



Forest Practices Officer Manual

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Forest Practices Officer Manual:
guidance for Forest Practices Officers in the
performance of their duties as defined under the
***Forest Practices Act 1985* and/or by**
delegation (s. 43 of the Act)

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Most forms and other resources referred to in this manual can be found at:

https://www.fpa.tas.gov.au/forest_practices_officers

https://www.fpa.tas.gov.au/about_us/legislation

<https://www.fpa.tas.gov.au/Planning>

<https://www.fpa.tas.gov.au/landowners>

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Note

All the points in bulleted lists are applicable, unless 'or' is included at the end of bullet points.

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A. Introduction

This manual provides guidance for Forest Practices Officers (FPOs) in the performance of their duties.

FPOs must familiarise themselves with the *Forest Practices Act 1985* (the Act), the *Forest Practices Regulations 2017* (the Regulations), the *Forest Practices Code* (the Code) and the *FPO Code of Conduct*.

The Forest Practices Authority (referred to as FPA and the Authority in this document) has been established (s.4B of the Act) to:

- advance the objectives of the forest practices system
- foster a co-operative approach towards policy development and management in forest practices matters
- take into account social, economic and environmental outcomes of its decision-making process.

The Board of the FPA (the Board) is responsible for the exercise and performance of the powers and functions of the Authority, consistent with the Authority's objectives (s.4AB of the Act).

FPOs are an integral part of the forest practices system which operates in a co-regulatory environment with FPOs meeting a number of objectives, outlined in Schedule 7 of the Act, including:

- an emphasis on self-regulation
- planning before forest operations
- delegated and decentralised approvals for forest practices plans and other forest practices matters
- an emphasis on consultation and education.

FPOs also contribute to the objectives:

- a forest practices code which provides practical standards for forest management, timber harvesting and other forest operations
- an emphasis on research, review and continuing improvement
- the conservation of threatened native vegetation communities
- provision for rehabilitation of land in cases where the forest practices code is contravened.

All FPOs have powers under the Act to ensure forest practices are being carried out according to the Act, the Code and certified forest practices plans (FPPs) (s.40). These powers extend to issue of requests and notices under s. 41.

Some FPOs have powers delegated by the Board to make decisions on behalf of the FPA (s.43 of the Act).

This FPO Manual contains directions that have been issued by the Board or the Chief Forest Practices Officer (CFPO) to guide FPOs in the day-to-day conduct of their duties including inspection or supervision of forest operations and making decisions with respect to applications for FPPs.

The CFPO is empowered by s. 43A of the Act to give a direction to an FPO (see B.1 below). This version of the FPO Manual is to be considered a direction under s. 43A subsection (1) and for the purposes of subsection (4) is to be complied with until a new version of the FPO Manual is released (see the Version Control at the end of this document).

Where there is doubt, FPOs should consult with the CFPO. The CFPO may need to seek advice from the Board. Questions of a legal nature may need to be referred to the Solicitor-General for advice.

The most recent version of the Manual is available for download on the FPA web site at [FPO resource manuals | Forest Practices Authority \(fpa.tas.gov.au\)](https://fpa.tas.gov.au/resource-manuals)

B. Forest Practices Officers

B.1 Chief Forest Practices Officer (CFPO)

The CFPO is appointed by the Minister on the recommendation of the FPA (s. 4J of the Act).

The CFPO's role is outlined in s. 4K of the Act –

- a) Is responsible for overseeing the day-to-day administration of forest practices
- b) Must perform any functions, and may exercise any powers, delegated to the CFPO by the Authority
- c) Must perform any other functions imposed on, and may exercise any powers granted to the CFPO by this or any other Act.

The CFPO is empowered by s. 43A of the Act to give a direction to an FPO as below:

43A. Directions by chief forest practices officers

(1) The chief forest practices officer –

- (a) may give a direction to a forest practices officer in relation to the exercise or performance of a function or power of the forest practices officer under this Act; and
- (b) may give a direction to a forest practices officer, or other person, in relation to a function or power of the Authority that has been delegated to the forest practices officer or person under [section 43](#) .

(2) A direction under [subsection \(1\)](#) –

- (a) to a forest practices officer in relation to the performance or exercise of –
 - (i) a function or power of the forest practices officer; or
 - (ii) a function or power of the Authority that has been delegated to the forest practices officer under [section 43](#) ; or
- (b) to a person in relation to the performance or exercise by the person of a function or power of the Authority that has been delegated to the person under [section 43](#) –

may be a direction as to a policy, or matters, to be considered by the forest practices officer, or the person, before performing or exercising the function or power, but must not require the forest practices officer or the person to make a particular decision in performing or exercising the function or power.

(3) Without limiting [subsection \(1\)](#) –

- (a) a direction under that subsection to a forest practices officer may require the forest practices officer to seek the advice of the chief forest practices officer before performing or exercising –
 - (i) a function or power of the forest practices officer; or
 - (ii) a function or power of the Authority that has been delegated to the forest practices officer under [section 43](#) ; and
- (b) a direction under that subsection to a person may require the person to seek the advice of the chief forest practices officer before performing or exercising a function or power of the Authority that has been delegated to the person under [section 43](#) .

(4) A direction under [subsection \(1\)](#) may specify a period, that is reasonable in all the circumstances, in which the direction is to be complied with.

The CFPO has the following delegation (Instrument of Delegation dated 15 July 2016) to exercise functions and powers under the following provisions of the Act:

Sections 19 (excluding 1AA), 22, 24, 24A, 25B, 27, 28, 47D.

B.2 Forest Practices Officers (FPOs)

The role of the FPO is to assist the FPA in the implementation of the Act. The primary objective of the Act is the achievement of sustainable management of Tasmania's forests with due care for the environment. The achievement of this objective is required to be as far as is possible self-funding and self-regulating. The appointment of FPOs from within the forest industry is part of a co-regulatory approach.

FPOs are expected to undertake their FPO duties at the same time as they are undertaking their normal duties for their employer or client.

The FPO has a separate responsibility under the Act to the FPA that may on occasions have the potential to conflict with the FPO's responsibilities to the employer or client.

The FPO should ensure that their employer or client understands that FPOs have statutory responsibilities under the Act, and that the effective functioning of the forest practices system requires that FPOs actions are consistent with the Act and any FPA directions. The *FPO Code of Conduct* gives guidance on how these issues are to be handled.

Instances of FPOs not correctly exercising their responsibilities under the Act may be dealt with by disciplinary action.

B.2.1 Functions

The functions of FPOs are to:

- ensure that forest practices are carried out in accordance with the provisions of the Act, the Code and any certified FPP
- ensure that private timber reserves are being used for establishing forests, or growing or harvesting timber
- perform any functions determined by the FPA according to the Instrument of Appointment
- follow any instructions issued by the CFPO (this is generally included on the Instrument of Appointment).

B.2.2 Responsibilities

The responsibilities of FPOs may include:

- prepare FPPs in accordance with the Code and associated planning tools (this is not exclusively an FPO function as s. 18(1)(a) of the Act permits anyone to prepare an FPP)
- inspect forest operations covered by FPPs to ensure compliance (see s. 40 of the Act)
- maintain records of monitoring work
- provide relevant and timely information to stakeholders on requirements of the Act, the Regulations and the Code (such advice should be given carefully and FPOs should take care that advice of a legal nature is given with appropriate disclaimer)
- carry out such work as may be directed by the FPA and/or CFPO under the Act and as provided for in the Instrument of Appointment
- issue notices as required under s. 41 of the Act and provide reports to the FPA on breaches of the Act, Code or FPPs
- appear at court proceedings or hearings of the Forest Practices Tribunal when requested by the FPA

- consult with local government, neighbours, stakeholders and other interest groups regarding FPPs and forest practices
- sign off Discreet Operational Phase (DOP) and Final Compliance Reports
- provide forest practices instruction to contractors and staff within the FPO's own organisation
- implement the various FPA policies and instructions
- for FPOs (Planning) only: make decision on certification of FPP applications
- if requested to do so under the *Judicial Review Act 2000*, give a Statement of Reasons for a Decision (e.g., to certify an FPP; issue a s. 41 notice etc.).

B.2.3 Providing an opinion and exercise of powers

FPOs need to exercise care when exercising their duties and powers (see section B.3).

FPOs are not authorised to give legal advice on interpretation of the Act or Regulations on behalf of the FPA. If an FPO does so, they put themselves at personal risk being held liable for such advice and such advice cannot be relied upon as a defence by the person receiving the advice.

In cases where an FPO is asked for advice in relation to interpretation of the Act or Regulations, they should make it clear that only an opinion can be provided and cannot be relied upon in a legal sense. If the person seeking the advice needs to make a decision in regard to legal obligations and rights then expert legal advice may be required.

It is advised that any correspondence, verbal or in writing, includes a disclaimer. Here is an example:

Any opinion or information contained in this correspondence cannot be relied upon for the purpose of complying with the Forest Practices Act 1985 or any other legal requirements as it should be considered general in nature and is not in any way or form to be considered legal advice or binding on the author. The author accepts no liability for damage or loss suffered by the recipient who may act on this opinion or information. It is recommended the recipient obtain advice from a qualified Australian legal practitioner before taking action.

All FPOs should ensure that responsibilities are exercised in accordance with the Instrument of Appointment.

All FPOs (Planning) must only exercise decision-making powers in accordance with the Instrument of Delegation.

FPOs need to ensure their clients or a person to whom advice is being given understands when advice or directions are being given in relation to functions and powers as an FPO and opinion that is being given outside those functions and powers. This is particularly important for FPOs who are providing services in relation to preparation of FPPs or supervising forest operations.

FPPs often have prescriptions which require an FPO to provide input or approval in certain circumstances. It is OK for an FPO to provide an instruction or make a decision in these cases because they should always be around implementation of a Code prescription. Such advice or decision should always be recorded.

B.3 Powers of Forest Practices Officers

B.3.1 Section 40 – Powers, etc., of Forest Practices Officers

FPOs must read and understand s. 40 of the Act which outlines the powers which may be exercised and how to exercise them.

The CFPO will provide guidance to FPOs who are in doubt with respect to circumstances.

B.3.2 Issue of notices

Under s. 41 of the Act FPOs have the authority to issue requests and notices to make good and report instances of non-compliance.

Section 41(1) provides for a request to comply with an FPP or the Act and to take action to repair any damage or rehabilitate or revegetate land and is enforceable to the extent that if it is not complied with, the matter is escalated to a s. 41(2) notice. A s.41(1) request may be oral or in writing. If made orally, the FPO is encouraged to follow up with a written version of the same request.

Section 41(1) requests serve a similar purpose in the forest practices system to Corrective Action Requests (CARs) in certification schemes. The Act clearly states these can be done orally or in writing and when a notice is issued, the FPA is informed. This enables the FPA to monitor what is happening within the forest practices system and identify any trends across the industry. The FPA does not consider the issuing of s 41(1) requests to be a negative reflection of the implantation of the forest practices system, but instead demonstrates that FPOs are being diligent in addressing identified issues as they occur and suggesting improvements before they become major breaches which require assessment and may lead to further action.

The s. 41(2) notice can only be issued in relation to not complying with the s. 41(1) request previously given. It cannot add additional requirements that were not in the original request.

A section 41(2) is a formal notice that must be issued in writing according to s. 46 of the Act (i.e., the notice is effectively served if it is: given to the person; or left at or sent by post to the recipient's last known postal or residential address or address of business or employment; or sent by facsimile).

Sending a s. 41(2) notice by email is not sufficient unless the recipient has consented to the use of email for service.

A person who is aggrieved by the service of a s. 41(2) notice may appeal to the Tribunal within two days of the service – see s. 42 of the Act.

All requests or notices issued by an FPO pursuant to s. 41 of the Act must be notified to the FPA (using the booklet provided or by completing the pro-forma provided on the FPA's website to https://www.fpa.tas.gov.au/forest_practices_officers/compliance_report)

B.3.3 Delegated powers

In addition to the above powers, an FPO may also be given additional delegated powers by the FPA according to s. 43 of the Act.

The powers delegated to an FPO are contained in the **Instrument of Delegation** which is issued by the FPA. When FPOs are using these powers, they are acting as the FPA itself.

An FPO with delegated powers is known as FPO (Planning).

An FPO (Planning) must have a good understanding of how to exercise these powers including a working knowledge of the relevant sections of the Act.

FPO (Planning) must refer to the Instrument of Delegation whenever they are exercising their delegated powers.

B.3.4 Decisions by FPOs

When making a decision in relation to the Act and the Code an FPO cannot be fettered in making that decision by any other person. That means no-one can tell you what decision to make. You are free to take advice before exercising a decision-making power, but you can't be instructed or directed on what decision to make.

The Act has recently been amended to give the CFPO a power to give a direction to an FPO (see section 43A). The directions are limited to matters of policy or matters to be considered before performing or exercising the FPO's function or power but must not require the FPO to make a particular decision in performing or exercising the function or power.

The circumstances which this may apply to include:

- exercising your powers as an FPO Inspecting under section 40 of the Act (includes issuing requests and notices under s. 41)
- deciding on an application for certification of an FPP, i.e., a decision made by an FPO Planning according to the Instrument of Delegation.

There are provisions for decisions to be questioned as follows:

- appeal to the Tasmanian Civil and Administrative Tribunal (TasCAT) forestry stream in relation to:
 - a s41(2) notice
 - decisions in relation to applications, variations, and revocation of FPPs (see s. 25)
- seek review of a decision according to the *Judicial Review Act 2000*.

If you exercise a decision-making power, you must be prepared to give reasons as to why the decision was made. You are advised to record these reasons at the time the decision was made.

B.3.5 Personal liability

Section 39(5) of the Act protects an FPO from any 'personal liability for any act done or purported or omitted to be done by that officer acting in good faith under the Act.'

B.4 Appointment of Forest Practices Officers

B.4.1 How are Forest Practices Officers appointed?

Officers are appointed by the FPA under s. 38 of the Act and then they are authorised by warrant signed by the Chairperson of the FPA (under s. 39 of the Act) to be FPOs.

Upon appointment an FPO will receive an **Instrument of Appointment** as an Officer (under s. 38) and a **Warrant of Authorisation** (under s. 39).

The Instrument of Appointment should be kept in a safe place. The Warrant of Authorisation will be given to you in the form of a photo identification card. An FPO is required to produce and show the Warrant to any person before exercising powers under s. 40 of the Act.

B.4.2 Appointment and delegation categories

All FPOs are actively involved in forest practices and exercise the relevant powers and functions under the Act. For administrative purposes, the FPA recognises two categories of FPO: FPOs (Inspecting) and FPO (Planning). Both these categories of FPO carry out the role of FPO (Inspecting). FPO(Planning) have additional delegated powers, as described below.

FPO (Inspecting) and FPO (Planning):

- carry out functions as described in the Instrument of Appointment
- Warrant of Authorisation card must be produced when exercising powers
- must follow direction by CFPO related to a function, or power, delegated to the FPO within the period specified in that direction
- may exercise powers under s. 40 of the Act
- may issue notices under s. 41 of the Act
- undertake monitoring and lodge compliance reports under s. 25A of the Act
- undertake assessment of forest practices on any land
- assist with investigations into breaches under the Act
- assist with forest practices training of staff or contractors.

FPO (Planning):

- in addition to above, has delegated powers under s. 43 of the Act as described in the Instrument of Delegation
- is responsible for making decisions as the FPA
- must follow a direction given by the CFPO to seek approval before performing or exercising a delegated function or power
- is trained and accredited to make decisions on FPPs to certify, refuse, amend or vary plans (ss. 19, 22, 23 and 24 of the Act). Some of these delegations are conditional, for example they are limited to plantation FPPs.

B.4.3 Qualifications and skills/knowledge required for appointment

The FPA has determined that to be appointed as an FPO a person will:

- have appropriate qualifications/experience in forestry
- have completed appropriate training and have satisfied the FPA that they are suitable for appointment

- be actively engaged in working in the forestry sector in Tasmania and have access to experienced FPOs who can act as mentors
- have demonstrated to the satisfaction of the FPA that their work requires them to exercise the powers of an FPO under Section 40 of the Act.

The qualifications and experience required for appointment as an FPO are:

- a tertiary qualification in forestry or suitable technical qualifications or demonstrated equivalent expertise
- successful completion of the FPO training course
- FPO (Planning) - at least five years of practical field forestry experience in planning and supervising the conduct of forestry operations
- FPO (Inspecting) - at least five years of practical field forestry experience in supervision of forestry operations.

B.5 Maintaining your Forest Practices Officer appointment

It should be noted that under s. 39(3) of the Act, the FPA may at any time revoke the appointment of an FPO for reasons including negligence or not being diligent. Any instance of alleged poor performance by an FPO is dealt with in accordance with the FPA's *Investigation and Enforcement Protocols*.

Where instances of poor performance are found, the delegation and/or warrant of the FPO may be withdrawn on a temporary or permanent basis.

The FPA may also set the terms and conditions for FPOs to maintain their Instrument of Appointment.

All FPOs must attend the biennial refresher course to keep their accreditation.

The FPA may require an FPO (Inspecting) to demonstrate active involvement in supervising, inspecting or otherwise managing forest operations.

An FPO (Planning) must demonstrate active involvement in planning forest operations through writing FPPs or through consideration of FPPs for certification. The FPA considers that an FPO (Planning) would need to demonstrate such involvement in at least two FPPs per calendar year.

<p>If an FPO ceases to be actively involved in forest practices in Tasmania, the FPO should resign in writing to the FPA and destroy the Warrant card - see s. 39(4) of the Act.</p>

B.6 Forest Practices Officers – conduct and operational matters

Summary

- FPOs must be diligent in the performance of their duties.
- FPOs should discuss key provisions of FPPs with contractors and their employees before operations under an FPP commence, and should have contractors refer issues of Code/FPP interpretation to them when in doubt.
- FPOs can enter land where forest practices are or were carried out, gather information and issue notices as appropriate.
- FPOs must report breaches to the FPA.
- FPOs are authorised to issue s. 41 notices where compliance with the provisions of an FPP or the Act is not occurring.
- FPOs may be asked by the FPA to assist with the investigation of complaints.
- FPOs have a role to assist landowners to provide information in FPPs to neighbours and other interested parties and/or stakeholders.

B.6.1 Diligence

S. 39 of the Act authorises the FPA to revoke the authorisation of an FPO who ‘has been negligent or not diligent in performing the duties and exercising the powers of a forest practices officer’. As agents of the FPA, FPOs must be diligent in performing their responsibilities, and clearly separate and differentiate their responsibilities to the FPA from those to their employer.

FPOs are advised to exercise professional judgement and to declare any conflicts of interest in any dealings associated with exercise of powers as an FPO.

B.6.2 Code of Conduct for FPOs

Division 2 of the Act provides for the FPA to issue a Code of Conduct to specify the manner in which FPOs are to perform their functions and exercise their powers under the Act. FPOs must familiarise themselves with the Code of Conduct.

(At November 2022 the FPO Code of Conduct has been provided to the Minister for tabling in Parliament. As it is a disallowable instrument, any Member of Parliament may move a motion to disallow the Code of Conduct).

B.6.3 Implementation of *Forest Practices Code* and FPP provisions

The success of the forest practices system is largely dependent on FPOs who work as field supervisors and who make day-to-day decisions on interpretation and implementation of the Code and FPP provisions (i.e., FPO Inspecting).

A supervisor is defined in this manual as a person who is authorised to monitor forest operations.

It is essential that FPOs discuss key provisions of FPPs with landowners, FPP applicants, field supervisors, contractors or their bush bosses before operations commence, to ensure that everyone involved in the operation is aware of and understands the provisions of the FPP and the Code.

Be aware that some people involved in the implementation of FPPs may have literacy and numeracy issues. It is important that FPOs are aware of and are sensitive to these constraints

and take care with communication to ensure the provisions of the Code and the FPP are well understood.

It is important to brief the contractor about the provisions of the FPP to ensure prescriptions are appropriate for site conditions and operations to be undertaken. If wording is ambiguous or contrary, this should be corrected through a variation.

If altered prescriptions or map alterations are material to the effect of the FPP, these changes should be incorporated in a revised FPP and certified as a variation. The reason for this is to avoid multiple variations confusing the contractor.

The contractor should always have a copy of the certified FPP and the Code on site, while operations are in progress. FPOs are strongly encouraged to include this requirement in the 'A: GENERAL' section of FPPs. Be aware of the paragraph above. Some FPPs have different maps for different DOPs. The contractor may only need to see the map appropriate to the phase of the operation being conducted.

Where an FPO is handing over responsibility for supervision of an operation to another FPO or person (e.g., when going on leave), the handover should include a briefing on operational progress and any forest practices issues within the operation and should including any necessary site inspections.

Contractors should be encouraged to refer any forest practices issues or questions that arise on their operations to an FPO for advice or interpretation.

Direct supervision of operations under an FPP should be the responsibility of the contractor and/or a supervisor appointed by the forest manager or timber processor.

Direction of the contractor's employees should lie with the contractor. However, in practice this may not occur as:

- some contractors do not visit their operations often enough
- there is often no experienced supervisor in charge of the operation on independent private property
- supervisors may not inspect operations frequently or may not be prepared to enforce requirements sufficiently
- some contractors' and operators' knowledge of the Code and FPP requirements is inadequate (i.e., they require additional training)
- certain situations may require immediate attention and it may not be prudent to wait until the principal contractor can be contacted.

FPOs and supervisors should brief operators on site, ideally in the presence of the contractor. Where an FPO gives any form of direction to an operator, the FPO should avoid instructing the operator on how to achieve the direction if safety issues may be involved. This is particularly important if safety considerations may be involved. In doing so the FPO may become inadvertently responsible for causing a breach of the workplace health and safety legislation.

If there is any doubt, operations should be suspended in the part of the coupe that is of concern until the contractor or designated supervisor can be contacted to discuss and resolve appropriate instructions.

B.6.4 Monitoring and assessment of FPPs – compliance reporting

The Act places an emphasis on self-regulation, and for this to be successful it is highly desirable that the implementation of FPPs is monitored on a regular basis by FPOs.

Some forestry organisations have environmental management systems (EMS) or third-party forest certification (e.g., Australian Forest Standard or Forest Stewardship Council) that require them to monitor forest practices through formal audit processes, with follow-up corrective actions for incidents of non-compliance. The FPA fully supports this approach as desirable for achieving good forest practices outcomes. S. 41(1) requests should therefore be treated in the same way as CARs in certification schemes.

The FPA has developed an [assessment form](#) that may be used by FPOs, or they may use a form developed by their own organisation.

FPOs should be aware that breaches of the Code or an FPP must be reported to the FPA, even if they have been dealt with via an internal corrective action process. The use of a s. 41 notices is encouraged where appropriate.

The reason for submitting s. 41(1) requests is so the FPA can monitor trends in the industry and issue alerts if there is a spate of minor incidents. For example, in a wet month there might be a sudden increase in s. 41(1) requests about compliance with the wet weather limitations of the Code. The CFPO may then issue an alert to all FPOs to increase awareness.

The Act requires preparation and lodgement of compliance reports at the completion of each DOP identified in the FPP as well as a final compliance report when the FPP expires. If the operation has been monitored regularly, compliance reporting should be a simple and straightforward process.

B.6.5 Boundaries

All boundaries must be clearly identified before any forest operations commence.

