

**OBSERVATIONS REGARDING THE EXTENSION OF
THE TERM OF TIMBER PERMIT 1-7 WAVOI GUAVI AND
THE PROPOSED ALTERATIONS TO THE PERMIT
TERMS AND CONDITIONS**

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

At no time since the Minister granted an extension to the term of TP 1-7 Wavoi Guavi in February 2002 have the terms and conditions of TP 1-7 Wavoi Guavi been in compliance with the Forestry Act 1991 (as defined in this report) or the National Forest Policy 1991 (which the Act implements).

Further, the terms and conditions the NEC directed the PNGFA to implement (NEC Decision 89/2003), would also not have met the requirements of the Act.

Although the PNGFA Board has persisted with its directions to the PNGFA to negotiate with the permit holder to secure terms and conditions which would put the Timber Permit into compliance with the Act, the appointed negotiating team had little chance of achieving a successful outcome without unequivocal Government support. The product of the most recent negotiations (the March 2004 document entitled "Agreement to Amend Timber Permit No 1-7 by Mutual Agreement Between [the] PNG Forest Authority and [the] Wavoi Guavi Timber Company"), even if formally implemented, would also not meet the requirements of the Act. There is little doubt that all of the relevant parties understand this.

Given the limited nature of the remaining forest resource it is questioned whether in the case of TP 1-7 Wavoi Guavi compliance with the Act is realistic, or indeed economically or socially desirable.

Given the current lack of a legal basis for extending the term of the permit it is the view of the 2003/2004 Review Team that appropriate legislative action is warranted. However, before any action is taken in this regard, the existing challenge to the legal validity of the Timber Rights Purchase agreement underlying Block 3 (which contains the bulk of the remaining forest resource), should be determined as a matter of urgency.

1. PURPOSE OF THIS REPORT

The Minister for Forests granted an extension of the term of TP 1-7 Wavoi Guavi for 10 years on 4 February 2002. Since that time the PNG Forest Authority (PNGFA), under the direction of the PNGFA Board, has been attempting to secure amendments to the terms and conditions of the Timber Permit which would bring the logging project into compliance with the Forestry Act 1991. Compliance is a condition of the Government's Forestry and Conservation Project (FCP) Loan from the World Bank. An independent review team (referred to as the 2002/2003 Review Team) undertook an audit in early 2003 and found that compliance had not yet been achieved. At the direction of the Board and the office of the Chief Secretary, further discussions and negotiations between the permit holder and the PNGFA were held, culminating in the March 2004 document entitled "Agreement to Amend Timber Permit No 1-7 by Mutual Agreement Between [the] PNG Forest Authority and [the] Wavoi Guavi Timber Company".

This report has been produced by the 2003/2004 Review Team in response to a request from the PNG Government, through the office of the Chief Secretary, for the team to examine whether compliance with the Forestry Act 1991 has now been achieved.

2. POLICY BACKGROUND

The National Forest Policy 1991 introduced the objective of sustainable log production for the Papua New Guinea forestry sector. Although the policy sets out the intention that sustainability be managed on a provincial basis, given the private ownership of the forest resource sustainability can be implemented and regulated only on a project by project basis where the landowners have agreed that their forest should be managed this way.

The National Forestry Policy 1991 and the Forestry Act 1991 which implements the policy, envisaged that (unsustainable) logging projects existing at the time the Forestry Act 1991 came into force¹ would as much as possible be restructured into sustainable projects. In order to facilitate this objective the PNGFA Board was given the powers to vary the terms and conditions of existing project agreements to the extent that they did not comply with the new policy and Act. The key compliance requirement was a reduction of the annual allowable cut (AAC) to a sustainable level. It was envisaged that where restructuring was for what-ever reason not achieved, then logging would continue at the permitted but unsustainable rate until the original term expired without extension. It was anticipated that by this time the forest resource would be exhausted, and that the project would then cease to have effect. This has been the case for a significant number of projects originally authorised under legislation preceding the 1991 Act.

¹ These were either Timber Permits (TPs) granted under the preceding Forestry Act, or Local Forest Areas (LFAs) granted under the Forestry (Private Dealings) Act. Both were repealed by the Forestry Act 1991.

Although a significant effort was made during the period 1993 to 1995, no projects already existing at the time the Forestry Act 1991 came into force were successfully restructured and thus placed on a sustainable basis. This is despite the fact that a significant number of permits (including TP 1-7 Wavoi Guavi) had been granted immediately before the Forestry Act 1991 came into force, and thus had the potential to be restructured at the time. The Government's wish to avoid potential litigation by permit holders contributed to this outcome.

Today, in 2003/4, after about 10 years of logging at the permitted unsustainable rate, it is generally impractical to consider restructuring any remaining projects set up under the legislation preceding the Forestry Act 1991 in order that they might better comply with the National Forest Policy 1991 and the Forestry Act 1991. Only remnant resources remain, and essentially the opportunity to restructure projects has passed.

3. TP 1-7 WAVOI GUAVI

TP 1-7 Wavoi Guavi was an unsustainable 10 year Timber Permit granted in April 1992, immediately before the Forestry Act 1991 came into force.

The permit was somewhat exceptional in that it was based on a total resource of 4.12 million m³ and a annual allowable cut of 350,000 m³. The term of the project was thus always going to expire before the resource was fully harvested, and before all of the forest land owners had received their expected benefits.

Over the years of its operation there have been many landowner calls for improved landowner benefits. A review of landowner benefits in 1998² indicated that the benefits provided for landowners under TP 1-7 Wavoi Guavi were the lowest of all the permits existing at the time. File notes indicate that:

Attempts around 1998 – 2000 to review the W-G Timber Permit never got off the ground because RH refused to cooperate – a loophole had been placed into the TP which only required a 5 yearly review of the forest working plan but not the TP³.

In 2002 some of the landowners of Block 3 challenged the validity of the Timber Rights Purchase (TRP) agreement and the Timber Permit under OS 121. This is a serious matter which is still pending.

² Audit of Landowner Benefits Received from Harvesting Operations Under Timber Permit (1998). Groome Poyry Ltd.

³ It would appear that this loophole was not removed when the term of the permit was extended by the Minister, or during any subsequent negotiations.

4. OBSERVATIONS AND CONCLUSION

Synopsis

The permit holder, Wavoi Guavi Timber Company Ltd, applied for an extension of the term of the permit on 12 September 2001 before the permit was due to expire on 9 April 2002. The application was processed by the PNG Forest Authority, and the Minister granted a 10 year extension on 4 February 2002.

