forests is still pending.

CONCLUSIONS REGARDING LEGAL COMPLIANCE

- That development of Asengseng Consolidated is in breach of s54 of the Forestry Act in that the consolidated project is not mentioned in the National Forest Plan, nor are two of the three component areas (Asengseng and Agulu).
- That for that part of the allocation procedure examined by the audit, that due process has generally been observed. However, there needs to be increased attention to the completion and filing of the prescribed statutory forms. There are however outstanding compliance issues from the 2000/2001 Review Report.
- That the failure of the NFS to attend to the recommendation of the 2000/2001 Review Team (and the Time Bound Action Plan) with regard to defects in the Incorporated land Groups (ILG) and the FMAs, has placed the NFS in a vulnerable position now that landowners from the Agulu and Asengseng components of the project are threatening to pull out of the project, and to take legal action.
- There is no legal instrument to formally record landowner agreement to consolidation. This is seen as a vulnerability in the event that there are disputes between the landowners from the Forest Management Agreement (FMA) areas making up the consolidated project.

CONCLUSIONS REGARDING LANDOWNERS

- Differences between two factions of landowners regarding the choice of preferred developer are noted.

RECOMMENDATIONS

Recommendations are made for consideration by the relevant parties. These are primarily aimed at:

- Meeting the sustainability requirements of the National Forest Policy 1991 by progressing the project on the basis of a reliable forest resource description, and consequently a reliable estimate of the sustainable annual allowable cut (AAC);
- Ensuring compliance with the requirements of the new Environment Act 2000; and
- Ensuring that the Government meets its contractual obligations under the terms and conditions of the World Bank loan for the Forestry and Conservation Project.

At the current stage of project development (the Board has not yet executed the Project Agreement and as thus has not yet contractually committed the State), the opportunity to make changes still exists. Consequently **the key recommendation is:**

- **That the PNGFA Board does not execute the Project Agreement at this time.**

Further recommendations are as follows:

- That Government make a clear decision whether it wishes to retain the Forestry and Conservation Project (and thus implement both the project and the Time Bound Action Plan), or to formally withdraw from the project and the World Bank loan agreement².

If the Government decides to proceed with the FCP, then **it is further recommended:**

- That Government revise the timetable inherent in the Time Bound Action Plan, and direct its implementation.
- That the Minister for Forests prepares a submission to the NEC requesting it to formally approve a change to the National Forest Policy implementing a 35 year cutting cycle to replace the current requirement for a 40 year cutting cycle.

² It is noted that PNG is a signatory to the International Tropical Timber Agreement which requires observance of sustained yield management of tropical forests.

- That the PNGFA Board:
 1. Directs the member representing the DEC to provide the Board with a full and detailed brief explaining the requirements of the Environment Act 2000, and how the Department sees the Act will impact on the development of new forestry projects;
 2. Directs the NFS to expedite its participation in the joint DEC/NFS Committee considering the requirements of the Act;
 3. Satisfies itself that the requirements of the Environment Act 2000 can be met; and
 4. Informs the Minister of the impact of the Act on new project development (both in terms of procedure and time requirements).

Provided the Board is satisfied that the further development of Asengseng Consolidated is able to comply with the requirements of the Environment Act 2000, then **it is further recommended:**

- That the PNGFA Board direct the NFS to:
 1. Update the National Forest Plan in order that s. 54 of the Forestry Act 1991 may be complied with;
 2. Implement those aspects of the Time Bound Action Plan which impact on the estimate of the sustainable AAC, and in particular to undertake field inventory work to provide a reliable estimate of the loggable volume per hectare and the sustainable AAC; and
 3. Take into account the provision in the FMA for a 10% conservation set-aside, when recalculating the AAC.
- That the NFS:
 1. Revisit and verify the ILGs;
 2. Make proper enquiries into the certification of the FMAs, and that the certification be reconfirmed; and
 3. Reconfirms the AAC after dealing with all the requirements of the Time Bound Action Plan which impact on the AAC (with particular attention to additional field inventory).

