

FORESTRY INDEPENDENT
REVIEW TEAM
(Passismanua LFA Extension)

FINAL REPORT
ON

PASSISMANUA TIMBER PERMIT
14-14 EXTENSION

PROJECT SUMMARY

PROJECT SUMMARY

Timber Permit (LFA) No.	TP 14-14 (formerly LFA 14-14)
Permit Holder	Passismanua Inland Timber Resources Ltd (FI 083 registered on 4 November 1993) Contractor: Timbers (PNG) Ltd (FI 211 registered 27 September 1994) Sub-Contractor: Lianseng Ltd (FI 949 registered 29 July 1998)
Operating right	Local Forest Area – Declaration on 19 March 1992 (not sighted) Dealing – 19 March 1992 Logging & Marketing Agreement – 20 March 1992
Permit Area	Block 1 – 40,000 ha Extension - 34,840 ha Total – 74,840 ha
Date of Permit (Dealing)	19 March 1992 (10 years term)
Expiry of permit (Dealing)	18 March 2002
Initial Resource Volume	650,000 m ³
Harvested Resource Volume	No record but can assume 600,000 m ³ as the difference of initial resource and remaining resource
Remaining Resource Volume	50,000 m ³
Annual Sustainable Cut Volume	1,428 m ³
Application for extension or renewal	01 March 2002 (Form 120) but see Observations in the Report
Applicant	Passismanua Inland Timber Resource Ltd
Board Request for PFMC Report	20 November 2002 (Form 121)
PFMC Report	12 December 2002 (Form 122)
Board Recommendation	20 January 2003 (Form 124)
Ministerial Approval	23 January 2003 (Form 118)

SUMMARY OF FINDINGS AND RECOMMENDATIONS

The Team finds that Timber Permit 14-14 should not have been extended because –

- The permit had already expired on 18 March 2002 and there was no permit to extend. The permit had been extended on 23 January 2003, 10 months 5 days after the expiry on the wrong advice of the Managing Director, David Nelson.
- TP 14-14 as a saved permit under s. 137 of the Act could not have been lawfully extended under s. 78 of the Act.
- The extension was given to a company that has already been de-registered by the Registrar of Companies on 3 June 2002, seven months before the extension on 23 January 2003.

Even if extension has been properly given under s. 78 of the Act there would still be serious departures from due process as noted below.

Requirement	Compliance Status	Remarks
Application for Extension or Renewal (Form 120)	Irregular and Questionable	Application dated 1 March 2002 but cheque for application fee raised on 31 October 2002 and receipted at NFS on 01 November 2002. Application (Form 120) was faxed to NFS on Rimbunan Hijau fax number 9835595 on 29 October 2002.
Board Request for PFMC Report (Form 121)	Complied as to process	Request made on 20 November 2002. Signed by MD, David Nelson.
PFMC Report to the Board (Form 122)	Complied as to process	Report submitted on 12 December 2002
Board Recommendation to the Minister for Extension or Renewal (Form 124)	Complied as to process but wrong advice	Recommendation Form 124 signed by MD, David Nelson as Board delegate on 20 January 2003.
Timber Permit Extension or Renewal (Form 118)	Not complied	Minister acting on wrong advice by David Nelson signed the extension on 23 January 2003, 10 months 5 days after the expiry date.
Social Acceptability, Past Performance of Permit Holder and Resource Availability under section 78(3) of the Act	Not Complied	See details in the body of the Report

FINAL PROJECT REPORT

FORESTRY INDEPENDENT REVIEW TEAM

FINAL PROJECT REPORT

PASSISMANUA LOCAL FOREST AREA WEST NEW BRITAIN PROVINCE

INTRODUCTION

Under the contract the Independent Review Team has finalized its review of the extension of the timber permit applying to the Passismanua project in the West New Britain Province. This review was done in March 2003.

The Report makes a finding of the Team and recommendations made in relation to the possible remedial actions. At the outset the Report has no hesitation in finding that the extension has been unlawful when –

- ❑ Timber Permit 14-14 issued on 19 March 1992 has been a saved permit under s. 137 of the Forestry Act 1991 (as amended) and therefore can not be lawfully extended under s. 78 of the Act.
- ❑ The Permit Holder and the Applicant Company for the extension had already been de-registered by the Registrar of Companies on 3 June 2002, 7 months before the extension on 23 January 2003.
- ❑ The extension had been given 10 months 5 days after the expiry of the permit on 18 March 2002.
- ❑ The involvement of Rimbunan Hijau in a number of irregular and unlawful extensions such as Wawoi Guavi, Vailala Blocks 2 & 3, Passismanua and any others are deserving of a full inquiry.