Note: Formal reserves include gazetted reserves such as Forest Reserves. Informal reserves, such as streamside reserves and wildlife habitat strips, are discussed under [Guidance on location and marking of reserve boundaries](#).

Determination of property and formal reserve boundaries

Background

Breaches to harvest boundaries and other intrusions onto adjoining properties can occur for several reasons, including:

- failure to mark a property boundary (e.g., commencing operations before all boundary marking has been completed and failing to inform contractors of this fact)
- accepting the landowner's advice on a boundary location without undertaking the necessary work to confirm this boundary – fence lines are often not accurately located on the actual boundary
- inadequate or confusing demarcation of a property boundary (e.g., insufficient tape used in dense undergrowth)
- geo location errors when using GPS equipment, especially when working under canopy
- human error or equipment failure.

All harvest area incursions onto adjacent properties are serious procedural breaches and must be reported to the FPA.

Procedure

Where operations under an FPP are planned to occur near a property boundary, the onus is on the applicant to ensure that boundaries are located correctly. When operations occur

within 100m of a property boundary, the neighbour notification process will be triggered and issues about the correct boundary location may arise. The FPO should try to establish the correct boundary location to the satisfaction of both parties.

Legal requirement under *Surveyors Act 2002*

It is a legal requirement under s. 16 of the *Surveyors Act 2002* for a registered land surveyor or someone who is under the supervision of a registered land surveyor to survey land (i.e., to survey boundaries between properties) and to demarcate easements shown on a Title.

In a letter to the CFPO (dated 1 November 2022), the Office of the Surveyor-General(S-G) has recently sought legal clarification in relation to aspects of the *Surveyors Act 2002* that pertain to the legality of depicting title boundaries on detail survey plans often used as the basis for site plans required in support of development applications.

The Surveyors Act regulates who is authorised to survey the location of legal interests in real property and subsequently depict their location on a document or plan. Known as 'land surveying', the execution of a survey that shows the location of a property boundary in relation to other features is restricted to individuals who have demonstrated they have the necessary specialised skills and knowledge and in Tasmania these individuals are described as registered land surveyors and are indicated by the Land specialist competency in the Surveyors Register.

Section 3 of the Surveyors Act includes the following definition:

survey means the definition, redefinition, measurement, interpretation, marking or documentation of the geographic position, dimension, extent or relativity of points, lines and things on, above or below the surface of the earth, for any purpose authorised by any Act;

Section 16 of the Act states:

16. Only registered land surveyors to survey land or practise as land surveyors

(1) A person who is not a registered land surveyor must not carry on business or hold himself or herself out as a land surveyor or registered land surveyor.

Penalty: Fine not exceeding 200 penalty units and a further penalty not exceeding 5 penalty units for each day during which the offence continues after conviction.

(2) **A person who is not a registered land surveyor, or acting directly under the supervision of a registered land surveyor, must not survey land.** (S-G emphasis)

Penalty: Fine not exceeding 200 penalty units.

(3) A person who is not a registered land surveyor must not give a certificate that under any law is required to be given by a registered land surveyor.

Penalty: Fine not exceeding 200 penalty units.

(4) In this section,

Survey includes deciding, for fee or reward, whether improvements are, or are not, within the boundaries of any land (S-G emphasis).

FPOs should ensure that when they commission survey projects, any elements of the survey that require the depiction of title boundaries or other legal real property interests are executed by a registered land surveyor. Plans not so executed may void the protection of any professional indemnity insurances in place, and may fail to provide forestry organisation with protections in the event of a dispute.

In that regard, the Surveyor-General advises that if any subsequent site construction elements are required to be set out in relation to property boundaries, whether or not the property boundary is to be marked, such set out works must be conducted by a registered land surveyor, or under the direct supervision of a registered land surveyor, as the set out requires the boundary to be surveyed. This is particularly important for construction elements that have a statutorily defined relationship, or minimum offset, to a property boundary or other legal property interest such as an easement.

Suggested methods of boundary marking, where the boundary has been established and verified as above include:

- For a boundary that has been marked in the past by a registered surveyor, an individual with an understanding of surveying could re-establish the previously identified boundary (using survey notes, compass and chain, GPS etc.). It would be prudent to ensure a registered land surveyor oversees the work.
- Accept an existing fence line or other existing marking as being the boundary if it appears to be in the right place when verified with a GPS unit – consultation with a Registered land surveyor is recommended. Be aware that fence lines may not have been accurately located in the past and an agreement between two existing landowners that the fence is the boundary has no legal standing (if one or both of the properties changes hands a dispute could arise).
- Use a GPS from an agreed point [a point that is identifiable on a map, e.g., a road intersection, to aid post-processing].

Where there is a disagreement about the correct boundary location, the FPO may decide to allow for a sufficient buffer between the operational boundary and the disputed boundary to ensure that any incursion cannot occur.

It is recommended a registered surveyor be employed to establish the boundary.

Use of GPS equipment WARNING (Advice to CFPO from Surveyor-General)

The combination of global navigation satellite system (GNSS) uncertainty in a canopied environment and the imprecision of map-based feature locations means that reliance on GNSS positioning for critical operational boundaries is highly risky as explained below:

GNSS, whilst being able to access increasing numbers of satellites from which to determine positioning solutions, is still affected by interference commonly called ‘multipath’, which refers to when incoming GNSS signals get distorted and weakened by objects in the signal path. Canopy and aspect play a major interference role. Many forest environments cause major distortions to GNSS signals. In addition, single point positioning is rarely more precise than 5 metres, and a canopy environment is potentially many times worse. Differential GNSS via correction signals improves precision but is equally affected by multipath factors.

Gullies with tall trees are particularly bad and using GNSS as the sole means of positioning in such an environment is likely to cause major errors in position. This is also a typical streamside reserve location.

The use of smartphones for positioning is becoming much more prevalent, and whilst these are excellent new tools that offer unparalleled convenience for operators, they are just as susceptible to signal degradation as described. Within a few years, newly launched satellites and improved internal aerials will allow smartphones to record positions to the decimetre level, and augmented correction systems are already available for some versions. However, none of these developments will prevent the impact of topographical and multipath factors from affecting precision.

Property boundaries depicted on the LIST for example are not necessarily spatially correct, even though an uninformed user may draw this conclusion in a digital environment. This is because the cadastre, or property boundary system originated in the early days of European settlement and was conducted without connection to a unifying State Geodetic System of permanent survey marks.

The result was that individual grant surveys were only able to be plotted on mapping products with a variety of imprecise methods, particularly in rural areas when forestry operations are more prevalent. This imprecision has migrated across to the digital environment, except where modern surveys have been able to 'coordinate' property boundaries in which case the digital depiction may be more accurate.

Therefore, finding the boundaries on the ground relies on surveying techniques which place greatest weight upon the location of original corner marks or monuments, or upon long standing occupation (fencing) that can reliably be related back to the age of the original surveys, and checked by accurate measurements.

Under no circumstances should anyone rely on coordinates derived from digital depictions of the cadastre as being accurately representative of the boundary on the ground.

Natural features such as streams and rivers were plotted for mapping purposes from photogrammetric means, where a skilled operator would manually trace the best available line of such a feature. In the heavily timbered areas this was at best an educated guess due to the impossibility of seeing through the canopy to the actual stream.

On 1:25,000 mapping products for example, 1mm on a map translates to 25m on the ground, so it must be realised that the purpose for which these features were derived are not the same as those for which they may be used in a forestry operation.

Therefore, streamside reserves which are nominated at a fixed distance from the feature must be physically measured in relation to that feature to account for the very high likelihood of variations from the map to the real feature. Such variations can be of a very large magnitude and can have a material impact on coupe design and harvesting operations.

Use of LiDAR to determine surface features is a means to significantly improve knowledge of the real feature location. Use of the 'hill shade' layer available on The List is encouraged.

Guidance on location and marking of reserve boundaries

The reserve widths used are specified in the Code. Wider reserves, or reserves for other values, may be specified in individual FPPs.

The effectiveness of an informal reserve is not usually dependent on the specified width being adhered to precisely. To measure informal reserve boundaries precisely would be an expensive exercise, especially where the ground conditions are difficult and reserve boundaries are irregular, such as for meandering streams. For these reasons, the FPA accepts that practical methods of determining informal reserve boundaries are acceptable in most situations and that people will err on the side of caution.

For the purposes of monitoring and assessment, the FPA will expect that field marking has been done in good faith and that:

- The reserve width that is marked will be consistent with that required under the Code.
- Sections of reserve that are below the standard width will not comprise more than 10% of the length of the reserve and will be no more than 10% below the required width at any point.

- Streamside reserves, wildlife habitat strips, and other reserves of fixed width, should be determined by methods that ensure reasonable accuracy to achieve the above specifications. The FPA recommends the following approach:
 - appropriate equipment should be used (e.g., tape measure, clinometer, vertex and transponder, and GPS – recognising there may be issues when working under canopy)
 - as all reserve widths specified are horizontal distance, corrections for slope should be made for slopes in excess of 10%.
- For streamside reserves in situations of good visibility (e.g., dry forests), a single experienced person can mark the reserve boundary by walking parallel to the creek and estimating the streamside reserve width visually with occasional checks by actual measurement. When using this method of estimating the distance, a conservative approach is appropriate (i.e., for a 20 m reserve width aim for at least 22 m width).
- For streamside reserves in situations of poor visibility (e.g., wet forests): a similar approach to the above should be used, except that a second person who walks along the streambank in parallel to the first person should be used, and regular checks made (say every 50–100m) by actual measurement.
- For wider reserves such as wildlife habitat strips (100 m), landscape and flora reserves, a practicable approach should be employed (e.g., using a GPS).
- Logical points such as a break in slope should be used as boundaries, provided the minimum specified reserve width is obtained.

The Code provides guidance on use of GPS technology which can track location in real time on mobile phones and tablets. If a contractor requests a boundary to be marked, this must be done before operations are in close proximity to the reserve boundary.

Guidance on location and marking of operational boundaries

The Code provides guidance on boundary marking for harvesting operations in section C.1.

Ensure the person identified as responsible for boundary marking has expertise and competence to do so.

Although the colours recommended in the *protocol for forestry field marking colours* are in general use, the protocol is not obligatory. Boundaries that are obvious, such as a plantation/pasture edge, do not need to be marked if they are clearly described in the FPP. Be careful where plantations have previously been wrongly established over property boundaries. When firebreaks or other tracks or roads form the boundary of an FPP, they should be marked as lying within the FPP to ensure any required maintenance arising from forest operations is covered by the FPP and subject to compliance assessments.

- Marking is usually done by attaching flagging tape along the boundary at intervals.
- The interval between each tape should depend on the overall visibility. In forests with dense understoreys (generally wetter forests) or where machine falling is being undertaken, a shorter interval between tapes will be appropriate.
- Where felling machines are to be used near a boundary, it is preferable to hang tapes as high as possible, so the tape is visible to the operator in the machine's cabin. In open forests a longer interval can be used.
- A minimum of two to three tapes should be visible in either direction along the boundary from any other tape.

- Corners and intersecting boundaries should be clearly identified by the use of multiple pieces of tape at the point of change of direction.
- Be aware that some people may be colour blind and therefore not able to see tapes, particularly red on green or blue on green.

More secure systems of boundary marking should be used where there are concerns about the removal or re-location of flagging tape by unauthorised persons. For example, boundary trees may be marked by paint, blazing or branding, provided that care is taken to not unduly damage trees intended for retention.

All boundaries should be accurately depicted on GPS maps or marked before operations commence under an FPP. Where this is not possible and an operation commences before all of the boundaries have been marked, it is suggested that the supervising FPO keeps a file record, including a map indicating the section of boundary already marked, and makes contractors aware of the marked boundaries. The contractor should be directed to operate only in areas where boundaries have been marked, and to obtain clearance from the FPO before moving to another section. If considered necessary, the restriction on the initial operating area can be written into the FPP, or into a variation. Supervising FPOs should also ensure that this information is passed on to any other supervisor that will be involved with the operation.

All contractors should be fully briefed on boundaries and their marking, and on the reason for the related provisions in the FPP (e.g., requirements for falling adjoining wildlife habitat strips).

It is preferred that contractors and their crews walk each section of their boundaries before harvesting up to them.

Where there is reliance on GPS, it is recommended that operators or supervisors physically check boundaries when the harvesting machinery is operating within 20 metres. Where there is doubt about the boundary then work needs to cease in that location until the boundary can be physically marked.

Where boundaries are marked around sites of significance (e.g., cultural heritage or threatened species) contractors and their crews should be shown these boundaries and walk them prior to commencing operations in that area.

B.6.6 Powers of FPOs to enter land to inspect forest practices

Under s. 40 of Act, an FPO, on production of their warrant of authorisation, may at any reasonable time and with such assistants as they consider necessary:

- a) enter and remain on any land on which forest practices are being carried out, or in the reasonable opinion of the FPO forest practices have been carried out, to ensure compliance with any FPP and the Act
- b) enter and remain on any private timber reserve (PTR) to ensure it is being used for establishing forest, or growing or harvesting timber, or other forest practices
- c) ask any person associated with the forest practices to produce documents relating to the forest practices, and answer any questions relating to the forest practices.

FPOs should use their discretion in using these powers. If an FPO observes forest practices being carried out and believes them to be in contravention of the Code, or that they are being undertaken without an FPP, the FPO has a duty to take action as authorised under s. 40 of the Act and to report the matter to the FPA.

A check can be made to see if an FPP is current for the site by checking the FPP location map on the FPA's website [Map of certified FPPs | Forest Practices Authority \(fpa.tas.gov.au\)](#)

If machinery is working and appears to be causing environmental damage, the FPO should act to stop the activity if it is a 'forest practice' providing that there is no risk to their personal safety. In this case the FPO should approach the person apparently in charge and:

- politely inform them that they are an FPO with responsibilities under the Act, showing them their warrant of authorisation
- ask if there is an FPP for the operation.

If there is no FPP (and the operations appear to be more than the exemptions under Section 4 of the Regulations allow) the FPO should:

- a) request the person apparently in charge, to cease operations (preferably issue a s. 41(1) notice), explaining that he/she is likely to be in breach of the Act by undertaking the activity, and inform him/her that the matter will be reported to the FPA
- b) obtain the name and contact details of the person apparently in charge, and the landowner
- c) advise the FPA as soon as possible so that it can conduct a more detailed investigation if required.

If there is an FPP, the FPO should:

- a) request to see the FPP
- b) confirm if there is an FPO or company supervisor responsible for the operation
- c) request the person apparently in charge to cease operations and make good (as appropriate) if immediate environmental damage is occurring, using s. 41(1) if considered appropriate (may be verbal) – if this is issued the FPA must be notified
- d) advise the FPO who normally supervises the contractor, if any, as a courtesy
- e) if immediate environmental damage is not occurring, report the matter to the responsible FPO who can initiate any action necessary. If there is no supervising FPO, report the matter to the FPA as soon as possible so that it can conduct a more detailed investigation.

Before exercising these powers, it is advisable that FPOs familiarise themselves with s. 40 of the Act or obtain advice on the correct approach from the CFPO.

B.6.7 Reporting of breaches

The integrity of the forest practices system relies on public confidence that there is open and transparent reporting of breaches of the Act, Code and FPPs, and that such breaches are appropriately dealt with.

What type of breaches should be reported to the FPA?

The FPA becomes aware of breaches in several ways including:

- reports from FPOs
- public complaints
- issuing of s. 41(1) request

- issuing of s. 41(2) notice, if s. 41(1) request not complied with
- FPA's monitoring and assessment program
- completed compliance reports.

Minor breaches

Minor breaches would usually be addressed through s. 41(1) requests to take corrective action.

FPOs can exercise a level of discretion on whether such a request needs to be formal (written) or can be addressed almost immediately (verbal).

Minor breaches that will be remedied through restoration do not need to be reported to the FPA (e.g., snig tracks that require additional grips).

Other minor breaches should be recorded through internal mechanisms, such as incident reports, and be reported later to the FPA through compliance reports.

Where there has been a breach which has been addressed satisfactorily, this must still be reported on the compliance report as 'non-compliant – no further action recommended'.

All FPOs should maintain a record of any minor breaches detected, and the action taken to correct and report the breach. Contact the FPA if in any doubt.

Serious breaches

Serious breaches must be reported to the FPA as soon as possible after they are detected.

Most of the breaches that the FPA would consider to be a serious breach are actions that reflect a major systems error and/or environmental damage that cannot be remedied by corrective action and/or where forest practices are undertaken without authority. These include but are not limited to:

- undertaking forest practices without an FPP
- operating (harvesting, site preparation, herbicide spraying, etc.) outside an operational boundary
- constructing roads that do not comply with Code standards
- operating outside the wet weather provisions in the Code
- applying pesticides under an FPP without an appropriate plan and/or contrary to such a plan (if the FPP requires a plan)
- failure to notify local government or neighbours of impending operations under an FPP
- ignoring or contravening prescriptions in an FPP that relate to natural or cultural values
- removing treeferns from a forest without tags affixed
- offering treeferns for sale without tags
- any breaches where serious environmental damage is considered to have occurred and/or likely to occur
- ignoring a s. 41(1) request that requires issuing a s. 41(2) notice
- repeated instances of lesser breaches by the same individual or organisation after receiving two or more similar s. 41 notices.

If a detailed report to the FPA regarding a serious breach cannot be provided immediately, brief details should be provided to the FPA as soon as possible following a detection of an incident, with a more detailed report subsequently provided. Reports should provide sufficient details (generally one or two pages, including photos and maps) of the alleged breach and detail any corrective action taken (see table below).

Report breaches and s. 41 notices to info@fpa.tas.gov.au.

Aspect of breach to be reported	Details required
When and where it occurred	Date the incident occurred; FPP number; copy of the relevant parts of the FPP; and a map or sketch indicating the location of the alleged breach; photos.
How it was detected	e.g., detected during FPO compliance check
When and who inspected	Date FPO inspected alleged breach; names of people present when the alleged breach was inspected on the ground.
Details of the alleged breach	<ul style="list-style-type: none"> • What part of the Act/Code/FPP has been breached? • Date (if known) when it occurred • Person(s) responsible (include contact details) • How did it occur? (Describe what happened) • Why did it occur? (e.g., because the operator had not seen the FPP map and was not briefed) • Assessment of the degree of environmental damage
Corrective actions recommended or undertaken	<ul style="list-style-type: none"> • Details of restoration work necessary or undertaken • Measures to minimise the risk of future breaches (e.g., specific operator training, improved communication).

When serious breaches are reported through s. 41(2) notices or compliance reports, it may be necessary to provide a supplementary report to the FPA to ensure that all the aspects detailed above are documented.

In all instances, the FPA places a strong emphasis on corrective actions that will remedy the situation as much as possible and avert future breaches.

The FPA will conduct its own investigation of serious breaches reported by FPOs. The FPO will sometimes be requested to accompany an FPA investigating officer on a field investigation of the alleged breach.

B.6.8 Responding to stakeholders and the general public

Handling of complaints – enquiries and Investigations

The FPA responds to all enquiries or reports relating to alleged breaches of the Act or below standard forest practices.

Where appropriate, the FPA will request the relevant FPO to respond to a report of an alleged breach, undertake a preliminary assessment relating to operations under their control and address the report with the individual registering a concern.

The decision to undertake a formal investigation is made according to the *FPA investigation and enforcement guidelines*.

The annual report provides information on investigations completed by the FPA.

Notice of Intent/Neighbour Notification

Refer to section A3.2 of the Code under the heading *Consultation and notification*.

A notice of intent is intended to give local government and landowners within 100 meters of an operational boundary an opportunity to comment on the intended forest practices. This may result in negotiations regarding possible revisions to some aspects of the proposed FPP.

The notice and subsequent negotiations do not confer any additional rights for the nearby neighbour or obligations on the applicant. Each party has legal rights and the FPP process is not the means by which an outside party's legal rights can be enforced.

The FPP may prescribe additional notification requirements associated with the proposed operations, however there is no legal requirement to do so.

FPOs should be aware that there may be additional notification and monitoring requirements around some operations which are essential to the FPP but are covered by other legislation such as:

- fire management (*Fire Management Act*)
- aerial spraying (*Aerial Spraying Code of Practice*)
- ground spraying (*Ground Spraying Code of Practice*)
- use of pesticides (*Agricultural and Veterinary Chemicals (Control of Use) Act*).

B.7 Forest Practices Officer training and accreditation

B.7.1 Training

The FPA conducts the following training courses for FPOs:

- training for new FPOs
- refresher courses for existing FPOs
- briefings on specific topics such as issue of a new Code
- training in natural and cultural values, risk assessment, quarries etc.
- other training is offered from time to time in specific areas as advertised in *Forest Practices News* or through emails.

It is compulsory for FPOs to attend some courses to maintain their accreditation.

B.7.2 Accreditation

There are pre-requisites to undertake training with the FPA (see B.4.3), where this leads to appointment as an FPO or to exercise specialist powers. The prerequisite requirements are outlined in training course documentation available on the [FPA's website](#).

After completing training, FPOs may be accredited to perform certain functions in relation to planning and/or certification of FPPs (see B.4.2).

B.7.3 Training records

The FPA keeps records on the training and accreditation of FPOs. If you have any concerns about the accuracy of these records you should contact the FPA.

C. Forest practices plans: Responsibilities and implementation

C.1 Landowners (*owner of land* as defined in s. 3 of the Act)

Summary

- The *owner of land* is defined in s. 3 of the Act (note that the term landowner is more generally used).
- The landowner must not carry out or cause the carrying out of forest practices unless there is a certified FPP in place or the activity is exempt from requiring an FPP according to the Regulations (s. 17 of the Act).
- The landowner has a duty of care under an FPP to contribute to the conservation of significant natural and cultural values (s. D of the Code).
- The landowner's approval must be obtained before an FPP is certified (s. 18 of the Act) or varied (s. 23). Where there are multiple landowners, the approval of all landowners must be obtained. In the case of Crown Land Services, see section F 3.15
- An FPP continues to apply when a property is sold to a new landowner.
- The landowner is not a party to the FPP.
- Landowners must be notified when an FPP application is amended or refused (s. 19), the FPA varies an FPP (s. 22), a s. 23 variation application is amended or refused (s. 24), an applicant assigns responsibility to another person (s. 25D), all sections in the Act.

C.1.1 Definition of landowner

See *owner of land* in s. 3 of the Act

C.1.2 Landowner's responsibilities

A landowner is a 'responsible person' (s. 17 of the Act), and as such 'must not carry out or cause or allow the carrying out of forest practices on their land without appropriate authorisation' (usually a certified FPP or a permit or authorisation issued by another regulatory process).

Landowner assignment

Note that s. 17(2) of the Act allows for a landowner to assign responsibilities to any other person in writing under seal. It is important that there is a written assignment, a verbal assignment is not sufficient. In the case of a company the Board may provide a written delegation to an employee(s) to sign documents on behalf of the company. If you are considering a forest practice plan for certification you should check the person who has signed the landowner memorandum, has authority to do so (i.e., you should check who the legal owner is and view any written authorisation for assignee(s)).

Landowner responsible for ensuring forest practices have appropriate authorisation

The requirement for an FPP under the Act is not affected by whether the proposed harvesting is of a commercial nature. For example, a landowner may require an FPP for taking firewood from his or her own property for personal use, depending on the scale of the operation and whether vulnerable land is present.