In the meantime the Government had signed the World Bank FCP Loan on 20 December 2001. This requires (Schedule 5 Clause 10) the PNG Government to review all logging permit applications⁴ submitted after the date of the agreement to ensure compliance with the requirements of the Forestry Act 1991.

Although the extension of the term of the permit on then existing terms and conditions had already been granted by the Minister, under the direction of the Board, the PNGFA continued with a review of the terms and conditions originally initiated in 1998. The review process included negotiations with the permit holder, and resulted in a document setting out the amendments agreed to between the permit holder and the State Negotiation Team in early 1993.

Neither the terms and conditions of the permit at the time it was extended, nor the terms and conditions which would have applied had the 1993 agreed amendments been formalised, would have met the requirements of the Forestry Act 1991.

An independent review of the extension of the term of the permit which reported in March 2003 raised questions regarding the legal basis for the extension, aspects of due process and also reiterated the lack of compliance with the requirements of the Forestry Act 1991.

Since March 1993 the PNGFA, again under the direction of the Board, has further engaged the permit holder with a view to ensuring compliance with the Forestry Act 1991. The outcome of this process is a document entitled "Agreement to Amend Timber Permit No 1-7 by Mutual Agreement Between [the] PNG Forest Authority and [the] Wavoi Guavi Timber Company" produced in March 2004.

Compliance With The Forest Act 1991

Compliance with the Forestry Act is generally taken to mean compliance with the National Forest Policy 1991 (which the Act implements), the Act itself and all relevant Regulations and Guidelines.

The National Forest Policy 1991 and the Act specifically require:

⁴ Defined in the Loan Agreement as "Forest Management Agreements, Timber Permits, Timber Authorities and geographical extensions to Timber Permits".

- The acquisition of forest resources by the State from land owners who have organised themselves into Incorporated Land Groups (ILGs) by means of a Forest Management Agreement (FMA);
- Limiting the annual allowable cut to that which the forest resource is able to sustain⁵;
- The preparation of a Development Options Study (DOS) and the issuance of Project Guidelines before the project is offered for development; and
- Publicly advertising the resource and entering into a Project Agreement⁶ with the selected bidder.

It is generally understood that the conditions of the FCP Loan require that all applications for new forestry projects, or extensions to forestry projects (geographical or term), are required to be audited for compliance with the Forestry Act 1991 before the permit or the extension is granted by the Minister. It is inferred that where there is non-compliance that either changes will be made to ensure compliance, or that the application will not be granted.

Order of Events

A general order of events is presented in Attachment 2. This also provides more detailed background. It is based on an extensive but not exhaustive review of documents.

Observations

Observations drawn from the review of the relevant documents are that:

- Regardless of whether there exists a legal basis for the granting of an extension to the term of TP 1-7 Wavoi Guavi, the then PNGFA Managing Director erred by:
 - Ignoring the direction of the Board to review the extension of the permit in order to “ascertain compliance in accordance with the Act”. Clearly the Board indicated its expectation that it would consider the application for extension in light of additional information yet to be obtained. (The Board’s direction also indicates its commitment to ensuring compliance with the terms and conditions of the FCP Loan).
 - Subsequently recommending the granting of the extension of the term of TP 1-7 Wavoi Guavi to the Minister⁷ without further reference to the Board, and without taking account of the recommendation set out in the

⁵ The National Forest Policy 1991 sets a sustainable cutting cycle of 40 years.

⁶ The Board approved a standard pro-forma Project Agreement for this purpose in 2000.

⁷ The Report of the 2002/2003 Review Team recommended that “the Managing Director be called upon to explain his actions”. The Minister’s submission to the NEC (Policy Submission 72/2003) further recommended that “the [by then] former Managing Director should be required to explain actions”. There is no evidence that the individual concerned has ever been formally called to account.

Provincial Forest Management Committee report which was received before the recommendation was made.

- On receiving the report of the 2002/2003 Review Team the Government failed to immediately obtain a clear ruling as to whether the extension of the term granted by the Minister was legal. Similarly the PNGFA Board failed, once the situation was brought to its attention, to ensure that a clear ruling was immediately pursued. As at April 2004 only conflicting opinions have been prepared (see further discussion in Attachment 3).
- The permit holder not surprisingly held firm to the view that the extension of the term granted by the Minister was legal, and it reserved the right to mount a legal challenge if for whatever reason the extension was annulled.
- The NEC, possibly reflecting the Government's desire to ensure that logging and the receipt of log income tax continued uninterrupted, directed the PNGFA (Decision 89/2003 of 6 June 2003) to implement "the revised timber permit conditions as negotiated". Given that the terms and conditions as negotiated at this point in time did not meet the requirements of the Forestry Act 1991 (as defined above), this indicates that the NEC was prepared to disregard the conditions of the FCP Loan.
- The latest PNGFA Timber Permit Review Team was placed in a difficult position which gave it little chance of success in achieving compliance with the Forestry Act 1991. It was caught between:
 - A generally uncooperative permit holder who was defending an extension granted by the Minister which did not meet the requirements of the Act;
 - The NEC directing the acceptance of terms and conditions which did not meet the requirements of the Act;
 - The Office of the Chief Secretary to Government which was pressuring additional changes to the terms and conditions of the permit to bring it into compliance with the Act; and
 - The PNGFA Board which from the available documentation appears to have been somewhat divided but generally did support actions to secure compliance with the Act.

To have had any chance of success the negotiating team would have had to have had the unequivocal backing of Government.

Conclusions

Given that the document entitled “Agreement to Amend Timber Permit No 1-7 by Mutual Agreement Between [the] PNG Forest Authority and [the] Wavoi Guavi Timber Company” produced in March 2004 does not address the issues which would need to be addressed if the Timber Permit were to be amended to become compliant with the Forestry Act 1991, it cannot be said that compliance with the Act has been achieved.

As discussed in the following Section of this report, there is a strong question as to whether, with respect to TP 1-7 Wavoi Guavi, compliance is in fact achievable or desirable.

5. A PRAGMATIC POINT OF VIEW FOR CONSIDERATION

It would appear that there is no existing legal basis for extending the term of TP 1-7 Wavoi Guavi. This reflects the policy intent that Timber Permits issued under the preceding Acts, if not brought into line with the 1991 Act, would be allowed to continue to their date of expiry only. It follows that there was no legal basis for the Managing Director to recommend or the Minister to grant the extension in February 2002. Consequently the current ongoing logging operations under TP 1-7 Wavoi Guavi also have no legal basis.