The Report makes observations about whether there was failure to observe due process and about the matters adversely affecting the rights of the resource owners. Forestry and Planning Issues, Landowner Issues and Legal Issues are discussed under the 'CONSIDERATIONS' part of the Report. A complete 'SEQUENCE OF EVENTS' is provided to the end of the Report to indicate the basis upon which the observations, findings and recommendations have been made. The Report also provide details in relation to –

- ❑ The incorporation details of each of the companies involved in the project.
- ❑ The log exports figures (volume and FOB value) relating to the project from the date of the grant of the extension.

METHODOLOGY

The Findings and Observations of the Report are based on information and data obtained from the official PNGFA records. The General Manager of NFS assigned Mr Julius Tiura as the contact and liaison person for the Team. Their cooperation has been good though at times certain urgently required information has not been forthcoming mostly due to missing or misplaced files or records. All company searches were arranged through the NFS. The Team had direct access with SGS for the export records whose data system has been the most up to date.

The relevant information relied on to make the Findings in this Review is set out in the SEQUENCE OF EVENTS part of the Report.

RELEVANT STEPS IN THE TIMBER PERMIT EXTENSIONS

These steps apply only to extension of permits under the current Forestry Act 1991 (as amended). In the Team's view section 137 does not allow extension or renewal of permits issued or agreements entered into under the repealed Act(s). These permits or agreements are valid for the term for which they were granted or until they expire or are terminated according to law. The Team is also of the view that section 78 regulates the grant of extensions or renewals of timber permits issued under the current Act. An extension under s. 78 can be affected by non-compliance of any one of the following requirements.

Step 1.	Application by Permit Holder to the National Forest Board. The application must be lodged with the Managing Director (in Form 120) and is accompanied by the prescribed fee
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Step 2.	The Board requests report (in Form 121) from the relevant Provincial Forest Management Committee (PFMC) on the social acceptability of the permit holder in the project area, its past performance and the amount of resources available in the (vicinity of) project area in accordance with sustainable yield management practices
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Step 3.	The PFMC submits its report to the Board (in Form 122) canvassing the matters required on social acceptability of the permit holder in the project area, its past performance and the amount of resources available in the (vicinity of) project area in accordance with sustainable yield management practices
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Step 4. If the reports of the PFMC are satisfactory the Board recommends to the Minister (in Form 124) that the extension or renewal be made. The Board may decide to reject the application for extension in Form 123

Step 5. Upon receipt of the recommendation of the Board the Minister may extend or renew the timber permit (in Form 118)

FINDINGS

1. This Timber Permit 14-14 as a saved permit under s. 137 of the Forestry Act 1993 (as amended) could not possibly have been lawfully extended under s. 78 of the Act.
2. In any case the extension was given to a company that had already been de-registered by the Registrar of Companies on 3 June 2002, seven months before the extension on 23 January 2003.
3. The extension was given ten months five days after the expiration of the timber permit on 18 March 2002. The Team also finds the application for the extension highly questionable in that whilst the application is dated 1 March 2002, the cheque for the application fee was raised on 31 October 2002 and receipted at the National Forest Service (NFS) on 01 November 2002. The application (Form 120) was faxed to NFS on Rimbunan Hijau fax number 9835595 on 29 October 2002. It appears that the application for extension was lodged after the expiry date of the timber permit and back-dated to 1 March 2002.
4. Landowners were deprived of their right to be represented and to express their views at the PFMC meeting when the extension was considered as required under s. 28(3) of the Act.
3. The Report of the West New Britain Provincial Forest Management Committee under section 78(3) of the Act does not satisfy the requirement of sustainability of the resources under the extended operations. The maximum annual allowable cut of 150,000 m³ does not correlate with the sustainable allowable cut of 1,428 m³ of the remaining resources of 50,000 m³. The annual allowable cut is 100 times higher than the total remaining volume.
4. The logging operation under the extended permit cannot be said to be in accordance with sustainable management practices.