Provided the recalculated sustainable AAC exceeds the Board determined 70,000 m³ minimum for a viable stand alone log export project, then **it is further recommended:**

- That as the proponent of the project, the PNGFA initiates the process required to obtain an Environment Permit under the Environment Act 2000;

- That the PNGFA enter into a formal agreement with the landowners for each FMA area recording their agreement to the consolidation, and to the consolidated area being managed as a single sustainable project;
- That the permitted maximum AAC set out in the Project Agreement is revised;
- That the PDB is properly implemented as originally designed by removing the requirement for the developer to pay levies and to deliver social infrastructure.
- That the PNGFA makes an increased effort to ensure that landowners are adequately consulted, and provided with a real opportunity to present their case where there is dissent.

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 at that time 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 reviewed. In addition it made a number of generic recommendations applying to all projects. A copy of the recommendations are set out in Attachment 1. The recommendations were endorsed by the National Executive Council (NEC), and developed by the Department of the Prime Minister and the NEC into a Time Bound Action Plan for implementation by the relevant Government Departments and Authorities, mainly the PNGFA and the Department of Environment and Conservation (DEC).

ASENSSENG CONSOLIDATED

One of the project reviewed was Asengseng Consolidated. At the time of the 2000/2001 Review, the project had been progressed to the point where a Development Options Study (DOS) was due to be prepared.

THIS COMPLIANCE AUDIT REPORT

Since the 2000/2001 Review Report was produced and the Time Bound Action Plan was endorsed by the NEC under both the previous and the current Government (NEC Decisions 188/2001 and 170/2003), the PNGFA Resource Development Division has further progressed Asengseng Consolidated to the point of negotiating a Project Agreement with a duly selected developer (Niugini Lumber Merchants Ltd), and submitting the agreement to the Board for execution. This compliance audit report was requested by the Managing Director of the PNGFA in order that any compliance issues might be addressed before the Project Agreement is executed by the Board, and thus becomes a legal contract binding the State.

THE PROJECT DEVELOPMENT ENVIRONMENT

This compliance audit has been undertaken against a background of strongly divergent views with regard to new logging project development. The 2000/2001 Review Team recommended that a number of generic issues be addressed, as well as a number of issues specific to Asengseng Consolidated, before the project was progressed any further. The NEC approved Time Bound Action Plan was designed to address the issues raised and to ensure that the recommended remedial actions were implemented. In addition to the NEC approving the plan, the Government also agreed to the implementation of the plan being included as a condition of a forestry related loan under negotiation at the time with the World Bank (for the Forestry and Conservation Project (FCP)). The loan agreement was duly signed in December 2001.

In August 2002 a new Government was elected. The new Government almost immediately directed that it wanted 10 new logging projects to be initiated as soon as possible as a contribution to its Export Led Economic Recovery Strategy. A number of senior NFS managers saw the Time Bound Action Plan as a serious impediment to meeting the directions of the new Government, despite the new Government retrospectively endorsing the Time Bound Action Plan through NEC Decision No 170/2003. It is clear from meeting minutes that this view was shared by a number of the members of the PNGFA Board.

At the time of this audit it is the observation of the Audit Team that the situation remains strongly polarised. The NFS continues to ignore the requirements of the Time Bound Action Plan and to push the further development of a number of new projects, including Asengseng Consolidated. It is being encouraged by the failure of the Board to insist that the relevant decisions of the NEC are implemented, and by the Board continuing to support the development of new projects by approving various necessary instruments (e.g. the Project Guidelines, draft Project Agreements) before the requirements of the Time Bound Action Plan are fully complied with. Board members in the minority regularly raise the need to resolve the issues identified by the 2000/2001 Review Team and set out in the plan. Whilst the issues do receive some attention, typically they are trivialised or ignored by senior NFS officers or other members of the Board.

It is true that the NEC also (Decision 43/2002 in response to a submission by the Minister for Forests):

Endorsed the Minister for Forests to process timber projects particularly the 10 projects with the exception of Kamula Doso project approved for development by the Independent Review Team without any hindrances, to contribute towards Economic Recovery.