Regulation 4 of the Forest Practices Regulations describes circumstances ***under*** which an FPP is not required and FPOs should be careful in giving guidance to landowners (check the [Guidelines for exemptions under Forest Practices Regulation 4](#) for more information).

All forest practices within the FPP boundary are subject to the provisions of the FPP. A landowner must ensure that any other activities they conduct or authorise within the FPP boundary, such as stock grazing or firewood cutting, are not in breach of the FPP. For example, a landowner who allowed their stock onto a recently regenerated area would risk being in breach of the FPP as the stock would be expected to have a detrimental effect on reforestation.

Duty of care

A landowner has a 'duty of care' to contribute to the conservation of natural and cultural values within areas that are subject to an FPP. The duty of care is defined in the Code in section D.

C.1.3 Landowner's rights

An application for certification of an FPP must be accompanied by a memorandum stating that the landowner(s) has given approval for the FPP to be submitted to the FPA (s. 18 of the Act).

A landowner memorandum must also accompany a s. 23 variation application.

In practice this is done by the landowner(s) approval and contact details recorded on Form 1: Acknowledgement of persons or organisations in relation to FPP (see C.1.2 for clarity on who is able to sign on behalf of the landowner).

The landowner must be notified in writing and invited to make submission, in the following circumstances:

- FPP application is to be amended or refused (s. 19 of the Act)
- FPP is to be varied by the FPA (s. 22 of the Act)
- s. 23 application for variation of an FPP is to be amended or refused (s. 24 of the Act)
- FPP is to be revoked (s. 24A of the Act)

In relation to these matters the landowner does not have appeal rights, as only the applicant has that right (s. 25 of the Act), but could be joined in an appeal by the applicant. The applicant and landowner can be one in the same.

C.1.4 Change of ownership

When a new landowner does not wish to continue with activities authorised under an FPP and where operations have already commenced

The operations authorised by the FPP must be completed to a satisfactory standard to ensure the objectives of the FPP have been followed for the land where operations have commenced. Any DOP and final compliance reports must be submitted (see s. 25A of the Act).

Where a new landowner does not wish to continue with activities authorised under an FPP and where operations have not commenced

If operations have not commenced the FPP should be revoked by the Authority (s. 24A of the Act) or ended by variation (s. 23) of the expiry date before the property settlement – a final compliance report must be submitted (s. 25A).

C.2 Applicants

Summary

- The applicant is the person(s) or organisation(s) who applies for the FPP to be certified under s. 18 of the Act.
- The applicant is required to sign the FPP on Acknowledgment Form 1 and initial each page of the FPP.
- The applicant is the only person who can apply for a variation (s. 23 of the Act).
- The applicant is responsible for ensuring that compliance reports are lodged within 30 days of the expiry of an FPP, and within 30 days of the completion of each DOP (s. 25A of the Act).
- Applicants may be required by the FPA to lodge progress reports during the lifetime of the FPP (s. 25B of the Act).
- The applicant is the only person who can appeal to the Forest Practices Tribunal regarding FPPs, variations and progress reports (s. 25 and 25C of the Act).
- The applicant cannot be changed by variation, but the applicant may authorise another person in a written agreement to assume roles and responsibilities of the applicant (s. 25D of the Act).

C.2.1 Who is the applicant?

The applicant is the person who applies for certification of the FPP under s. 18(1)(b) of the Act.

Any person (or organisation) can apply for certification of an FPP. In practice it is usually either the landowner or a forest manager. The name of the applicant is listed on the front page of the FPP, and their signature and contact details are recorded on Acknowledgment Form 1, which is generally the last page of the FPP.

Where an individual signs as applicant on behalf of a forest management company or similar arrangement, that individual does not personally take on the rights and responsibilities of the applicant.

A person who signs on behalf of a company must have authorisation to do so. For company employees, this will be in the form of a written delegation from the Board of their company.

C.2.2 Applicant's rights

The applicant or the person assigned applicant's responsibilities is the only person who can apply for a variation of an FPP (s. 23 of the Act).

The applicant or the assignee is the only person who can formally appeal to the Forest Practices Tribunal against the refusal or amendment of an FPP application (s. 19 of the Act), variation made by the FPA (s. 22 of the Act), refusal or amendment of an application to vary an FPP (s. 24 of the Act), or revocation of an FPP (s. 24A of the Act).

C.2.3 Applicant's responsibilities for compliance and progress reports

As the 'responsible person' for an FPP, it is the applicant's responsibility to ensure that a compliance report is lodged with the FPA within 30 days of the expiry of an FPP (s. 25A of the Act). The applicant is also responsible for ensuring that compliance reports are lodged with the FPA within 30 days of completion of each DOP identified in the FPP. These are known as an FPP compliance reports and the final compliance report is known as the certificate of compliance.

In certain circumstances, the applicant may also be required by the FPA to provide a progress report(s) on the FPP (see s. 25B of the Act). The FPA will ask for a progress report if it feels that it has reasonable grounds to not rely solely on compliance reports to monitor compliance with an FPP. A progress report must be provided within 21 days of receipt of a notice from the FPA, or as specified in the FPP. The applicant has the right to appeal a notice to provide a progress report issued under s. 25B (see s. 25C of the Act).

An applicant who is also the landowner, and who sells land covered by an FPP, remains the applicant after the sale. They retain all the applicant's rights and responsibilities under the Act as described above, even though they have sold the land. In this case the applicant should seek to re-assign responsibilities (s. 25D of the Act) – see below.

C.2.4 Changing applicant

Section 25D of the Act allows for the responsibilities of the original applicant to be transferred to a new applicant, through a Deed of Agreement between the two parties. This agreement must be in writing and provided to the FPA and the landholder.

The assignment of a Deed of Agreement is a legal agreement between parties. The FPA is not a party to the agreement and cannot provide a template agreement – it is recommended that the parties seek legal advice in drawing up the agreement.

Please note that other sections of the Act have been amended making it clear that the assigned applicant can exercise the rights of the original applicant (e.g., applying for variations, appeal rights and reporting obligations).

In preparing the FPP, where a prescription, task or responsibility is required to be completed by an applicant, it is recommended that they are referred to as 'the applicant' rather than naming the applicant themselves.

For example, if Joe Bloggs is the applicant and his responsibility for boundary marking is indicated in the FPP, the FPP should read...

'Boundary marking will be completed by the applicant' rather than 'Boundary marking will be completed by Joe Bloggs'.

This is possibly an important consideration for forest management companies who have fixed or limited term contracts with forest owners and there is a possibility that applicant responsibilities could be taken over by another management company during the life of the FPP.

If and when a deed of agreement is entered into, please let the FPA know by sending a copy to info@fpa.tas.gov.au and upload a copy of the agreement into Cover Page by selecting '*Change of Responsible Person Agreement in writing under seal*' Document Type under the '*Upload a new FPP document*' tab. FPA administrative staff will add the details of the new responsible person to the FPP home page on Cover Page.

Cover Page will then be amended to show the new 'responsible person' and contact details.

C.2.5 Can more than one party apply for an FPP?

Yes. For example, the landowner and a timber processor may apply for an FPP as joint applicants. In this case, both parties may jointly or individually exercise the rights of an applicant.

Where there is disagreement between the applicants, the FPA would consider the views of all applicants in making a decision. However, only the applicant who applied for the variation would have appeal rights with respect to any decision relating to that variation.

C.2.6 Communication of information contained within FPPs

The FPA's policy in relation to communication of information in relation to FPPs is outlined in the document '[Communication of information in relation to forest practices plans](#)', available on the FPA website.

In summary:

- Notification of intent is an extremely important part of the planning process and it is required by the Code. Notifications should be given at least 30 days prior to commencement of operations and preferably allow for input into the planning process, before an application to certify the FPP is made.
- FPO(Planning) must not certify an application for an FPP if notification has not been given in accordance with the requirements of the Code.
- An applicant should be prepared to discuss the contents of an FPP with neighbours and other interested parties; or by arrangement, have an FPO perform this function.
- When the FPA receives an inquiry about an FPP it will generally refer the inquirer to the FPP applicant, in the first instance.
- The FPA has the right to provide FPPs to 'interested parties' under Right to Information law. In doing so the FPA will first consult with applicants and landowners and any sensitive private and commercial information will be redacted as detailed under law.

C.3 Timber processors

Summary

- The term ‘timber processor’ is defined (s. 3 of the Act).
- A timber processor must not cause the harvesting of timber unless there is a certified FPP in place (s. 17 of the Act).
- Timber processors can play an active role in the forest practices system by employing FPOs, and ensuring that their staff and contractors have sufficient training.
- If applicable, an FPP should specify the name of any timber processor by whom the timber harvested under the FPP is intended or expected to be processed (s. 18 of the Act).
- Timber processors are encouraged to ensure that there is adequate supervision of operations under their control, and to take an active part in contractor training.
- Timber processors may receive timber that has been harvested under the prescribed circumstances in Regulation 4 without an FPP (s. 17 of the Act) (check the [Guidelines for exemptions under Forest Practices Regulation 4](#) for more information).

C.3.1 Definition of timber processor

See **timber processor** in s. 3 of the Act.

Also check the interpretation for **timber**.

C.3.2 Timber processors’ responsibilities

Accepting timber

A timber processor must only acquire or purchase timber from land that has a certified FPP, except in prescribed circumstances (s. 17 of the Act).

Every timber processor should ensure before receiving timber that either it originates from an operation where:

- a certified FPP exists
- or if there is no certified FPP, the timber was harvested in accordance with Regulation 4 (check the [Guidelines for exemptions under Forest Practices Regulation 4](#) for more information).

The timber processor should check the *bona fides* of the supplier where timber is being supplied under exemptions contained in Regulation 4. Suppliers claiming an exemption from requiring a certified FPP under Regulation 4 (a), should be scrutinised carefully to ensure vulnerable land is not harvested without an FPP and that the area and volume limits are being adhered to.

If there is any doubt, the processor should refuse to accept timber until such time as the supplier can prove that provisions of Regulation 4 are satisfied or a certified FPP is in place.

If a timber processor is in doubt over the legality of the source of any timber offered to them, they should seek advice from an FPO or the FPA.

Must not cause contravention of a certified FPP

Where there is a certified FPP on any land in force under the Act, a timber processor must not cause forest practices on that land or any operations associated with forest practices on that land to be carried out in contravention of the FPP (s. 21(1)(b)).

C.3.3 The role of the timber processor under the forest practices system

Many timber processors play an active role in the forest practices system. Larger timber processors may employ FPOs who prepare and certify FPPs and manage operations conducted under FPPs. A commitment by timber processors to the forest practices system will help to continue to deliver high compliance levels.

A timber processor may be the applicant for an FPP.

Timber processors should ensure that their contractors and staff have sufficient forest practices training. The FPA has provided resources to enable training of forest workers in *FWPCOR2203 Follow environmental care procedures*. These are available on the [FPA's website](#).

Timber processors can provide input into the ongoing development of the forest practices system through the Forest Practices Advisory Council which includes *'a person with expertise in, and experience of, forest issues in relation to harvesting and processing ...'*, as per s. 37A of the Act.

C.3.4 Naming a timber processor in an FPP

See s. 18(2)(d) of the Act. The name of at least one timber processor, named in the FPP, must be shown in Cover Page. Where no timber is to be harvested under the FPP, there is no need to name a processor.

The fact that a timber processor is not listed on an FPP will not preclude the processor from receiving timber nor affect the validity of the FPP. Similarly, the fact that a processor listed on an FPP does not receive timber will not affect its validity. A processor does not incur any liability for a breach of the Act merely because the processor is listed or not on the FPP, unless it can be shown that the processor has had direct influence on the conduct of forest practices.

C.3.5 Harvesting and processing timber under the Forest Practices Regulations 2017

Occasionally a person may seek to sell or process timber that they have legitimately harvested from a property without a certified FPP in accordance with Regulation 4 (check the [Guidelines for exemptions under Forest Practices Regulation 4](#) for more information).

However, some timber processors insist on the vendor always providing evidence the wood has been harvested legally.

The Australian Government *Illegal Logging Prohibition Act 2012* and the requirements of voluntary certification mean that many processors must exercise a duty of care to demonstrate that timber has been legally harvested. They do this by demonstrating they have undertaken due diligence in monitoring their wood supply chain. A certified FPP associated with a wood delivery is considered sufficient for that purpose.

S. 17(6) of the Act points to prescribed circumstances, that are contained in the Regulations, where an FPP is not required.

For some clauses in the Regulations (4 (b), (c), (h)), the clearing of trees or native vegetation is permitted, but there is no permission to harvest timber without a certified FPP. In these circumstances, the FPA does not require an FPP if the timber is to be used by the landowner (e.g., personal use for firewood or processing for personal use). However, if the timber is to be sold or traded then an FPP would be required as the operation meets the definitions of 'harvest' and 'process' which goes beyond 'clearing of trees'.

There are circumstances where more than one regulation may be applicable to the proposed forest operation, therefore FPOs need to carefully consider all aspects of the proposed operation.

FPOs may be asked to provide a letter to the vendor (usually the landowner) and/or processor indicating that the timber has been legally harvested. This letter may also be used by a processor/purchaser as evidence they have undertaken due diligence as described above.

Any request of this nature needs to be carefully considered as the FPA does not want to create a situation where large volumes of timber could be supplied to a processor that may not have been obtained from a legitimate source. This can put the processor at risk and may bring the forest practices system into disrepute due to the potential illegal nature of the activity.

There is no legal requirement for FPOs to provide such a letter. S. 17 of the Act indicates that the responsibility to obtain the necessary permissions and demonstrate the legality of the timber to whomever they are selling lies with the responsible person(s).

Therefore, if you are requested to provide a letter in your capacity as an FPO and you decide to do so, you should exercise caution and be very specific about the details of the operation and the type and amount of wood to be harvested.

It is suggested that the letter contain the following details (to the best of your ability to estimate):

- valid for a specific period (suggest no more than three months)
- specify an estimated volume/tonnage and type of timber to be harvested (e.g., hardwood or softwood)
- specify who is authorised to trade the timber off-site (this may be a harvesting contractor or forest management company)
- clearly identify the area of land (not just a PID) and why an exemption is granted (which subsection of the Regulation applies)
- if known, the processor who will be receiving the timber
- a disclaimer that the FPO does not accept any liability for advice given.

A copy of the letter and any supporting information, such as a map showing where the timber is to be harvested, must be sent to the FPA for attention of the CFPO (send it to info@fpa.tas.gov.au). This may be useful to answer queries from processors, auditors and/or investigators.

Please note that some certification schemes will not recognise timber as controlled wood in circumstances of clearance and conversion of native forest (whether or not there is an FPP) or legal harvest under the Regulations without an FPP (plantation or NF). So, while the timber has been legally harvested, it might not be acceptable to some buyers. This is out of the control of the FPA.

C.4 Contractors

Summary

- Contractors may be asked to sign Acknowledgment Forms 2,3, and/or 4 before operating under an FPP, but this is not mandatory. All contractors are bound by the provisions of an FPP whether or not they have signed an acknowledgement form.
- Contractors are responsible for their employees through vicarious liability (s. 47C of the Act).
- Contractors must comply with the requirements of s. 41 notices.

C.4.1 Contractors' responsibilities

Contractors and their employees play a vital role in ensuring that high forest practices standards are achieved. Contractors and their employees are potentially liable to fines or prosecution under the Act if they breach the provisions of an FPP or the Code. Contractors should read the FPP and query an FPO if unsure of the meaning of, or the requirements under, an FPP.

Contractors may be asked to sign an optional acknowledgement form. The purpose of this is to ensure that contractors are aware of the requirement to comply with the provisions of any FPP that they operate under. Although this is not legally required it is useful as evidence that the contractor has read and understood the FPP.

The fact that a contractor has not signed an acknowledgement form does not diminish the contractor's legal responsibility to comply with the provisions of that FPP, nor reduce the contractor's potential liability in the event of the contractor causing a breach.

Contractors must ensure that their employees are aware of and comply with the requirements of the FPP and the Code. The contractor should ensure that all employees are briefed at the commencement of operations on FPP requirements. A copy of the FPP and a copy of the Code should be kept on site at all times while forest practices are in progress. The contractor should ensure that when an employee is taking over another's duties, a handover procedure takes place so that the incoming employee is aware of the FPP prescriptions and any other relevant matters.

Vicarious liability means that an employer or contractor may be held legally responsible for the actions of their employees (s. 47C of the Act).

Contractors should exercise due diligence to minimise exposure to the vicarious liability provision of the Act by ensuring that their employees:

- have adequate training and instruction, and any new employees are inducted onto the operation
- possess the skills, knowledge and tools necessary to meet their obligations and are briefed on and understand the requirements of the FPP before operations commence
- have a copy of the applicable FPP, including any subsequent variations, on the site at all times while operations are in progress
- have a copy of the Code available to their employees
- understand the necessity of complying with the Code and FPP provisions
- where they are in doubt, refer matters to an FPO

- comply with any s. 41 notices issued by an FPO.

C.4.2 Compliance with section 41 notices and appeal rights

The contractor should comply with the provisions of any notice issued under s. 41 of the Act to them by an FPO.

A s. 41(1) notice is in the form of a request. The request may be issued at any time the FPP is in force or any time in the 12-month period after the FPP expires (s. 41(1A) of the Act). If, in the opinion of an FPO, the request has been complied with, no further action is necessary.

If the s. 41(1) request is not complied with, a s. 41(2) notice can be issued, which is a demand.

A s. 41(2) notice must be consistent with the s. 41(1) request(s). You can't introduce new requirements without first using the s. 41(1) request.

Note that formal notices such as the s. 41(2) notice must be issued in writing and given or posted to the recipient. If sent by email, the recipient must agree to use email as a means of communication beforehand (see section [G1 Issuing of notices](#) below).

According to section 42 the recipient of a s. 41(2) notice has a right to appeal to the Tasmania Civil and Administrative Appeals Tribunal (TasCAT) within two days of the service of the notice.

The recipient must be informed of the appeal right and the time they have to lodge an appeal, when the notice is given to them (see [G. 2 Appeal to the Tribunal](#)).

Refer to [Forestry Practices Stream | TASCAT - Tasmanian Civil & Administrative Tribunal](#) (www.tascat.tas.gov.au/forestry-practices) for an appeal form.

D. FPP monitoring and reporting

D.1 Forest practices plan compliance reports

(See also [Monitoring and assessment of forest practices plans](#))

Summary

- It is the responsibility of the Applicant to ensure compliance reports are lodged (s. 25A of the Act).
- The compliance report process is designed to ensure that regular compliance inspections of operations conducted in accordance with FPPs occurs.
- DOPs are forest practices specifically identified in an FPP (e.g., road construction, timber harvesting, forest establishment, non-commercial thinning). The FPP must contain an estimated completion date for each operational phase. However, the date in the FPP is only a guide and the DOP compliance report must be lodged within 30 days after the actual completion of the operational phase, not within 30 days of the date shown on the FPP coversheet.
- There is no need to prepare a variation to an FPP simply to extend the length of a DOP.
- A final compliance report must be lodged by an FPO within 30 days of expiry of an FPP.
- If all operations have been completed, a compliance report can be completed and lodged before the expiry of an FPP, but any non-compliances should be rectified first. If a s. 41 notice has been issued and not yet closed, out the certificate should be lodged as 'Further Action Required – s. 41 notice issued'. If the problem has been addressed through a s. 41 or another corrective action mechanism, the certificate should be lodged as 'No further action recommended'. This is to ensure that FPPs with compliance issues which have been resolved are distinguished from FPPs which complied in the first instance.
- Any remedial work identified in the final compliance report should be undertaken 12 months of the expiry of the FPP.
- FPOs can sign and lodge a compliance report for an FPP where someone else has undertaken the compliance check. The person who completed the assessment should be noted when lodging the certificate on the Cover Page system.
- Explanatory notes are provided in this document detailing the process to complete the compliance report forms.
- Compliance reports must be lodged electronically onto FPA Cover Page.

D.1.1 What is the purpose of a compliance report?

Compliance reporting was introduced to ensure operations were completed according to the FPP, or very substantially complied with (see D.1.15). The main reason for requiring that these reports being lodged within 30 days is so that any identified non-compliances can be rectified in a timely manner. It is more efficient, for example, to address issues requiring use of heavy machinery whilst that machinery is still on site, rather than having to return it to the operation area. It is also important that an FPO 'signs-off' the compliance report so the FPA can be confident that forest practices in accordance with the FPP have been correctly implemented and in the event of any issues that all matters have been addressed appropriately.

D.1.2 What are discrete operational phases (DOP)?

The Act includes provision under s. 18 for DOPs to be identified in FPPs. There are up to seven DOPs under an FPP, which are listed near the bottom of the FPP Cover Page. They may include any or all of the following:

- roading
- tree fern harvesting
- timber harvesting
- reforestation (i.e., re-stocking land with trees)
- reforestation assessment (i.e., stocking surveys)
- non-commercial clearing (i.e., tree clearing; non-commercial thinning)
- quarrying.

In some instances, a DOP may refer to a stage in the operation, resulting in more than one DOP for a stage. For example, if tree clearing occurs over a number of phases, a compliance report may be required at the end of each phase.

D.1.3 Responsibility for lodgement of compliance reports

The Act provides that it is the responsibility of the applicant to lodge compliance reports. Where an individual has signed as applicant on behalf of a company the FPA would regard the company as responsible for lodging the compliance reports, provided that the individual has clearly signed on behalf of the company.

D.1.4 When must interim compliance reports for discrete operational phases be lodged?

An interim compliance must be lodged within 30 days following the completion of all activities covered by that DOP.

The last DOP (generally *DOP Reforestation assessment*) will generally incorporate the final compliance report. This can be indicated on the certificate of compliance form and **must be** indicated on Cover Page. This is especially important when dealing with applicants for independent private property FPPs who generally would pay a consulting FPO to lodge the DOP interim compliance and final certificate of compliance on their behalf.

D.1.5 When must interim compliance reports for incomplete discrete operational phases be lodged?

Where a DOP has not been completed and there is an interruption of three or more months, then a compliance report should be prepared for the operations that have been completed. This avoids issues of ongoing liability manifesting.

D.1.6 Can an interim compliance report be lodged prior to the estimated completion date for the DOP in the FPP?

Yes. The estimated completion date for a DOP on an FPP is the date the phase is anticipated to be completed. An interim compliance report must be lodged within 30 days following the completion of all activities covered by that DOP.

D.1.7 What should an FPO do if operations under a DOP will not be completed before the estimated completion date for that phase in the FPP?

The FPA does not require a variation to an FPP if the DOP completion date is exceeded and the FPP has not yet expired. However, if a variation is being prepared for other changes to

the FPP, then it is recommended that this variation includes changes to DOP completion dates as well.

D.1.8 When must the final compliance report (certificate of compliance) be lodged?

The certificate of compliance must be lodged within 30 days of the FPP expiry date. Section 41(1) notices will be issued to applicants by the FPA who have not lodged a compliance report on their expired FPP within this time frame.

D.1.9 Can the last compliance report for an FPP be lodged prior to the expiry of the FPP?

