

Frieda River Environmental Impact Statement: public consultation submission with special reference to Indigenous Peoples and FPIC, ASM, resettlement and livelihood restoration, and mining agreement-related risks

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This public consultation submission concerns the treatment of four related topics in the Frieda River Environmental Impact Statement ('the EIS'):

- IFC guidance for dealing with Indigenous People / FPIC
- Resettlement and livelihood restoration
- Artisanal and Small-Scale Mining (ASM)
- Mining agreement-related risks

IFC Performance Standards (1) – Indigenous People and FPIC

Chapter 4 of the EIS, 'Stakeholder Engagement', is devoted to the community consultation undertaken to date in the broader project impact area. Surprisingly, the IFC's Performance Standard 7 'Indigenous Peoples' – the key guide to dealing with Indigenous stakeholders

such as are found in the project area¹ – is barely mentioned in this chapter, when they had featured centrally of Chapter 3 (§3.5.1). Instead Panaust’s own Sustainability Management Standards, apparently completed in 2013, are applied (Chapter 4, p. 4-2), notably:

- Standard 7 – Community, Social and Human Rights.
- Standard 8 – Stakeholder Engagement.

These are mentioned in various places in the EIS, but no publication details are given or where PanAust’s standards might be found online.²

Panaust’s 2018 *Business Review & Sustainability Report* (p. 19) suggests that information on the fourteen standards is given on Panaust’s sustainability web page.³ But no copy of the standards is found there, the nearest being a two-page fact sheet *Sustainability at Panaust*.⁴ It does not mention the standards.

However, it has proved possible to locate a 2012 copy⁵ of the *PanAust Sustainability Management Standards* behind a paywall on the document delivery site Scribd. This shows that ‘Sustainability Standard Element No. 8 – Stakeholder Engagement’ is a 316-word precis saying little more than ‘effective communication channels shall be in place’ and saying stakeholders should be engaged ‘in an appropriate manner’. No mention is made of the special vulnerability of Indigenous People, nor that ‘if their lands and resources are transformed, encroached upon, or significantly degraded’ they are especially at risk, which is essentially the basis of the expected impacts on the project area communities.

This, however, what is underscored in the introduction to IFC Performance Standard 7 ‘Indigenous Peoples’.

A compounding failing is that the *Sustainability Management Standards* do not mention the concept of FPIC as understood by the IFC. Chapter 4 of the EIS says (p. 38-39) that ‘the stakeholder engagement plan is aligned with’, among other things:

- IFC’s procedural note on reviewing *free prior informed consultation* and determining broad community support [note: ‘IFC, undated’; emphasis added].

¹ The affected communities of the Frieda project are among the ‘indigenous inhabitants of the country’, as the PNG Constitution puts it (*Constitution of Papua New Guinea*, Schedule 1.2).

² ‘The Project will be managed under the governance of the PanAust Group Sustainability Policy. The Sustainability Policy is supported by 14 Sustainability Management Standards relating to leadership, risk management, health and safety, training, environment, stakeholder engagement and community, which have been developed by PanAust to ensure consistent sustainability-related outcomes across the business’ (Executive Summary, p. 59; also Chapter 3, pp. 12-13).

³ <https://panaust.com.au/sustainability>

⁴ https://panaust.com.au/sites/default/files/A4%20Fact%20Sheets_Jun2019_Sustainability.pdf

⁵ The EIS references the standards as being finalised in 2013, so this may not be a final version.

The 'IFC, undated' procedural note would appear to refer to a section in an IFC document dating to 2006.⁶ This is a legacy document and is marked internally as obsolete. The current standards date to 2012 and the current overall guidance document, *IFC's Sustainability Framework: From Policy Update to Implementation*,⁷ shows that Indigenous Peoples have a right to *Free, Prior, and Informed Consent* (FPIC) in development-related decision making (p. 8). The document gives the further explanation that the change from 'consultation' to 'consent' is seen in the World Commission on Dams report (2000), the World Bank's Extractive Industries Review (2004), and was given international endorsement in the UN General Assembly in the *Declaration on the Rights of Indigenous People* (2007).

If there is any doubt, the need for FPIC is triggered when a project:

- will impact on lands and natural resources subject to Indigenous Peoples' traditional or customary use; or,
- will require Indigenous Peoples to be relocated away from traditional or customary lands or natural resources.⁸

These criteria are both met at Frieda.