The term "hindrances" was not defined. However it is clear from the Minister's submission that it is a reference to the FCP and the Time Bound Action Plan. A number of NFS staff and members of the PNGFA Board appear to interpret the NEC direction to mean that the Time Bound Action Plan may be ignored. This is despite the current Government having endorsed the plan under NEC Decision 170/2003, and implementation of the plan being a contractual obligation on Government by being a condition of the loan agreement with the World Bank.

The Audit Team is gravely concerned. Although as noted above the PNGFA Board periodically discusses issues raised by the Time Bound Action Plan, little is resolved. The Board's decision (Board Meeting 101 of May 2004) that it:

..... resolves to advise the Ministerial Committee on Economic matters that the National Forest Service has been complying, and is complying and will continue to comply with the conditions set by the World Bank

can only be interpreted as self-delusion. Not only were the conditions not set by the World Bank (they were negotiated between the World Bank and the PNG Government), but key aspects of the conditions, including the requirement to implement the Time Bound Action Plan, continue to be ignored.

There continues to be strong and ongoing political pressure to issue new Timber Permits quickly. Previous compliance audits³, which also identify the situation as described above, are seen by some as unnecessary and unwelcome impediments to progress.

METHODOLOGY

The same methodology as developed by the 2000/2001 Review Team has been adopted as the basis for this audit.

2. FOREST RESOURCE ISSUES

Notes regarding the sustainable annual allowable cut (AAC) are set out in Attachment 2.

The National Forest Policy 1991 requires that the forests be managed on a sustainable basis. A consequential requirement is that the forest resource be properly assessed and described in order to determine the net loggable area in accordance with the limitations on logging set out in the PNG Logging Code of Practice; the net loggable volume per hectare based on field inventory; and the sustainable AAC. Whilst an overly conservative estimate is acceptable (the allowable cut can always be increased), any overestimation of the AAC will result in the forest being logged faster than the rate of sustainable growth, and the eventual depletion of the resource. This undesirable outcome is already evident in some existing logging projects in PNG, e.g. Makapa.

Asengseng Consolidated was considered by the 2000/2001 Review Team as being one of four which the Team identified as having the potential to be developed into successful commercial log export projects – subject to some remedial actions.

By applying sensible and practical harvesting and marketing criteria to the list of "in process" projects, and adjusting the estimated sustainable yield estimates for the combined effects of excluding Fragile forests from logging; fully implementing the 10% forest set-asides for conservation purposes; and applying a 40 year cutting cycle, then Table 3 indicates that there are four projects which have the potential to be developed into successful commercial log export projects (more

³ Previous compliance audits have been carried out for East Awin (February 2004), Wavoi Guavi (April 2004) and Amanab Blocks 1-4 (August 2004).

than 70,000 m³/annum sustainable yield) regardless of the decisions made regarding Fragile forests, conservation set-asides or the cutting cycle. All four require some remedial action.

Table 4 lists the projects with commercial potential. It also sets out the key areas of non or inadequate compliance which must be remedied. These projects may be progressed by the PNG Forest Authority as priority projects

(Underlining added).

The remedial actions required for Asengseng Consolidated were that the PNGFA should:

- Undertake additional forest field inventory up to a 1% minimum sample.
- Check the net loggable area estimates based on the data contained in FIMS which recognises the limitations on logging set in place by the Logging Code of practice.
- Check and amend if necessary the net loggable area estimates and the net volume per hectare information for all three component FMA areas, and update the FMA documents accordingly (and in particular complete the resource description in the FMA document for the Asengseng component);
- Ensure that the recalculated net loggable volume data is included in the DOS, the Project Guidelines and the Project Agreement;
- Ensure that the DOS and the Project Guidelines make it clear to potential investors that there are three FMA areas each of which is contractually required to be managed on a sustainable basis.

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 Resource Development Division had not taken into account when calculating 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” were identified in a report prepared for DEC in 1999, and the relevant forest types have been appropriately tagged in the PNGFA’s FIMS data base allowing them to be deducted from the net loggable area. The PNGFA Resource Development Division had not provided for the fragile forest areas to be excluded from logging when calculating the sustainable AAC; and

- The sustainable cutting cycle. The PNGFA Resource Development Division 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, and although some discussions have been held and some draft papers produced, a submission on any of the above issues has yet to be forwarded to the NEC.