5. The Managing Director signed Form 124 recommending extension on 20 January 2003 to the Minister under existing instrument of delegation of the powers of the Board but the Minister was not advised of the following relevant matters -
 - That the applicant company had already been de-registered on 3 June 2002.
 - Timber permit 14-14 expired on 18 March 2002, 10 months 5 days before the extension and could not legally been done as there was no permit.
 - Remaining resources for the extension would be unsustainable for a 5 years term. The Minister had not been advised correctly of the PNGFA official resource information on the extension.
6. As the project was the subject of a Local Forest Area declaration under the repealed Forestry [Private Dealings] Act there were no Timber Rights Purchase Agreements (TRP) or Forest Management Agreements (FMA) with the landowners. Consequently requirements of compliance with Project Guidelines, Development Option Studies and Public Tender have not been applied.
8. The actions of the permit holder, contractor and their related companies, former managing Director (David Nelson) and the forestry officers of the Islands region and West New Britain involved in the extension of this permit are deserving of full inquiry.

OBSERVATIONS

The Review Team makes the following observations -

1. THE DENIAL OF OTHER LANDOWNER RIGHTS

When the PFMC met on 12 December 2002 to consider the application for extension landowner representatives of the project area were not represented at the meeting as required under s. 28(3) of the Act. Isidore Teli, recorded as a landowner representative of the South Coast does not come from the project area. The minutes hold no record of landowner views, which are relevant to show landowner support of the permit holder as required by s. 78(3). Instead the PFMC recorded its long held

assumption that since the permit holder has been a landowner company it "represented the development interests and wishes of the landowners..."

The Team finds this rather erroneous particularly when there is no record of landowner views and there is no evidence that the landowner company represented landowners' interests for the extension.

2. SOCIAL ACCEPTABILITY OF THE PERMIT HOLDER

This is also a consideration under s. 78(3) which the PFMC has to consider in recommending extension. The landowner issues are set out under the 'CONSIDERATION' part of this Report.

The PFMC Report (Form 122) of 12 December 2002 notes the following comments -

- The Permit Holder being a landowners company has represented the development interests and wishes of the landowners in general administration and operational matters.
- As any business the Permit Holder has had its fair share of problems with depressed market conditions and landowner disputes. With the support of contractor, Timbers (PNG) Ltd, landowner issues were a priority to finding workable solutions.
- The Permit Holder's representation record in the past is of high order and commendation. "...the extension of permit will mean the upgrading of the socio economic projects which are currently on ground and the direct benefits to the landowners from timber royalties".

OBSERVATIONS

- Further inquiry may be called for to ascertain landowner factions that appear to have been challenging the management and benefits sharing arrangement of the permit holder. A further audit of landowner benefits of royalties and other revenue and social benefits can determine the level of landowner support for the permit holder and the extension of its operations.
- There is no clear evidence of the permit holder being representative of the landowners through the shareholding structure by clan units.

3. PAST PERFORMANCE OF PERMIT HOLDER

Past Performance assessment of the Permit Holder is also a consideration under s. 78(3) and its requirements are discussed under the 'CONSIDERATION' part of this Report.

The Permit Holder and its contractor were required to carry out the social and infrastructure obligations under the Dealing and the Logging and Marketing Agreement. They were also required to pay levies towards reforestation, agriculture, provincial government, infrastructure, and community development purposes.

The PFMC Report of 12 December 2002 show the permit holder complied with many social development projects and infrastructure except for Umbi bridge (transferred to Pomalmal), telecommunication center at Aka (considered not necessary) and the sub-health center at Pomalmal.

An AusAid funded report of April 1998 prepared by Groome Poyry Ltd on the audit of landowner benefits from harvesting operations in the Passismanua projects show the following findings -

- Reforestation levies (K1.00 m3) paid to Forest Authority but no reforestation was carried out in the operations.
- Provincial Government levy (K0.50 m3) paid to Provincial Government through the NFS Kimbe office. Levy went into provincial consolidated funds but no evidence that funds were spent in the project area.
- Agriculture Development Levy (K1.00 m3); Infrastructure & Community Development Levy (K1.00 m3); Export Premium. These funds were paid directly to Permit Holder Company Trust Fund by the contractor, Timbers (PNG) and kept in ANZ Bank account in Port Moresby. Copra and cocoa plantations were established with social development infrastructure and projects and various other investments.
- The Audit concluded that internal controls were adequate to ensure correct and prompt payments of landowner benefits specified in the Dealing and the Logging & Marketing Agreement. This conclusion was reached despite the Audit been unable to vouch receipts by the Landowner Company.