However, to attempt, 10 years after the opportunity was created to do so, to restructure the Wavoi Guavi Timber Permit so that it complies with the Forestry Act 1991 (i.e. setting up Incorporated Land Groups, negotiation of a Forest Management Agreement, the determination of a sustainable annual allowable cut, the completion of a Development Options Study, the issuance of Project Guidelines, and public advertisement of the resource), seems impractical (given that the remaining resource is too small to support a financially viable sustainable logging operation) and socially inequitable (not all of the landowners have received their expected income).

Given the PNGFA Board’s lack of success in the early to mid 1990s in altering the terms and conditions of permits issued under the preceding legislation to achieve compliance with the new policy and Act, it was always a possibility that the term of some of the old permits would expire before their forest resource base was exhausted. In practice harvesting at less than the permitted annual allowable cut has resulted from a number of factors including landowner disputes, changes of logging contractor, and weather conditions. As noted previously, in the case of Wavoi Guavi, even cutting at the maximum annual allowable cut for 10 years would not have depleted the entire resource during the term of the permit.

Further, given that the landowners have been assured that their forest would be logged (or that at least they had a reasonable expectation that this would be so, a view which has not in any way been contradicted by Government), and that they would receive benefits, it would seem harsh to deny the owners of the remaining resource their income

earning opportunity by closing the logging operation down⁸. There is also the issue of facilitating an opportunity for the landowners to receive infrastructure assured under the original permit, but not yet delivered.

In addition, from a commercial point of view, it would seem very unlikely if a sustainable cut was determined, that public advertising would have resulted in an interested bidder. Most of the forest resource has already been logged, and insufficient remains to underpin a financially sustainable logging operation⁹. It would seem that the maximum financial benefit for the PNG Government and the landowners would be achieved through an agreement with the existing logging operator, whose infrastructure and staff are already in place, to complete the logging.

Thus, regardless of the legal interpretation of the Forestry Act 1991 with respect to the extendibility of the term of permits issued under preceding legislation, it would seem economically and socially sensible to allow the current logging operator to continue until the forest resource on which the project was originally based is exhausted. If it is deemed that the Forestry Act 1991 does not allow this, then it is the opinion of the Review Team that an amendment to the Act, or special legislation, would be appropriate. Clearly such an amendment would not provide for the extension of underlying Timber Rights Purchase agreements. The extension of the term of the Timber Permit would only be permitted to the extent that the underlying Timber Rights Purchase agreement remains valid, and the time required at the permitted annual cut to complete logging.

⁸ This supporting reason, before being accepted, would need to be examined against the reasons some of the Block 3 landowners have challenged the validity of the Timber Rights Purchase agreement and the Timber Permit through the Court. For whatever reason, landowners may not support ongoing logging.

⁹ 30,000 m³ per annum.

ATTACHMENTS

1. Findings and Recommendations of the 2002/2003
Review Team Regarding TP 1-7 Wavoi Guavi – March 2003
2. General Order of Events
3. The Legality of the Extension of the Term of the Permit

ATTACHMENT 1

FINDINGS AND RECOMMENDATIONS OF THE 2002/2003 REVIEW TEAM REGARDING TP 1-7 WAVOI GUAVI – MARCH 2003

FINDINGS:

The 2002/2003 Review Team made the following findings:

1. *Landowners resource rights have not been properly acquired by the State. Court proceedings have been taken out by certain landowners of Block 3 in the Waigani National Court challenging the validity of the Timber Rights Purchase Agreements and the Timber Permit under OS 121 of 2002¹⁰.*
2. *The granting of the Timber Permit 1-7 to Wavoi Guavi Timber Co Limited has deprived the resource owners of any clear and enforceable legal right in relation to the logging operation. Landowner benefits and social and infrastructure needs are totally inadequate and unsatisfactory under the existing timber permit. Calls by landowners for the review of the timber permit have been soundly ignored. The review would have been the opportunity for landowners to negotiate their project development benefits and incorporate them into the permit conditions.*
3. *The protracted attempts to secure a variation of the terms of the Timber Permit, to meet the legitimate demands of the resource owners, have not achieved an acceptable outcome. The Board has been remiss in not applying the provisions of section 137(2) to vary the terms of both the Timber Rights Purchase Agreement and Timber Permit 1-7 so as to apply appropriate requirements that are consistent with the current law.*
4. *The rights of the landowners have been overlooked in the processing of the application for the extension of the Timber Permit by -*
 - (a) *requiring them to leave the PFMC meeting when the Committee made its decision despite them not having the right to vote ;*
 - (b) *endorsing the grant of the extension before the Timber Permit had been re-negotiated to the satisfaction of the resource owners as the landowners have been critical of the performance record of the permit holder; and*
 - (c) *granting the extension for a period of ten years, and not imposing the condition set by the PFMC that the Timber Permit must be finally re-negotiated within 6 months.*
5. *Serious questions arise as to the processing of the application for extension, namely:*

¹⁰ The report notes that “this is a serious case that the PNGFA has yet to respond to”.

- (a) *The report of the PFMC made under section 78(3) does not deal adequately with the sustainability of the resource under the extended operations. It is clear that the resource will be exhausted well within the period of the extension. No regard has been had at all to the application of a 35 year (or any other) cutting cycle to ensure the sustainability of the resource. The estimated remaining resources have been grossly and negligently over estimated;*
 - (b) *The Board has never recommended the grant of the extension as is required by section 78(4). One day before former Managing Director, Thomas Nen, purported to exercise a delegated power to make the recommendation on the Board's behalf, a Board Paper was withdrawn from consideration by the Board; and*
 - (c) *The Board Meeting No. 79 of 30 January 2002 show that a business paper B4 listed as agenda No. 8 relating to amendments to timber permit No. 1-7 for Wavoi Guavi was withdrawn by the then Managing Director, Thomas Nen. He then proceeded to sign Form 124 on 1 February 2002 purportedly under delegated powers of the Board. The full Board was denied by the former Managing Director of its right to consider the PFMC report and to make its recommendation to the Minister under Form 124. The former Managing Director may have acted without power of delegation under the Forestry (Amendment) Act 2000. Section 4 of the 2000 Amendment does not save any delegation of powers of the Board made by the Minister under the former section 19 of the Principal Act.*
6. *It cannot be said that the interests of the resource owners or the nation have been secured in relation to the initial grant of the Timber Permit, or its extension. The actions of the permit holder and its affiliate and of former PNGFA Managing Director, Thomas Nen, require a full inquiry.*

RECOMMENDATIONS:

The 2002/2003 Review Team made the following recommendations:

- 1. *As a matter of policy the National Forest Board should direct that extensions or renewals under section 78 will not be entertained in relation to Timber Permits saved by reason of section 137 (1). Section 137(1A) of the Act does not allow extension or renewal of timber permits saved from the repealed Forestry Act.*
- 2. *The National Forest Board should exercise its powers under section 137 (2) to vary Timber Permit 1-7 to achieve compliance with the provisions of the Forestry Act 1991 (as amended). The required variations could relate to -*
 - (a) *a variation to the TRP(s) to require the finalization of Incorporated Land Groups for all areas within a specified time;*

- (b) *a requirement that a Development Option Study and Project Guidelines be formulated and applied to the project within a specified time, with appropriate variations to the Timber Permit;*
- (c) *a variation of the TRP to impose a requirement that the project be advertised under section 64; and*
- (d) *a variation to the Timber Permit to ensure that the allowable cut is consistent with principles of sustainable yield with immediate effect.*

NOTE: *If the Timber Permit holder indicates that these variations are not acceptable then the permit shall lapse (section 137(2)(f)). Action should then be taken accordingly.*

- 3. *The National Forest Board should revoke any delegation to the Managing Director that would permit the exercise of any power to make a recommendation to the Minister under section 78(4) in relation to the extension or renewal of a Timber Permit.*
- 4. *Former Managing Director, Thomas Nen should be called upon to explain his actions in withdrawing Board Paper B4 from Meeting 79, and then proceeding next day to exercise a delegated power of the Board.*

ATTACHMENT 2

GENERAL ORDER OF EVENTS

The following notes set out the order of relevant events as well as providing more detailed background. An extensive but not exhaustive review of documents was undertaken. The minutes of the latest meetings of the PNGFA Board were not available as they were yet to be confirmed as correct by the Board.

Generally, although some of the documents present confusing or poorly detailed information, or are undated, the general picture is clear.

10 April 1992

Timber Permit 1-7 Wavoi Guavi granted to the Wavoi Guavi Timber Company Ltd immediately before the Forestry Act 1991 came into force. Term of 10 years. Permitted annual allowable cut of 350,000 m³. A condition (Clause 14) was the payment of a Landowner Premium of K1.00/m³ log harvest to the so called landowner company (WG Development Limited) which purported to represent the landowners and which was generally accepted as intending to utilise the funds for the benefit of the landowners in general.

13 November 1998

Clause 14 was amended by mutual agreement between the landowner company and the permit holder providing for an increase in the Landowner Premium from K1.00 to K2.00/m³ log harvest.

Unclear date, but thought to be about 2000

Clause 14 was further amended by mutual agreement between the landowner company and the permit holder. The amendment increased the Landowner Premium from K2.00 to K4.00/m³ log harvest.

July 2000

The PNGFA Board (Board meeting No 64 and 65) approves a revised pro-forma Project Agreement and directs that it be used for all new projects and any projects which are reviewed and renegotiated. A component of the pro-forma is a new approach to the delivery of infrastructure for landowners whereby the permit holder, rather than being directly responsible for construction, pays a log volume based Project Development Benefit (PDB) from which the infrastructure will be funded. The Board directs that inclusion of the PDB in all new projects and renegotiated projects is non-negotiable.

12 September 2001

The PNGFA receives an application from the Wavoi Guavi Timber Company Ltd for an extension of the term of Timber Permit 1-7 Wavoi Guavi. The Timber Permit was due to expire on 9 April 2002.

Sometime in 2001

Presumably after the application for extension was received. NEC Policy Submission 72/2003 records that:

Prior to the expiry date the Board instructed the Managing Director (named) to carry out a project review to ascertain the compliance and acceptability of the requirements of the Project in accordance with the Act. This instruction to the Managing Director was made twice in 2001, however the Managing Director failed to carry out the Board's instructions.

A further statement made in the same Policy Submission is that:

A full project review was undertaken under s79 of the Act starting in 1998 and concluded in February 2003.

It is not clear whether the above mentioned review process examined compliance with the Forestry Act 1991, or merely sought to change some of the basis terms and conditions.

23 November 2001

The Board (presumably under the impression that the term of Timber Permits granted under preceding legislation could legally be extended under the Forest Act 1991, and consequently that the requirements of s78 needed to be followed), requested a report from the Western Provincial Forest Management Committee (PFMC) regarding the requested extension.

20 December 2001

The PNG Government signed a loan agreement with the World Bank (Loan 7093 – PNG) for the Government's Forestry and Conservation Project (FCP). The conditions of the loan agreement (Schedule 5 Clause 10) require that the PNG Government, in order to "determine the status of compliance with the Forestry Act":

Shall, through the PNGFA, review all logging permit applications submitted after the date of this Agreement under their arrangements satisfactory to the Bank. For the purpose of this paragraph the term "logging permit" means Forest Management Agreements, Timber Permits, Timber Authorities and geographical extensions to Timber Permits.

Essentially the intent of the above condition was that all new forestry projects and extensions to forestry projects would be reviewed for proper compliance with the

National Forest Policy 1991, the Forestry Act 1991, and other regulations and guidelines before the Timber Permit, or the extension of the permit, would be granted by the Minister.

Whilst technically the wording of the condition as set out in the loan document does not mention the extension of the term of a Timber Permit, it is understood and generally accepted that the intent was that the condition of the loan would have broad applicability. (A possible explanation for this apparent omission is that the drafters of the Loan agreement had read the Forestry Act 1991 and had reached the conclusion that the Act did not provide for the extension of the term of a Timber Permit granted under the preceding legislation, and consequently that this type of extension did not need to be covered by the agreement. However it appears that this limitation of the Act was not generally recognised until it was raised by the 2002/2003 Review Team in early 2003.)

28 January 2002

The Board receives the report from the PFMC.

1 February 2002

The Managing Director of the PNGFA recommended the extension to the Minister under delegated powers. He ignores the recommendations set out in the PFMC report that the terms and conditions of the Timber Permit should be reviewed within 6 months of the extension being granted.

4 February 2002

The Minister grants a 10 year extension. There were no changes made to the terms and conditions of the permit at this time despite the fact that the State's rights to the forest resources of Block 3 had been challenged in the High Court (the case is still pending), and that the records show many cases of landowner dissatisfaction with the terms and conditions of the permit.