At the time of this audit the current status is as follows:

- 10% set-aside:

This has been the subject of a number of discussions by the PNGFA Board. A draft NEC submission was prepared jointly by DEC and the PNGFA in mid 2004. The Board resolved at its meeting No 99 (January 2004) that it:

Approves a limit of 10% reduction in net operable area as conservation set-aside in all Forest Management Agreements (FMAs).

Whilst being a useful endorsement of the concept, the limit of 10% of the net loggable area is already set out as a maximum in the terms and conditions of each existing FMA. The issue is that the set-aside has not been allowed for in the calculation of the sustainable AAC by the PNGFA Resource Development Division, and that the PNGFA's right to set aside forest for conservation purposes has not been carried forward into the Project Agreement. As far as the Audit Team is able to ascertain, conservation set-asides have not yet been satisfactorily dealt with.

- Fragile Forests:

This has been the subject of a number of discussions by the PNGFA Board, and was also considered in the draft NEC submission referred to above. At one point the Board resolved that a 50 year cutting cycle should be applied. At its meeting No 102 (June 2004) the Board resolved to place the issue in the hands of DEC to reach a formal position. Discussions held with DEC Senior Managers indicates their wish to see some if not all fragile forests protected from logging. As at February 2005 there is no formal NEC approved resolution.

- Cutting Cycle:

This was discussed at Board Meeting No 107 (December 2004). It was pointed out by a Board member that the change from 40 to 35 years was a condition of the Economic Recovery Policy agreed between the PNG Government and the World Bank in 1992⁴. Consequently the Board resolved:

⁴ This has not been verified by the Audit Team. The Time Bound Action Plan requires (Clause 2.2.10) that "A standard cutting cycle must be agreed and applied to the calculation of the sustainable annual cut to ensure proper, scientifically based, compliance with the sustainability requirement under the Forestry Act".

That the Board approves the Amendment to the National Forest Policy to reduce the cutting cycle from forty to thirty-five years.

This decision by the Board does not however resolve the issue, as the Board does not have the power to alter policy instruments set in place by the NEC. What is required is a request through the Minister for Forests for the NEC to agree to a variation of the National Forest Policy.

The conclusion reached by the Audit Team is that the required policies have not yet been satisfactorily clarified, and consequently the PNGFA is not yet in a position to reassess the forest resource description for Asengseng Consolidated project in accordance with the recommendations of the 2000/2001 Review Team and the requirements of the Time Bound Action Plan. The PNGFA has not however, felt itself constrained by these requirements, and has progressed the project anyway. The fact that the PNGFA Board approved the Project Guidelines indicates that the Board likewise does not feel itself constrained.

THE ESTIMATE OF THE AAC

The estimate of the AAC based on the data presented in the respective FMA documents is 115,000 m³. The Development Options Study (DOS) indicates an AAC of 96,000 m³. The decrease is due mainly to the significant reductions in both the net loggable area and the net loggable volume per hectare for the Asengseng component. There is also an increase in the net loggable area for the Asirim component.

The 2000/2001 Review Team found that the original estimate was unreliable for the following reasons:

- The field inventory undertaken in Asengseng, Agulu and Asirim was less than adequate at an estimated 0.49%, 0.07% and 0.10% of the gross loggable area (as recorded in the PNGFA's Forest Information Management System (FIMS)) respectively;
- The results of the field inventory work (gross volume per hectare estimates) are considered to be unrealistically high at 60.6, 53.9 and 54.2 m³ per hectare respectively;
- The net loggable area recorded in the FMA documents is about 103,000 ha, whereas FIMS, which takes into account the limitation on logging set out in the PNG Logging Code of Practice, indicates a net loggable area estimate of 88,000 ha.

The AAC estimate of 96,000 m³ set out in the DOS is based on the FIMS area data, and the original forest inventory data which as noted above is considered to be unrealistically high. The data set out in the DOS is maintained throughout the project Guidelines and the Project Agreement.

The 2000/2001 Review Team recommended that additional field inventory be undertaken. This has not been done.

