

Forest Consent Areas and Forest Consent Agreements

Freehold process

The holder of certain types of leases under the *Land Act 1994* can apply to the Department of Natural Resources and Mines (DNRM) to convert their lease to freehold.

As part of the process to assess an application for conversion, DNRM consults the Department of Agriculture and Fisheries (DAF). If a lease is assessed to contain commercial timber, DAF can (amongst other things) require the establishment and registration of a forest consent area over the entire lease area or a surveyed part of the lease, as a condition of the State's acceptance of the application.

Commercial Timber

Commercial timber on State land leases can include the following types of native forest log and other timber:

- cypress sawlogs;
- hardwood poles, girders, sawlogs, landscape timbers, mining timbers, railway timbers, fencing timbers, including rosewood and lancewood timbers, and other log timbers; and
- sandalwood.

Responsibilities

DNRM is responsible under the *Land Act 1994* for the assessment of the conversion application to freehold the lease.

DAF is responsible under the *Forestry Act 1959* for the identification of a forest consent area on the lease, if required, prior to conversion to freehold and, if a forest consent area is not required, for either valuing the commercial timber on the lease or for arranging any required harvesting of the commercial timber on the lease prior to its conversion.

DAF is also responsible for the sale of log timber, other forest products, and quarry material from State land, including from State land leases that may be converted to freehold land. A sales permit issued under the *Forestry Act 1959* provides the authority to third parties to get log timber, other forest products or quarry material from State land. There may be existing sales permits under the *Forestry Act 1959* on State land leases where the lessee has applied to freehold the lease.

Each harvesting operation to harvest the commercial timber on a forest consent area will also be authorised under a sales permit.

Forest consent areas and forest consent agreements

The lessee of a State land lease that is approved to be converted under the *Land Act 1994* to freehold, and the chief executive for DAF, may enter into a forest consent agreement that identifies an area as a forest consent area. A forest consent area may cover all or part of the lease.

A forest consent area allows the State to retain the ownership of the commercial timber after the lease has been converted to freehold, as the ownership of the commercial timber is separate from the

ownership of the land. The forest consent agreement between the State and the landholder is registered as a profit a prendre on the title of the land.

All survey costs associated with a forest consent area must be met by the landholder. If DAF is agreeable for the forest consent area to cover only part of the lease, rather than the entire lease, the landholder must engage a surveyor to undertake all the survey requirements, including for the preparation of an explanatory or other survey plan, for the forest consent area. DAF will advise the lessee of the type of plan required based on the location of and access to the forest consent area within the lease.

An explanatory or sketch plan provides certainty by defining the boundaries of the forest consent area with dimensions, but does not usually require any field survey and can be a relatively simple desktop exercise undertaken by a surveyor. It can be created using spatial imagery to identify the desired areas to be included, and defined through simple polygons placed around the areas of commercial native forest timber. The explanatory or sketch plan is to show dimensions for each of the boundaries of the polygon around the forest consent area.

The proposed boundaries of a forest consent area over only part of the lease must be approved by DAF to ensure that the forest consent area appropriately includes the areas of commercial timber. DAF's progression of its requirements in regard to each relevant application for conversion of tenure will be dependent on the lessee's provision of the explanatory or sketch plan to the required standards and specifications. DAF will advise the lessee of the type of plan required and the required boundaries of the forest consent area.

The use of forest consent areas will help to ensure that, despite the conversion to freehold, the State will still have access to (and have authority to grant third parties access to) the commercial timber on the forest consent area to meet its contracted supply commitments and the provision of native forest log timber to the timber industry in perpetuity.

Forest Products staff of DAF will attempt to discuss the requirement for a forest consent area with the lessee, either in person or by telephone. Where DAF is agreeable for a forest consent area to be only over part of the lease, DAF will provide advice about the type of plan required and the required location of boundaries of the forest consent area.

A copy of the State's forest consent agreement template is provided in Attachment 1. The forest consent agreement is a legal document, which has been prepared in consultation with AgForce and other stakeholders, and its terms and conditions are not negotiable.