4, 5 and 18 April 2002

PNGFA Board Meeting No 81. The Board directed the "State Negotiating Team" to "by mutual agreement" negotiate with the timber permit holder "on behalf of the Board". A report to Meeting 90 of the Board in March 2003 records that at this meeting the Board issued the following directives:

- *That pursuant to s79(3) of the Act [the State Negotiation Team] negotiates amendments to TP 1-7, by mutual agreement, with the permit holder – Wavoi Guavi Timber Co Ltd;*
- *That the negotiations be made on behalf of the Board by a SNT (State Negotiating Team), also endorsed in that meeting by the Board, comprising officers of the NFS and the Department of Western Province, and appointed landowner representatives from the project in question; and*

- *Negotiations be based on a Draft Amendments as also endorsed by the Board in that meeting.*

The directions of the Board's directives make it clear that either the Board did not accept the validity of the permit extension granted by the Minister on 4 February 2002, or that it was of the view that the terms and conditions of the extended permit could still be reviewed and renegotiated.

November 2002

The PNG Government was provided with information by NGOs that suggested that due process and legal obligations were not being followed with respect to the extensions of three forestry projects being processed by the PNGFA, specifically the Kiunga-Aiambak Road TA, the Bonua-Margarida TRP and the Simbali TA. An independent review was commissioned by the Chief Secretary to Government. Subsequently concerns were also expressed regarding the extension of Vailala Blocks 2 & 3, Pasismanua LFA, and TP 1-7 Wavoi Guavi. A review was also commissioned to examine these planned or already granted project extensions. The review teams are collectively referred to as the 2002/2003 Review Team.

January 2003

The 2002/2003 Review Team is engaged.

February 2003

The PNGFA completes its own review of the terms and conditions of TP 1-7 Wavoi Guavi in consultation with the permit holder. A draft revised Timber Permit document is prepared. The draft does not change the term of the extension, the permitted annual allowable cut, or materially improve the provision for landowner benefits. The revisions deal mainly with the fact that the landowners have set up a number of new landowner companies to represent various portions of the permit area, and the payment of the Premium Payment to these new entities.

March 2003

The 2002/2003 Review Team produced its report regarding the extension of TP 1-7 Wavoi Guavi. Among the findings is the opinion that the Forestry Act 1991 does not allow for the extension of Timber Permits originally issued under legislation preceding the 1991 Act. In other words, although the 1991 Act saves those permits granted under preceding legislation (by virtue of s137(1)), the provisions of the Act allowing the extension of Timber Permit (s78) apply only to permits issued under the 1991 Act itself (see further discussion presented in Attachment 3).

TP 1-7 Wavoi Guavi was issued under legislation preceding the 1991 Forestry Act, and consequently the view of the 2002/2003 Review Team was that the extension of the term granted by the Minister did not have a legal basis.

As part of its terms of reference the 2002/2003 Review Team also examined aspects of the State's original acquisition of timber rights, and the processing of the application for extension by the PNGFA against the requirements of the Forestry Act 1991, and other regulations and guidelines (i.e. under the supposition that a legal basis for the extension of the term of the permit did exist, and that the requirements of s78 needed to be met).

Key findings were that:

- Landowner resource rights had not been properly acquired by the State (specifically Block 3);
- Landowner benefits and social and infrastructure needs are totally inadequate and unsatisfactory under the existing timber permit. Given that NEC Policy Submission 72/2003 indicates that the "..... full project review undertaken under s79 of the Act starting in 1998 and concluded in February 2003" included the completion of negotiations, it is assumed that the 2002/2003 Review Team was referring here to the re-negotiated terms and conditions, rather than the terms and conditions existing at the time the extension was granted by the Minister in February 2002;
- The Board has been remiss in not applying the provisions of s137 to vary the terms of both the Timber Rights Purchase agreement and TP 1-7 Wavoi Guavi;
- The rights of landowners had been overlooked in the processing of the extension of the term; and that
- Serious questions arise as to the processing of the application for the extension of the term, including "that the PFMC Report does not deal adequately with the sustainability of the resource". (It would seem that this last finding may have been based on an error in the report which indicated that the remaining resource was 4.0 million m³, whereas in fact a field survey undertaken in late 2003 indicated a remaining volume of 862,600 m³, which is an insufficient resource basis to underpin a financially viable sustainable logging operation.)

It is not surprising that the 2002/2003 Review Team found that the extension was not in compliance with the Forestry Act 1991. Full compliance would have required:

- The landowners to set up Incorporated Land Groups;
- The State to re-acquire the forest resource from the landowners under a Forest Management Agreement;
- A sustainable annual allowable cut to be determined;
- The PNGFA to undertake a Development Options Study;
- The Board to issue Project Guidelines; and
- The (remaining) resource to be publicly advertised and tendered.

Whilst the effort required to ensure compliance may have been warranted if the remaining resource did indeed contain 4.0 million m³ of harvestable logs, as noted above it is in fact considerably less (862,600 m³), and at the allowable annual cut set out in the permit (350,000 m³) the remnant resource will last only about 3 years.

As noted below the report was not formally presented to the PNGFA Board until June 2003.

29 March 2003

PNGFA Board Meeting 90. The Board was presented with a Business Paper entitled "Amendments to Timber Permit TP 1-7 Relating to Wavoi Guavi Timber Project – Western Province". The paper advises the Board that "negotiations have been concluded" and that the purpose of the paper is "To present the Board the Final Amendments, as negotiated, for its consideration, endorsement and eventual execution".

The Board resolved:

(i) That the Board endorse the Final Draft Amendments in principle subject to management attending to, consulting with and reaching a resolution with the parties out of court; and

(ii) Subject to (i) above, directs the acting Managing Director to finalise formalities for the execution of the amendments between the Board and the Permit Holder.

It is understood that the reference to an out of court settlement referred to the as yet unresolved challenge of the validity of the Timber Rights Purchase agreement and the Timber Permit by some of the landowners of Block 3.

June 2003

The report of the 2002/2003 Review Team was submitted to the PNGFA Board by the Chief Secretary to Government, accompanied by a draft NEC Policy Submission which was edited and finalised by the Board for submission to the NEC by the Minister. It appears that until this time the Board had not been aware of the view set out in the report that the extension of the term of Timber Permits granted under preceding legislation has no legal basis.

3 June 2003

The Minister for Forests submits Policy Submission 72/3003 to the National Executive Council. It deals with the review of forestry project extensions. For TP 1-7 Wavoi Guavi it recommends to the NEC the following:

The National Forest Board to exercise its powers under s137(2) to vary TP 1-7 to achieve compliance with the provisions of the Forestry Act, requiring:

(a) The finalisation of ILGs for all areas within a specified time;

- (b) *Project Guidelines and Development Options Study to be formulated and applied to the project within a specified time, and applied to the Timber Permit;*
- (c) *That the project be properly advertised under s64; and*
- (d) *The Timber Permit is varied to ensure that an allowable cut is immediately applied, consistent with the principles of sustainable yield.*
- (e) *If the above are unacceptable to the permit holder, then the permit shall lapse (under s123(2)(f)) or the permit is suspended under s85 and subsequently [cancelled] under s 86 of the Act.*

It is unclear who prepared the submission, but if the persons responsible were of the view that the remaining resource was 4.0 million m³ (as set out in the report of the 2002/2003 Review Team), the above recommendations might have been justified. However, as noted before the resource is in fact considerably less (862,600 m³), and at the allowable annual cut set out in the permit (350,000 m³) the remnant resource will last only about 3 years.