Yes. FPOs do not have to wait until expiry of an FPP before completing the last compliance report. The certificate can be completed as soon as all operations under an FPP are completed. If required, the FPP expiry date can be brought forward by variation if the operation is completed and compliant.

However, if the operations have been completed, but work is outstanding (e.g., additional road drainage is required or remedial regeneration works are required to meet a stocking standard) this work should be completed and then reported on in the compliance report.

D.1.10 What should an FPO do if an FPP is due to expire before operations under the FPP have been completed?

If expiry of an FPP is imminent and all the requirements under the FPP have not been completed (e.g., stocking survey, post-operation archaeological survey), the FPP expiry date should be extended by variation.

D.1.11 Can remedial work identified in a compliance report be undertaken if the FPP has expired?

Yes. The FPO should issue a s. 41 notice to cover such circumstances, as the contractor may be required to return to the operation area to conduct any remedial activities. The Act provides that a s. 41 notice may be issued up to 12 months after the expiry of an FPP.

D.1.12 Completion of the compliance report forms

An FPO must ensure that all provisions of the FPP have been complied with. The FPA has a standard checklist available on the [FPA's website](#), which FPOs may choose to use for this report.

Some organisations have monitoring forms or checklists in place as part of their environmental management system, such as harvest monitoring forms and coupe clearance forms. These documents are suitable for the task of documenting compliance and FPOs do not have to duplicate processes by completing the FPA checklist. All completed certificate of compliance forms and accompanying checklists should be retained as they will be reviewed if the FPP is selected as part of the FPA's independent monitoring and assessment process.

D.1.13 Who can sign the compliance report?

Any FPO can sign the compliance report. An FPO who signs a compliance report, where another person has assessed the operations, must have confidence that the person undertaking the compliance check was competent, had visited the operation, and had sufficient knowledge of the Code and FPP.

D.1.14 Changes to Regional Forest Agreement (RFA) communities

Any known changes to the vegetation community classification or number of hectares harvested or regenerated should be recorded on the FPA Cover Page system when lodging compliance reports. These changes should be shown by revising the table of RFA

communities that appears on the Cover Page database under the relevant FPP. If appropriate, the report should be lodged as ‘DOP complied –operational area is smaller than planned’.

This information enables the FPA to monitor changes in the native forest estate, as required under the Permanent Native Forest Estate Policy, and in reporting on harvest and reforestation operations.

D.1.15 Explanatory notes for completion of the compliance report forms

Category	Comments
<p>The activities under the FPP did not proceed</p>	<p>None of the provisions in the FPP have been implemented (i.e., the FPP was certified, however the applicant didn't implement ANY part of the FPP).</p> <p>If there was some activity implemented under the FPP, do not select this category.</p>
<p>DOP complied –</p>	
<p>Fully complied</p>	<p>The FPP (including the Code) has been fully or very substantially complied with.</p> <p>A few very minor non-compliances that are not considered to have any significant adverse effect on natural or cultural values are permitted in this category.</p> <p>Examples include:</p> <ul style="list-style-type: none"> • a culvert on a road is located a few metres further from the previous culvert than the distance specified in the FPP or Code • not all grips on all snig tracks will be fully effective • there are slight differences between the operational boundary indicated on the FPP map and the actual boundary (provided it does not compromise the boundary of a formal or informal reserve in any way).
<p>Operational area is smaller than planned, but all other provisions of the FPP have been fully complied with.</p>	<p>The FPA understands that there will almost always be minor discrepancies between planned operational areas and final operational areas. Use this category only if the FPP has been fully or very substantially complied with but is <u>less</u> than original indicated area on the FPP Cover Page.</p>
<p>Not complied with the provisions of the FPP –</p>	
<p>No further action recommended</p>	<p>The non-compliance(s) are of a relatively minor nature and either remedial action cannot rectify the non-compliance or remedial action is not considered necessary as a significant effect on natural or cultural values is not anticipated.</p> <p>The FPO should enter notes regarding the identified non-compliances.</p>
<p>Further action required – s. 41(1) notice issued</p>	<p>The non-compliance(s) are significant and require rectification through a s. 41 notice. The FPO is of this opinion that</p>

Category	Comments
	<p>investigation and action by the FPA will not be necessary provided the notice is complied with.</p> <p>Examples of a s. 41(1) request could be:</p> <ul style="list-style-type: none"> • place additional culverts along new road construction • complete restoration work • remove temporary log crossings. <p>The FPO should forward the s. 41 notice to the FPA and report summarised details of the notice issued on Cover Page.</p>
<p>Further investigation and action recommended</p>	<p>The non-compliance(s) are significant and warrant investigation by the FPA. Generally, these non-compliances are serious and/or cannot be rectified by remedial action through the issuing of a s. 41 notice.</p> <p>Examples include:</p> <ul style="list-style-type: none"> • a road has been constructed for a considerable length parallel to a stream and in a different location to that shown on the FPP map • harvesting trees within a reserve excluded from the harvest area with flagging tape • harvesting trees on an adjoining property without landowner consent • soil cultivation during very wet conditions causing severe soil damage and/or stream siltation • substantial incursion into class 4 machinery exclusion zones. <p>The FPO should enter details as to what were the identified non-compliances.</p> <p>The FPO should note the particulars including responsible parties, how the non-compliance occurred, and any actions taken by the FPO in the 'Details' section of the certificate of compliance report.</p>

D.1.16 Electronic lodgement of compliance reports

All lodgement of compliance reports must be done through the FPA Cover Page database. Details on how to lodge a compliance report are contained in the *FPA Cover Page Application User Manual* on the [FPA's website](#).

D.2 Forest practices plan progress reports

D.2.1 What is the purpose of a progress report?

Section 25B of the Act provides for progress reports if the FPA considers on reasonable grounds that it should not rely solely on the DOP reports to monitor compliance with an FPP.

D.2.2 How to request a progress report?

A notice in writing can be given to the responsible person for the FPP requesting a progress report on the FPP. The report must be submitted 21 days following the request notice.

The notice must be issued by the FPA.

FPOs who wish to request a progress report for an FPP must ask the CFPO to issue the notice on their behalf as only the CFPO has a delegation to issue this request.

D.2.3 Why would a progress report be requested?

The provision for progress reports was added to the Act to allow the FPA the power to request progress reports on current FPPs for any reason it considers reasonable. Usually, these requests would apply to FPPs where there are long periods with no apparent evident action and the FPA are concerned about the progress of the FPP.

Examples of where a progress report might be requested include:

- The FPA is concerned about the progress of reforestation activities and seeks a report on the condition of reforested area and confirmation that measures have been taken to protect the area from browsing.
- Harvesting operations have been suspended for some time and the FPA seeks a report on the condition of any temporary rehabilitation measures that may have been undertaken.

D.2.4 Responsible person may appeal the notice to provide a progress report

Section 25C provides for a responsible person for a certified FPP who is aggrieved by a notice to provide a progress report to appeal to the Forest Practices Tribunal.

E. Forest practices plans: natural and cultural values evaluation sheets

The evaluation sheets constitute a risk assessment process for assessing the risk of the planned operation on significant natural and cultural values and for developing appropriate recommended management actions to make a reasonable contribution to the conservation of those values in accordance with the guiding principles of the Code.

Summary

- Evaluation sheets will be completed as part of the development of an FPP and prior to certification of each FPP.
- Evaluation sheets for **draft** FPPs should be reviewed when the FPA advises of major changes to requirements if they were prepared more than six months prior to certification of the FPP
- Evaluation sheets and BVD for **certified** FPPs should be reviewed when the FPA advises of major changes to requirements if there is more than six months between certification of FPP and the commencement of operations.
- Evaluations for some values will need to extend beyond the proposed FPP boundaries.
- If (through a variation) changes are made to operational prescriptions, expiry date or to the area of planned operations that are not covered by the original evaluation sheets, new evaluation sheets may be required to cover the changes to the FPP.
- Use of reference material, field surveys and advice from specialists, as appropriate, is essential in evaluation sheet preparation.
- Notifications will be made to FPA specialists where directed to on the evaluation sheets via the FPA notification database.
- If an FPA specialist recommends prescriptions in their reply to a notification, these can only be substantially changed by the FPO following further consultation and agreement with the specialist. If agreement is not reached the matter must be referred to the CFPO.
- Prescriptions developed in the evaluation sheets and endorsed by the specialists (if required) must be transferred to the body of the FPP.
- The final natural and cultural values evaluation sheets and any supporting information (e.g., maps, database outputs, and specialist advice) should be uploaded to the FPA Cover Page Database.

E.1.1 General requirements for evaluation

Natural and cultural values evaluation sheets will be completed prior to certification of an FPP or for a variation of a certified FPP (see below). If FPA specialist endorsement of proposed management prescriptions is required, this must also be completed prior to certification or variation. The FPO certifying the FPP must be satisfied that the person who completed the evaluation sheets was competent to perform that task.

Evaluation sheets cover:

- biodiversity (flora/fauna)
- cultural heritage and earth sciences
- visual landscape.

The evaluation sheets are designed to ensure appropriate consideration of these values during the preparation of the FPP so that these values can be adequately managed either through prescriptions placed in the FPP, or areas being excluded from operations.

The evaluation sheets and supporting documentation will be retained by the FPO who certified the FPP. Copies of the evaluation sheets do not legally form part of the FPP, which is why it is imperative that any management prescriptions developed through preparing the required evaluation sheets are transferred to the body of the FPP. However, FPA requires these to be uploaded to the FPP Cover Page system. Evaluation sheets are not required to be provided to the FPP signatories, neighbours, or other interested parties unless they specifically request such background information. The prescriptions for natural and cultural values, and how they were determined, should be explained through briefings or training programs to ensure that all parties fully understand the rationale for the prescriptions.

E.1.2 When should evaluation sheets be prepared?

Sufficient lead time should be allowed to enable, where required, notifications to be sent and replies received from FPA specialists. The FPA specialist may also require a field visit of the proposed operation to determine appropriate management advice.

Evaluation sheets can be completed at any time prior to certification or variation of an FPP. However, on occasions the requirement for a particular value (e.g., recommended management advice for a threatened species) may change between the time the evaluation sheets are completed and certification or variation of the FPP.

When important changes to recommended management actions occur, the FPA will formally notify all FPOs that evaluation sheets already prepared for draft FPPs will need to be reviewed by the FPO. Evaluations for FPPs already certified will not be affected (except in the instances indicated in the next paragraph).

Where evaluation sheets have been completed more than six months prior to certification of the FPP, it will also be necessary to undertake a review of databases for new site listings/distribution information, and review evaluation sheets accordingly. These requirements are necessary to avoid situations where outdated or superseded recommended management actions or advice have been employed in the development of a particular FPP, potentially resulting in inadequate outcomes for identified natural or cultural values.

Occasionally the recommended management of a particular value may change during the course of conducting operations under a certified FPP. Generally, once an FPP is certified the FPA will not require changes to be made other than in exceptional circumstances, for example where new information indicates that the impact on a particular value may be substantially greater than previously known. In this instance, the FPA may instigate a s. 22 variation if no application for variation is received in accordance with s. 23 of the Act.

E.1.3 What area should the evaluations cover?

The evaluations for any proposed operation area need to cover all areas over which there will be forest practices conducted under the FPP. Evaluation for some values will however need to extend beyond those limits. For example, landscape evaluations often need to include consideration of values lying between the FPP area and viewpoints, searches for eagle nests may be required to extend beyond harvest and FPP boundaries and the availability of mature forest habitat surrounding the proposed operation area may influence the recommended management actions within the operation area.

Where a roading-only FPP is proposed, it is strongly recommended that a full evaluation of areas to be serviced by the new road be undertaken. That is, both the roading route and the

planned operational areas that are to be accessed by the road should be considered at the time the roading plan is being developed. This avoids situations where, although no restrictions were identified for road construction, a later evaluation for the harvesting area accessed by the new road reveals that the harvesting and/or reforestation operation may be either highly constrained or not able to proceed due to identified values (e.g., due to discovery of an eagle's nest or a forest community unable to be harvested or successfully regenerated).

E.1.4 Transfer of prescriptions from evaluation sheets to FPP

It is essential that the final prescriptions developed by an FPO in accordance with the Code and associated planning tools are transferred to the body of the FPP. Prescriptions not transferred to the body of the FPP do not have any legal effect as the evaluation sheets are merely supporting documents to the FPP. Likewise, FPPs should not contain non-prescriptive planning information.

E.1.5 What if the planned operational area or prescriptions are changed following completion of the evaluation sheets?

A map showing the area in which the natural and cultural values were considered during the development of the evaluation sheets should be retained with the evaluation sheets.

If during FPP preparation, it is determined that a change in the planned area or operational prescriptions is necessary, the map can be easily reviewed to determine whether the proposed changes involve areas already covered by the evaluations. If not, revised or new evaluation sheets may need to be prepared to cover the proposed revisions.

FPOs may need to further consult with the relevant FPA specialists to determine if the new areas require new evaluation sheets if areas are adjacent and substantially similar to those already evaluated.

Similarly, a check will be required to see if the changes were covered by the original evaluation sheets if changes are made to an existing FPP by variation. If not, FPOs should consult with the relevant FPA specialists to determine whether the new areas require new evaluation sheets.

E.1.6 Explanatory notes for completing evaluation sheets

Important points:

- It is essential that the person completing the evaluation sheets:
 - is aware of, has access to, and uses appropriate and current reference material on natural and cultural values
 - ensures that field visits are conducted to collect specific information on natural and cultural values in the area to be covered by the FPP
 - contacts the FPA specialist for advice when a statement on the evaluation sheet requires this.
- It is essential that a record should be kept of how final prescriptions have been developed, based on the evaluation sheets and specialist advice; and that the final prescriptions written into the FPP incorporate specialist recommendations, subject to minor changes of wording being acceptable (see section E.3.2).

Note that the recommended action delivered by FPA planning tools should be translated into a clear and concise management prescription in the FPP; the action must be clear to those responsible for conducting the operation (e.g., contractor and supervisor). Maps, photos and

illustration should be provided to clarify actions required (e.g., location of caves, eagle nest etc.).

The evaluation sheets include instructions for completion, and guidance on the circumstances which require notification of FPA specialists.

Boxes are provided on the evaluation sheets to insert answers. All boxes should be completed. In some cases, it will be necessary to answer 'not applicable'.

E.1.7 FPP for small-planted woodlot on non-vulnerable land

A checklist has been developed for FPOs to determine whether a simplified FPP process for small-planted woodlots on non-vulnerable land can be used. The checklist is also on the [FPA website](#).

Other associated documents include:

- biodiversity evaluation sheet for small scale plantations and plantation thinning
- earth sciences and cultural heritage – sheet for small FPPs.

These can be found on the FPA website.

The standard FPP template can still be used. Any parts of the template that are not required for the simplified FPP can be removed or marked N/A.

The FPP must conform with the requirements set down in s. 18 of the Act to be considered for certification.

E.2 Notifications to Forest Practices Authority program specialists

Notifications are provided to the FPA specialists through the [FPA notification system](#) on the FPA website.

Notifications are FPA notification system located on the FPA website.

The FPO user manual for the notifications system can also be accessed via the [FPA website](#).

Notifications for biodiversity, cultural heritage, soils and water must be sent to the relevant FPA program. For visual landscape evaluation sheets, FPOs should complete the evaluation sheets. If agreement cannot be reached the matter will be referred to the CFPO. If the landscape management objective (LMO) cannot be met, FPOs should notify the CFPO.

Most FPA specialists now use GIS to evaluate information provided. It would expedite the advice process if, where you can, you provide GIS shapefiles and point locations for any matters for which you are seeking advice, as well as the traditional pdf or Word map.

It is also useful for FPA to have shape files for any areas that have been 'set aside' for forest practices reasons such as reserves for special values including soil and water and duty of care reasons once the FPP is certified. This will facilitate effectiveness monitoring and future identification of 'vulnerable land' as described in the Regulations.

Please provide:

- GIS shapefiles and locations (in addition to PDF maps) of FPP boundaries, operation boundaries and other relevant special values information during the notification process.
- GIS shapefiles of the final FPP map and variations, loaded onto Cover Page, including:
 - the boundary of the FPP
 - the boundary of any areas retained or with management constraints for forest practices reasons
 - the boundary of areas retained/excluded from harvest for other reasons
 - the reasons for retention of such areas for monitoring purposes – as a minimum an indication of areas retained for soil and water and areas retained for other natural and cultural values (e.g., visual landscape, biodiversity and cultural heritage).

This will not only expedite the specialist advice process, but will also be useful in future effectiveness monitoring.

E.3 Determining what prescriptions to place in the forest practices plan

The person preparing the evaluation sheets for an FPP will place prescriptions for natural and cultural values at the end of each evaluation sheet.

These will be considered as final prescriptions if advice from the relevant FPA specialist is not required, or as DRAFT prescriptions if advice from the relevant FPA specialist is required. Upon receipt of any advice from FPA specialists, any additional recommended management actions will be developed into prescriptions and any revisions to proposed prescriptions will be made and then finalised, noting the following requirements.

E.3.1 Seeking FPA specialist advice

Further FPA specialist advice must be sought:

- if the endorsed or recommended management actions are not understood or cannot be implemented
- if additional natural or cultural values are subsequently identified in the FPP area
- if the coupe is to be extended significantly
- if a variation is planned to the FPP, such as a change in silvicultural prescriptions or land use, that will affect natural or cultural values that are not covered by the original FPP recommendations or endorsements.

E.3.2 Engaging FPA specialists or ecological consultants for assistance with conversion proposals

The circumstances under which the FPA may assist an FPO with ecological assessments for conversion proposals are outlined in the [Guidelines for ecological surveys and reports for areas proposed for a forest practices plan](#), available on the FPA's website.

The guidelines support clause 2.1 of the policy '[Roles and responsibilities within the forest practices system](#)', which was approved by the FPA Board in 2009. That document is available on the FPA's website.

Clause 2.1 of the *Roles and responsibilities policy* describes the FPA's role in supporting FPOs by carrying out surveys and assessments.

The FPA will require the applicant to provide a detailed ecological assessment by an appropriately qualified consultant for FPP applications involving broadscale clearing and conversion of native vegetation.

The ecological assessments must be completed in accordance with the *Guidelines for natural values assessments*, issued by the Department of Natural Resources and Environment Tasmania (NRE Tas, previously known as DPIPWE), available on the [NRE Tas website](#). The information gathered in the ecological assessment will be used by the FPO (with support and advice from FPA staff) to complete the biodiversity evaluation sheet for clearance and conversion operations.

The FPA may assist the FPO to complete ecological assessments for small scale clearing and conversion of native vegetation **except** in cases where:

- i. an FPP application is determined by the FPA to be complex due to a range of biodiversity values including but not limited to vegetation communities, threatened species localities or potential habitat for threatened species, or
- ii. the assessment requirements are beyond the resources of the FPA at the time of the application.

Where (i) or (ii) apply then the FPA will require the applicant to complete ecological assessments for FPP applications as described above.

The Biodiversity Program has developed guidelines for consultants undertaking ecological assessments of FPP areas. These guidelines closely follow the NRE Tas guidelines for natural values surveys but have been tailored for the risk assessments undertaken through the forest practices system.

If you have any queries regarding the guidelines for ecological consultants, please contact the FPA Biodiversity Program.

An FPO may only change a prescription recommended by a specialist:

- following the above consultation
- after consideration of all other factors, including other natural and cultural values prescriptions, and operational and management objectives
- provided the relevant specialist is consulted and agrees to the alternative prescription being adopted. If agreement between the FPO and the specialist is not reached the matter will be referred to the CFPO for a final determination. An FPO must follow any instruction given by the CFPO in relation to the wording of the prescription to be put in the plan.

Minor changes to wording to adapt the prescription to the needs of the particular FPP, while preserving the intent of the recommended recommendation, are acceptable.

Remember, the specialist must be notified if a recommended prescription needs to be changed. If agreement is not reached, the matter will be referred to the CFPO who will make a determination.

E.3.3 Transferring prescriptions from the evaluation sheet to the FPP

The FPO Planning who considers the FPP application must ensure that the prescriptions developed from the evaluation sheets and specialist advice have been transferred to the FPP, which is the legally enforceable document, once certified.

The FPP should contain only relevant, clear and concise prescriptions, generally in the form of instructions, for the people responsible for implementing the FPP.

The evaluation sheets and specialist advice may be provided to third parties if requested.

The FPO Planning who will consider the FPP application is the final decision maker in relation to whether the FPP can be certified, amended or refused. The FPO Planning may request to see the evaluation sheets and any specialist advice as part of the decision-making process.

F. Forest practices plans: certification, amendment, variation, refusal and revocation

Summary

- The FPA has the power to certify, refuse, amend, vary and revoke FPP applications (s. 19 of the Act) and s. 23 variation applications (s. 24).
- The FPA delegates the power to make some decisions on its behalf (s. 43 of the Act).
- FPP applications involving clearance and conversion of TNVCs and clearing of trees on offshore islands must be sent to the Board of the FPA for consideration.
- The powers delegated to FPO (Planning) are indicated on their Instrument of Delegation.
- Prescribed forms must be used for certifying, refusing, amending or varying FPPs.
- Once an FPP application is made there is a 28 day period to make a decision on its certification or otherwise.
- The applicant has a right to appeal to the Forest Practices Tribunal if an FPP is refused, amended, varied (under s. 22 of the Act) or revoked (under s. 24A) or if an application for variation of an FPP (under s. 23 of the Act) is refused.
- A certified FPP provides the authority to carry out forest practices on the land specified in the FPP.
- A person failing to comply with an FPP is guilty of an offence.

F.1 General requirements under the Forest Practices Act (the Act)

The primary role of FPO (Planning) is to consider an FPP application to make a decision to certify, refuse or amend according to s. 19 of the Act.

The FPO (Planning) holds the sole responsibility for that decision and cannot deflect that responsibility to anyone else such as the CFPO, an FPA staff member, a peer review group etc.

If the decision maker (the FPO (Planning)) does not have sufficient information to make a decision, the FPP application should be returned to the applicant with a request for further particulars.

A decision on an FPP application must be made within 28 days of the application being lodged with the FPA unless further particulars have been requested.

F.1.1 Submitting the FPP application

The Act states at s 18(1) Any person may –

- a) Prepare, or cause to be prepared, a forest practices plan in relation to any land; and
- b) Make application to the Authority for certification of that plan.

In practice the application is made when the plan is handed to an FPO (Planning) by the applicant for a decision to certify, refuse or amend the plan in accordance with s. 19.

At the point that such an application (being compliant with the provisions of s. 18 or s. 23 of the Forest Practices Act as the case may be) is received by the FPO (Planning) the application is taken to have been received by the Authority and a decision must be made within 28 days (see s. 19(2)). The FPO (Planning) or the FPA may exercise the power under s. 18(5) to request further particulars in relation to an FPP application, which stops the clock ticking on the decision-making time.

The FPO (Planning) cannot certify the plan until the invoice for the application has been paid to the FPA (in the case of approved corporate accounts the FPA invoices at monthly intervals). Cover Page will not allow a certification number to be issued if the application fee is not paid or the invoice issued in the case of approved corporate accounts.

FPP applications involving the clearing of trees on offshore islands (King, Flinders, Bruny) or s. 19(1AA), i.e., clearing and conversion of threatened native vegetation communities must be submitted to the Authority itself for consideration.