OBSERVATION

- The Team notes the favourable report of the PFMC on the past performance of the permit holder. This appears consistent with the audit report by Groome Provy Ltd in 1998. The Team also notes that the operations of the permit holder and its contractors ceased in 2001. A further audit may be called for.

4. SUSTAINABILITY OF THE EXTENDED OPERATIONS

The considerations applying to the PFMC Report required by section 78(3) in relation to the sustainability of the availability resources are noted in the 'CONSIDERATIONS' part of this Report.

The PFMC Report (Form 122) prepared in relation to this extension and dated 12 December 2002 notes the following -

- Timber area of 34,840 ha.
- Estimate volume of 650,000 m3
- Estimate remaining volume of 50,000 m3.

The Managing Director's recommendation brief to the Minister dated 15 January 2003 notes the following -

- Estimate remaining area of 14,441 ha.
- Estimate remaining volume of 259,335 m3.
- Term of extension of 5 years.

The Applicant Company's one-page submission with the application (Form 120) dated 1 March 2002 notes the following -

- Total logged over area of 21,657 ha.
- Remaining resource area of 14,441 ha.
- Estimated volume of 259,335 m3.
- Based on the maximum annual allowable cut of 150,000 m3 the estimated remaining resource can sustain two years operation under the maximum production quota.
- However, in anticipation of possible problems (as experienced before) that may arise (i. e. land disputes, weather condition, poor log export market, etc) and affect the log operation and production, it is projected that the remaining resource can sustain operation for about five (5) years.

OBSERVATIONS

- It is obvious the Managing Director relied on the company figures on the resources to recommend extension to the Minister. The Managing Director ignored the advice of the PFMC which was provided by the National Forest Service.
- The company admits in its one-page submission with the application (Form 120) for extension that the remaining resources would last two years at the allowable annual cut of 150,000 m³ based on their own remaining resource estimate of 259,335 m³.
- Both the PFMC and Company figures present untenable statements on the resource content of the area for any logging operation. In both instances the Team notes that the available resources will be unsustainable for a logging operation for the term of the extension.
- In both instances, PFMC and the Company's resource assessment for extension application did not show allowance for environmentally sensitive areas or conservation set-asides.
- There is no correlation in the resource figures provided to PFMC by the National Forest Service and to the Minister by the Managing Director. The actions of the officers involved in advising the PFMC and the Managing Director are questionable.
- There has been a failure to observe sustainable management of the resource and extension should not have been recommended as there can be no application of sustainable management principles.

5. OTHER DEPARTURES FROM DUE PROCESS

Timber Permit 14-14 expired on 18 March 2002. The application for extension is dated 1 March 2002 but the cheque for the application fee was raised on 31 October 2002 and receipted at the National Forest Service (NFS) on 01st November 2002. The application (Form 120) was faxed to NFS on Rimbunan Hijau fax number 9835595 on 29 October 2002.

The original LFA was divided into two – Block 1 numbered TP14-11 and the Extension numbered 14-14. Both areas have been allocated to Passismanua Timber Resources Ltd under the Dealing. The review is unable to establish the reason(s) for the separation of the areas. Log export records from SGS show log tags from Block 1 only, none from the Extension TP No. 14-14. There is no clear distinction between the two LFA boundaries.

The Forest Authority log export records show that log harvest commenced in 1991 with the first exports in August 1991. The timber rights were allocated to the permit holder on 19 March 1992 under the Dealing and the Logging & Marketing Agreement.

OBSERVATIONS

- The Team finds this bizarre series of events compelling to believe that the application was lodged after the expiry date and was back-dated.
- This practice of extension of expired timber permits is unlawful.
- Landowners may have been deprived of royalty and other benefits when operations commenced without authority in 1991.
- The confusion between the two consolidated project areas may impact on benefits distribution arrangements for landowners of the extension area when the SGS log tags identify logs only from Block 1, TP 14-11. The confusion between the two project areas with separate timber permit number references would need to be rectified if the extension was allowed.

RECOMMENDATIONS

The Review Team makes the following recommendations –

1. The National Forest Board direct the acting Managing Director to give notice to the Permit Holder to stop any operations under the extension due to the de-registration of the company and further that the extension appears to have taken effect after the expiration of the original term and that the Act does not allow extension of permits saved under s. 137 of the Act.