Where a forest consent area is required by the State, it will be a condition of the State's acceptance of an application to convert a lease to freehold.

The lessee will pay the State the value of the land included in the forest consent area at the time of freeholding, but certain forest products, that is the commercial timber, on the forest consent area will remain the property of the State.

The forest consent agreement allows the State to sell the commercial timber on the forest consent area to permit holders while the forest consent agreement is in place. The forest consent agreement also details the respective rights and obligations of DAF and the landholder in regard to the forest consent area and the land on which the forest consent area is located. Whilst in some cases the forest consent area may be only over part of the lease / land, access through the lease / land is required get to the forest consent area.

Note that where a forest consent area is not required, the lessee will be required to pay the value of any commercial timber on the lease or, in very exceptional circumstances, the State may arrange to harvest the lease to nil timber value before conversion to freehold.

Note that where quarry material is reserved to the State in the deed of grant¹ for the freehold land, the State has authority to access (and grant third parties access to) State-owned quarry material on freehold land following consultation with the landowner, regardless of whether or not there is a forest consent agreement in place.

Forest consent agreement

The forest consent agreement is registered as a profit a prendre on the title of the land. The forest consent agreement results in obligations and rights with regard to the forest consent area and the land on which the forest consent area is located, for both the State and for the landholder. The registered agreement will continue and transfer with the land if the land is sold or transferred to another party.

Definitions in the forest consent agreement

Forest consent agreements contain a number of terms. A definition of the terms is provided below.

Restricted Matter

Restricted matter is:

- prohibited matter under the *Biosecurity Act 2014*; or
- restricted matter under the *Biosecurity Act 2014*; or
- a pest declared under a local law by the local government for the land to be a pest because the pest is causing, or has the potential to cause, an adverse environmental, economic or social impact in all or part of the local government area.

Forest Products (commercial timber)

Forest products for the purposes of a forest consent agreement are all vegetable growth and material of vegetable origin whether living or dead and whether standing or fallen, contained in plants of every size and every life stage, including seedlings, saplings and trees, of the commercial species listed in Annexure A of the forest consent agreement for the particular forest consent area.

The commercial timber species to be listed in Annexure A will be compiled by DAF to include the species that are present or are likely to be present on the forest consent area and from which DAF routinely sells log timber under the provisions of the *Forestry Act 1959* into the local or regional markets.

Note that the listed commercial timber species are a subset of the forest products on a forest consent area (as defined in the *Forestry Act 1959*), as the definition for the purpose of the forest consent agreement is limited to the forest products listed in Annexure A of the agreement.

¹ A grazing homestead freeholding lease was previously an option for an approved conversion of tenure application received prior to 8 September 2014. The quarry material is also reserved to the State under a grazing homestead freeholding lease where the application for conversion was received on 5 February 1990 or later (see s45A of the *Forestry Act*).

Species that are not included in Annexure 1 of a forest consent agreement are not considered to a forest product on a forest consent area and therefore they will become the property of the landholder once conversion to freehold has occurred. Note that grasses (indigenous or introduced) or crops grown by the landholder on the forest consent area are also not a forest product.

However, the State retains ownership of the quarry material on the land where the deed of grant contains a reservation of quarry material, just as the State retains the ownership under the deed of grant of the minerals, oil and petroleum.

Get

Get has the same meaning as in the *Forestry Act 1959* and includes get, win, cut, saw, fell, dig, gather, remove, convert, or obtain.

Permittee

A permittee means the holder of a sales permit to get forest products under the *Forestry Act 1959*.

Landholder's rights and obligations under the forest consent agreement

The forest consent agreement provides the following rights and obligations on the landholder:

Access and use of the forest consent area

The landholder must allow access to persons lawfully authorised to enter and traverse the land and occupy the forest consent area. Such parties will be authorised by DAF under the *Forestry Act 1959*.

Depending on the position of the forest consent area, which in some cases only covers part of the lease, relative to the road network within the lease and to the public road network that provides access to the lease, the forest consent agreement may need to include land outside of the forest consent area to provide the required access to the forest consent area. This additional land will be limited to other parts of the area of the lease.