6 June 2003

The NEC considers Policy Submission 72/2003 and produced NEC Decision 89/2003. With regard to TP 1-7 Wavoi Guavi the NEC:

Directed the PNG Forest Authority to implement the revised Timber Permit conditions as negotiated as soon as possible”.

The NEC direction clearly does not accept the full recommendations set out in Policy Submission 72/2003 which included the steps required to ensure compliance with the Forestry Act 1991. The “conditions as negotiated” refer to the Draft Amended Timber Permit produced after negotiations with the permit holder by the PNGFA in February 2003.

Late June 2003

The suspended Managing Director resumes his office, and countermands many of the directions of the preceding acting Managing Director. The staff of the PNGFA are left confused and unclear how to proceed.

1 August 2003

Letter from the Chief Secretary to Government to the PNGFA General Manager in his capacity as leader of the PNGFA Wavoi Guavi Review Team. Reference is made to an “Addendum to the revised Agreement on Wavoi Guavi” and an agreement “at yesterday’s meeting” that in order for the revised agreement to:

..... comply with the requirements of the current Forestry Act, a major concern is that the current extension covers a ten year period, but that the resource is reportedly only going to last realistically approx 3 years at the proposed cut. And that the land owner benefits are largely stacked in the last few years i.e. when the harvest is already over.

The letter goes on to say that:

In order to comply with legal and social criteria and ensure that resource owners are actually paid their benefits, the addendum will need to specify either that the harvest rate is severely cut to fit within genuine sustainable levels, or that the harvest period is accurately specified (at the higher rate) over 3 or 4 years, in accordance with resource availability, and that the resource owner benefits are duly paid their entitlements during that period.

The clear indication is that the Chief Secretary's office is prepared to consider accepting an unsustainable level of harvesting provided the landowner infrastructural benefits are delivered within the period over which logging will take place i.e. to accept arrangements which are not in compliance with the Forestry Act 1991.

1 August 2003

Letter from the PNG Government to the World Bank. With regard to TP 1-7 Wavoi Guavi the letter states:

An extension to the Timber Permit was awarded to the operator by the former Managing Director of the Forest Authority. The required procedures were not followed, and the extension was not approved by the National Forest Board. To rectify the situation the National Forest Service has undertaken its own review of the project and its conditions (in addition to the technical specialist review of the project undertaken as part of the review of the six project extensions). On the basis of its own review the Forest Authority has issued the company with revised project obligations under a revised Project Agreement, sent on July 26, 2003 (copy attached). This project agreement does not incorporate all the recommendations of the technical specialists retained by Government last January. The Forest Authority has therefore issued an addendum today (attached) with revised conditions reflecting the recommendations of the technical specialists to ensure the company's compliance with the requirements of the new Forestry Act 1991 as amended. These revised conditions include requirements to ensure proper participation by, and appropriate benefits for, the resource owners and sustainable resource use. With respect to sustainability the company has been informed that it should agree to reduce the duration of the permit to reflect the remaining resource, or the rate of harvesting to achieve the same purpose over the 10 year life of the permit.

The above paragraph is contradictory, in that on one hand it refers to an addendum which purports to ensure compliance with the Forestry Act 1991 (including sustainable resource use), and on the other hand it accepts the 10 year term of the extension. It is

unclear how this was seen “to rectify the situation”. The permit holder is given 14 days to respond. The letter goes on to say:

If they choose not to accept the revised terms the Board will cancel the permit at its special meeting of 18 August 2003.

The letter also states that:

Independent verification of compliance, as required under the FCP loan conditions, will be undertaken by the on-going project review team prior to the issuing of an extension or new Timber Permit applicable to this project area in the event that the company agrees with the revised conditions.

Not unexpectedly the Wavoi Guavi Timber Company Ltd adopted the position that a 10 year extension of the existing Timber Permit and the permitted annual allowable cut of 350,000 m³ had already been approved by the Minister, and that it did not wish to entertain any thought that the extension might be illegal, or that any further variation of the terms and conditions of the permit were warranted. There is no evidence that the Board made any attempt to cancel the permit.

About Mid-August

The Managing Director is again removed from office, and a new acting Managing Director is appointed. By this time the review of the Wavoi Guavi Timber Permit was on the World Bank’s list of breaches of the loan agreement i.e. the view of the World Bank was that the PNG Government had failed to ensure compliance with the Forestry Act 1991.

August 2003

Board Meeting No 95. Minutes of the meeting show that with regard to TP 1-7 Wavoi Guavi:

- The Board had received communications from the landowners who “disagree with and are concerned about the very low rate of royalty and landowner premiums that is being paid”;
- The Board was advised that the Court challenge to the validity of the Timber Rights Purchase agreement and the Timber Permit by some of the landowners from Block 3 had not yet been heard;
- The Board discussed the issue of the level of annual allowable cut given the limited resource remaining;

Reference is made to a “notice served by the NFS on the permit holder to amend the Timber Permit” and that the notice “is viewed by the company to be totally illegal”. A copy of the notice has not been sighted.

The relevant meeting resolutions are as follows:

The Board having considered the views of the landowners from Wavoi Guavi Blocks 1, 2 & 3 and Mr Kurokuro, the notice issued to the company and the pending court case decides as follows:

- *Directs the acting Managing Director to expeditiously review the terms and conditions of the Timber Permit of the project as per the notice served to the company to resolve the annual allowable cut issue; and*
- *Directs the acting Managing Director and the NFS management to convene a special meeting with the landowners to establish or identify a duly recognised representative landowner company; and Directs that an out of court resolution of the pending court case by the landowners be sought; and*
- *Directs the acting Managing Director to immediately negotiate with the company on Block 1, 2 & 3 subject to joint resource inventory to ensure sustainable cut over 35 years remains an integral part; and*
- *Directs the acting Managing Director to expedite the finalisation of the review process and execute the amendments immediately.*

The above resolutions indicate that the Board was still pursuing compliance with the sustainability requirements of the National Forest Policy 1991 and the Forestry Act 1991.