For the avoidance of any doubt the Board made a resolution on 17 June 2022 in relation to FPOs (Planning) receiving FPP applications on its behalf, i.e., FPOs (Planning) are authorised by the Authority to receive on its behalf applications for FPPs and applications for variation of certified FPPs.

F.1.2 Who can prepare an FPP?

The preparation of FPPs requires a knowledge of the forest practices system, experience with the Code, knowledge of forestry operations and training in assessment of natural and cultural values. These skills are usually held by people who have undertaken the FPO Training Course.

It would be unusual for a person to be able to prepare an FPP without the above skills and training although the Act does allow it (see above).

Therefore, preparation of FPPs is usually undertaken by people who have completed the FPO training course or if not are typically part of a team being trained and mentored by accredited FPOs.

It is the decision-maker, i.e., the FPO (Planning) who has a delegation under s. 43 of the Act, who is responsible for the decision on whether the FPP may be certified, amended or refused. This responsibility requires due consideration of the quality of the FPP.

F.1.3 Restriction on delegated powers

The power to revoke FPPs under s. 24A of the Act is not generally delegated to FPOs and rests with the CFPO.

The powers delegated are shown on the Instrument of Delegation and should be referred to whenever an FPO(Planning) is making a decision on behalf of the FPA.

Applications for FPPs that involve clearing and conversion of threatened native vegetation communities, that is they require consideration of s. 19 (1AA) of the Act, are to be referred to the Board for consideration of the application, they are not to be certified by FPO (Planning) until the Board has made a decision on the s. 19(1AA) matters.

Applications for FPPs that involve clearing of trees on offshore islands (King, Flinders and Bruny) must also be referred to the Board for consideration.

Restrictions may apply to making decisions about FPP applications for plantations only.

The Instrument of Delegation will indicate if powers with respect to road construction decisions can be made.

Quarry FPPs can only be certified, amended or varied by FPOs (Planning) who have been given specific authorisation after having completed relevant training conducted by the FPA. Check the [Explanatory notes for drawing up quarry FPPs](#).

F.1.4 Forms

s22 application for variation of certified FPP by FPO

This form is to be used for any new variation initiated by the FPO. Remember to use the s. 23 form for variations initiated by the applicant. The s. 22 forms are only for use when you, as

the FPO, determine that a variation is required (and generally where the applicant is not agreeable to initiating a variation under s. 23 of the Act).

s23 application for variation for certified FPP for FPP applicant

This form is to be used for any new variation initiated by the Applicant.

Form 1: Acknowledgement of persons or organisations in relation to FPP

This form should be used to obtain signatures for the FPP.

Form 2: Acknowledgement of persons or organisations with primary responsibility for management of forest practices

This form should be completed where responsibilities are allocated under an FPP to any party that is not also the applicant. If the applicant is undertaking these responsibilities there is no need to complete these forms.

Form 3: Acknowledgement of persons or organisations with specific responsibilities under FPP

Variation of form 2. This form should be completed where responsibilities are allocated under an FPP to any party that is not also the applicant. If the applicant is undertaking these responsibilities there is no need to complete these forms.

Form 4: Acknowledgement of persons or organisations operating under FPP

Completion of this form is optional. However, it is suggested that contractors be asked to complete this form as an acknowledgement that they are aware of the existence of the FPP, and the need to comply with its provisions.

F.1.5 Appeals

The applicant has a right of appeal under s. 25 of the Act when the FPA:

- refuses or amends an FPP application (s. 19 of the Act)
- varies the provisions of the FPP (s. 22 of the Act)
- refuses or amends s. 23 application for an FPP variation (s. 24 of the Act); or
- revokes an FPP (s. 24A of the Act).

The person apparently in charge of the forest practices has the right to appeal the issue of a s. 41(2).

Appeals must be made in writing on prescribed forms. The Forest Practices Tribunal hears appeals.

In all of the above cases the applicant and landowner must be notified of the decision in writing by formal service of a notice in accordance with s. 46 of the Act. Advice should be sought, in these circumstances, from the CFPO.

F.1.6 Authority of a certified FPP

A certified FPP authorises forest practices and any operations associated with those forest practices to be carried out on the land specified in the FPP in accordance with the provisions of that FPP during the period specified in the FPP (s. 20 of the Act).

F.1.7 Breach of a certified FPP

Breaches of FPPs and the possible penalties are detailed in s. 21 of the Act.

Breaches must not be retrospectively authorised through variations.

An offence under s. 21 of the Act (Contravention etc. of a certified FPP) must be proven on the balance of probabilities.

F.1.8 Statement of Reasons

An FPO (Planning) may be asked to provide a Statement of Reasons under the *Judicial Review Act 2000* as to why they made a decision according to s. 19 to certify, refuse or amend an application for an FPP or a variation (s. 24) or used s. 22 to vary an FPP.

An FPO (inspecting) may be asked to provide a Statement of Reasons in relation to issuing a s. 41(2) notice.

The FPA can provide support to the FPO in providing the Statement of Reasons. The CFPO should be consulted but the FPO who made the decision is responsible for providing the Statement.

It is good practice to write down the Statement of Reasons for your decision every time you make one, this will save a lot of time if you are ever asked officially for such a Statement (see the checklist below for guidance).

F.1.9 Statement of reasons checklist

Requirements	How to comply
Notice in writing of the decision	All aspects of the decision must be clear from the notice (e.g. if an FPP is refused or amended).
Name and designation of decision maker	A statement of reasons need not be signed by the decision maker. Check that the decision-maker had legal authority to make the decision. (Check your Instrument of Delegation or if an FPO your powers under s. 40)
Process	Describe the main steps taken to make the decision. If the decision-making procedure is set out in legislation, check compliance with the requirements.
Findings on any material question of fact	Outline the findings on material questions of fact. A 'finding' on a question of fact is a conclusion reached by the decision maker. A material question of fact is one necessary or relevant to the decision and includes: <ul style="list-style-type: none"> • any primary fact which is relevant to reaching the decision; • any conclusion of fact or opinion (an ultimate fact) which is based on the primary fact; • any matters of fact which may have influenced the decision. <p>Make sure facts taken into account are relevant and include references to relevant legislation. (Answers to who, what, why, where, when should cover this).</p>
Reference to the material on which the findings of fact were based	Refer to the material on which the findings of fact were based. This means the sources from which the decision maker has obtained the facts on which he/she has relied, and includes documents, oral representations, views of other officers etc. This information does not have to be set out in full, but it must be properly identified and described.
A statement of the reasons for the decision	The statement should explain why the decision was made. It should show a connection supported by a chain of reasoning, between the findings of fact and the decision. It should contain a logical explanation of the decision, setting out all the steps in the reasoning process, linking the

Requirements	How to comply
	primary facts, the ultimate facts and the actual decision. Reasons should be concrete and specific, not merely a statement or restatement of legislation. Where there is conflicting evidence, or evidence has been rejected or given reduced weight, the reasons for this should be explained.
Appropriate information concerning review rights	Inform the applicant of relevant rights of review, including appeal rights. If the applicant is required to seek internal review first, a reference to that is generally enough.

F.1.10 FPP for small planted woodlot on non-vulnerable land

A checklist to determine if a simplified FPP process for small planted woodlots on non-vulnerable land can be used – available on the [FPA website](#).

Please note:

- The standard FPP template can still be used. Any parts of the template that are not required for the simplified FPP can be removed or marked N/A.
- The FPP must still conform with the requirements of s. 18 of the Act.

F.1.11 Crown Road Reserves

Agreement has been reached with Property Services Tasmania (formerly Crown Land Services) to improve the process of gaining approval for forest operations on Crown Road Reserves within FPPs.

The agreed procedures will avoid duplication with respect to the assessment of natural and cultural values. The procedures are as follows:

1. FPOs will ensure that road reserves are identified and fully considered when preparing the natural and cultural evaluations for FPPs. The evaluation forms will be submitted to the FPA Specialists in accordance with current procedures.
2. The FPA specialists will continue to liaise with the Natural and Cultural Heritage Branch of NRE Tas on any provisions relating to threatened species or vegetation communities that have a high priority for conservation.
3. Property Services have endorsed the FPP process as meeting their requirements for environmental assessments for road reserves, noting that the statutory purpose for road reserves is to provide road access.
4. FPOs will forward FPPs that contain Road Reserves to Property Services to seek landowner's consent as required under s. 18 of the Act (supporting documentation such as the evaluations for natural and cultural values are not required to be forwarded).
5. Property Services will, wherever possible, give consent to FPPs within 5 working days.

F.1.12 Policy for Maintaining a Permanent Native Forest Estate

The Policy for Maintaining a Permanent Native Forest Estate needs to be read and understood in its entirety before a decision is made on FPP applications involving broadscale clearing and conversion. Note that clearing and conversion of TNVCs is not authorised by the Policy.

When preparing plans which involve clearing of trees that may result in 'loss of significant nature conservation values in an IBRA bioregion' and non-threatened communities that may become threatened advice must be sought from the CFPO during the planning process, prior to the application for certification being made.

When considering an FPP application that involves the clearing of trees, i.e., conversion to a non-forestry land use, the Policy for Maintaining a Permanent Native Forest Estate must be part of the decision-making process.

The Board of the FPA has also resolved as follows:

- Application for an FPP that involves clearing of trees on an offshore island (King, Flinders, Bruny, Cape Barren etc) must be sent to the Board for consideration of the application.
- An FPP application for clearing of trees for an agricultural purpose must be limited to a maximum of 40 ha per property in a 12-month period or more.
- An application for clearing of trees that exceeds 40 ha per property must not be made regardless of the period of the FPP. If such an application is made, it is likely it will be refused, and therefore the applicant has a right to appeal the decision.
- This '40 ha rule' which is in clause 3.3(d) of the Policy only applies when clearing of trees is for an agricultural purpose. It does not apply in the case of non-agricultural purposes such as for an urban subdivision.
- The Board has taken the view the rule was put in place to give multiple landowners in an IBRA region an opportunity to undertake some clearing for agricultural purposes (i.e., everyone has a bite at the cherry) and therefore it would not be fair or reasonable to approve FPPs for multiples of 40 ha over many years to one landowner at the expense of others in the IBRA region. The Board first indicated this approach to FPOs in 2011 and the recent resolution of the Board has reiterated that position.
- If an applicant wishes to clear more than 40 ha under one FPP it may be subject to the substantial public benefit test under the Policy.

An FPP application submitted to the Board, must be considered by the Board in its entirety. The Board itself will decide on the application, therefore it is important the FPO who draws up the application provides accompanying information so the CFPO can advise the Board on operational prescriptions in the Plan.

F.2 Permits required by the Australian or local governments

F.2.1 Australian Government requirements

Clearing and conversion to a non-forest land use which involves Australian Government-listed vegetation communities or habitat of threatened species may be a controlled action under the *Environment Protection and Biodiversity Conservation Act* (EPBC Act). These are referred to as Matters of National Environmental Significance (MNES) and may require a permit from the Australian Government Minister for Environment.

Clearing and conversion is not covered by the Tasmanian RFA as it is not considered to be a forestry operation because it results in a change to a non-forest land-use.

Even if an FPP is certified for such activity, the landowner may still require Australian Government approval before operations commence. This is outside the jurisdiction of the FPA and as such, no further advice can be given.

The website [Environment assessment and approval process under the EPBC Act](http://www.awe.gov.au/environment/epbc) (see www.awe.gov.au/environment/epbc) should be checked by landowners.

F.2.2 Local government requirements

The introduction of the Tasmanian Planning Scheme – State Planning Provisions has removed the requirement for local government development permits for forestry operations in some specified zones e.g., rural resource zone. Local Provisions Schedules attached to the State Planning Provisions are gradually being approved for each local government. Check at [Planning Reform : Tasmanian Planning Scheme](#).

Table 4.4.1 of the State Planning Provisions provide exemptions from requiring a local government permit for vegetation clearance if done in accordance with other Acts if for:

- a) clearance and conversion of a threatened native vegetation community, or the disturbance of a vegetation community, in accordance with an FPP certified under the Act, unless for the construction of a building or the carrying out of any associated development
- b) harvesting of timber or the clearing of trees, or the clearance and conversion of a threatened native vegetation community, on any land to enable the construction and maintenance of electricity infrastructure in accordance with the *Forest Practices Regulations*
- c) fire hazard management in accordance with a bushfire hazard management plan approved as part of a use or development
- d) fire hazard reduction required in accordance with the *Fire Service Act 1979* or an abatement notice issued under the *Local Government Act 1993*
- e) fire hazard management works necessary to protect existing assets and ensure public safety in accordance with a plan for fire hazard management endorsed by the Tasmanian Fire Service, Sustainable Timbers Tasmania, the Parks and Wildlife Service, or local government
- f) clearance within 2m of lawfully constructed buildings or infrastructure including roads, tracks, footpaths, cycle paths, drains, sewers, power lines, pipelines and telecommunications facilities, for maintenance, repair and protection
- g) safety reasons where the work is required for the removal of dead wood, or treatment of disease, or required to remove an unacceptable risk to public or private safety, or where the vegetation is causing or threatening to cause damage to a substantial structure or building

- h) within 1.5m of a lot boundary for the purpose of erecting or maintaining a boundary fence, or within 3m of a lot boundary in the Rural Zone and Agriculture Zone.

This means that a certified FPP does not require an associated permit from local government (i.e., issued under the *Land Use Planning and Approvals Act 1993*). Previously only a PTR or the classification of forestry as a permitted use in certain Zones exempted the need for a local government permit.

If a development relates to construction of a building or any associated development, e.g., a subdivision involving road and infrastructure development, then that should be handled under a local government permit (a permit under the LUPA Act). FPOs should be careful when getting involved in such matters and encourage developers to get appropriate legal advice.

In addition, the Natural Assets Code does not apply to forest operations in accordance with a certified FPP, unless for the construction of a building or the carrying out of any associated development. See [Tasmanian Planning Scheme - Natural Assets Fact Sheet](#).

In Table 6.2 of the State Planning Provisions, the definition of Resource Development includes *plantation forestry* and *forest operations*. Table 3.1 defines those terms as:

- *Forest operations* means as defined in the *Forest Management Act 2013*.
- *Plantation forestry* means the use of land for planting, management and harvesting of trees for commercial wood production, but does not include the milling or processing of timber, or the planting or management of areas of a farm for shelter belts, firewood, erosion or salinity control or other environmental management purposes, or other activity directly associated with and subservient to another form of agricultural use.

There may be restrictions on plantation establishment on cleared agricultural land under the Protection of Agricultural Land Policy or in certain Local Government Planning Scheme zones. Checks should be made with local government planners when planning forestry operations.

Some matters covered by the Forest Practices Regulations may also need checking under the State Planning Provisions. For example, Table 4.6 'Miscellaneous exemptions' refers to planning provisions for fences and may need to be checked in relation to construction and maintenance of boundary fences.

FPOs should also be aware of State Planning Provisions and Local Provisions Schedules in relation to biodiversity protection and visual landscape management. While a certified FPP means that such provisions cannot be enforced by local government it is wise to consider these issues in the planning process to maintain the reputation and integrity of the forest practices system.

It is the responsibility of the landowner or applicant to ensure that consultation with the local government is undertaken during forest practices planning and prior to the commencement of operations. It is not the responsibility of an FPO to obtain any approval, although FPOs may be involved in the consultation process.

Local government requirements that are not relevant to the Code (for example load limits on roads), should not be included in the FPP, and local government should be made aware that it must take responsibility for enforcement of such requirements.

FPOs should try and resolve issues of particular interest to local governments prior to finalising an FPP, e.g., entry onto local government roads.

Remember that cooperation with local government is important for the efficient operation of the forest practices system. Where there is any doubt as to legal interpretation FPOs should encourage landowners or applicants to seek legal advice.

F.3 Certification of forest practices plans

F.3.1 Can I certify my own FPP?

The Act provides for delegated and decentralised approvals for FPPs. It also states, at s 18(1), *'Any person may prepare, or cause to be prepared, a forest practices plan...'*

The FPA accepts that FPOs (Planning) may prepare and certify their own FPPs. However, wherever possible it is recommended that the person who certifies an FPP is not the person who prepared it.

Peer review systems occur in larger organisations where FPPs are scrutinised prior to the application being sent to the FPO (Planning) for a decision. In these cases, the decision-maker still bears responsibility for the quality of the FPP and the decision made. They cannot deflect the responsibility to the peer reviewer(s) or the those involved in preparing the FPP.

Consulting FPOs are encouraged to establish a network so that their FPPs can at least be peer-reviewed prior to certification. Suggested best practice would be to have the FPP application prepared by one FPO considered for certification by another FPO (Planning).

F.3.2 Clearance and conversion of threatened native vegetation communities

Applications for forest practices plans that involve clearing and conversion of threatened native vegetation communities, that is they require consideration of s. 19(1AA) of the *Forest Practices Act 1985*, must be sent to the Board for consideration of the application as follows:

- a. If you receive an application for certification of an FPP which involves clearance and conversion of a threatened native vegetation community, refer that plan to the CFPO to table at the next FPA Board meeting (include sufficient accompanying information so the CFPO can advise the Board on operational prescriptions in the Plan).
- b. The application must be accompanied by a case, made out by the applicant, that addresses one or more of the matters raised in S.19(1AA).
- c. The Board will consider if one or more of the conditions of S 19(1AA) is satisfied.
 - i. If not, the application will not be certified as the Act prevents that.
 - ii. The Board may ask for further particulars according to s. 18(5) which may delay the decision-making process (see s. 19(2))
 - iii. If the Board is satisfied one or more of the conditions has been met, it will then proceed to decide whether to certify, refuse or amend the application based on the operational prescriptions in the Plan.

If the Board does decide to certify the plan it will affix the Seal and the CFPO will use Cover Page to assign a certification number.

F.3.3 Certification checks

The following checks are not mandatory for all FPPs. FPOs (Planning) should exercise judgement in determining which checks are appropriate for each FPP application. Some of the checks below should normally be undertaken well before application to certify an FPP to avoid time delays.

When certifying FPPs, FPOs (Planning) should:

- Check with the landowner or the FPA database that there is not already another current FPP for the area.
- Check that their Instrument of Delegation is current.

- Only certify the types of FPPs that the FPA has delegated them the authority to certify by checking the Instrument of Delegation – note that delegation to certify FPPs involving s. 19(1AA) of the Act matters (clearing and conversion of threatened native vegetation communities) has been revoked.
- Ensure the application for certification of the FPP is consistent with s. 18 of the Act.
- Be prepared to provide Reasons for the Decision under the *Judicial Review Act 2000*. It is recommended that FPO (Planning) document the reasons why the application for the FPP was certified, refused or amended.
- Ensure that the FPP to be certified is of an adequate standard – use of a checklist and/or peer review system is recommended.
- Make sure that all matters within the FPP are resolved; otherwise delay certification of the FPP, or at least ensure that the wording in the FPP provides a clear intent for future management.
- Ensure that Code requirements are met including:
 - Code ‘Will’ and ‘Must’ statements are not negated in the FPP
 - consultation and notification has occurred as required through the planning process
 - adequate coupe dispersal is achieved in accordance with the Code
 - authorisation has been obtained from the CFPO where required
 - prescriptions are placed in the FPP where required
 - wording is consistent with the Code and is not ambiguous or contradictory
 - if acronyms are used in the FPP, ensure they are defined when first used, especially if they are not common forestry terms.
- Check that, for private timber reserves, any area scheduled for harvesting is also scheduled for reforestation. If the area is not to be reforested, the PTR for that area must be revoked prior to certification of the FPP (or the revocation process should be commenced).
- Ensure that threatened native vegetation communities are not scheduled for clearance and conversion unless authorised by the FPA – see s. 19(1AA) of the Act matter above.
- Ensure FPPs for clearance and conversion do not exceed 40 ha per property (check the Tasmanian Government [Policy for Maintaining a Permanent Native Forest Estate](#) available on the Department of State Growth’s website).
- Ensure that agreed prescriptions have been transferred from the evaluation sheets to the body of the FPP and indicated on the FPP map where appropriate.
- Ensure that the harvesting prescriptions and reforestation technique specified are appropriate for the forest type.
- Ensure that widely separated non-contiguous areas are not included under the one FPP.
- Check that there are no existing use rights or covenants on the land that may either affect or be affected by the FPP.
- Check that local government planning approval has been obtained where required.
- Ensure that a risk assessment has been done where appropriate.

- Check whether the harvesting and/or clearing are covered by an exemption under the Forest Practices Regulations and therefore do not require a certified FPP (the applicant is entitled to apply for an FPP even if the Regulations provide an exemption from requiring an FPP).
- Check that the commencement date is not prior to the date of certification.
- Check that the completion dates for DOPs are reasonable, and that all operational phases required under the FPP have been listed on the Cover Page.
- Ensure there is a DOP Reforestation Assessment included in all FPPs requiring establishing of forest. This is still true even if the FPP prescribes nothing more than natural seedfall and residual stocking to achieve the stocking standard.
- Ensure that at least one timber processor has been listed on the Cover Page if timber harvesting is to occur under the FPP.
- Ensure 30 days-notice has been given to neighbours within 100 m of the FPP boundary before the FPP is certified.
- Ensure local government has been consulted about access onto local government roads.
- Ensure where operations are within 2 km of a town water supply intake that TasWater have been consulted.
- Ensure that the person assuming responsibility for reforestation has the ability and intent to comply with the FPP.
- Accept any signatures transmitted electronically if satisfied as to their authenticity.
- Ensure that the applicant and landowner(s) are consenting to the final version of the FPP by having them initial and date each page of the FPP, including the map. The FPO should also initial and date each page.
- Ensure the landowner's approval has been obtained before certifying the FPP.
 - Applicant(s) and landowner(s) must sign the acknowledgement form attached to the FPP (Acknowledgment Form 1) before the FPP can be certified, amended, or refused (mandatory).
 - The FPO (Planning) must only certify the FPP with signature and date after these requirements have been met.
- Note the following regarding landowners:
 - FPOs need to be reasonably satisfied with respect to the ownership of the land
 - a 'forestry right' may apply under the Act, but only to PTPZ land
 - the consent of all landowners who hold land that is subject to any forest practices under the FPP must be obtained (e.g., road reserves within the FPP boundary the consent of Crown Land Services must also be obtained)
 - authorised agents may sign for landowners (ensure the authorisation is in writing). Where there are multiple landowners and only one has signed the Memorandum, ensure there is a written assignment for that person from the other landowners.
- Note the following regarding applicants:

- The person who signs as an applicant must have authority to do so. In the case of a company, they must have a written delegation from the Board to sign on behalf of the company – if not that person may take on personal responsibility as the applicant).
- The applicant must be aware and acknowledge he/she takes on responsibility to ensure the FPP is complied with, including the requirement to lodge interim and final compliance reports.
- Obtain a certification number from the FPA's website. FPPs must not be certified before the certification number has been given and inserted onto the FPP Cover Page.
- Ensure that copies of the certified FPP is distributed to all relevant parties (usually the landowner(s), applicant(s) and timber processor(s)).
- All certified FPPs and variations must be uploaded on the FPA Cover Page database.
- The applicant email address should be added to Cover Page. If the applicant does not have an email address use info@fpa.tas.gov.au. This will enable email notification of DOP report and FPP expiry dates to applicants.
- While it is accepted practice for the person who prepares an FPP to then certify that FPP, it is a practice that the FPA discourages particularly in larger organisations where a number of FPOs (Planning) are employed. It is inherently difficult for a person who prepared the FPP to then meet their responsibilities for certifying a sound and considered FPP. It is essential that substantially flawed FPPs should not be certified (see the next section for more details).