The landholder may use and occupy the forest consent area, including for various types of agricultural activities. However, such use must not be inconsistent with the State's ownership of forest products and a permittee's right to harvest forest products from the forest consent area.

Use and occupation

The landholder may use and occupy the forest consent area including for various types of agricultural activities or to implement reasonable fire prevention and control measures, such as a low intensity prescribed burning program and/or firebreaks. However such use must not be inconsistent with the State's ownership of the forest products on the forest consent area or a permittee's right to harvest forest products from the forest consent area.

Notification

The landholder must use reasonable endeavours to notify the State of any damage to, or unauthorised interference or use of forest products or forested areas on the forest consent area. This includes natural events such as strong winds, fire, rain, hail, flooding, lightning strike, or insect attack.

Use of and interference with forest products

It is an offence under the *Forestry Act 1959* to interfere with State-owned forest products on a forest consent area except under the authority of a sales permit granted under the *Forestry Act 1959* or as otherwise provided under the *Forestry Act 1959*. However, under the forest consent agreement, the landholder is authorised to get up to a limit of 20 cubic metres per calendar year from the listed commercial timber species. This authorisation is only to the extent required to undertake reasonable management works or activities on the land and provided any timber products from trees are used by the landholder on the land containing the forest consent area.

The landholder may interfere with forest products on areas of the forest consent area that are not mapped as Category B (remnant vegetation) areas under the *Vegetation Management Act 1999* on the Regulated Vegetation Management Map, but only to the extent this is authorised under the *Vegetation Management Act 1999* and its associated self-assessable codes.

The landholder may interfere with forest products on areas of the forest consent area that are mapped as Category B (remnant vegetation) areas under the *Vegetation Management Act 1999* on the Regulated Vegetation Management Map. This interference is subject to, and in compliance with an agreement under section 39A(2)(c) of the *Forestry Act 1959* between the chief executive and the landholder or the landholder's agent (contracting party). Such an agreement does not attach to the land containing the forest consent area and it does not survive a change in the ownership of the land.

The majority of the commercial timber forest products are anticipated to be growing within the Category B (remnant vegetation) areas within the forest consent area.

An agreement under section 39A(2)(c) of the *Forestry Act 1959* may, amongst other things, provide for the contracting party's participation in the silvicultural treatment of the commercial timber forest products on the forest consent area. However any such approved inference with and/or silvicultural treatment of the forest products on areas of the forest consent area that are mapped as Category B (remnant vegetation) areas will be consistent with the requirements of the *Vegetation Management Act 1999* and its associated self-assessable codes.

Harvesting

The landholder acknowledges that any stumps or other harvesting residue from activities undertaken under a permit may remain on the property as routine harvesting practices will apply for each scheduled harvesting.

Entering into other agreements

The written consent of the State is required to enter into any agreement or arrangement in regard to the forest consent area that is contrary to the lawful use of the forest consent area under the *Forestry Act 1959* (unless where it is required by law).

This includes but is not limited to agreements or arrangements relating to nature refuge, nature conservation, environmental offsets, carbon abatement, carbon farming, access, mining or coal seam gas. This is required to ensure that the State's access to the forest products growing on the forest consent area is not compromised and that DAF is kept informed about activities or other uses proposed for the land containing the forest consent area. It may also, where applicable, help DAF to schedule / re-schedule harvesting operations consistent with these other proposed activities or uses.

State's rights and obligations under the forest consent agreement

The forest consent agreement provides the following rights and obligations on the State through DAF:

Access to the forest consent area

The State and its representatives may enter the land at any time to access the forest consent area, with such vehicles, plant and equipment as is necessary.

The State must provide reasonable notice to the landholder prior to entering the land for the first time, including for planning or harvest management purposes. Access by the State will principally be in relation to monitoring tree growth, planning for the next harvesting operation and supervision of harvesting operations.