(NOTE: The National Forest Board should ensure that no extension is approved for a permit that has expired)

2. The National Forest Board direct the acting Managing Director to take action without delay under s. 112 of the Act to cancel the forest industry registration of the permit holder as the company has been deregistered under the Companies Act 1996.
3. The PFMC ensure that the rights of the landowners of the project area to attend any future PFMC meetings and to express their views in relation to the project are properly observed and fairly recorded in the minutes.
4. The National Forest Board 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.
5. As a matter of policy and law the National Forest Board direct that extensions or renewals under section 78 of the Act will not be entertained in relation to Timber Permits saved by reason of section 137(1).
6. The National Government establish a Commission of Inquiry to further inquire into the circumstances under which the extension was given to a company that was de-registered before the extension and the role of the Managing Director, David Nelson, in recommending extension.

CONSIDERATIONS

Forestry and Planning Issues

The Report required from the PFMC by section 78(3) must include a consideration of –

- “(c) the amount of the forest resource available in the vicinity of the project area in accordance with sustained yield management practices”.

This provision is taken directly from the relevant statement in the National Forest Policy and no other guidance as to its precise meaning, or the way in which it is expected to be applied, is to be found in either the Policy or the Act.

It would seem that at the very minimum this part of the Report should make an attempt to give -

- (a) a description of the gross loggable area;
- (b) an appraisal of the areas already logged;
- (c) an estimation of the gross merchantable volume in the remaining areas, and the means by which this was determined;
- (d) an estimation of the net merchantable volume, and the means by which this was determined;
- (e) allowance for the environmentally sensitive areas and conservation set asides in the area; and
- (f) a final appraisal of the principles of sustainable yield by basing the annual allowable cut on the total net loggable volume spread over a cutting cycle of sufficient length to ensure that the forest can be harvested sustainably.

It may be inevitable that all PFMCs will find such considerations a little difficult to come to terms with. It is imperative that the NFS play its necessary supportive and advisory role. The difficulties of this task are no reason at all for it to be overlooked or relegated to a matter of lesser importance.

Landowner Issues

The Report required from the PFMC by section 78(3) must include a consideration of -

- “(a) the social acceptability of the holder of the timber permit in the project area.”

This provision is also taken directly from the relevant statement in the National Forest Policy and no other guidance as to its precise meaning, or the way in which it is expected to be applied, is to be found in either the Policy or the Act.

It would seem that at the very minimum this part of the Report should make an attempt to give -

- (a) an accurate account of the views of landowners, and a description of the means by which these were ascertained;

- (b) an account of any disputes arising from the presence of the operations in the area, including the reasons for the disputes and the means by which they were resolved (if in fact they have been);
- (c) an account of any undesirable practices or affects of the operations, including the incidence of rape, prostitution and other criminal or undesirable activities that may be associated with the presence of a development in a village based community;
- (d) an assessment of environmental impacts;
- (e) an appraisal of the community benefits that have resulted from the project, including an assessment of any related economic opportunities that have been available to the landowners by reason of the project; and
- (f) an assessment of the permit holder's compliance with infrastructure requirements and other social obligations applying to its operations to that time.

These are not matters about which "mere lip-service" may be paid. If necessary the operator itself should be required to commission an independent socio-economic impact analysis, to be undertaken by a person and in accordance with procedures, that are acceptable to the landowners.

Legal Issues

Issue 1. The application of section 78 to saved permits

The Forestry Act 1993

Under section 2 a "timber permit" is defined so as to include any timber permit granted under the repealed *Forestry Act (Chapter 216)* and saved by virtue of section 137(1A).

It is important to note that section 137(1A) only saves valid and current permits issued under the repealed Act "for the term for which they were granted or entered into or until they sooner expire or are revoked according to law as if the Act under which they were granted or entered into had not been repealed".

There is no mention in either section 2 or 137 of the right to extend or renew a saved timber permit. To apply section 78 to a saved timber permit is to extend the period in which the provisions of the current Act will have no application to that project.

Section 143 of the Forestry Act 1993 (as amended) allows saved permits under s. 137 to be extended only for a term of one year until the National Forest Plan has been drawn up or prior to 31 December 1993.

The National Forest Policy 1991

The section of the Policy dealing with Timber Permits (section 7 of Part II Forest Management – Strategies) states –

- “(d) A permit may be extended or renewed subject to local social acceptability of the operator, satisfactory and consistent performance by the operator, and resource availability in the vicinity of the permit area in accordance with sustained yield management practices”.