12 September 2003

Letter from Rimbunan Hijau (PNG) Ltd (on behalf of the timber permit holder) to the PNGFA acting Managing Director reiterating the permit holders view that negotiations have been concluded, and reminding the acting managing Director of NEC Decision 89/2003 (made on 6 June 2003) which:

Directed the PNG Forest Authority to implement the revised Timber Permit conditions as negotiated in respects of Wavoi Guavi Blocks 1, 2 & 3 Project as soon as possible.

As noted previously the “conditions as negotiated” refer to the Draft Amended Timber Permit produced after negotiations with the permit holder by the PNGFA in February 2003.

24 September 2003

Internal Minute from the PNGFA acting Managing Director re-assigning responsibility for the review of the Wavoi Guavi Timber Permit due to a lack of “meaningful progress”. The minute sets out the “issues to be resolved” as:

- *Utilisation of remaining forest resource throughout the extended permit period;*
- *Review of the landowner benefit in terms of premiums;*

- *The implications of Panakawa Veneer Mill within Wavoi Guavi Timber Permit;*
- *The option to undertake a collective logged over inventory of Wavoi Guavi Blocks 1 and 2 as an additional resource for the project.*

24 September 2003

Meeting No 96 of PNGFA Board. The acting Managing Director advised the Board that he has re-assigned the responsibility for the revision of the Timber Permit as set out in his Minute of 24 September 2003 referred to above.

The Board was presented with a status report on the ongoing [renegotiation] process. The meeting minutes record that:

- *A draft agreement was submitted to the company and the company has acknowledged the draft. The draft agreement contained the following terms and conditions:*
 - *Certain (unspecified) requirements relating to the Panakawa Veneer Mill;*
 - *Resource inventory to be conducted to determine the remaining resource as well as areas for re-entry;*
 - *Increase in landowner premiums.*
 - *The company in its acknowledgement letter expressed opposition, especially the harvest figures. They are adamant that the resource should be harvested in ten (10) years and no more.*

Further Board discussions regarding the review of TP 1-7 Wavoi Guavi are noted. Key points taken from the minutes are:

- That there were now two sets of Board decisions regarding the review;
- An opinion that the Board erred in earlier providing “conditional approval”;
- That an (unsuccessful) effort had been made to meet with the landowners of Block 3 who have challenged the validity of the permit in the Courts; and that
- An opinion that the Board’s resolutions of Meeting 95 (requiring further negotiations with the permit holder) were at odds with NEC Decision 89/2003 (which directed the PNG Forest Authority to implement the revised Timber Permit conditions as negotiated as soon as possible), and Meeting 90 (endorsing a draft revised Timber Permit).

17 October 2003

Letter from PNGFA acting Managing Director to Wavoi Guavi Timber Company Ltd reminding it that despite the company’s view that negotiation have been completed, that

the PNGFA Board at its Meeting No 95 in August 2003 had directed that a number of other issues to be addressed prior to concluding the review. Specifically listed are:

- A resource inventory to “determine the revised annual allowable cut and the life of the extended Timber Permit”;
- An increase in the Landowner Premium and the Reforestation levy; and
- The introduction of a Provincial Government Levy and a PDB payment.

27 October 2003

Minute from the newly appointed PNGFA negotiation team to the acting Managing Director. This records that:

As far as Wavoi Guavi Timber Company was concerned the negotiations were already concluded and that they did not see the requirement for another negotiation.

It also sets out the comment that:

The previous review was not conducted properly. Many important issues were overlooked. The landowners did not gain any increase. The PDB was not discussed. The NFS appeared to have yielded to WGTC arguments. It was an unfair review.

The minute also lists a number of “critical issues [still] to be negotiated” which includes the incorporation of the PDB. It goes on to state that:

Other World Bank review conditions like ILGs and advertisement of Wavoi Guavi should be reconsidered. They may not be relevant for a project whose remaining life is limited.

January 2004

Request from the World Bank to the PNG Government to suspend the project given the apparent lack of progress in amending the terms and conditions of the extended Timber Permit to comply with the requirements of the Forestry Act 1991.

4 February 2004

Letter from the PNGFA acting Managing Director to the Wavoi Guavi Timber Company Ltd indicating that:

The Government Ministerial Economic Committee has directed that the renegotiation of the Timber Permit should be finalised as soon as possible.

The letter goes on to say that:

The Government Ministerial Economic Committee has indicated that if we fail to reach agreement by 15th February 2004, then the Government will take steps to suspend the permit. Further if the renegotiations are not completed by 29th February, the Government will have no option but to proceed with the necessary steps leading to cancellation of the Timber Permit.

5 February 2004

Letter from Rimbunan Hijau (PNG) Ltd (on behalf of the Wavoi Guavi Timber Company Ltd) to the PNGFA acting Managing Director referring to a meeting held 27 January 2004 “at the Chief Secretary’s office with the World Bank representative¹¹ whereby we all agreed to allow more time to conclude the negotiations”.

The letter also notes that “both parties had duly agreed to revisit certain conditions of the timber permit without waiving the legal right of the timber permit holder that the negotiations has been duly concluded”.

25 February 2004

PNGFA Board Meeting No 100. Finalised meeting minutes have not been sighted, but it is understood that the Board:

- Discussed and resolved that the duration of the timber permit be reduced to 3 years to coincide with the agreed rate of cut and the availability. This reduction would also avoid any future confusion or expectation on the part of the timber permit holder that it deserved or the State is obligated to secure and allocate additional resources to the TP holder;
- Discussed that PDB was a Board decision to be applied/used in the awarding of any new timber concessions and in any existing timber permits that is a subject of review;
- Resolved and in recognition of the agreed position reached, directed the NFS Managing Director to advise the timber permit holder to consider and accept one of the following options:
 - Accept PDB as required of the revised timber permit; or
 - Pay the agreed rate of K1.25 as infrastructure levy and deliver all community infrastructure listed in Schedule 7 to the timber permit;
- Recognising that the Panakawa veneer plant is not an obligation of the Wavoi Guavi Timber Permit, resolved that the annual processing quota for the Wavoi Guavi sawmill is retained at 50,000m³ and the log supply requirements for the Panakawa plan be sourced from the allowable log export quota.

It is further understood that at the meeting the acting Managing Director advised the Board of an NEC's decision regarding the suspension of the project. His verbal advice is

¹¹ This was in fact the Manager of the Forestry and Conservation Project, rather than a representative of the World Bank.

understood to have been that the NEC did not support the suspension of the project (as requested of the PNG Government by the World Bank in January 2004). Instead it is understood that the NEC directed the PNGFA to conclude the review by the end of March, and to proceed with suspension if the reviews were not complete by then.

