

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

Freehold process

The holder of certain types of leases under the *Land Act 1994* can apply to convert their lease to freehold. One component of the State's consideration of such an application is the commercial native log timber (commercial timber) present on the lease.

The State, through the Department of Agriculture and Fisheries (DAF), will determine which of the following strategies will be adopted where commercial timber is present:

- a forest consent area is established over the entire lease;
- a forest consent area is established over a surveyed area assessed to contain commercial timber;
- the lessee pays the State the value of any commercial timber; or
- in very exceptional circumstances where time and harvesting scheduling commitments permit, the commercial timber is harvested to nil value prior to conversion to freehold.

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 timber; and
- sandalwood.

These types of commercial timber are routinely sold from State leasehold and other State lands, including State forests, by DAF on behalf of the State under the provisions of the *Forestry Act 1959* where there are local or regional markets of the log timber.

DAF does not routinely sell rainforest log timber as rainforests on State land are not normally harvested, except perhaps as a salvage operation as part of an approved project necessitating vegetation clearing.

Responsibilities

The Department of Natural Resources and Mines (DNRM) is responsible under the *Land Act 1994* for the assessment of the conversion application to freehold a lease.

DAF is responsible under the *Forestry Act 1959* for the identification of any required forest consent area on the lease prior to conversion to freehold, for the valuation of the commercial timber on the lease and for arranging any pre-conversion harvesting on the lease.

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 commercial 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.

Assessment of commercial timber

The lessee will be required to pay the value of State owned commercial timber on the land in those cases where the commercial timber is not reserved to the State under a forest consent agreement, or, as will be in most cases, not harvested to nil value prior to conversion to freehold. The process for valuation of commercial timber is discussed further below.

Forest consent areas and forest consent agreements

The lessee of a State land lease that is 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 can 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, so 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.

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 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 on-going supplies to the timber industry.

The lessee pays the State the value of the land included in the forest consent area at the time of freeholding, but certain 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 situated.

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

Requirements for a forest consent area

DAF will require a forest consent area in the three contingencies, where DAF:

- determines that there is sufficient commercial native cypress and/or hardwood log timber on the lease to be of on-going interest to the timber industry; or
- has an existing commitment for the supply of sandalwood from the lease; or
- has an existing commitment for the supply of a particular commercial timber product from the lease.

Outside of these requirements DAF will not require a forest consent area, that is, a forest consent area will not be required where there is an existing commitment for seed, foliage or other miscellaneous forest products.

If a forest consent area is not required by DAF, the commercial timber will be valued as at the date of receipt by DNRM of the properly made application to convert the lease to freehold and payment of the assessed commercial timber value will be a condition of DNRM's acceptance of the lessee's application to convert the lease.

Forest Products staff of DAF will attempt to discuss the requirement for a forest consent area with the landholder, either in person or by telephone.

DAF is willing to apply a forest consent area to the whole lease or to just the specific areas of commercial timber on the lease.

The application of the forest consent area over the whole lease will minimise the survey costs that must be borne by the lessee. After the land has been converted to freehold, DAF is prepared, upon request from the landholder, to renegotiate the boundaries of the forest consent area so that it better corresponds with area/s of commercial timber. All survey costs for redefining 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, at their cost, 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. The required boundaries of a forest consent area over only part of the lease will be advised by DAF to ensure that the forest consent area appropriately includes the areas of commercial timber. DAF will also provide advice on whether an explanatory plan or sketch plan is required, dependent 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.

DAF's progression of an application for conversion of tenure where DAF is agreeable to a forest consent area over part, rather than the whole, of the lease will be dependent on the lessee's provision of the explanatory or sketch plan to required standards and specifications.

DAF will apply a forest consent area to a lease in perpetuity.

However, the State may determine at some future time that it no longer requires a forest consent area. If so, DAF will remove a forest consent agreement from the title of the land and at that time, the forest consent area will stop being a forest consent area and the State will have no further right to harvest or sell the commercial timber products from the land.

Any remaining commercial timber may be valued at the time that DAF no longer requires the forest consent area and the landholder may be required to pay the State the value of any remaining commercial timber on the forest consent area.

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 grant¹.

Harvesting of commercial timber

In the very exceptional circumstances where DAF arranges and authorises the harvesting on a lease area before its conversion to freehold, DAF will ensure that this harvesting is undertaken to achieve a residual nil timber value.

Where this harvesting does not involve sandalwood, it will be consistent with the provisions of the applicable code of practice. After harvesting operations in any areas of Category B or Category C vegetation have been completed, the area reduced to nil timber value will remain mapped as assessable vegetation (Category B or Category C) on the regulated vegetation management map and will not be made Category X.

Forest Products staff of DAF will attempt to discuss any requirement for harvesting of the commercial timber to nil value with the lessee, either in person or by telephone.

Where a forest consent area is required, DAF will also arrange and authorise the next harvesting, if it does not involve sandalwood, on the forest consent area in accordance with the applicable code of practice.

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).

Valuation of commercial timber for conversion to freehold applications

For an application for conversion to freehold, a valuation of the commercial timber present on the lease will be needed where there is commercial timber and a forest consent area is not required or if harvesting to nil timber value has not recently occurred.

The commercial timber will be valued as at the date of receipt by DNRM of the properly made application to convert the lease to freehold.

Rather than undertake a costly and time-consuming detailed field-based assessment of the forest areas containing commercial timber on the lease, DAF will undertake a less formal assessment to conservatively estimate the value of the commercial timber. Experienced DAF staff will use available information to undertake this assessment; including of aerial photographs and satellite imagery,

¹ The quarry material is also reserved to the State under a grazing homestead freeholding lease, which was previously an option for an approved conversion of tenure application received prior to 8 September 2014.

published and other reports, regional ecosystem and vegetation maps, data from previous harvesting operations, and data from previous and/or recent inspections or assessments of the forested areas on the lease.

DNRM will provide DAF's 'without prejudice' valuation of the commercial timber in writing to the landholder.

If this valuation is acceptable, the landholder will be required to provide written confirmation of this to DNRM and of their agreement to forego any judicial review and appeal to the Land Court of the commercial timber valuation.

If this valuation is not accepted by the landholder, then DAF will schedule another timber valuation assessment. The commercial timber will still be valued as at the date of receipt by DNRM of the properly made application to convert the lease to freehold. The landholder will be advised of the anticipated timeframe to complete this assessment and subsequent valuation. However in the interim, the application to convert the lease to freehold will not be able to be progressed by DNRM until DAF has provided a revised valuation of the commercial timber.

Other applicable Fact Sheet

The following Fact Sheet, which is available from DAF's website, is relevant to forest consent areas:

- Forest consent areas and forest consent agreements.