I find, therefore, that the *framing* of the stakeholder engagement process in the Frieda project area is faulty because the EIS authors (a) have not properly declared what PanAust's performance standards are (or sought to apply them in a detailed way) and (b) have failed to recognise the heightened requirements of FPIC that apply to a project of this nature. While FPIC itself is not expected to be secured in advance of a formal agreement-making process, the correct roadmap needs to be followed.

IFC Performance Standards (2) – Resettlement and Livelihoods Restoration

The EIS (Chapter 3, Section 3.5.1 International Standards and Guidelines), says that PanAust, the project proponent, 'aligns its business' with a range of external standards, including the IFC Performance Standards on Environmental and Social Sustainability.

Nineteen passages in the EIS volumes refer to the IFC Performance Standards. However, many mentions are extremely brief. This is acutely noticed in the 74-page Chapter 9 'Socio-Economic Impact Assessment' where, under the approach to impact assessment, a single bullet point mentions the standards. The 186-page Appendix 13 'Social Impact Assessment', on the other hand, has three paragraphs (in §2.3.1) that explain what the standards are and

⁶ *IFC E&S Review Procedures*, Version 1.0, 30 April 20006.

⁷ https://www.ifc.org/wps/wcm/connect/topics_ext_content/ifc_external_corporate_site/sustainability-at-ifc/policies-standards/sustainability-policy/sustainability-policy (dated 2013, current as of 24 March 2020).

⁸ *IFC's Sustainability Framework: From Policy Update to Implementation* (2013), fn 15.

note that PS5 'Land Acquisition and Involuntary Resettlement' and PS7 'Indigenous Peoples' are particularly relevant to social impacts.

In the bibliography of the EIS, it is clear that it is the 2012 version of the IFC standards that apply (and which remain in force in 2020).

These two standards are relevant to the consideration of what will happen to communities of the Frieda-Nena area that require resettlement and/or are dependent on ASM.

Resettlement

The Executive Summary correctly says (p. 14) that 'The filling of the reservoir [for the combined hydro and tailings dam] will displace the villages of Ok Isai and Wabia, necessitating their resettlement', and that two other villages close to construction sites and access roads, Paupe, and Wameimin 2, are also 'proposed to be resettled'.

The EIS, submitted to the PNG government in 2016⁹ and in 2018¹⁰ is deficient in omitting details of Panaust plans for the resettlement of Ok Isai, Wabia, Paupe and Wameimin 2.

The EIS says that two further villages, Wesdeco (82 households) and CIS Point (11 households) in Ward 2 of the Vanimo Urban LLG, will be impacted by the Vanimo Ocean Port (Appendix 13, p. 133 – Social Catchment 1D). If the map of the proposed facilities (Appendix 13, Fig. 6.4, Fig 7.29) is correct, parts – perhaps all - of Wesdeco will be displaced. However, the EIS is deficient in:

- failing to show the precise location of Wesdeco and CIS Point in relation to the proposed port layout.
- failing to provide a clear statement of the fate of the settlements and their inhabitants.

A project Resettlement Plan was submitted later, in January 2019,¹¹ but it remains unavailable for public consultation. The 7000-page public consultation version of the EIS released in May 2019 does not include it. References to resettlement in the EIS are vague, merely stating (e.g. Chapter 9 'Socio-Economic Impact Assessment', §9.2.2) that 194 households will require:

- Compensation for gardens and other physical assets lost or impacted by the project.
- Infrastructure and service re-establishment.

⁹ 'Environmental Impact Statement lodged for the Frieda River Copper-Gold Project, PNG', PanAust media release, 21 December 2016 <https://panaust.com.au/company-announcements>.

¹⁰ 'Sepik Development Project Environmental Impact Statement delivered to provincial authorities and landowning communities', PanAust media release, 15 April 2019 <https://panaust.com.au/company-announcements>

¹¹ <http://www.looppng.com/business/frieda-river-permitting-update-81635>. The correct IFC terminology is, however, 'Resettlement Action Plan'.

- Support for livelihood restoration.
- Re-establishment or compensation for business losses

The last two will apparently include such things as ‘enhanced techniques for improving agricultural productivity’, ‘financial literacy and long-term investment planning’ and ‘business development mentoring’.