OBSERVATION OF DUE PROCESS

With regard to the determination of the AAC for Asengseng Consolidated it is the opinion of the Audit Team that there has been inadequate observation of the due process required to meet the requirements of the National Forest Policy 1991 and the Forestry Act 1991. The key aspects of non-compliance are:

- The failure to develop reliable forest resource descriptions; and
- The failure to properly implement the requirements of the Time Bound Action Plan which impact on the estimate of the AAC.

3. LEGAL COMPLIANCE

CHANGES TO THE LEGAL REQUIREMENTS FOR NEW FORESTRY PROJECTS

A new Environment Act 2000 came into force on 1 January 2004. It represents the most substantive change to the legislation affecting the allocation of new forestry projects since the Forestry Act 1991 itself came into force in mid-1992. The Act has placed a significantly stronger emphasis on national environmental values, and thus has placed significantly stronger controls on where logging operations may be undertaken.

Under s. 77 of the Forestry Act, an application for a Timber Permit must be accompanied by an Environmental Plan which has been approved under the Environmental Planning Act (Chapter 370). The Environmental Planning Act has been repealed by the new Environment Act 2000.

The Environment Act 2000 requires that a logging operation must have an Environment Permit, thus strengthening the requirement for appropriate environmental controls set out in the Forestry Act. The Environment Act 2000 provides (s. 136(1)) that Environmental Plans approved under the repealed Environmental Planning Act are deemed to be Environment Permits for the purposes of the new act. In addition, where a logging project was lawfully being carried out at the time the act came into force, then it is permitted to continue.

For new logging projects however, the Environment Act 2000 sets out an involved process which must be completed before a Timber Permit can be granted under the Forestry Act 1991. Notes regarding the Environment Act 2000, and the process for obtaining an Environment Permit, are presented in Attachment 3. A significant part of the process is intended to evaluate whether or not logging is to be permitted. Clearly a positive outcome would be needed before the PNGFA would be justified in proceeding with the acquisition of forest resources from landowners under an FMA.

There appears to be no transition provisions for the treatment of forestry projects for which the forest resource was acquired before the Environment Act 2000 came into force and the allocation process has not yet been initiated, or new projects where the allocation process is at an advanced stage, as is the case for Asengseng Consolidated. It is the Audit Team's interpretation that for Asengseng Consolidated the Act will require

the full environmental assessment procedure to be applied. A component of the procedure is a decision by the Director for Environment, or the Minister for Environment, as to whether logging will or will not be permitted on environmental grounds.

It would seem sensible for the PNGFA Board to defer the signing of the Project Agreement until such time as the implications of the Environment Act 2000 are clearly understood. Discussions held with senior DEC Managers indicates that DEC is still clarifying the requirements of the Act in relation to forestry projects for itself.

COMPLIANCE WITH THE FORESTRY ACT 1991

Notes regarding legal compliance issues are set out in Attachment 4. For that part of the allocation procedure examined by this report, due process has generally been observed.

The 2000/2001 Review Report recommended that:

1. The ILG work should be re-visited and verified by the NFS; and
2. That the certification of the FMAs must be re-confirmed after proper enquiries are made.

This work is yet to be undertaken by the NFS. It is the opinion of the Audit Team that the lack of attention to the above recommendations may leave the PNGFA in a vulnerable position now that the landowners from the Agulu and Asengseng components of the project have threatened to withdraw from the project.

COMMENT REGARDING THE FINAL PROJECT AGREEMENT

The following comments are made regarding the details of the final project agreement:

Clause 37: A separate clause for variation poses the risk of abuse by either party particularly to the disadvantage of other stakeholders such as the landowners. As the landowners are not privy to the contract such a clause leaves room for the PNGFA and the proponent company to vary any term/s of the agreement as and when they think fit.

Instead of a separate clause it is recommended that the variation clause be tied in with clause 38.3 (periodic review), or that the clause be rewritten so that in the event of a need to vary a term/condition, the parties can negotiate with proper consultation and participation of the landowners.

Clause 5.1(c): The opening sentence should commence with 'Subject to the grant of a Timber Permit', so that it is clear to the parties that the representations and warranties do not apply until the Timber Permit is granted. This will then be consistent with clause 21.2 of the agreement where in the event of conflict between the terms of the agreement and those contained in the Timber Permit the terms of the permit prevail.