This statement appears in the policy provisions applying to permits granted under the proposed new regime. The status of permits granted under other laws (ie those to be repealed by the current Act) is noted quite separately from the above, as follows –

- “(h) All timber permits and additionally all dealings under the *Forestry (Private Dealings) Act (Chapter No. 217)* current at the time this policy takes effect will be subject to the requirements of the new forestry legislation, and permits and dealings that are inconsistent with this policy will be subject to renegotiation or termination as required.”

It is therefore –

- By no means clear that the Policy anticipated that the right to seek extension or renewal of timber permits applied to saved permits; and
- Quite clear that the policy anticipated that action would be taken to ensure that operations carried out under saved permits would be made consistent with the requirements of the proposed new Act (i.e. the *Forestry Act 1993*).

CONCLUSIONS

- It is not clear that the section 78 should be applied to saved permits. To do so is contrary to the spirit of the Act as it extends the period of time in which the new Act will not apply to the relevant project.
- The National Forest Policy also indicates that there is a distinction to be drawn in this regard between timber permits issued under the Act and those that pre-date the Act and are saved by it.
- The Board would be well advised to adopt a policy that would prevent section 78 being applied to saved permits, and should ensure that all PNGFA officers are aware of this resolution.
- Section 143 of the 1993 Act makes it clear that saved permits under s. 137 can only be extended for a period of one year provided it was given before the National Forest Plan was drawn up or prior to 31 December 1993. It is therefore clear that s. 78 applies only to permits granted under the current Act.

Issue 2. The requirement for saved permits to comply with the current Act.

This expectation was clearly stated in the National Forest Policy (see above excerpt).

This is also reflected in section 137 of the current Act as follows –

“(2) Where the Board is of the opinion that any term or condition of any

...(b) permit, licence, timber rights purchase agreement or other authority granted under the Forestry Act (Chapter 216); ...

is at variance with the provisions of this Act to an extent which makes it unacceptable, it shall by written notice –

- (d) advise the ... holder of the permit, licence or other authority or parties to the agreement or timber rights purchase agreement, as the case may be, of the term or condition that is unacceptable; and
- (e) specify the variation in the term or condition required to ensure compliance with this Act; and”
- (f) (specify a date upon which the variation shall apply, or if the person so notified indicates that the variation is

unacceptable then the permit etc shall then cease to have effect.)

CONCLUSIONS

- In addition to the policy recommended in relation to Issue 1, the Board should take action under section 137(2) to review all saved TRP's and the timber permits issued under them, to ensure that full compliance with the provisions of the current Act is achieved.
- Extension of saved permits cannot be entertained other than under s. 143 of the 1993 Act.

Issue 3. The specific requirements and conditions of section 78.

Under section 78 a timber permit may be extended or renewed if –

- (a) the holder of the permit applies to the Board;
- (b) the application is lodged with the Managing Director in the prescribed form and is accompanied by the prescribed fee;
- (c) the Board has obtained a report from the PFMC on the social acceptability of the permit holder in the project area, the past performance of the holder of the permit and the amount of resource in the vicinity of the area in accordance with sustainable yield management practices.

If the reports are satisfactory the Board shall recommend to the Minister that the extension or renewal be made. The Minister cannot grant the extension and renewal except on the valid recommendation of the Board.

Under the Forestry Regulations 1998, the following Forms were required in relation to the application under section 78 –

Form 118 - Timber Permit Extension or Renewal of Term
To be signed by the Minister.

Form 120 - Application for Extension or Renewal of Term of Timber Permit

Must include a cheque for the prescribed application fee (K3,000).

Form 121 - Board Request to PFMC for a Report on Timber Permit Extension or Renewal

Form 122 - Report to the Board by a PFMC on an application for an Extension or Renewal of a Timber Permit

Form 123 - Rejection by Board of Application for Extension of Renewal or Term of a Timber Permit; or

Form 124 - Recommendation by Board to the Minister for Extension or Renewal of Timber Permit

SEQUENCE OF EVENTS

1st March 2002 Form 120 - Application for Extension or Renewal of Term of Timber Permit.

Application is made by Passismanua Inland Timber Resource Ltd and is signed by a Lawrence Mango, Chairman of the applicant company.

A one - page submission is attached as required.

Although the application was dated 1 March 2002 the application fee cheque was raised on 31 October 2002 and receipted at NFS on 01 November 2002.

Application Form 120 was faxed to NFS on a Rimbunan Hijau fax number 9835595 on 29 October 2002.