The State must enter and depart the land using the gates and/or grids provided on the land. However where necessary the State may, in consultation with the landholder, cut a fence on the land. Where this happens, the State will promptly repair the fence or install a gate or grid. The necessity to cut a fence will mostly likely be in association with the provision of additional road or track access associated with a harvesting operation.

The State may undertake any works or activities on the forest consent area as required to properly manage the forest products on the forest consent area.

Restricted Matter

The State must use reasonable endeavours to ensure that the State does not spread the reproductive material of restricted matter. The State's primary control measure will be to ensure that vehicles and machinery are washed down to remove any propagative material of restricted matter prior to entry.

The State is not responsible for controlling restricted matter on the land that were present on the land prior to the commencement of the forest consent agreement, or that are not directly the result of the State's own entry onto the land or use of the forest consent area.

Damage

The State must repair damage to any road, track or route where the damage is in excess of normal wear and tear, cultivated land, crops or other improvements where such damage is directly caused by DAF as a result of access by DAF staff and/or contractors engaged by DAF.

Harvesting

The State must notify the landholder of the name and contact details of any permittee who is authorised to access the forest consent area.

The State must take reasonable steps to consult with the landholder in the preparation of an operational harvesting plan for scheduled harvesting on the forest consent area.

The State must advise the landholder when the harvesting on the forest consent area has been completed.

Harvesting a forest consent area

Once a forest consent area is established, DAF has the right to enter and traverse the land for the purpose of accessing the forest consent area to perform relevant functions under the *Forestry Act 1959* and to authorise third parties to harvest the commercial timber on the forest consent area.

DAF may grant a sales permit under the *Forestry Act 1959* that allows forest products to be harvested by another party, referred to as a permittee, on the forest consent area. Once a sales permit has been

granted to a permittee, the permittee (including its employees or contractors) can enter and traverse the land, including with vehicles, plant and equipment, to access the forest consent area to harvest and remove the forest products.

Whilst several log timber products may be harvested from a forest consent area containing commercial hardwood timber species, it is expected that in most cases these products will be harvested on an integrated basis rather than part of a series of single product harvesting operations.

All harvesting operations on the forest consent area, if not involving sandalwood, will be in accordance with requirements of the code of practice that will be applied to the harvesting operation to minimise the environmental and other impacts of harvesting.

Section 13 of Part 1 of Schedule 24 of the *Sustainable Planning Regulation 2012* stipulates that any activity authorised under the *Forestry Act 1959* is not assessable development and hence is exempt from the requirements of the *Vegetation Management Act 1999*.

Any harvesting of sandalwood will be consistent with the requirements of the *Nature Conservation Act 1992* and with the provisions of the *Code of Practice for Native Forest Timber Production on the QPWS Forest Estate 2014* (or its successor).

The frequency of harvesting operations on the forest consent area is expected to be limited to once in every 20 to 50 years, depending on the commercial timber species and the productivity of the forest. Twenty to 50 years usually provides sufficient time following the previous harvesting operation for a sufficient number of the retained trees to grow to commercial size.

Termination of a forest consent agreement

DAF will apply a forest consent area in perpetuity. However, the State may determine at some future time that it no longer requires a forest consent area.

DAF will terminate the forest consent agreement shortly after the State has determined that it no longer requires the forest consent area. Any remaining commercial timber will be valued at the time that DAF determines that it no longer requires the forest consent area.

Before DAF removes the forest consent agreement from the title, the landholder most likely will be required to pay the State the value of any remaining commercial timber on the forest consent area. DAF will issue a tax invoice to the landholder for the value of this remaining commercial timber.

Once the forest consent agreement has been removed, the forest consent area stops being a forest consent area and the State has no further rights to access the land or to harvest or sell forest products from the land under the forest consent agreement. Note however that the State and its permittees will still have rights of access to State-owned quarry material on freehold land under the *Forestry Act 1959* where the quarry material is reserved to the State under the deed of grant.

Another relevant Fact Sheet

The following Fact Sheet, which is available from DAF's website, is also relevant:

- Process for considering the commercial timber on receipt of an application to convert a State land lease to freehold.