



Guidelines for consideration of exemptions under Regulation 4 of Forest Practices Regulations 2017

– circumstances in which a forest practices plan is not required

Endorsed by the Board of the Forest Practices Authority on 22 April 2021

Disclaimer

These guidelines cannot be relied upon to meet the legal obligations of a person wishing to undertake activities that may or may not be authorised by the *Forest Practices Act 1985* (the Act) or the Forest Practices Regulations 2017 (the Regulations). Independent legal advice should be sought. The Forest Practices Authority (FPA) accepts no liability if the following guidelines are relied upon by any person, corporation, or other legal entity.

Preamble

The harvesting of timber, clearing of trees¹ and clearance and conversion of threatened native vegetation communities² is regulated under the provisions of the Act including:

- Harvesting of timber, clearing of trees and clearance and conversion of threatened native vegetation communities must not occur unless authorised by a forest practices plan (FPP) that has been certified by the FPA or an authorised Forest Practices Officer (FPO) (sections 17 and 19).
- An FPP must contain specifications to provide reasonable protection to the environment in accordance with the provisions of the *Forest Practices Code* (sections 18, 31).
- The clearing of forest must comply with the requirements of the state's Policy for Maintaining a Permanent Native Forest Estate (section 4C(fb)).
- Any person undertaking forest practices on land must comply with the provisions of an FPP (section 21) and the applicant must lodge interim compliance reports upon the completion of each discrete operational phase in the FPP and a final compliance report at the expiration of the period in which forest practices are authorised to be carried out under the plan (section 25A).
- The FPA or an authorised forest practices officer (FPO) may issue requests and notices (section 41) to a person to take any action that is necessary to comply with the Act or provisions of an FPP.

¹ See Interpretations in Section 3 of the Act

² See interpretation in Section 3A of the Act

- Non-compliance with the Act or an FPP may result in prosecution (section 47) or as an alternative a prescribed fine (section 47B).

Section 17(6) of the Act provides that an FPP is not required in prescribed circumstances. These circumstances are detailed in the Regulations.

The exemptions from the requirement to obtain a certified FPP are generally based on the following rationale:

- the intent is to undertake activity authorised by the Regulation, not for some other purpose
- the activities are small scale at levels where the risk of environmental harm is low
- the activities are necessary for ongoing management and maintenance of infrastructure and assets
- the activities are covered by an alternative, more relevant planning, and approval process.

The exemptions are summarised in Table 1. Of the 14 exemptions under Regulation 4, eight are unconditional; three are conditional upon an authorisation under other legislation; and three are conditional upon the approval of a specific instrument being approved by the FPA.

Table 1 Brief summary of exemptions from the requirement for a FPP in the Regulations

Reg.	Nature of exemption	Rationale for exemption			Conditions	Permitted activity		
		Small scale	Routine management/maintenance	Covered by other process		H	CT	CC TNVC
4(a)	Harvesting/clearing <100 t or < 1 ha on non-vulnerable land	✓			Does not apply to vulnerable land (see Regulation 3 for definition). Consent of landowner required.	✓	✓	
4(b)	Buffer for infrastructure	✓	✓		Must be necessary for maintenance or public safety		✓	
4(c)	Previously cleared and converted land		✓		Used for non-forestry for 5 consecutive years since 1985. Consent of landowner required.		✓	
4(d)(i)	Dam works			✓	Must be authorised by a dam permit under the <i>Water Management Act 1999</i>	✓	✓	✓
4(d)(ii)	Gas pipelines		✓	✓		✓	✓	✓
4(d)(iii)	Public roads		✓	✓	See Regulation 3 for meaning of public road	✓	✓	✓
4(e)	Establishment of trees does not involve construction of road or	✓			Consent of land owner and land has not contained trees or a TNVC in the immediately			