F.3.4 Standard of FPPs

It is the responsibility of the FPO (Planning) to check any FPP presented for certification (including planning information used in the development of the management prescriptions) to ensure that it is of a satisfactory standard.

An FPO (Planning) must only certify the FPP if he/she is satisfied that the FPP is a satisfactory standard.

If the FPO (Planning) is not satisfied with the standard of FPP application, the first course of action would be return the FPP to the applicant and request further particulars or revisions. In making that request it is reasonable to indicate the standard of wording in the FPP is not sufficient to certify the proposed FPP. Any specific deficiencies in the FPP can be communicated at this time.

The FPO (Planning) has power to either amend or refuse the FPP application if the applicant refuses to address suggested changes. As such a decision may be appealed to the Forest Practices Tribunal, it is suggested that consultation with the CFPO occurs before this happens.

The FPO (Planning) who certifies an FPP is held primarily responsible by the FPA for any deficiencies in the FPP. To put it simply, a flawed FPP must never be certified.

F.3.5 Time limit on decision to certify FPPs

The decision to certify, not certify or amend an FPP must be made within 28 days of the application being made according to s. 19(2) of the Act. There is no time limit on decisions for s. 23 variations.

The FPO (Planning) can request further particulars in relation to an application. This request in effect resets the timeframe to make a decision. The 28-day period recommences once the requested further particulars have been provided and addressed.

An FPO (Planning) should not be pressured into making a hasty decision regarding the certification of an FPP. It is the responsibility of the applicant to make application for certification well in advance of the planned commencement of operations.

It is unfair for an FPO (Planning) to be told, 'I need to get this FPP certified because the machines are waiting to go, and I want to start tomorrow.'

Remember, it is the FPO (Planning) who takes responsibility for the decision to certify the FPP and therefore its quality. If you need time to make inquiries and review the FPP thoroughly, you are entitled to take the time necessary to do this.

F.3.6 Responsibility for decision

In Australian law the person who is to decide administrative matters, such as certification of an FPP, must make that decision free of bias or influence.

If you have a delegation from the Board to make decisions about applications for FPPs, i.e., you are an FPO (Planning), you are deciding on its behalf and the FPA will bear responsibility for that decision. You may still be required to justify that decision to the Tribunal or, if a case is brought under the Judicial Review Act, in a Statement of Reasons or to the Supreme Court.

It is important therefore to inform the CFPO if you have a situation where you may want to refuse or amend an FPP, as such a decision may lead to further action by you or the FPA. No-one can seek to change or influence your decision – that would be illegal. It is suggested that you check sections 18(2) and (3) for the detail.

F.3.7 What an FPP application must contain

The FPP must at least contain:

- specifications of the forest practices to be carried out – s. 18(2)(a) of the Act
- specifications in connection with restocking – s. 18(2)(b) of the Act – in the case of a PTR or where the landowner wishes to restock the land with trees
- identified DOPs (usually roading, harvesting, reforestation as applicable) – s. 18(2)(c) of the Act. It is up to the FPP author to decide what the DOPs need to be (for example there could be additional DOPs for burning, site preparation).
- specifications for harvesting of treeferns if applicable – name of person harvesting, estimated number, estimated period of treefern harvest – s. 18(2)(ba) of the Act
- an estimate of finish date (becomes actual finish date when FPP is certified), estimate of period of each DOP (these remain flexible after FPP is certified) – s. 18(2)(c) of the Act
- the name of the timber processor, if applicable (intended or expected) – s. 18(2)(d) of the Act.

Additional considerations:

- Any specifications above must be in accordance with the Code in force at the time the FPP is prepared s. 18(3) of the Act.
- The application must be in writing and shall be accompanied by a memorandum in writing signed by the owner of the land or the holder of a forestry right, that approval has been given for the FPP to be submitted – s. 18(4) of the Act – note that the memorandum is not a part of the FPP.
- For FPPs that involve clearing and conversion of threatened native vegetation, s. 18(2)(bb) of the Act must be referred to the FPA Board for its consideration and the

CFPO will make the final decision on the application – the timeframe for this consideration commences when the application is made. It is important to notify the CFPO when an application is about to be submitted, as the Board only meets monthly, so it may be required to make a decision about the application out of session.

F.3.8 FPP application fee

The fee for application to certify an FPP is set annually by Treasury in accordance with the *Fee Units Act 1997*. The FPP application fee can be calculated using the FPP fee calculator, available on the on the FPA website. This calculator is adjusted accordingly to reflect any fee changes.

The application fee is due when the applicant submits a signed copy of the FPP application to the FPA for consideration. In practice this is when the FPO Planning has the final version of the FPP ready for him/her to make the decision about certification according to s. 19 of the Act. The fee is payable whether or not the FPP is certified or amended.

The FPA generates an invoice for the applicant once the FPP information has been submitted through the Cover Page application.

The applicant must pay the prescribed application fee s. 18(4A) of the Act – the clock starts ticking for a decision to be made when the application fee has been paid for applicants that are not subject to monthly invoicing.

Some companies have arrangements with FPA for a monthly invoice – in these cases the FPO (Planning) will be able to certify the FPP immediately. In all other cases, the FPO (Planning) will not be able to certify the FPP until the invoice is paid in full.

Section 25 outlines the appeal rights for applicants. In the event that an FPP or variation is refused or amended or an existing FPP is revoked, the person(s) who received a notice of the decision has 14 days to register an appeal of the decision with the Tribunal. The FPO (Planning) is legally required to inform the applicant and landowner of a refusal or amendment of the FPP or variation in writing. The use of the form [Notice of refusal to certify FPP \(s. 19\)](#) to record the decision is important as it serves as a notice of the decision. .

Regulation 6 provides for an additional fee to be paid if the FPP is varied to increase the area by more than 10% or 20 hectares.

F.3.9 Can two FPPs cover the same area?

There is no legal impediment to having two FPPs covering the same area, however it is not generally recommended. Two FPPs in operation at the same time can lead to confusion, especially if there are prescriptions in each FPP which contradict or conflict each other.

On occasions, an FPO (Planning) may be asked to certify an FPP when there is already an existing FPP covering part or all of the same area (i.e., the FPP boundary shown on the map for the existing FPP includes part of the operational area for the new FPP). This typically may occur when a harvesting FPP is prepared for an area that already has a separate FPP for road construction.

If there is any reason to believe that there may be another FPP already extant over the area (e.g. there is evidence of relatively recent forestry activity within the proposed FPP area for the FPP you are considering for certification), the FPO (Planning) should check the [FPP mapper](#) on the FPA website.

In some instances, there may already be an FPP in existence, in which case it is recommended:

- a) ensure that the FPP boundary (as shown on the FPP map) for the new FPP does not overlap with that of the existing FPP; or
- b) vary the existing FPP to terminate it on or before the commencement date for the new FPP (noting that this should not be done if there are any outstanding non-compliance issues that will not be addressed under the new FPP); or
- c) vary the existing FPP to incorporate the changes required.

It is recommended to consult with the CFPO in these instances.

In cases where there is likely to be conflict between the two FPPs and the applicant for the original FPP is unwilling to assign (under s. 25D) or vary (s. 23) then it may be required that the first FPP is brought to an end by a s. 22 variation (that is a variation at the instigation of the Authority). In that case the applicant may appeal to the Tribunal if aggrieved by the variation.

F.3.10 Inclusion of non-contiguous areas under the one FPP

Sometimes an FPO may be asked to certify an FPP covering two or more non-contiguous operation areas.

It is acceptable to cover harvesting of two or more patches of timber separated by agricultural land under the one FPP. However, separate FPPs will normally be required for separate properties owned by the one landowner, or where there are two landowners involved. One FPP may be sufficient if the areas are relatively close to each other and required very similar FPP prescriptions.

The general rule of thumb is that non-contiguous areas should only be included under the one FPP if the:

- operation areas fit on the one map at an acceptable scale (generally this should be limited to what will fit on an A3 sheet at 1:10,000 scale)
- areas are similar enough in terms of, natural and cultural values, forest type, silvicultural prescriptions etc., so that most prescriptions required under the FPP will be common to all areas covered under the FPP.

F.3.11 Existing property rights and covenants

The FPO should determine if there are any existing property rights held by other parties or covenants that may need to be considered in developing the FPP. For example, there may be mineral exploration rights held over the land, or there may be a conservation covenant on the land title. Care must be taken in such cases with preparation of the FPP so that existing property rights or covenants are not infringed. The FPO should always check the title as part of the planning process.

The landowner should also be made aware that the once certified the FPP might constrain other activities on their property within the FPP boundary. For example, cutting of firewood by the landowner within the FPP boundary could only be done in accordance with the provisions of the FPP.

F.3.12 Risk assessment

The risk assessment procedure must be applied during FPP preparation in situations where the retention of trees under the Code (e.g., roadside trees retained for landscape purposes) may potentially result in an increased risk to public safety. Where applicable and prior to certifying an FPP, an FPO must ensure that a risk assessment has been undertaken by a trained and accredited individual, and that where the risk was determined to be unacceptable, modifications were made to the FPP to reduce the risk to within acceptable

limits. (Refer to the Risk assessment form for FPOs available on the FPA's website.) In this section 'trained person' means a person who has successfully completed a training course in risk assessments for FPPs conducted by the FPA in collaboration with WorkSafe Tasmania.

It is essential that risk assessments are carried out for those FPPs where trees that are intended to be retained for landscape or other forest practices reasons may cause an increased risk to public safety. The FPP Cover Page has a requirement to check whether a risk assessment is required and, if so, whether it has been completed.

All FPOs are instructed that FPPs should not be certified unless any necessary risk assessments have been completed and, if required, appropriate prescriptions are contained in the FPP to ensure that the risk to public safety is not unduly increased. FPOs have a legal responsibility to ensure that reasonable action is taken to ensure that forest practices do not result in an increased risk to public safety. Particular attention should be paid to designing operations to avoid creating an increased risk of wind throw into areas frequented by the public (roads, walking tracks etc). Options may include leaving wider buffers, removing hazardous trees from proposed retained patches or removing/relocating any areas planned for retention under the FPP.

F.3.13 Period of FPP

The FPP must specify the period for which the FPP is to remain in force (s. 18(2)(ca) of the Act).

The start date of the FPP lifetime must not be earlier than the date that the FPO certifies the FPP. Failure to do this will render the FPP legally invalid.

The period of the FPP should allow sufficient time to complete of all activities prescribed under the FPP. This includes successful reforestation as indicated by a stocking survey. For FPPs involving road construction, harvesting and reforestation, a period of five years will generally be sufficient provided that there are no delays or sectioning of the operation area.

The Code gives guidance on the period of various types of FPPs. Consult with the CFPO if a longer period is envisaged.

F.3.14 Discrete operational phases and final compliance report

Under s. 18(2)(c)(ii) of the Act, an FPP must provide an estimate of the period during which each operational phase of the FPP is to be carried out.

DOPs under an FPP may include any or all of the following:

- road construction
- tree fern harvesting
- timber harvesting
- forest establishment
- assessment of reforestation
- tree clearing
- quarry operation.

The estimated completion date for each DOP is recorded on the FPP Cover Page. The FPO should ensure that the completion dates are reasonable and realistic. For the last DOP on the FPP, the end date should be the same as the FPP expiry date for the FPP.

Multiple DOPs can be established for an FPP (e.g., an FPP which has a section of native forest, and a section of plantation could have two DOPs for timber harvesting).

A final compliance report is due within 30 days of the expiry of the FPP (See D.1.6.).

F.3.15 FPP signature page

FPPs need to be signed by the person certifying the FPP. Landowners and applicants must sign Acknowledgement form 1 before the FPP is presented for certification. The FPA's administrative procedures require each party to initial and date each page of the FPP, including the map, so that there is no doubt about the status of versions of the FPP that are held by each party.

Landowner approval

Section 18(4) (b) of the Act requires that an application '*shall be accompanied by a memorandum in writing signed by the owner of the land referred to in the FPP or, if the land is subject to a forestry right, the holder of the right, stating that they have given approval for the FPP to be submitted to the Authority.*'

In practice this is achieved by the landowner(s) approval and contact details recorded on Acknowledgment Form 1, generally the last page of the plan.

- **Failure to comply with this provision will render the FPP invalid, meaning that operations under the FPP would be in breach of s. 17 of the Act.**
- **Where there are multiple landowners, then all landowners must provide approval.**
- **There must be written proof of the agreement where one person has delegation to represent landowner/s.**

A holder of a forestry right relates to any forestry right continued under the *Forest Management Act 2013* (e.g., a company that holds a Forestry Right on PTPZL to manage a plantation estate).

The landowner or forestry right holder is not a party to the FPP and has no specific responsibilities other than those conferred in s. 17 of the Act.

Acknowledgement of applicant

The person applying for certification of the FPP must be asked to complete the acknowledgement of applicant section on Acknowledgement form 1. FPOs should indicate to the applicant their responsibilities with regard to the payment of the application fee under s. 18 (4B) of the Act and the lodgement of compliance reports with the FPA under s. 25A of the Act. These responsibilities are stated on Acknowledgment form 1.

F.3.16 Landowner(s)

The following notes provide details of checks that may be required to verify who the landowner(s) are with respect to an FPP presented for certification:

Proof of ownership

An FPP is invalid if it has been certified by an FPO before the landowner (or authorised agent) has given approval for the FPP to be submitted for certification (i.e., if an acknowledgement has not been signed by the landowner (or authorised agent)).

For ease of administration and reducing red tape, the FPO can accept the word (and signature) of the person acting as the landowner who gives their consent for the FPP to be submitted. The FPO is not liable if they accept information given in good faith. However, further checks, such as a title search, are considered prudent for the protection of the FPO and other parties such as timber processors and contractors, if any doubt exists as to ownership. Note that it is an offence under s 45 of the Act for any person to make a false or misleading statement with respect to an application for the certification of an FPP. An FPO

should point this out if there is any doubt about whether a person is duly authorised to sign as landowner.

Care is required where the property is under company or joint ownership, in which case the FPO must be satisfied that the person who signs the FPP is duly authorised to do so on behalf of other owners.

FPPs covering areas with two or more landowners

Where an application is being made by a number of owners under s. 18(1) of the Act for certification of an FPP, each landowner must sign the landowner consent part of the Acknowledgement form 1, unless there is evidence that an 'authorised agent' (see below) has been appointed. That is, an FPO cannot certify an FPP until all the landowners have approved the FPP to be submitted for certification.

Road reserves and other Crown Land

FPOs should be aware of the need to obtain the consent of the PWS Property Services branch of the NRE Tas prior to certifying any FPP that contains a Crown road reserve (s) or other areas of Crown Land. FPOs must review the title of the area covered by the FPP to confirm whether the land contains a Crown Land road reserve, particularly where the existence of a reserve may not be apparent on the ground. It is a breach of s. 17 of the Act to conduct forest practices on road reserves without the consent of PWS Property Services.

FPOs will forward FPPs that contain Crown road reserves to PWS Property Services to seek landowner's consent as required under s. 18(4)(b) of the Act. (NB It is not necessary to forward supporting documentation such as the evaluations for natural and cultural values.) If activities covered by the FPP will occur on Crown Land, a representative of PWS Property Services must sign as a landowner on Acknowledgment Form 1, and also sign any subsequent variations.

The Applicant can ask PWS Property Services to enter into a written agreement that any subsequent variations which do not affect the Crown Land portion of the FPP can be authorised by an FPO without obtaining a signature from PWS Property Services.

Note that the above procedures are subject to suitable arrangements being in place where relevant with respect to royalties or rights. FPOs should continue to liaise with PWS Property Services with respect to these matters.

All road reserves are shown on land titles – this information is available through [the LIST](#) for a fee or contact PWS Property Services in NRE Tas.

Where an existing road on a Crown road reserve requires substantial upgrading for a harvesting or reforestation operation, the upgrading will need to be covered under the FPP in accordance with the Code.

Authorised agents

Landowners may authorise a person (an agent) to sign an FPP or variation on their behalf. An example of this might be an absentee landowner living interstate or overseas. Where an agent signs the consent on behalf of a landowner it should be noted on Acknowledgement form 1. Such an agent may be:

- an external party (e.g., a lawyer or company) signing on behalf of a landowner
- one member of a family signing on behalf of others
- an officer or employee signing on behalf of a company.

Such an agent must act in the interests of the landowner, and is subject to control by the landowner; therefore, normally the Applicant for the FPP should not act as an agent for the

landowner in providing this consent (because of the natural potential for a conflict of interests). If an agent signs the consent for the landowner, the FPO must be satisfied that the agent is authorised to do so. FPOs should do this by sighting the written authorisation and retaining a copy (in case disputes arise). If FPOs are not satisfied that the agent is authorised to sign for (and as) the landowner, the matter should be referred to the CFPO for advice before the FPP or variation is certified.

Companies

Companies and authorities may authorise their officers to sign documents on their behalf. Persons employed by companies and authorities should only sign as landowner or Applicant if so authorised in writing by that company or authority.

Joint or family ownership

Where there are joint or family landowners, e.g., a husband and wife, the approval (signature) of both parties should normally be obtained as landowners. In some cases, one party only may sign if authorised to do so by the other owners.

F.3.17 Electronic signatures

In Tasmania, a facsimile or email transaction is legally recognised under the *Electronic Transactions Act 2000*. An FPO may accept an electronically transmitted signature of a person completing one of the Acknowledgement forms if satisfied of its authenticity.

F.3.18 Submitting the application and obtaining a certification number

FPOs (Planning) are reminded that the instructions from the FPA require FPOs to obtain a certification number **before** certification of the FPP. FPPs should not be certified before the certification number has been generated and inserted into the FPP Cover Page database.

The FPP certification numbering system operates through the FPA Cover Page database. For first-time users of Cover Page, a new account can be created and a username and password obtained by contacting the FPA. An operating manual for the FPP Cover Page database can be viewed on the FPA website.

F.3.19 Submission of documents to Cover Page

The FPP Cover Page database will be used to create a coversheet for the FPP, which can then be printed and attached to the FPP once it has been certified. FPOs are to ensure they initial the computer-generated coversheet once printed and attach this signed copy to the certified FPP, as the coversheet printed from Cover Page is an integral part of the FPP.

Should a password to the FPP Cover Page be forgotten, it may be reset by using the forgotten password link on the login screen or, if you continue to have issues, by contacting the FPA.

F.3.20 Retaining original copies of FPPs and variations

FPPs and FPP variations are official government documents and as such are subject to the *Archives Act 1983* and the *Right to Information Act 2009*.

It is a requirement that FPPs are loaded onto Cover Page within five days of certification.

Loading FPPs onto Cover Page is the best method of ensuring they are stored appropriately and can be retrieved. The signed FPP should be the one that is stored in PDF format. The final natural and cultural values evaluation and any supporting information (e.g., maps, database outputs, and specialist advice) should be uploaded to the FPA Cover Page Database.

Cover Page has facilities to store other associated documents and it is left to the discretion of FPOs if they wish to use this facility. GIS shapefiles of the final FPP map and variations may be loaded onto Cover Page, including:

- the boundary of the FPP
- the boundary of any areas retained or with management constraints for forest practices reasons
- the boundary of areas retained/excluded from harvest for other reasons
- the reasons for retention of such areas for monitoring purposes – as a minimum an indication of areas retained for other natural and cultural values such as:
 - visual landscape
 - biodiversity
 - areas reserved from harvesting
 - cultural heritage, soil and water.

To load shapefiles into Cover Page, in Upload/View FPP Documents, select Document Type = Shapefiles (zipped) option. Note: this data is stored on a secure restricted server in the Cover Page database.

Hard copies of FPPs that are not stored on Cover Page must either be scanned and loaded onto Cover Page in PDF format or sent to the FPA for storage.

F.3.21 Distribution of copies of FPPs and variations

It is the responsibility of the FPO who certifies the FPP to ensure that copies of the FPP and any variations are provided to relevant parties as soon as possible following certification. Copies must be provided to the applicant and the landowner, and should be provided to the principal processor, and any contractors who will operate under the FPP.

F.3.22 Forest practices that do not require an FPP

Section 17(6) of the Act caters for prescribed circumstances for which an FPP is not required. The prescribed circumstances are detailed in the Forest Practices Regulations, Regulation 4.

The FPA has issued Guidelines for Interpretation of Regulation 4 (check the [Guidelines for exemptions under Forest Practices Regulation 4](#) for more information).

In some cases, an applicant/landowner may request a certified FPP even though the proposed operations may be exempt under the Regulations. In this instance, the applicant must then conform to the prescriptions in the FPP and recognise that this may be more onerous than the requirements of Regulation 4.

F.3.23 What to do when there are unresolved issues

All major matters pertaining to the FPP should have been resolved by the time of FPP certification, otherwise FPP certification should be delayed until the matters are resolved or at least ensure that the wording in the FPP provides a clear intent for future management.

FPOs should not certify FPPs that provide open ended or unrestricted flexibility as to what is authorised to occur under the FPP. For example, the following statement is not an considered an acceptable provision to be included, *'Some areas may be converted to pasture and other areas regenerated to native forest at the discretion of the landowner.'*

Similarly, the use of 'should' statements in FPPs can be reflective of a decision not having been made. For example, 'A tracked fire break should be constructed along this section of the boundary.'

FPPs will provide a clear statement of what is intended to occur upon the land covered by the FPP and how this is to be conducted. The Act, through the provision of a variations, allows any subsequent changes in intent or practice detailed in the FPP to be addressed.

F.3.24 Forest Practices Code requirements

The FPO should be confident that all Code requirements have been fulfilled before certifying the FPP.

Coupe dispersal

For harvesting FPPs the coupe dispersal requirements apply as per sections C1.2 and C9 of the Code. For Permanent Timber Production Zone Land, the FPA accepts that Sustainable Timber Tasmania's *Landscape Context Planning System* coupe dispersal metric provides a reasonable approach for coupe dispersal.

Forest Practices Code references for approvals by the CFPO

Where the Code indicates referral to the CFPO is required, the FPO must refer the matter to the CFPO directly or through the relevant FPA specialist or the Forest Practices Advisor where appropriate. The CFPO will provide a written response (letter or email). A copy of the correspondence should be placed on the relevant FPP file as it may be subject to an FPA assessment (audit).