Given that Panaust has no demonstrated experience in rural development, the Frieda River EIS is deficient in not setting out much more precisely what any of this means for the affected communities and how the company proposes to remain compliant with what it might commit to in a future mining agreement:

- Panaust has not signalled, in publicly available documentation, how success or failure in a resettlement and livelihood restoration program might be measured.
- Panaust has not signalled, in publicly available documentation, what qualifications or experience its staff or contractors might need to possess to implement a successful resettlement and livelihood restoration program.
- The EIS authors, Coffey Services Australia, say (Appendix 13, p. 52) that they did a literature review to identify ‘lessons learned from large-scale mining projects now closed or currently operating including Misima, Panguna, Porgera, Lihir and Ok Tedi’. – but resettlement and the restoration of livelihoods are not mentioned among the topics covered.
- The bibliography of the EIS contains nothing from the global and regional policy literature on resettlement.
- Neither PanAust nor Coffey is frank about the prospects of translating mining wealth into social and economic benefits for mine area communities. Lessons drawn from UNDP’s *National Human Development Report* for PNG published some years ago show that the chances are not high.¹²

Livelihoods / coverage of ASM in the EIS

Six topic areas to do with ASM are covered in the EIS (Annex A). They focus on ASM as an opportunity for participation in the cash economy and ASM as compared with formal work opportunities. But the way ASM is treated in the EIS is a poor reflection of what issues are considered important in the large global literature on ASM. The contemporary literature is divided into several themes, including:

- Technical aspects of ASM.¹³

¹² PNG 2014 *National Human Development Report. From Wealth to Wellbeing: Translating Resource Revenue into Sustainable Human Development*. Port Moresby: United Nations Development Programme and PNG Department of National Planning and Monitoring, 2014.

¹³ Key publication for PNG (unreferenced in the EIS): Blowers, Mike (1992). *Handbook of small scale gold mining for Papua New Guinea*. Christchurch: Pacific Resource Publications.

- Environmental and health impacts of ASM, including the effects of mercury usage.¹⁴
- Economic importance of small-scale mining and ASM as a livelihood strategy, and its interactions with state policies and LSM.¹⁵

The first two themes are barely mentioned. On the economic importance of ASM in the communities at Frieda, at the points in the EIS flagged in Annex A, discussion of the value of ASM to people's lives is cursory. Colleagues who have experience of the area have remarked that villagers view it as a 'critical component of their livelihood'. This is poorly captured in the EIS. Beyond an attempt to quantify household incomes, the EIS does not provide a full discussion of the position of ASM and how dealings over land and compensation are very likely to become inextricably tied to issues surrounding the loss of ASM areas under the ISF.

Poverty and the global literature on ASM

On ASM as a broad livelihood strategy, the EIS has completely missed the key global policy shift of the last 25 years. Multilateral agencies, such as the World Bank and the ILO, and rural development practitioners alike have moved away from ASM interventions in terms of helping ASM entrepreneurs to be 'better miners' by providing microfinance and technical assistance,¹⁶ to understanding that participation in ASM is largely a response to poverty. Researchers have filled out this picture during the 2000s and have sought to place the spotlight on the embeddedness of ASM in the economies of local communities.¹⁷

At Frieda, the choices of the ASM communities are stark: in the context of a non-performing state, to do without the means to pay for health services, school fees, river transport, improved forms of housing, and 'new essentials' such as phone credit, or to pay for them themselves using money from ASM.

The EIS says in numerous places (e.g. seven times in Appendix 13 'Social Impact Assessment') that development of the mine 'is expected to lead to improved household income levels' without saying exactly how this will come about, what protections are in place to ensure no impact area households are left behind, and whether or not there is a commitment by Panaust to ensure that project area communities are lifted out of poverty, as measured by objective criteria.

¹⁴ Numerous papers on mercury in the Bulolo River (none referenced), e.g. Orathinkal, J., Tetang, A. & Kilip, J. (2011). Mercury concentration and its effect on the aquatic environment of the lower Watut River, Morobe Province, Papua New Guinea. *Contemporary PNG Studies: DWU Research Journal*, 14, 38-50.

¹⁵ Large literature covering Africa, Asia and Latin America. A leading contributor to the Africa-centric literature is Gavin Hilson, the founder (in 2014) and editor-in-chief of *The Extractive Industries and Society*.

¹⁶ Seen in PNG with the creation of the EU-funded Small Scale Mining Training Centre (SSMTC) at Wau.

¹⁷ e.g. Hilson, G., & McQuilken, J. (2014). Four decades of support for artisanal and small-scale mining in sub-Saharan Africa: A critical review. *The Extractive Industries and Society*, 1(1), 104–118. <https://doi.org/10.1016/j.exis.2014.01.002>.