Reg.	Nature of exemption	Rationale for exemption			Conditions	Permitted activity		
		Small scale	Routine management/maintenance	Covered by other process		H	CT	CC TNVC
	quarry and <10ha/yr				preceding 5-year period. Consent of landowner required.			
4(f)	Harvesting tree ferns (<6/yr)	✓			Consent of owner of land and less than 6 tree ferns are harvested on applicable land per year.			
4(g)	In accordance with Conservation Covenant or Vegetation Management Agreement (VMA)		✓	✓	Conservation Covenant or VMA must be of a kind approved by the FPA in writing. Consent of landowner required.	✓	✓	✓
4(h)	Fire Management work		✓	✓	Fire Management Program must be of a kind approved by the FPA in writing. Consent of landowner required.		✓	✓
4(i)	Mining, mineral exploration			✓	Must be authorised under the <i>Land Use Planning and Approvals Act 1993</i> or the <i>Mineral Resources Development Act 1995</i>	✓	✓	✓
4(j)	Construction of building(s) or carrying out of any associated development	✓	✓	✓	Must be authorised under the <i>Land Use Planning and Approvals Act 1993</i>	✓	✓	✓
4(k)	Railways – construction and maintenance, includes buffers		✓	✓	The railway must be within the meaning of section 3 of the <i>Rail Infrastructure Act 2007</i>	✓	✓	✓
4(l)	Electricity infrastructure		✓	✓	Easement in place or landowner consent and an Environmental Management System must be endorsed by the FPA	✓	✓	✓

H = harvesting of timber, CT = clearing of trees, CC TNVC = clearing and conversion of a threatened native vegetation community

Notes on interpretation

The above table must not be relied upon as comprehensive or authoritative. Refer to the actual regulations and the guidelines in this document for the complete information.

Reference must be made to Sections 3 and 3A of the Act and Regulation 3 of the Regulations to interpret terms used in the Regulations.

Some of the Regulations do not provide an exemption from requiring an FPP for the harvesting of timber as the intent is that the *Forest Practices Code* would apply and a FPP would provide prescriptions for the harvesting and reforestation operations. This is different from ‘clearing of trees’ which is regarded as non-commercial in relation to clearing land for non-forestry land use and no timber is harvested³.

Clearance and conversion of a threatened native vegetation community is defined in section 3A of the Act.

Clearing for the purpose of protection of existing infrastructure or for public safety – Regulation 4(b)

The intent of the clearing activity must be for the purpose authorised by Regulation 4(b). If the intent is for another purpose such as to clear land to gain additional agricultural land, that activity would either be subject to another clause in the Regulations or an FPP would be required.

If there is an intent to harvest timber, this is not authorised by Regulation 4(b) and an FPP is required. A small volume of timber in accordance with Regulation 4(a) can be harvested.

The clearing of native vegetation must be necessary for the maintenance of the infrastructure or public safety and clearance in relation to previously unused and /or unmaintained infrastructure is therefore not warranted. For example, an unmaintained or derelict fence line does not warrant vegetation clearance.

Existing infrastructure is defined in Regulation 3 and must be built infrastructure. This is interpreted as being permanent such as a permanent fence, a constructed drain or pipeline, power or telegraph poles, or a permanent building such as a house or shed. Temporary objects such as portable electric fences, caravans, or moveable irrigation pipes are not considered as existing infrastructure under this.

A reasonable buffer for safe vehicular access must be no wider than is necessary to allow the passage of a vehicle to the infrastructure by the most direct practicable route. For example, a clearing up to 5m width on one side in the case of a fence. Consideration should also be given to use

³ This was the intent of the 2002 amendment to the Act to include land clearing activities as outlined in the Minister’s 2nd reading speech.

of infrastructure such as fence lines and roads as fire breaks, which may be authorised under Regulation 4(h), subject to being part of an approved fire management program.

A reasonable buffer to protect the existing infrastructure from damage by falling trees and branches must be no wider than is necessary to protect from reasonably foreseeable damage. For example, in the case of a fence, only:

- trees which overhang the fence and are likely to shed limbs; and
- trees which are damaged, unstable or moribund and are likely to fall over the fence may be cleared.

Only those trees which are likely to damage the infrastructure may be removed. The Regulation does not provide for the clearance of all vegetation between the particular tree and the infrastructure.

The matter of public safety needs to be assessed using a risk management approach and taking mitigation measures which are reasonably practicable. The matter of public safety is limited to roads and areas that the public is likely to access.

Clearing of trees or native vegetation regrowth from an area of previously cleared and converted land – Regulation 4(c)

The Act was amended in 2002 to include land clearing activities. Clearing of trees is considered to be a non-commercial activity associated with conversion to another land-use, where it would not be appropriate to apply the *Forest Practices Code* in its entirety as the subsequent land use may not be compatible with some Code requirements. Where timber is recovered for sale, that activity comes under the definition of harvesting of timber.

The clearing of failed plantations without the requirement for a FPP is permitted under Regulation 4(c).

The distinction between ‘clearing of trees’ and ‘harvest’ is important in this situation. (this was the intent of the 2002 amendment to the Act to include land clearing activities as outlined in the Minister’s 2nd reading speech).

If any timber is harvested, then an FPP is required. This is because the Regulation 4(c) leaves out the words ‘harvesting of timber’.