The following table summarises all the references in the Code to situations where CFPO approval is required. For the complete wording, the Code should be consulted. **FPOs should also check planning tools for circumstances where CFPO approval may be required during the planning stages of an FPP.**

Code Section	Code Provision (<i>abbreviated</i>)
B5. Quarries and borrow pits	The CFPO will be consulted before quarries are opened in areas underlain by bedrock types potentially containing karst features, such as Ordovician limestone, Precambrian dolomite and magnesite, Permian limestone and Tertiary limestone or calcarenite.
C3. Harvesting and extraction equipment and soil protection	Table 4 is a guide to harvesting systems to be used under a range of site conditions. Harvesting systems include felling and extraction processes and equipment. Forest practices which are not addressed by Table 4 will only be undertaken in consultation with the CFPO .
C6.1 Extraction tracks	Skidders may cross a flowing Class 1 or 2 watercourse using a culverted or bridge crossing, or a ford when there is no water flow, provided: <ul style="list-style-type: none"> – it is not feasible to use alternative extraction routes – measures to avoid sediment entering the watercourse (e.g., matting or gravelling of approaches) are implemented

Code Section	Code Provision (<i>abbreviated</i>)
	<ul style="list-style-type: none"> – CFPO approval is obtained.
<p>C7.1 Harvesting native forest in streamside reserves</p>	<p>Harvesting machinery will not enter streamside reserves except at designated watercourse crossings, unless:</p> <ul style="list-style-type: none"> – an FPO has specifically approved machines such as excavators to carry out restoration work (e.g., removal of slash or windthrow from watercourses by machines working from the streambank) when soils are dry or moist, or – for CFPO-approved salvage works (see C8)
<p>C7.2 Harvesting plantations in streamside reserves</p>	<p>Debris dams that have accumulated in streams should be removed where practicable. If machinery needs to work in the stream channel to remove debris, CFPO approval is required.</p>
<p>C8. Salvage operations</p>	<p>The forest practices may need to be considered in two sections:</p> <ul style="list-style-type: none"> – areas outside the salvage area, to which this Code will apply – areas within the salvage area, for which the CFPO may exempt the forest practices from the provisions of this Code but will prescribe alternative provisions to be placed in the FPP.
<p>C9. Steep country harvesting (slopes 20° and above)</p>	<p>Plantations established on majority slopes steeper than the slope limit in Table 4 and the landslide threshold slope angle in Table 6 can only be harvested with written approval of the CFPO.</p>
	<p>Clearfell coupes in both native forest and plantations with majority slopes of 20° or more will be limited to 50 ha in size, unless approved by the CFPO, who will take into account potential hydrological impacts.</p>
<p>D1. Soils</p>	<p>Clearfelling will not be permitted on areas with vulnerable karst soils or within 2 km of a town water supply intake, unless authorised by the CFPO.</p>
	<p>Other rock types not shown in Table 6, and slopes below the threshold, may be subject to landslides. Where such landslides have occurred or occur during operations, they will be reported to the CFPO and the area assessed for landslide hazard.</p>
<p>D2.2 Water supply and other significant catchments</p>	<ul style="list-style-type: none"> – Clearfelling in plantations within 50 m of a Class 1, 2, or 3 watercourse, and within 2 km upstream of a town water supply, will be subject to the approval of the CFPO. – Clearfelling in plantations within 10 m of a Class 4 watercourse, and within 2 km upstream of a town water supply, will be subject to the approval of the CFPO.

Code Section	Code Provision (<i>abbreviated</i>)
E1.2 Site preparation techniques	Plantations will not be permitted on sites with vulnerable karst soils unless authorised by the CFPO .
E1.3 Post-harvest fire management	Advice will be sought from the CFPO concerning burning of areas with sinkholes.

F.4 Issues associated with reforestation or clearing

F.4.1 Private timber reserves

An FPP that includes land declared as a PTR must specify reforestation measures to occur following any harvesting.

It is not permissible, for example, for harvesting to be followed by clearance and conversion to non-forest land use. This would not be compatible with the intent of a PTR. Section 12 of the Act states *'it [a PTR] shall be used only for establishing forests, or growing or harvesting timber in accordance with the Code and such other activities which the FPA considers to be compatible with establishing forests, or growing or harvesting timber.'*

If the land is to be cleared of forest (including plantation) and converted to non-forest use the PTR must be revoked for that portion of the land prior to certification of the FPP or the revocation process must have commenced and the FPP includes reforestation provisions that will apply if the revocation is not completed.

F.4.2 Clearance and conversion

All FPOs must check with the CFPO **before** commencing the **preparation of FPPs** that deal with broadscale clearance and conversion and which invoke the Policy for Maintaining a Permanent Native Forest Estate or threatened native vegetation communities which invoke s. 19(1AA) of the Act.

The proponent will need to produce a written justification for the proposed conversion (which may include offset proposals) for consideration by the Board of the FPA before an FPO commences the preparation of the FPP. The FPA's offset policy may be considered in the preparation of the proposal and you may also wish to advise the proponent that they should seek their own independent legal advice on the implementation of s. 19(1AA) of the Act and the relevant provisions of the Policy for Maintenance of a Permanent Native Forest Estate and the FPA Offsets Policy.

FPOs must ensure that proponents are provided with accurate information on the requirements of the Act, the Policy for Maintaining a Permanent Native Forest Estate and the Code prior to them entering into any agreement to develop the FPP. Not doing so can result in substantial, and perhaps unnecessary, costs to landowners and the FPA.

F.4.3 Threatened native vegetation communities:

Only the FPA Board can approve FPP applications involving clearing or conversion of threatened native vegetation communities.

As at 2 October 2017, the FPA Board has determined the following two matters in relation to applications for FPPs detailing clearing and conversion:

1. Applications for FPPs that involve clearing and conversion of threatened native vegetation communities, that is they require consideration of s. 19 (1AA) of the Act, are to be referred to the Board for consideration of the application.

The delegation for an FPO (Planning) to consider FPPs for certification is revoked where s. 19 (1AA) matters must be decided, if such a delegation is held.

- a) If you receive an application for certification of an FPP which involves clearance and conversion of a threatened native vegetation community, refer that FPP to the CFPO to table at the next FPA Board meeting.

- b) The application must be accompanied by a case, made out by the applicant, that addresses one or more of the matters raised in s. 19 (1AA).
 - c) The Board will consider if one or more of the conditions of S 19(1AA) are satisfied.
 - i. If not, the FPP will not be certified or the Board may request an amendment.
 - ii. If the Board is satisfied one or more of the conditions is satisfied, the FPP will be passed to the CFPO for consideration of all other matters in the FPP for certification.
 - d) FPOs will not provide advice on clearing and conversions on TNVC where this involves a landowner exercising provisions under the Regulations and where FPA specialist advice has not been sought and provided.
2. Refer clearance and conversion FPP applications, involving all applications that will result in *'loss of significant nature conservation values in an IBRA bioregion'* and non-threatened communities that may become threatened, to the CFPO for discussion and advice prior to certification of the FPP.
- a) The 2017 Policy for Maintenance of a Permanent Native Forest Estate has removed the thresholds-based approach, to a prohibition on broadscale clearing and conversion of native forest, other than in limited prescribed circumstances.
 - b) The FPA will continue to monitor the maintenance of the permanent forest estate by RFA communities and bioregions and place the latest monitoring report on the FPA website.

FPOs should consider communities will require referral to the CFPO if:

- they are close to being <2000 ha in a bioregion, or
- the community is threatened, or
- it has reached its bioregional threshold for area converted according to the latest monitoring report.

F.4.4 Offshore islands

The FPA on 15 February 2019 made the following decision regarding the consideration of applications for clearing and conversion FPPs on offshore islands – Applications for FPPs involving clearance and conversion on offshore islands will only be considered according to s. 19 of the Act by the FPA itself.

What this means is that all FPOs (Planning) will no longer have the delegated power to consider applications for certification of FPPs for clearing and conversion operations on offshore islands; usually King, Flinders and Bruny Islands. FPOs will still be able to prepare FPPs for clearance and conversion on offshore islands and assist landowners with the application process.

This decision was made in line with the implementation of the Policy for Maintaining a Permanent Native Forest Estate and concerns about the impact on remaining native vegetation extent and condition on offshore islands.

In considering such applications, the Board will be guided by provisions of the Policy on clearing and conversion of native forest in section 3 and the exercise of discretion afforded to the FPA under section 4.

Accordingly, in preparing FPPs for broadscale clearing and conversion, FPOs and landowners are asked to provide information that assists the FPA to consider the matters raised in Section 4 of the Policy.

Please ensure that the applicant provides the draft FPP and any supporting information to the CFPO so that the Board can consider the application in a timely manner.

F.4.5 Seeking advice from FPA specialists

Advice must be sought from both the Biodiversity Program and the Earth Sciences and Cultural Heritage Program for planning associated with development of FPP applications involving clearance and conversion of native forest and/or threatened native non-forest. This is due to the complexity of planning a clearance and conversion operation.

The onus is on the applicant to provide all the necessary information for FPA staff to complete an evaluation of the biodiversity and earth sciences matters. It is not the role of FPA staff to undertake the detailed planning work. This may require the applicant to retain the services of an expert to undertake desktop and field surveys to ensure evaluation sheets contain all the necessary information for FPA staff to consider.

The Biodiversity and Earth Sciences evaluation sheets will need to be completed and submitted through the notifications process. FPOs should ensure that Biodiversity and Earth Sciences and Cultural Heritage notifications are sent to FPA at the same time, as there is often overlap of these values for these types of proposed operations.

F.4.6 Surveys to detect Aboriginal cultural heritage sites

The requirement for surveys to detect Aboriginal cultural heritage on land for which FPPs have been prepared for converting native forest or plantations to create agricultural land can be found in the [Procedures for Managing Aboriginal Cultural Heritage when Preparing Forest Practices Plans](#) available on the FPA website. This document contains specific requirements on pages 14 to 19 covering all phases of operations, from the planning stage to post-operation compliance checks.

The requirement for Aboriginal cultural heritage surveys as specified in the Procedures document applies while the FPP is current, regardless of whether forestry operations have technically been completed or not.

For FPPs detailing conversion-to-agriculture operations, care needs to be taken to fulfil the requirements of the Code and Procedures document (as summarised above) while not creating a situation where the prescriptions of the Code and the Procedures document apply to what has become agricultural land.

It is recommended that the FPP expires when the harvesting or clearing operations and any rehabilitation works associated with harvesting or clearing have been completed. To this end it may be necessary for the responsible person to submit a variation (s. 23 of the Act) to the FPP to expire the FPP when the final certificate of compliance has been completed by the responsible person (s. 25A (2) of the Act).

F.4.7 Reforestation

Summary

- The applicant (or the person named as responsible for reforestation in the FPP) must ensure that reforestation measures in the FPP, including a stocking survey, are undertaken in an appropriate and timely manner.
- If the stocking standard specified in the FPP cannot be achieved before expiry of the FPP, the FPP should be extended by variation or the FPA notified.

Responsibility for reforestation

The applicant is responsible for reforestation unless another person is specifically given this responsibility in an FPP.

S. 21(3) indicates that failure to comply with restocking provisions of an FPP could result in the Applicant being liable to a penalty of up to 250 penalty units (approximately \$43,250 based on 2021 penalty units, noting that these are revised annually).

This person or organisation takes responsibility for ensuring that reforestation is undertaken as required under the FPP. The person or organisation must ensure that if contractors are engaged to undertake the work they are aware of the requirements of the FPP.

The person responsible for reforestation should have sufficient expertise or access to expertise to undertake reforestation including a stocking survey, and ensure that these measures are undertaken in an appropriate and timely manner.

FPOs (Planning) should not certify FPPs unless they are satisfied that the person assuming responsibility for reforestation has the ability and intent to ensure compliance with the FPP.

Reforestation techniques

Appropriate reforestation techniques are listed the Code.

An FPO must not certify an FPP unless they are confident that the harvesting prescription, reforestation technique, and stocking standard specified in the FPP are appropriate for the forest type and can be achieved. Inappropriate prescriptions can lead to situations where the stocking standard specified in the FPP cannot be achieved, and therefore the FPP will be non-compliant at expiry, e.g., clearfall on some grassy sites can lead to 'failed' regeneration and it then becomes extremely difficult to return forest to some sites.

The person or organisation responsible for reforestation should have sufficient expertise or access to expertise to undertake reforestation. FPOs should not certify FPPs allocating responsibility for reforestation to the landowner unless they have reasonable confidence that the landowner has the intent and capacity to undertake the responsibilities allocated to them under the FPP.

The landowner should also be informed of the consequences of not complying with the FPP should reforestation be ineffective due to their actions (or lack of action).

To be clear the stocking standards in the Code for native forest regeneration should aim to achieve adequate stocking for the whole coupe. For example, in lowland wet eucalypt forests, it would not be acceptable for 65% of the coupe to be fully stocked and 35% to have little or no stocking (see below). Table 9 of the Code should be interpreted in relation to plots that are stocked.

The FPP must prescribe the type of stocking survey which is to be undertaken and the stocking standard to be achieved. Stocking standards for Clearfelling, Shelterwood, Even-Aged Regrowth, and Multi-Aged Stands operations are given in the Code. Particular attention to correct reforestation techniques should be taken on PTRs, PTPZL, and/or where rare, vulnerable or endangered forest types are present, or where the landowner's primary intention is to return the area to a fully stocked forest.

If none of these situations applies and the landowner does not wish to return their land to a fully restocked forest, it is appropriate to set a stocking standard according to the landowner's wishes. **If the stocking standard prescribed is below the minimum defined in the Code for the prescribed operation, the operation is considered a conversion operation and it is subject to the constraints of the Policy for Maintenance of a Permanent Native Forest Estate.**

Stocking surveys should be conducted by persons with appropriate expertise. The FPO should ensure that the silvicultural prescriptions within the FPP contain clear requirements relating to the retention of growing stock, seed trees, assessment of seed crops, preparation of adequate seedbed and protection of seedlings from browsing by native animals and grazing by domestic stock.

Whenever an FPP includes prescriptions for reforestation, it must also include a DOP for Reforestation Assessment on Cover Page.

When reforestation cannot be achieved before the FPP expires

Reforestation standards to be achieved will be specified in the FPP and follow one of the stocking standards specified in section E1.5 of the Code. Similarly, stocking standards for plantations should be specified in the FPP. Reforestation assessment methods which include sufficient documentation to determine whether the nominated stocking standard has been met must also be specified in the FPP.

Sometimes roading and/or harvesting activities are delayed so that reforestation cannot be undertaken to the required stocking standard within the lifetime of the FPP. In this case it would be normal to vary the FPP to extend the expiry date and therefore lifetime of the FPP. If the applicant or landowner does not agree to extend the period of the FPP, the person responsible for reforestation should contact the CFPO for advice.

In instances where attempts have been made to establish regeneration according to the FPP but the required stocking standard has not yet been met, consideration should be given to drawing up a variation specifying additional remedial treatments which may be employed, such as scarification and/or broadcast burning, as well as extending the lifetime of the FPP.

Circumstances may arise where reforestation is not achievable because a harvesting contractor has left a coupe and is unlikely to return. This can occur either where the landowner directs the contractor to leave, or where the contractor leaves of their own volition.

In these instances, the CFPO should be notified as action may be required to ensure compliance with the FPP.

F.5 Amendment to application for a forest practices plan

F.5.1 What is an amendment?

Amendment(s) is/are a change(s) made to an FPP or a s. 23 variation by the FPA or FPO (Planning) after it is submitted for certification.

FPO (Planning) should seek advice from the CFPO before amending an application for an FPP.

F.5.2 Amendment or variation?

The term 'amendment' has sometimes been used loosely for what is, in fact, a variation. FPOs should ensure that they are familiar with the difference between an amendment and a variation, as described in the following sections. In practice, amendments are rarely required as issues tend to be resolved between the parties involved before the FPP is finalised.

F.5.3 How to amend an FPP

The FPA can amend an FPP presented for certification under s. 19 of the Act as considered necessary, and certify the FPP as so amended by:

- a) inserting conditions and restrictions to be complied with in the harvesting of timber, the clearing of trees or the carrying out of other forest practices covered by the FPP
- b) inserting new specifications in the FPP or amending or omitting specifications contained in the FPP as submitted
- c) identifying, for the purposes of s. 25A(1) of the Act, the DOPs of the FPP.

The appropriate form for amendments under s. 19 of the Act must be used.

The following examples are situations where an amendment to an FPP would be required:

- An FPP presented to an FPO (Planning) for certification is found to contain a prescription that is not in accordance with a 'will' statement in the Code. (Alternatively, this circumstance would normally be remedied by getting the parties to agree to the change and having them sign and date a new FPP).
- An FPP does not contain adequate provisions for setting aside forest for threatened species or threatened vegetation communities.

F.5.4 Appeal rights

The Act requires that the applicant and the landowner must be informed in writing of proposed amendments.

The applicant can appeal against amendments proposed by the FPO (see s. 25 of the Act).

The landowner does not have appeal rights.

F.6 Refusal of forest practices plans or variations

The FPA has the power to refuse to certify or vary an FPP (s. 19 of the Act). The prescribed form must be used (Notice of refusal under s. 19 form).

The reason for the refusal must be stated on the form and must be justifiable. Examples of situations that may require refusal of an FPP are:

- a) where the FPP provides for harvesting of an area recommended for reservation by the FPA (e.g., a reserve for a wedge-tailed eagles nest)
- b) where the FPP is deficient (e.g., inaccurate, inconsistent with the Code, statements are unclear in meaning); or
- c) where written approval has not been obtained from all landowners for submission of the FPP for certification.

Amendment of the FPP may be a more appropriate option in some circumstances. As instances requiring refusal of an FPP will be rare and can lead to an appeal to the Tribunal, FPOs should consult with the CFPO before refusing FPPs.

F.6.1 Appeal rights

The applicant has the right to appeal against the refusal of an FPP (see s. 25 of the Act).

The applicant or the person who has been assigned the applicant's responsibilities under s. 25D of the Act can appeal the refusal of a s. 23 variation.

The landowner must be informed by a notice in writing of the refusal but has no appeal rights.

F.6.2 Is the FPP application fee refunded if the FPP is refused?

No. The fee is for the application to be lodged and is due and payable regardless of the decision to certify, amend or refuse the FPP.

F.6.3 Refusing an FPP to protect a threatened species or threatened native vegetation community

Always contact the FPA for advice before proceeding to refuse an FPP because of threatened species or threatened vegetation communities as any such amendment can lead to an 'affected landowner' lodging an appeal and potential compensation claim under the *Nature Conservation Act 2002*.

FPOs should only advise their clients that an 'affected landowner' may apply for compensation. This can be a complicated legal definition under the *Nature Conservation Act 2002* and is best left to a lawyer for interpretation and advice.

Under no circumstances should an FPO advise that the landowner will be entitled to compensation.

Clients should be referred to the provisions of the *Nature Conservation Act 2002* (Part 5, Division 4 – Covenants arising from forest practices FPP applications) and recommend they obtain legal advice if they wish to make an application for compensation.

If this situation arises contact the CFPO for advice before proceeding.

F.7 Variations to forest practices plans

The purpose of a variation is to make changes to an existing certified FPP. FPOs must follow the statutory requirements of the Act in relation to all variations. The requirements are not onerous; they aim to ensure proper consultation and rights of appeal.

The Act provides for two types of variations to certified FPPs; a variation instigated by (an FPO acting for) the FPA under s. 22, and a variation requested by the applicant under s. 23.

When considering any application to vary an FPP, including an application to vary the period or lifetime that the FPP is in effect, the FPA and its delegates (FPOs) will need to determine the application in the context of:

- the version of the Code that is current at the time the application to vary the FPP is made
- the version of the Permanent Native Forest Estate Policy (PNFEP) that is current at the time the application to vary the FPP is made
- changes in status of threatened species or threatened native vegetation communities and associated advice for habitat protection
- all other provisions of the Act relevant at the time the application to vary the FPP is made.

These conditions apply to both s. 22 and s. 23 variations.

F.7.1 Checks when certifying variations

FPOs will need to undertake certain checks when certifying variations. These checks are covered under the headings below.

The current version of legislation, regulations, the Code and government policies must be applied when certifying variations.

If the variation is not compatible with the current laws, policies and the Code it may have to be refused or amended.

F.7.2 Variation instigated by the FPA under s. 22 of the Act

Section 22 of the Act provides that the FPA may vary the provisions of a certified FPP but only after it has offered the applicant and the landowner the opportunity to make submissions in relation to the variation. The power to make variations under s. 22 of the Act has been delegated to Planning FPOs. The prescribed form must be used to ensure that the variation is legally valid.

This section of the Act is intended to be exercised where an FPO believes a variation is necessary in order to ensure a better result in accordance with the Code or any instruction or advice provided by the FPA.

The need to do a s. 22 variation will generally only arise where either the applicant or the landowner is not willing to initiate a variation under s. 23 for certification.

A variation under s. 22 of the Act does not take effect until 14 days after the notice has been served in writing on the applicant and landowner.

F.7.3 Variation requested by the applicant to an FPP under s. 23

This will be the type of variation normally used to make changes to an FPP.

Section 23 of the Act provides that the applicant to the FPP may seek a variation, provided that they have obtained the consent (in writing) of the landowner for the variation. The prescribed form must be used to ensure that the variation is legally valid. FPOs (Planning) may certify the variation on behalf of the FPA, provided the variation is in accordance with the Code and other technical instructions.

If an FPO decides to refuse an application for a variation under s. 23 of the Act, they must inform the applicant of the refusal, and the reasons for the refusal (as required under s. 24(2) of the Act). The other parties should also be informed. The FPO should also inform the CFPO, noting that the applicant may lodge an appeal against the refusal of a variation.

F.7.4 What matters are to be considered in an application for a variation

When an application to vary an FPP is prepared there are some aspects which need to be considered afresh. These include:

- the Act and Regulations at the time of the application
- the current version of the Policy for Maintaining a Permanent Native Forest Estate
- changes in status of threatened species or threatened native vegetation communities and associated advice for habitat protection
- the current version of the Code.

The above matters may mean the variation significantly changes what can or can't be done on the property. Therefore, the applicant needs to carefully consider whether the application for variation is necessary to complete the operations that were certified in the original FPP.

F.7.5 Who can certify variations?

An FPO (Planning) can certify an application for variation. There is no requirement for it to be the same person who certified the original FPP. Once the variation has been certified, upload to Cover Page.

An FPO (Planning) may not have the power to certify variations for all types of FPPs, depending on their Instrument of Delegation.

All applications for variation that involve **clearance and conversion of a threatened native vegetation community** must be submitted to the Board of the Authority for consideration of s. 19 (1AA) provisions of the Act.

F.7.6 When is a variation required?

There may be a fine line between minor and major changes (see below *Minor changes not requiring an FPP* and *Changes requiring a variation*). FPOs should employ common sense, exercise professional judgement and consider the potential environmental effect of any proposed change.

For example, a minor change to the location of a road would not normally require a variation, but if that minor change involved the road being relocated within the immediate catchment of a sinkhole, then additional provisions would need to be added through a variation.

In some cases, a new FPP may be required, where a variation is not the appropriate mechanism to change prescriptions because there is a major change in the outcome of the FPP. This would be where there was a substantial change in the operational type such as a

change from a partial harvesting system to clearfall or change in land use from native forest to plantation or agriculture. As a guide, if there is an increase in the FPP ranking (see Schedule 1 of the Regulations) then a new FPP would be required.

The following points outline situations when a variation is required.

Appropriate wording of FPPs to reduce the need for subsequent variations

‘Anticipated’ variations can be dealt with by including appropriate wording in the original FPP. Experienced FPOs know where such variations are likely to arise, e.g., authorising an additional crossing on a class 4 stream etc. Such variations can be accommodated by including provisions in the FPP such as ‘Additional crossings on the class 4 stream may be authorised by an FPO who will mark the location of the crossing in the field, inform field staff and keep a record of such authorisation’.