27 February 2004

Letter from the PNGFA acting Managing Director to the Wavoi Guavi Timber Company Ltd advising the permit holder that the PNGFA Board on 25 February 2004 (Meeting No 100) considered the outcome of the negotiations to date and directed the negotiating team to:

Address the issues of PDB and community based infrastructure development.

Although the letter states that “the Board has decided that PDB be incorporated in permit 1-7”, it goes on to offer the permit holder a choice of agreeing to include the PDB as a condition of the permit, or that the company “provide community based infrastructure under Schedule 7 as well as an infrastructure levy of K1.25/m³ of harvest”.

12 March 2004

Letter from the leader of the PNGFA negotiation team to the acting Managing Director advising that “we have completed the negotiations” and setting out the agreed changes. It is notable that:

- The changes are alterations to the terms and conditions of the Timber Permit extended by the Minister on 4 February 2002. In other words the attempt made to introduce the Board approved pro-forma Project Agreement (including a requirement to pay PDB) was not successful.
- With regard to the recommendations of the 2002/2003 Review Team the letter sets out the opinion that “The conclusion of the review indicates that a number of key recommendations of the [2002/2003 Review Team] have been satisfactorily fulfilled”. It goes on to list those recommendations not achieved as follows:
 - *ILG Incorporation: This recommendation could not be considered because of the limited life of the remaining resource.*
 - *Resource inventory: Based on the remaining resource [a] new annual allowable cut was established¹².*

¹² Although some alteration to the annual allowable cut set out in the original permit (350,000 m³) might have been agreed, it is of little value as the new agreed cut remains at 350,000 m³ per annum for years 11-13 (long enough to cut out the remaining resource), and then drops to 250,000 m³ per annum for years 14-20. It is unclear where the resource to meet the harvesting entitlement for years 14-20 will come from.

- *Development Option Study: The DOS was considered not relevant.*
- *Advertisement under s64: This was not relevant because there was no consideration whatsoever to terminate an ongoing investment like Wavoi Guavi and Panakawa We were of the view that if the intentions of the actions taken consistent with s137(b) were not resolved then cancellation and advertisement for a new developer would be considered. However the critical question is who would come for only three year operation.*

The agreed changes to TP 1-7 Wavoi Guavi are set out in a document entitled "Agreement to Amend Timber Permit No 1-7 by Mutual Agreement Between [the] PNG Forest Authority and [the] Wavoi Guavi Timber Company". It is undated but provides for the entry of a date on signing. The agreement provides for a basic increase in the payments to be made to landowners, payment of the bulk of the funds to landowner companies, and the completion of infrastructure obligations within the first 3 years of the 10 year extension.

26 March 2004

Letter from the PNG Government (Chief Secretary) requesting the current 2003/2004 Review Team to provide a further report regarding the compliance of the renegotiated terms and conditions for TP 1-7 Wavoi Guavi with the requirements of the Forestry Act 1991, in accordance with the Government's obligations under the terms of the loan from the World Bank.

ATTACHMENT 3

THE LEGALITY OF THE EXTENSION OF THE TERM OF THE PERMIT

2002/2003 Review Team Report

The March 2003 report of the 2002/2003 Review Team set out the team's view that Timber Permits granted under preceding legislation were not extendible under the Forestry Act 1991.

Private Firm Opinion

Following the report of the 2002/2003 Review Team, the Office of the Chief Secretary sought a further legal opinion from a local private law firm Gadens Lawyers. In its letter of 21 July 2003 Gadens set out their opinion that extensions are legal.

Government Legislative Drafting Consultant

In early November 2003 the opinion of the Government's Legislative Drafting Consultant working under the Department of the Prime Minister and the National Executive Council was sought. The consultant responds that:

I am inclined to favour the opinion given by the Forestry Transitional Management Council¹³ i.e. that the definitions of 'timber authority' and 'timber permit' do not include permits and authorities saved by s137".

This supports the view of the 2002/2003 Review Team that there is no legal basis for the extension of the term of a Timber Permit granted under legislation preceding the Forestry Act 1991. This includes TP 1-7 Wavoi Guavi. The consultant goes on to note:

If it had been intended that the authorities and permits under the old Act should be treated as "timber authorities" and "timber permits" under the new Act, the appropriate provision would have been a provision deeming authorities under the old Act to be "timber authorities" [and timber permits] under the new Act etc.

A 1993 amendment to the Forestry Act 1991 did deem Local Forest Areas (LFAs) to be permits for the purposes of the 1991 Act, but did not do the same for Timber Permits.

Request For Attorney General Opinion

On 27 November 2003 the office of the Chief Secretary wrote to the to the Attorney General seeking an opinion. The request is clear and states:

The issue is whether (a) the authorities and permits issued under the old Forestry Act and the Forestry Private Dealings Act, which were saved under s137 are subject to the general provisions of the Forestry Act, and in particular whether they can be extended under s78 of the new Act.

¹³ Document entitled "Forestry Act 1991 – An Explanatory Overview" dated 25 June 1992.

A response from the office of the State Solicitor dated 27 January 2004 confirms that LFAs are deemed to be permits for the purposes of the Forestry Act 1991 (as provided for by the 1993 Amendment) and consequently that they can be extended. However it does not specifically answer the Chief Secretaries query regarding the extendibility of Timber Permits.

A Private Opinion

A private legal opinion produced by Mr Brian Brunton (an ex PNG Judge currently active in the environmental movement) on 23 January 2004 supports the opinion offered by the Government Legislative Drafting Consultant, that Timber Permits granted under preceding legislation cannot be extended under the Forestry Act 1991.

Discussion

Contrary legal opinions have been produced, and at this date only opinions exist.

The Review Team has examined the arguments, and the relevant documentation, and concluded that it was certainly the intent of the policy developers that on the 1991 Act coming into force the then existing forestry projects would be either restructured to comply with the new policy and the new Act, or left to expire without any extension of their term. A superficial reading of the 1991 Act (as originally drafted) by a person not aware of the intent of the policy makers would see provisions for the extension of Timber Permits (s78), and perhaps not realise that Timber Permits granted under the preceding Forestry Act were not the same as Timber Permits granted under the 1991 Act. If this had been the intent then the 1991 Act would have “deemed” existing Timber Permits to be Timber Permits for the purposes of the 1991 Act. It did not do so.

It would seem that an amendment to the Forestry Act 1991 will be required if a general legal basis for extending the term of Timber Permits granted under preceding legislation is to be created. An alternative might be case by case special legislation.