A starting point would be to state clearly whether or not the project area communities are currently living in poverty as, from experience, *all* will be objectively doing so, not on the basis of their (low) incomes but on the life outcomes they are at present able to achieve.¹⁸ Household income data are presented in the EIS (e.g. on household incomes – Appendix 13b, Appendix 1 ‘Study area social profiles baseline’, pp. 19-29), but the authors fail to interpret this strongly enough in terms of regional benchmarks.

The only place where the project area is connected with the term ‘poverty’ is in the statement ‘The lack of economic activity in the Sandaun Province has, over many years, resulted in widespread rural poverty, poor infrastructure and poor social services in most of the province’ (Appendix 13b, Appendix 1 ‘Study area social profiles baseline’, p. 169, repeated in Chapter 7 ‘Description of Existing Environment’, p. 7-219).

The drivers of both poverty and ASM activity in the impact area are weakly identified in the EIS. An exception is the observation that ASM households of Ok Isai and Wabia are able to spend about PGK 825/year on education fees whereas non-ASM villages can only manage PGK 250-350/year (Appendix 13b, p. 27 and Figure 9).

Coverage of the loss of ASM areas

The Executive Summary says that the inhabitants of Ok Isai and Wabia will have to be resettled, but the fact that the construction of the proposed Integrated Storage Facility (ISF) will result in the loss of *all the currently productive ASM areas* is not stated in direct terms until Chapter 4. Even here, the ‘*potential loss of alluvial gold and alluvial mining opportunities*’ appears as a bullet point in Table 4.11.

The blunt fact is that Ok Isai and Wabia will be denied ASM as a livelihood strategy from the moment construction begins on the ISF.

The policy implications are not seen at all. Repeating the absence in the EIS bibliography of policy literature on resettlement, there is nothing to be found of the large, evidence-based global literature on the political economy and social ramifications of ASM.

Further mining agreement-related risks

Potential for conflict and stability of the landowner arrangements around the project

There are questions to be asked about the stability of the landowner arrangements within the immediate vicinity of the project. Several operating mines confront the prospects for

¹⁸ On the international criteria used for this, see the example of Manda, an Ok Tedi downstream village: Burton, John E. (2018). Are the people of Manda in Middle Fly poor? A development assessment using the Oxford Multidimensional Poverty Index. *Contemporary PNG Studies: DWU Research Journal*, 28, 84–98
https://www.dwu.ac.pg/en/images/All_Attachements/Research%20Journals/vol_28/2018v28-07-Burton-Are-Manda-people-poor.pdf

violent conflict in and around the mine leases. For example, most of eastern Porgera was rendered uninhabitable in tribal fighting between 2006 and 2010 and renewed conflict saw the entirety of one of the resettled villages destroyed in 2017. At Hidden Valley, land acquisition took place in a dispute area between two historically enemy ethnic groups. This is not unusual. But Frieda is proposed to be established on top of actual 'conflict land', where there are complex historical legacies between different language groups with an interest in the area. This will limit the ability to source land for displaced groups where all other viable land has been taken by the project. There are groups to the immediate north and west that the company will establish agreements with to enable the project.

The EIS is mute on the subject of their interests and the instability risks are untested.

Mismatch of impacts and benefits

There is a serious issue with the downstream river communities carrying all of the exploration and construction disturbance for the six years of construction, as material will be barged up to site. Once construction is completed, however, these impacted communities stand to be severed from the mix of benefits once the project starts.

A further complication is that the downstream river communities are in East Sepik Province, where no production-related benefits will accrue by default, whereas the land on which the mine's various leases will be situated, and which will generate both royalties and lease payments for the whole of the mine life of the, is all in Sandaun Province.

The EIS discusses the holding of a Development Forum, and the need to conclude compensation agreements and a Memorandum of Agreement (MOA) between landowners, non-landowner impact area communities, local-level governments, district administrations¹⁹ and the provincial and national government in terms of the policy requirements of the PNG government (Chapter 2, §2.1.3 'Policy requirements').

The EIS is silent on guidance for the parties convening a Development Forum *beyond the bare policy requirements* in terms of outcomes that stand to:

- Worsen the imbalance between benefits and impacts among different ethnic groups (to the point of conflict); or,
- Disadvantage East Sepik impact footprint stakeholders as opposed to those in Sandaun; or,
- Mitigate impacts over the wider area by distributing benefits beyond the strict mine lease area landowners.