The one-page submission states -

- the Permit Holder's desire to engage the same contractor, Timbers (PNG) Ltd and to extend the terms of the Dealing
- total logged over area - 21,657 ha
- remaining resource area - 14,441
- estimated volume - 259,335 m³
- based on the maximum annual allowable cut of 150,000 m³ the estimated remaining resource can sustain two years operation under the maximum production quota
- "However, in anticipation of possible problems (as experienced before) that may arise (i.e. land disputes, weather condition, poor log export market, etc) and affect the log operation and production, it is projected that the remaining

resource can sustain operation for about five (5) years".

20 November 2002 Form 121 – Board Request for PFMC Report

Board Request Form 121 signed by Managing Director, David Nelson.

12 December 2002 PFMC Board Meeting # 04/2002

The meeting attended by Paul Rame (alternate chairman representing West New Britain Provincial Administration; Amalan Laubalil (NFS); Greg Mongi (NANGO); Dennis Galia (LLG); Isidore Teli (Landowners/South Coast); and Benedict Pamotu (ex-Officer/WPFMC). Landowner representative for North Coast recorded absent.

NFS represented by Julius Tiura (Manager Allocation) and Fabian Niulai (Officer Allocation).

Chairman read application for extension and report tabled by Dami NFS office recommending extension as the Applicant 'had met all conditions conducive to such an extension successfully'.

Resolved: "WPFMC recommended the award of an extension of the term of timber permit number 14-14 to proponent Passismanua Inland Timber Resources Ltd".

PFMC submission for extension presented for the New Guinea Islands Area Manager informing PFMC members of the application for extension by Passismanua Inland Resource Ltd and seeking approval for the extension of TP 14-14 for 5 years term.

Form 122 - PFMC Report and Form 122 signed for the PFMC Committee attached to the submission for endorsement by the Committee members. Submission reported on the social acceptability of the applicant,

performance of the timber permit (Dealing) obligations and the availability of resources as required.

On social acceptability the report makes the following comments –

- The Permit Holder being a landowners company has represented the development interests and wishes of the landowners in general administration and operational matters.
- As any business the Permit Holder has had its fair share of problems with depressed market conditions and landowner disputes. With the support of contractor, Timbers (PNG) Ltd, landowners issues were a priority to finding workable solutions.
- The Permit Holder's representation record in the past is of high order and commendation. "...the extension of permit will mean the upgrading of the socio economic projects which are currently on ground and the direct benefits to the landowners from timber royalties".

On past performance the report makes the following comments –

- Permit Holder's obligations under the Timber Permit 14-14 are carried out by the contractor, Timbers (PNG) Ltd under the Logging & Marketing Agreement. It attach a compliance report showing –
 - Log harvest at annual cut of 150,000 m³ – total log harvest from March to December 1998 was 20,675 m³
 - Total log export from March to December 1998 was 13,263 m³ (PY 1 – at 150,000 m³; PY 2 – at 147,000 m³; PY 3 to 2000 and onwards – at 142,000 m³)
 - Sawmilling – total log input from March to December 1998 was 122 m³ (Contractor required to process as follows – PY 1 – Nil; PY 2 – 3,000 m³; PY 3 – 8,000 m³; PY 4 to 2000 and onwards – 20,000 m³)

- Roads/Bridges/Crossings—all connected/constructed except the Umbi bridge (to be transferred to Pomalmal)
- Social Infrastructure – all constructed/supplied except telecommunication center at Aka (not necessary) and sub-health center at Pomalmal
- Total Agriculture Development Levy for PY 2 – PY 9 – K463,682.00
- Total Provincial Government levy for PY 2-PY 9 – K232,228.00
- Total Infrastructure & Community Development Fund levy for PY 2-PY 9 – K463,692.00
- Total log sawmill input for PY 2-PY 9 – K12,081.00
- Reforestation Levy for PY 2-8 – K463,692.00
- Total log Harvest value for PY 2-8 – K493,102.00
- Total log Export value for PY 2-8 – K464,499.00

On the remaining and available resources the report states –

- timber area – 34,840 ha
- estimate volume – 650,000 m³
- estimate remaining volume – 50,000 m³

20 January 2003 Managing Director's recommendation and Brief under his delegated powers to the Minister (Form 124)

Estimate remaining area – 14,441 ha
 Estimate remaining volume – 259,335 m³
 Term of extension – 5 years

23 January 2003 Minister Pruaitch signs the extension (Form 118) for five (5) years without conditions.

OTHER INQUIRIES

The companies involved

- OBSERVATIONS

Passismanua Inland Timber Resources Limited

This company is noted as the permit holder and applicant for the extension.