4. AUDIT CONCLUSIONS

The conclusions of this Audit with regard to the AAC are as follows:

- That although the forest resource description is based on some field based inventory work, it has become clear to the Audit Team that the inventory data produced by Planning Division is not reliable. The net loggable volume per hectare estimates at 38 – 42 m³ per hectare are judged to be too high to be credible. The conclusion drawn is that the forest resource description for Asengseng Consolidated is not sufficiently reliable to ensure that the sustainability requirement of the National Forest Policy is being met. In the opinion of the Audit Team it is also not sufficiently reliable to be used as the basis for a long term (35 year) commercial agreement which must be commercially viable if the payments required of the company (royalty, PDB, log export tax) are to be made.
- That there is no evidence that the Government has rescinded NEC Decision 188/2001 or 170/2003, and consequently that the NEC's directions that the Time Bound Action Plan be implemented, and that the policy consequences be applied to all new and in process forestry projects, is still in force. Compliance with the Time Bound Action Plan is judged to be a requirement of due process.
- That the above conclusion is strongly supported by the fact that the Government has not terminated the Loan Agreement with the World Bank. Under the agreement the Government has contractually undertaken to implement the Time Bound Action Plan.
- That the PNGFA Board, the NFS and DEC have not complied with due process by failing to implement the Time Bound Action Plan, and by progressing new forestry projects before the policy consequences of the Time Bound Action Plan were properly decided by the NEC. Of particular relevance are the policy decisions regarding the loggability of Fragile Forests, and the length of the cutting cycle.
- That the Resource Development Division has continued to ignore the right of the PNGFA to set aside 10% of the gross loggable area for conservation purposes when calculating the AAC, and further that this right is not properly brought forward into the Project Guidelines or the Project Agreement.
- That the Resource Development Division, despite giving advice to the Board to the contrary, has not identified through the Project Guidelines that each of the four FMAs making up the consolidated project undertakes that the forest area covered by the FMA will be sustainably managed. This will have implications for operational management, and the flow of benefits to landowners, which appear to be being ignored. (See conclusion set out below regarding the lack of a formal agreement for consolidation).

The conclusions of this Audit with regard to legal compliance are as follows:

- That the new Environment Act 2000 has put in place an involved process for assessing the impact of new forestry projects which may result in the Director for Environment, or the Minister for Environment, declining to approve logging as an acceptable activity for the proposed site. As a consequence it behoves the PNGFA to obtain approval under the Act before commencing to acquire forest resources from the landowners. The Act has placed a significantly stronger emphasis on environmental values, and thus has placed much stronger controls on where logging operations may be undertaken.
- That the Environment Act 2000 makes no special provisions for projects such as Asengseng Consolidated, where the forest resource was acquired before the Act came into force, and where the project allocation procedure set out in the Forestry Act 1991 is well advanced. It would appear that the PNGFA will need to first implement the requirements of the Environment Act 2000, and confirm that logging will be permitted under the Act, before the allocation procedure may be completed.
- That neither DEC nor the PNGFA have yet come to understand clearly the requirements of the Environment Act 2000, and that discussions are urgently required.
- That Asengseng Consolidated is in breach of s. 54 of the Forestry Act 1991 in that it is not mentioned in the National Forest Plan. S. 54 requires that "*forest resources shall only be developed in accordance with the National Forest Plan*". An update of the plan will be required before there is compliance.
- That in respect of legal compliance, due process has generally been observed, although there is a worrying lack of attention to the completion and filing of the prescribed forms.
- That the lack of a formal consolidation agreement between the PNGFA and the landowners representing the three FMAs which make up the consolidated project, is of concern. Disaffected landowners could conceivably use this to their advantage if they wished to disrupt the project, or mount a legal challenge.

ATTACHMENTS:

1. Findings of the 2000/2001 Review Affecting Asengseng Consolidated
2. Notes Regarding the Sustainable Annual Allowable Cut
3. Notes Regarding the Environment Act 2000
4. Notes Regarding Legal Compliance