¹⁹ District Administrations are notoriously omitted from the statutory provisions for the holding of a development forum, *Mining Act 1992* §3(1) and (2).

Physical, political and economic risks associated with dam failure

While this public submission is centred on social and (local-level) political risks, the higher-level political and economic risks associated with dam failure are insufficiently covered in the EIS. Dam failure is discussed twice (§5.6.11 'ISF Stewardship' and §11.3.2 'Management Measures') but in terms of technical protocols, an engineering 'dam break' analysis, and in terms of management strategies which assume the operating company is in good financial shape many years into the future and that adequate provisions for mine closure and post-mine curatorship of the ISF have been made.

A political and economic risk analysis of dam failure at some point in the indefinite future has not been included in the EIS. This is perhaps the most significant oversight in light of the physical risks associated with this project, and the global attention on tailing dam failures.

Conclusion

What we should see set out are how all the impact area communities can maintain (or improve) their domestic economies with the challenges of:

- The loss of large areas of customary land (as a land rights issue)
- The loss of ecosystem services (biosphere resources on the lost land)
- The loss of alluvial gold resources (mineral resources on the lost land)
- Resettlement and issues surrounding the restoration of livelihoods
- The challenge for landowners to acquire new skills fast enough to be able to profit from employment opportunities in the Frieda project (experience at Ok Tedi points towards this being a struggle)
- The unequally distributed economic benefits and employment opportunities that are likely to arise at the Frieda project
- The unequally distributed social and environmental impacts that are likely to arise at the Frieda project
- In-migration as a source of stress on viable landowner livelihood strategies (experience at all operating mines points towards this being a struggle)

In the modern view of ASM, it is incorrect to treat ASM activities on their own. They have to be understood as activities embedded in the livelihood strategies of the ASM-dependent communities, and which may well be set aside as the mine is developed. On the other hand, it is possible that landowners will discover and move onto new ASM areas after they have lost their current ones but, if so, it will be an indicator of collective failure to meet the challenges just listed.

The EIS is defective in the abbreviated way it sets out Panaust's strategy for coping with these challenges.

ANNEX A
SUMMARY OF ASM TOPIC THEMES IN THE FRIEDA RIVER EIS

No	Topic	Mentions	Where
1.	End of ASM at Frieda	<p>Requirement for resettlement is stated in Executive Summary but the blunt fact of the loss of ASM areas <i>is not stated in direct terms</i>. See Error! Reference source not found. for detail, but the loss of ASM areas is 1st alluded to in Chapter 4:</p> <p>Table 4.11 'Main issues and concerns raised during the 2014 EIR engagement campaign ... potential loss of alluvial gold and alluvial mining opportunities.'</p> <p>Chapter 9 – 'Ok Isai and Wabia are to be resettled, with the flooding of their lower lying land by the FRHEP removing the attraction of the associated alluvial gold which has drawn migrants in the past'.</p>	<p>Chapter 4, page 4-33</p> <p>Chapter 9, page 9-18</p>
2.	ASM as an opportunity for participation in the cash economy	<p>Volume A Executive Summary</p> <p>Chapter 4 Stakeholder Engagement</p> <p>Chapter 7 Description of Existing Environment</p> <p>Chapter 9 Socio Economic Impact Assessment</p> <p>Appendix 3a Frieda River Copper-Gold Project</p> <p>Appendix 3b Frieda River Hydroelectric Project</p> <p>Appendix 13 Social Impact Assessment</p> <p>Appendix 13(3) Community Health and Nutrition Baseline Report</p> <p>Attachment 4 EIS Guidelines and EIR Cross Reference Table</p>	Recurrent throughout
3.	Technical aspects of ASM	Chapter 7 Description of Existing Environment	Chapter 7, Page 7-155
4.	Need for livelihood restoration	Chapter 9 Socio Economic Impact Assessment	Chapter 9, Page 9-3
5.	ASM as a migrant attractor	Chapter 9 Socio Economic Impact Assessment	Chapter 9, Page 9-17
6.	ASM compared with formal work opportunities	<p>Chapter 9 Socio Economic Impact Assessment</p> <p>Attachment 4 EIS Guidelines and EIR Cross Reference Table</p>	<p>Chapter 9, Page 9-36</p> <p>Attachment 4, Page 23</p>