Company search reveal that the company had been deregistered on 3 June 2002. A Michael Kartson applied to the Registrar of Companies on 27 February 2003 under s. 378(2) of the Companies Act 1997 to reinstate or restore the company. Objection to the application by a faction led by John Kipong was lodged on 7 March 2003. The team learned that the Office of the Registrar of Companies has considered the application defective as Michael Kartson is not an officer of the company.

The particulars revealed in the company's FIP application at PNGFA were -

- Authorized capital – K30,000.00
- Paid up capital – K15.00
- Shareholders – all 14 PNG citizens with 1 share each.
- Directors – 30 Papua New Guineans (possibly all landowners). Mango Lawrence as chairman and Savoio John as vice Chairman
- Address of Service – Section 219, Lot 6, Kitogara St., Gordens 5, NCD

Timber PNG Ltd

This company is noted as the contractor of the project. A search of the company reveal the following -

- The Company was incorporated on 1st September 1998 with 1,500,098 issued shares.
- Its registered office is at Lot 1 Section 479, Kennedy Road, Gordens (PO Box 102, Port Moresby)
- Its directors are Mee Sing Wong, Kiew Chiong Tiong, Ivan Su Chiu Lu, James Sze Yuan Lau
- Its shareholders are Wilmington Co. Limited of British Virgin Islands (1,499,000 shares), Fan Yin Yong (1,000 shares) and Liangseng Limited of c/- Sinton Spence Chartered Accountants (98 shares)

OBSERVATIONS

- The address, post office box and names of directors all indicate that this is a Rimbunan Hijau company but this is not reflected in the named shareholders.
- The majority shareholder appears as a company registered in the British Virgin Islands. Tax issues may be indicated here.
- The share capital of the company is not clear but it may be as little as K 10,000. This is not an appropriate financial base for a company operating in the forestry sector.

Rimbunan Hijau (PNG) Limited

This company is noted on the export records kept by SGS in relation to this project.

A search of the company was arranged and this revealed the following: -

- The company was incorporated 3 March 1986 with 3,000,005 issued shares.
- Its registered office is at Lot 1 Section 479 Kennedy Road Gordons (P. O. Box 102 Port Moresby)
- Its directors are Kiew Chiong Tiong, James Sze Yuan Lau, Hiew King Tiong, Thai king Tiong, Ivan Su Chiu and Ik King Tiong.
- The shareholders are Rimbunan Hiau Sdn Bnd of 11 Mission Road, Sibu Sarawak Malaysia (360,000 shares), Habacus Trading Pte Ltd of 11 Collyer Quay The Arcade Singapore (360,000 shares), Gotcha Company Ltd of 1501 Hutchinson House Hong Kong (2,280,000 shares), Hiew King Tiong (1 share), Ik King Tiong (1 share), Thai King Tiong (1 share), Yung King Tiong (1 share) and Thomas Bruce Gall of 20 Churchill Street Mont Albert Victoria Australia (1 share).

Liangseng Limited

This company is noted as the sub Contractor of the project. A search of the company reveal the following -

- The company was incorporated on 10 September 1997 with 100 issued shares
- Its registered office is at Sinton Spence Chartered Accountants, 2nd Floor, Brian Bell Plaza, Turumu St Boroko (PO Box 6861, Boroko NCD)
- Its directors are Hong Haw Tiong, Hong Yu Ling (Both of Lot 1 Section 479, Kennedy Road, Hohola)

- Its shareholders are Timbers PNG Ltd (98 shares), Haw Hong (1 share) and Yu Ling Hong (1 share)

OBSERVATIONS

- The names and addresses of directors and the shareholders all indicate that this is a Rimbunan Hijau company.

Log Exports since the Extension of the Timber Permit

There was no log export since the extension as the company stopped operations in 2001. Records maintained by SGS were reviewed and revealed the following figures relating to the export of logs since 01 January 1996 to 18 March 2002 (expiry date of TP 14-14) –

- 209,785 m3 of logs have been exported.
- Their FOB value has been listed as K 35,565,300.00.

SGS export data sheet show the operation site as Passismanua Block 1 but the company was given harvesting rights over the whole LFA Dealing area including Block 1 and the extension.