In situations where some of the plantation has failed and is to be cleared with no harvesting and some trees are to be harvested, the operational area of the FPP should 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.

In circumstances where trees or native vegetation regrowth is to be cleared, the interpretation of ‘previously cleared and converted land’ in Regulation 3 is quite clear and the landowner must be able to demonstrate that the land meets it.

Conservation covenants and Vegetation Management Agreements (VMAs) – Regulation 4(g)

Regulation 4(g) requires the conservation covenant or VMA to be *of a kind that the Authority has approved in writing*. This means that the FPA does not need to approve all such instruments with individual landowners, but rather that it should approve suitable generic models developed by other agencies. The FPA has had sufficient experience with conservation covenants to be reasonably confident that the current model developed by DPIPW E would, if presented, be approved by the FPA for the purposes of Regulation 4(g). The development of VMAs is less advanced. The DPIPW E has had preliminary discussions with the FPA regarding the development of a generic model for VMAs as part of a broader move by the DPIPW E to encourage property-based plans (see https://dpiuwe.tas.gov.au/Documents/NFVoptions_web.pdf). However, no standard model has to date been submitted to the FPA by the DPIPW E or any other agency.

Any harvesting or clearing of native vegetation under a conservation covenant or VMA should be restricted to small scale activities or minor developments. It is preferable that an FPP is still required for any forest practices conducted under a conservation covenant or VMA as such an instrument is unlikely to contain prescriptions on how forest operations (harvesting, establishment) should be conducted.

Due to the lack of enforcement options for VMAs, the FPA is of the view they are not a suitable mechanism for the long-term protection of vegetation without support from some other regulatory instrument such as a long-term FPP, conservation covenant or a DPIPW E-approved property management plan (as at March 2021 the DPIPW E property management plan process is not in operation).

The FPA has entered into VMAs for removal of invasive vegetation (i.e. weeds or escapee plantation species) to protect values in natural vegetation and for management of vegetation to achieve conservation outcomes at a landscape scale (e.g. vegetation management on the Hobart Domain by Hobart City Council).

Criteria applied by the FPA in assessing conservation covenants and VMAs

A conservation covenant or VMA may be approved by the FPA pursuant to Regulation 4(g) where:

- Environmental assessments have been conducted to a standard equivalent to that required under the *Forest Practices Code* and associated administrative procedures.
- Specifications for the management of natural and cultural values are incorporated into the instrument in a manner that is consistent with the *Forest Practices Code*.
- The loss of any significant natural and cultural values is offset through improved conservation outcomes elsewhere upon the land covered by the instrument.
- The area to be cleared or harvested is a small fraction of the land covered by the instrument and does not exceed a maximum of 5% or 10 ha of the land area (whichever is the lesser) or, in the case of selective harvesting, less than 5% of the basal area of forest, unless such clearing or harvesting is subject to the requirements for an FPP to be obtained in accordance with s.17 of the Act.
- Any clearing or harvesting should avoid further fragmentation of native vegetation and be consistent with maintaining ecological values and processes, including requirements for fire management and regeneration.

- The relevant landowner/manager submits an annual report to the FPA detailing any clearing or harvesting activities that have been undertaken and any relevant management measures carried out to forests or threatened native vegetation communities.

Fire Management Work - Regulation 4(h)

Regulation 4(h) requires the Fire Management Program to be *of a kind that the Authority has approved in writing*. This means that the FPA does not need to approve all such instruments with individual landowners, but rather that it should approve suitable generic models developed by other agencies or organisations.

The FPA has raised this matter with the State Fire Management Council. This Regulation has been in place since 2005 and, as at March 2021, the FPA has never been asked to approve a Fire Management Program.

The rationale behind the requirement for Fire Management Programs to be ‘approved’ by the FPA is to ensure that fire management work is not subject to a layer of bureaucracy (under the forest practices system) that would dissuade land managers from sensible fire protection measures. Ideally, such fire management works would have separate planning processes (e.g. fire management plans) that take account of the need to minimise unnecessary adverse impact on natural and cultural values.

Planned burning, including regeneration burns and burning of log and bark heaps, and associated activities (e.g. firebreaks) are not exempt from the requirements of the forest practices system where they are undertaken to cause the clearing of vegetation for purposes related to reforestation or a change in land use (such as grazing, agriculture or infrastructure) where such clearing would otherwise require approval under the FPP process. This is particularly important with respect to the requirements to protect threatened native vegetation communities and forest regeneration after harvesting.