Sometimes it may not be possible to avoid a future variation, as there may be issues that cannot be fully resolved at the time of FPP certification. FPPs must be carefully worded in this circumstance, so that a clear intent for future management is provided, and, where appropriate, a specific commitment to a future variation.

Generally, it is best to avoid specifically naming a person in an FPP when allocating responsibilities – it is preferable to state ‘the landowner’ or ‘the harvesting contractor’ etc. instead. This removes the need to vary the FPP to ensure that the responsibility is transferred (such as to a new landowner or contractor), and reduces the risk of a potential technical breach of an FPP if that person becomes unavailable to perform that responsibility.

Minor changes not requiring a variation

Minor changes that do not essentially affect the integrity of the certified FPP and are not likely to have substantial environmental effects should be resolved in the field between the contractor, the supervisor and the FPO. Common sense should prevail but examples are:

- minor extensions of roads or access tracks (see below)
- minor changes to landing locations
- minor modifications to boundaries
- change in contractor.

Minor changes must be noted with the original copy of the FPP and made available to the FPA on request for monitoring and compliance purposes.

Where agreed, the FPO may enter into a general agreement with the landowner that minor changes can be dealt with without the need to consult with the landowner.

Changes requiring a variation

The following are examples of changes that will generally require a variation to the FPP. However, a new FPP would be required, rather than a variation, if there is an increase in the FPP ranking (see Schedule 1 of the Regulations).

- a) major change to the location of a road re-alignment
- b) construction of an access track (not in the original FPP) for log cartage
- c) construction of a borrow pit (not in the original FPP)
- d) substantial changes in landing locations or provision of additional landings, if not specifically allowed for in the FPP
- e) change from a predominantly uphill to a predominantly downhill snigging system
- f) change from conventional to cable harvesting and vice versa

- g) minor change in the harvesting or reforestation prescriptions (not change in land use)
- h) change in regime (e.g., partial harvest to clearfall)
- i) change of management objective e.g., from replanting to agriculture (plantations only)
- j) changes in natural and cultural value prescriptions or classifications (e.g., soil erodibility class)
- k) changes in watercourse classifications and therefore streamside reserve widths
- l) addition of class 4 watercourses not shown on the FPP map (unless provided for in FPP wording and provided appropriate measures are taken)
- m) changes in responsibilities under the FPP
- n) where the original FPP states that a variation will be required (e.g., at the time of certification of the FPP the reforestation prescriptions were not finalised)
- o) extension or reduction of the expiry date and therefore lifetime of an FPP

Quarry FPPs:

- a) extending quarry operations boundaries
- b) significant changes to quarry development and rehabilitation sequence
- c) moving from level 1 to level 2 production volumes.

Removal of FPP wording through a variation

In most cases it will not be necessary to formally delete existing FPP wording through a variation, as it will be evident that a certain part of the FPP wording is being negated through the variation (e.g., where the harvesting prescription is changed).

One way of doing this is to draft the variation to read, for example, 'Section C3.4, Landing Restoration, will be replaced with the following: '[insert new provisions] '

However, in some cases addition of a new prescription or removal of an existing prescriptions within the FPP through a variation could lead to contradictions in the FPP. FPOs should ensure that this does not occur by formally removing any wording in all parts of the FPP which are no longer applicable as a result of the proposed changes.

When does road upgrading become road construction? (see FPN June 2000)

Substantial upgrading of a road or track needs to be covered by an FPP and refers to road works that involve any of the following:

1. general earthworks (e.g., turning a firebreak into a class 4 road)
2. upgrading of road class (e.g., from Class 4 to Class 3, or from a non-gravelled road to a gravelled road) that involves the installation of drainage works such as stream crossings, culverts and table drains
3. high potential for environmental harm, e.g., high erodible soils, threat to domestic water supplies, karst environments, threatened species habitat, upgrading existing tracks or roads that are within the defined streamside reserve according to the Code (this often occurs in plantations established on ex- pasture).

Maintenance or minor upgrading (no FPP required) refers to road works that only involve:

1. re-shaping or grading of the road surface
2. re-gravelling or patch gravelling
3. repair of culverts and crossings

4. localised activities such as the re-alignment of a corner or the installation of a culvert.

F.7.7 Variation to extend or reduce the lifetime of an FPP

Extension of the lifetime

The expiry date of an FPP is the last date shown in the 'Plan lifetime' box on the Cover Page. The only way to extend the lifetime of an FPP is through a variation. Once the FPP is certified, the expiry date for the FPP is the legal expiry date.

Once an FPP has expired it ceases to exist legally and therefore cannot be extended. If an FPP does expire before all intended activities are completed, then operations should immediately cease. The land should be rehabilitated so that the final certificate of compliance for that FPP can be completed.

Once the FPP has expired, for forest operations to continue on that land a new FPP must be prepared, and application made for certification. An application fee will apply.

It is appropriate to extend the period of an FPP in some circumstances.

Reduction of the lifetime

Operations not commenced

The expiry date of an FPP may be brought forward through a variation. Occasionally FPOs may be requested to terminate an FPP under which no activities have taken place. This may occur where a new landowner does not wish to proceed with the FPP. In this case, the expiry date of the FPP can be the same as the date the variation is certified.

Where operations have not commenced under a certified FPP, an alternative is to revoke the FPP using s. 24A of the Act. This would generally be done by the CFPO who has a delegated power from the Authority. Revocation requires the approval of the applicant who applied for the FPP under s. 18 (1) of the Act, therefore it is best to undertake this prior to the property changing hands.

Operations commenced

FPOs should not bring forward the expiry date on any FPP under which operations have already commenced unless they are satisfied that all the operations completed to date under the FPP are compliant (including, where appropriate, any stocking survey for regeneration) and can be completed by the new date. That is a final certificate of compliance must be lodged and all operations must be compliant.

Any changes to dates of an FPP by variation must be updated on the FPA Cover Page database in the appropriate fields.

Variation to change the completion date for a discrete operational phase (DOP)

There is no need to prepare and lodge a variation to change the completion date for a DOP. The DOP completion date stated in the FPP is only an estimate and may well differ from the actual date on which operations are completed.

Applicants are required to lodge interim compliance reports on each completed DOP within 30 days of the actual completion date (not the estimated date specified in the FPP) (see s. 25A of the Act) – the penalty for not doing so is a fine of up to 10 penalty units (approx. \$1720).

F.7.8 Variation to change the area of operations covered under an FPP

Note that new evaluations for natural and cultural values may need to be completed if the area of operations is being increased through a variation.

The circumstances relating to extending or reducing the area of operations through a variation are discussed under the following headings:

Estimating operational area

The planned area of operations under an FPP is indicated on the Cover Page and is delineated on the FPP map. The planned area is used in calculating the FPP fee applied by the FPA. It is important that the area be calculated reasonably accurately, especially where RFA communities are being harvested or cleared, as the FPA is responsible for monitoring any changes to the areas of forest communities under the Permanent Native Forest Estate policy.

In most instances, operational areas will be approximately as planned or smaller, and any minor discrepancies in planned versus actual operational area can be reported when the compliance report is lodged, by indicating that the 'Operation complied – operational area is smaller than planned'.

Does slight modification of an operational boundary require a variation?

Generally not. It is accepted that operational (harvesting, clearing and forest establishment) boundaries on FPP maps are not necessarily shown with a high level of precision.

It is advisable to use wording in the FPP such as 'the harvest boundary is as shown approximately on the FPP map'). However, any increase in the operational area under an FPP beyond the above will require a variation before any activity occurs on the expanded operational area. In dealing with these situations FPOs, should use good judgement and consult with the CFPO in the event that advice is required.

Examples of situations *requiring a variation*:

- a) An operational boundary is shown as being to the edge of a road on an FPP map, and it is decided that an area on the other side of the road should be added to the operational area.
- b) A slight change to an operational boundary is planned that will result in an area outside the FPP boundary as shown on the FPP map being included within the operational boundary.
- c) Any slight change to a boundary that may have implications for the management of natural and cultural values (in which case a new assessment may be required under the evaluation sheets).

Examples of situations *not requiring a variation*:

- a) An operational boundary is shown as being to the edge of a road on an FPP map, and it is subsequently found that the actual location of the road is slightly different to that shown on the FPP map, resulting in a slight increase to the operational area.
- b) An operational boundary is shown as being to the edge of a steep slope on an FPP map and in marking the operational boundary on the ground it is found that the edge of the steep slope is slightly different to that shown on the map, resulting in a slight increase to the operational area.

How much can boundaries be extended under a variation?

Minor extensions of operational areas or FPP boundaries are permissible under variations. An extension to the total area to be harvested or reforested under an FPP must not exceed 20 ha or 10% of the area covered by the FPP, whichever is the lesser, provided that the natural and cultural values present in the additional area are similar to those covered by the original natural and cultural values evaluations for the coupe.

Where an FPP is to be increased beyond 20 ha or 10% of the area of the FPP, natural and cultural values must be assessed for the additional area and any changes in legislation, Code and policies must be applied to the whole FPP.

If an increase in area beyond 20 ha or 10% of the original area covered by the FPP is required, approval must be obtained from the CFPO. Such an increase requires the payment of a fee for the increase (see Regulation 6).

Details of any changes to FPP Cover Page information resulting from a variation, particularly a change to RFA community areas, must be changed on Cover Page when certifying the variation.

The consent of any landowner covered by the extended operational areas or FPP boundary under a variation must be obtained.

Neighbours within 100 m of the extended operational boundary should be notified at least 30 days before the commencement of the planned forest practices.

Where operational boundaries are extended by variation care should be taken to ensure that any property or reserve boundaries are correctly identified.

What if it is decided not to proceed with forest operations in some areas under an FPP?

A decrease in the operational area under an FPP does not need to be covered by a variation, unless the applicant or landowner wants an area that has not had operations conducted on it excluded from the FPP. The compliance report will need to report on the operations that were not completed as prescribed in the FPP –i.e., the DOP report and the final certificate of compliance should note that the FPP was compliant (or not) and that the operational area was smaller than planned.

An applicant does have the right to decrease the area of an FPP by variation. There is no refund in fees for a decrease in area.

Is a variation necessary for minor changes to areas covered by different prescriptions?

A mix of silvicultural treatments may apply to the operational area under some FPPs (e.g., the operation area may be sectioned to include partial harvesting silviculture and clearfelling). The final proportion of the area treated by each silvicultural technique may vary according to forest type and site factors.

If it becomes apparent during operations that the proportions treated by varying techniques are likely to be significantly different to that stated in the FPP, a variation will be necessary. As a general rule, a variation should be prepared to cover any major change in the proportion of treatments (e.g., if >20 ha or 10% (whichever is the lesser) of the operational area is affected).

F.7.9 Changing harvest method or land use

An applicant may wish to change the operational prescriptions for part or all of the area under an FPP. Any such change must be evaluated for its consistency with the Code and relevant planning tools in force at that time and be covered by a variation.

Note that:

- In some cases, a new FPP may be required, where a variation is not the appropriate mechanism to change prescriptions because there is a major change in the outcome of the FPP.
- if conversion to a non-forest land use is proposed, check that no part of the property is within a PTR and the change is consistent with the Policy for Maintaining a

Permanent Native Forest Estate (new evaluations may be required and the CFPO should be consulted).

- if changes are proposed to include operational prescriptions that are not covered by the original evaluation sheets, new evaluation sheets will be required to cover the changes to the FPP.

F.7.10 Is a variation required for a change of landowner, contractor etc.?

(See also C.1.2.)

Generally, there is no need to vary an FPP for a change in landowner, contractor(s), or timber processors. Where a landowner purchases a property over which there is a certified FPP, they inherit the responsibilities of the previous landowner under that FPP. However, it may be appropriate to vary an FPP to re-allocate responsibilities where a landowner or contractor was allocated responsibilities by name in the body of the FPP.

Where one contractor has completed works on part of the operation area and a new contractor is to complete works on the remainder of the operation area, the new contractor may be concerned that they will assume responsibility for any non-compliances by the original contractor. In such circumstances it is recommended that a compliance check of the original contractor's operation be carried out prior to the commencement of the new contractor's operation. Another DOP can be added to Cover Page to cover the work performed by the second contractor – contact the FPA Compliance Program.

F.7.11 Can the applicant be changed by variation?

No.

The applicant is a matter of historical fact. Under the Act, the applicant is the person who first applied to have the FPP certified pursuant to s. 18(1).

S. 25D of the Act provides for applicant responsibilities to be transferred to another person.

F.7.12 Variations are not to be done retrospectively to authorise actions or breaches

Under no circumstances can an FPO sign a variation that authorises activities that have already occurred and are not covered in an FPP. Any breach must be recorded and reported to the FPA. Under some circumstances the CFPO may authorise a variation to carry out corrective actions.

In the past variations have sometimes been done to authorise changes that have already occurred such as authorisation of a new landing not shown in the original FPP. It should be self-evident that under no circumstances should an FPO sign a variation that authorises activities not covered in an FPP that have already occurred. The breach should be recorded and reported to the CFPO. Under some circumstances the CFPO may authorise a subsequent variation to be done to carry out corrective actions.

F.7.13 Do notices of intent have to be sent out when a variation is done?

Notices of intent must be sent in the following circumstances:

1. Where the FPP operational area is increased by variation, notifications should be sent out to any neighbours not previously notified that are within 100 meters of the proposed new operational boundaries.
2. Where more intensive operational prescriptions are proposed, new notifications should be sent to relevant parties (including neighbours and local government). In some jurisdictions, a Development Application may be required from local government for some forms of harvesting but not others.

F.7.14 Do variations need to be referred to local government or other government authorities?

Consultation with local government should be done for forest practices issues whether they arise during the preparation of an FPP or of a variation.

Examples of matters that local governments or other government authorities such as TasWater may have a particular interest in could include:

- reduction to areas reserved for landscape protection under an FPP
- change to the silvicultural prescription from native forest to plantation within a town water supply catchment
- an alteration to the agreed location for a new road planned to access onto a local government road.

FPOs will need to use their judgement in determining whether referral to local government or other authorities is necessary. In some cases, it may also be necessary to send a new notice of intent to local government.

F.7.15 Do copies of variations need to be sent to the FPA?

All certified variations must be uploaded as a document onto Cover Page under the relevant FPP.

F.7.16 Numbering of variations

Each variation must be numbered sequentially for future reference (i.e., variation no. 1, variation no. 2, etc.).

F.7.17 Landowner approval for a s. 23 variation

As with the original FPP, the approval of the landowner(s) must be obtained before the FPO certifies any variation (under s. 23 of the Act).

The landowner will be required to sign the 'Landowners Consent' section attached to a s. 23 variation form.

Is the approval of all landowners always required?

s. 23(2)(c) of the Act requires that the consent of all landowners be obtained to any variation to an FPP. For road reserves and other 'incidental' Crown land on private property which are not impacted by the proposed variation, a written agreement can be entered into with PWS Property Services (see F.3.16). This agreement should be attached to Acknowledgement form 1 landowner signatory page in the FPP.

Acknowledgement of applicant for a variation

The applicant (s. 18 or s. 25D of the Act) must complete and sign the first section of a s. 23 variation form.

Acknowledgement of persons or organisations with primary responsibility for management of forest practices

On occasions a variation may be used to record an agreed change in responsibilities allocated under an FPP (e.g., a change to the organisation with primary responsibility for reforestation). When this occurs, it is suggested that Acknowledgement Form 2 is used to formally record acceptance of the responsibility.

Contractors

There is no need to record a change to contractors operating under an FPP by completing a variation, provided contractors were not allocated responsibilities directly by name under the FPP.

It is recommended that contractors involved in the FPP sign Acknowledgement Form 2 as evidence they have read and understood the FPP and any responsibilities that have been assigned to them.

F.7.18 Consent to the final version of a variation

The FPO, the applicant and the landowner(s) should initial and date all pages of the variation, including any variation FPP map. This makes it clear that they are agreeing to the submitted version of the variation.

F.7.19 FPO certification of variation under s. 23 of the Act

The decision should be clearly indicated on the s. 23 variation form if the variation is certified, amended or refused.

F.7.20 Distribution of copies of variations

The procedure outlined under F.3.21 [Distribution of copies of forest practices plans and variations](#) should be followed.

F.7.21 Working version of the forest practices plan to incorporate variations

If altered prescriptions or map alterations are material to the effect of the FPP, these changes should be incorporated in a revised FPP and certified as a variation. The reason for this is to avoid multiple variations confusing the contractor.

F.8 Revocation of certified forest practices plans (s. 24A of the Act)

Under s. 24A of the Act, current certified FPPs can be revoked by the FPA where considered necessary.

The FPA has delegated the authority to revoke FPPs to the CFPO, but not to FPOs (Planning). Therefore, FPOs must contact the CFPO if they consider that revocation of an FPP has become necessary.

The main circumstances where revocation would be necessary are:

- a) where a certified FPP is found to be significantly deficient
- b) where an FPP contains certain conditions which must be met for the FPP to be implemented and those conditions have not been met, or no longer apply, or have expired
- c) where a property under an FPP is sold and the new landowner does not wish to proceed with the FPP, provided no works have commenced, a revocation or variation could be used to terminate the FPP.

Revocations under s. 24A of the Act cannot occur until the applicant and landowner have been given the opportunity to make submissions in relation to the proposed revocation. Revocations do not come into effect until 14 days after service of the notice on the applicant.

F.9 Failed plantations and clearing on previously cleared and converted land

F.9.1 Failed plantations

Plantation failure because of fire, pest and disease, lack of maintenance or other factors occurs from time to time. If the area is to be replanted then an FPP will usually be required to cover the clearing, site preparation and replant operations.

The lack of a market is not considered a sufficient reason to consider a plantation as failed, especially if the trees have grown to a commercial size.

If a failed plantation is on previously cleared and converted land and no timber is to be harvested, the trees can be cleared without an FPP.

If the plantation is on ex-native forest which was cleared less than five-years ago, an FPP will be required for clearing of trees and the land is considered as previously cleared for the purposes of biodiversity evaluation.

If the area is to be replanted, the clearing operations can be covered in an FPP as follows:

- Areas of plantation that contain trees that are all dead or moribund should be coded in the FPP as non-forest (other) community 'NFO', operation type 'CF-CLR'.
- Areas of plantation that contain that are to be harvested, should be coded as a plantation community, operation type 'CF-CLR'.

Please contact the CFPO if you require clarification as to which operational code and fee ranking applies to any 'failed' plantations for which you are preparing FPPs.

F.9.2 Clearing of trees or native vegetation regrowth on previously cleared and converted land

The Regulations permit the clearing of failed plantations or tree regrowth without the requirement for an FPP under Regulation 4(c). (check the [Guidelines for exemptions under Forest Practices Regulation 4](#) for more information).

The distinction between 'clearing of trees' and 'harvest' is important in this situation.

According to s. 3 of the Act:

- **clearing of trees** means the removal of trees by –
 - a) clearing, cutting or otherwise removing; or
 - b) destroying the trees in any way
- **harvest**, used in relation to timber, means to cut and remove that timber from a forest
- **timber** includes the trunk, branch and any other part of a tree or fallen tree, whether or not it is cut up, sawn, hewn, split or otherwise dealt with
- **trees** means –
 - a) any woody plants with a height or potential height of 5 metres or more, whether or not living, dead, standing or fallen, that are –
 - i. native to Tasmania; or
 - ii. introduced into Tasmania and used for the processing or harvesting of timber; and
 - b) treeferns.

If any timber is **harvested** then an FPP is required. This is because the Regulation 4(c) leaves out the words '**harvesting of timber**'.

The FPA suggests that the operational area of the FPP be restricted to the areas where harvesting is taking place, if that is a subset of a larger clearing and conversion back to agricultural use.

The interpretation of 'previously cleared and converted land' in Regulation 3 is also quite clear and the landowner must be able to demonstrate the land meets it.

G. Important administrative matters

G.1 Issuing notices

Section 46 of the Act describes the service of notices and other documents.

FPOs should be familiar with that section.

G.1.1 How to serve a notice

The notice can be:

- given to a person;
- left at, or sent by post to, the person's postal or residential address or place or address of business or employment last known to the person required by the Act to serve the notice, application or other document
- sent by facsimile to the person's facsimile number

In the case of any other person (e.g., a company) the notice can be:

- left at, or sent by post to, the person's principal or registered office or principal place of business
- sent by facsimile to the person's facsimile number

Sending a notice by email is not considered legal service of the notice unless the recipient has given consent to use email for that purpose. Once a person has received an email and responded, that could be considered implied consent. To be sure it is best to get consent in writing from the person to whom emails are sent (by a return email).

G.1.2 When is a notice required?

- Refusal or granting an application for a Private Timber Reserve - s.8 (4) and (5) respectively
- Revocation of a PTR at instigation of the Authority - s. 13(1)
- Decision of Authority to revoke a PTR on application of owner - s.14(6)
- Decision to certify, refuse or amend an application for an FPP - s. 19(3)
- Variation of certified FPP at instigation of Authority – s. 22(3)
- Refusal of application to vary a certified FPP – s. 24(2)
- Revocation of a certified FPP – s. 24A(3)
- Request to supply an FPP progress report – s. 25B(2)
- Vary or refuse a three-year plan – s. 29
- Direction under s. 41(2) given to person apparently in charge of forest practices on the land– s.41(3)

G.2 Appeal to Tribunal

G.2.1 Appeal to the Forest Practices Stream of the Tasmanian Civil and Administrative Tribunal (TASCAT)

See [Forestry Practices Stream | TASCAT - Tasmanian Civil & Administrative Tribunal](https://forestry-practices.tas.gov.au/forestry-practices) (<https://tascat.tas.gov.au/forestry-practices>).

When a notice is served, as above, the recipient usually has a right to appeal to the Forest Practices Stream of TASCAT. In some cases, the landowner and the applicant must be afforded a right to make a submission before a decision is made (e.g., proposed revocation of a PTR or FPP).

The Forestry Practices Stream of the Tasmanian Civil and Administrative Tribunal determines matters that previously were determined by the Forest Practices Tribunal under the *Forest Practices Act 1985*.

The Tribunal has produced a form for the filing of any proceedings under the *Forest Practices Act 1985*. There is no fee for filing proceedings under the *Forest Practices Act 1985*.

There are different timeframes to file proceedings depending on the type of appeal.

Section	Timeframe
Section 9	14 days after the service of a notice
Section 13	14 days after the service of the notice
Section 14	14 days after the service of the notice
Section 25	14 days after service of the relevant notice
Section 25C	14 days after the responsible person is served with the notice
Section 29	28 days after the decision of the Authority to request or refuse
Section 42	2 days after the date of service of the notice upon the person

The Forestry Practices Stream will follow processes that are very similar to the processes undertaken in the Resource and Planning Stream, and appellants should have regard to the Information Sheets and Practice Directions under that Stream for guidance as to the processes that will apply.

As a result of the passage of the *Tasmanian Civil and Administrative Tribunal Act 2020*, the Forestry Practices Stream may now undertake Alternative Dispute Resolution (ADR) in relation to any proceedings (please see Section 102 and 103 of the *Tasmanian Civil and Administrative Tribunal Act 2020*). The Information Sheets related to ADR in the Resource and Planning Stream provide details of how that process will take place.

Please note, legal practitioners are permitted to appear in the Forestry Practices Stream (see Section 98 of the *Tasmanian Civil and Administrative Tribunal Act 2020*).