Criteria applied by the FPA in assessing Fire Management Programs

A fire management program should contain elements that ensure fire management works and should:

- be planned and documented
- be subject to appropriate assessments to avoid undue damage to natural and cultural values
- be undertaken by persons who are trained and accredited
- have the consent of the landowner
- be supported by education and information programs to ensure that land managers are aware of the impacts of various fire management strategies (including the impacts of fire-exclusion strategies).

Fire management works should be designed to address one or more of the following objectives:

- manage fuel loads within forested environments
- promote regeneration and natural ecological processes
- ensure human safety and the protection of assets and infrastructure.

Mining activities – Regulation 4(i)

Permits and licences associated with mineral exploration or mining have specifications which restrict the activity to a portion of the land that is under the permit or licence. The existence of a mining lease does not give an exemption from requiring an FPP for any forest practices which are outside the footprint of the permitted mining activities.

The permit or licence should be read before deciding which areas are exempt under this Regulation and which areas may require a FPP if forest practices are to be carried out.

Construction of buildings and associated developments – Regulation 4(j)

A permit granted under LUPAA needs to be in place and any clearing must be in accordance with the permit, in the sense that the clearing is necessary to facilitate what the permit authorises.

A permit for development, but which does not mention a planned building, would be exempt but only to the extent that the permit authorised development (or associated works) which reasonably required the clearing of trees. That will have to be determined on a case by case basis by looking at what is authorised by the permit.

In law, the interpretation of building is quite broad. For example, a fence could be regarded as a building and local government planning schemes have provisions for construction of boundary fences with or without permits.

If an activity is exempt under LUPAA from requiring a permit (i.e. the local government planning scheme provides an exemption from requiring a permit), then this Regulation does not apply to that activity and a FPP may be required, if the activity is not covered by another clause in the Regulations.

Electricity Infrastructure – Regulation 4(l)

The FPA must endorse an environmental management system (EMS) and forest practices must be undertaken in accordance with it.

The construction and maintenance of electricity infrastructure is a public good that is covered by other legislative requirements. The management of native vegetation should be an integral factor in the planning, construction and maintenance of the infrastructure and due consideration should be given to achieving a reasonable balance with respect to access, maintenance requirements, public safety and biodiversity values.

There is no generic model for an endorsed EMS, and each one is assessed by the FPA on a case by case basis.

Criteria applied by the FPA in assessing an EMS

An EMS may be endorsed by the FPA pursuant to Regulation 4(l) where it contains appropriate provisions for:

- environmental assessments to be conducted to identify any significant natural and cultural values that may be impacted by the construction or maintenance of the infrastructure; and
- measures to be taken to avoid, where practical and feasible, damage to any significant natural and cultural values, particularly with respect to threatened native vegetation communities and habitat for threatened species; and
- the submission by the relevant electricity entity of an annual report to the FPA detailing any clearing activities exceeding one hectare that have been undertaken in forests or threatened native vegetation communities and advising the vegetation type, location and area for monitoring and reporting requirements under the State Policy for Maintaining a Permanent Native Forest Estate.

Legal advice reminder

Any advice contained in this document or provided by a staff member of the FPA or an authorised forest practices officer (FPO) cannot be relied upon to meet legal obligations. Person(s) responsible for forest practices on any land, as described in section 17 of the Act, should seek independent legal advice before operations commence.

Document summary information

Document name	Guidelines for consideration of exemptions under Regulation 4– circumstances in which a forest practices plan is not required
Version	2.2
CM record	D21/83753 formerly 2011/1407
Owner	Peter Volker
Author(s)	Peter Volker (based on version 1.1 by Graham Wilkinson)
Release date	Jun 2021
Release status	Public document

Version control

Version	Date	Author(s)	Summary of changes
1.0	5 Jan 2011	Graham Wilkinson	draft policy prepared for the Board meeting of 21/1/11
1.1	21 Jan 2011	Graham Wilkinson	Policy endorsed by the Board on 21/1/11
2.0	24 Mar 2021	Peter Volker	Update to make contemporary with 2017 Regulations and 2020 Code – comments provided by Board members
2.1	27 Ap 2021	Peter Volker and Board	Final edits and review to Regulation 3(b) guidance
2.2	29 Jun 2021	Peter Volker	Incorporate changes suggested by FPAC

Stages required for release outside FPA

Category of advice (A1, A2, B1, B2, B3 or C):		A1
Stages	Required/not required	Completed (date)
CFPO	Required	15 April 2021
Board	Required	22 April 2021
FPAC	For information	10 June 2021