

Policy of the Forest Practices Authority



The criteria used to assess instruments for the purposes of the Forest Practices Regulations 4(g), (h) and (l) – circumstances in which a forest practices plan is not required

Policy endorsed by the Board of the Forest Practices Authority on 21/1/11

Preamble

The harvesting and clearing of forests in Tasmania is strictly regulated under the provisions of the *Forest Practices Act 1985*. The relevant provisions of the Act include:

- Harvesting and/or clearing of forest must not occur unless it is authorised under a forest practices plan (FPP) that has been certified by the Forest Practices Authority (FPA) or an authorised Forest Practices Officer (FPO) (s.17,19).
- An FPP must contain specifications to provide reasonable protection to the environment in accordance with the provisions of the *Forest Practices Code* (s.18, 31).
- The clearing of forest must comply with the requirements of the state's Permanent Forest Estate Policy (s.4C(fb)).
- A person must comply with the provisions of an FPP (s.21) and must lodge compliance reports upon the completion of each operational phase in the FPP (s.25A).
- The FPA may issue notices (s.41) to require a person to take any action that is necessary to comply with the provisions of an FPP.
- Non-compliance with the Act or an FPP may result in fines (s.47B) or prosecution (s.21, 41).

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

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

1. small scale activities at levels below which the risk of environmental harm is relatively low; and/or
2. the activities are necessary for ongoing management and maintenance of infrastructure and assets; and/or
3. the activities are covered by an alternative, more relevant planning and approval process.

The exemptions are summarised in Table 1 (below). 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 (highlighted below).

Table 1 – Summary of exemptions from the requirement for a FPP in the Forest Practices Regulations

Reg.	Nature of exemption	Rationale for exemption			Conditions
		Small scale	Routine management/maintenance	Covered by other process	
4(a)	Harvesting/clearing <100 t or < 1 ha on non-vulnerable land	✓	✓		
4(b)	Buffer for infrastructure/safety	✓	✓		
4(c)	Previously cleared land		✓		
4(d)(i)	Dam works			✓	Must be authorised by a dam permit under the <i>Water Management Act 1999</i>
4(d)(iii)	Gas pipelines	✓		✓	
4(d)(iv)	Public roads		✓	✓	
4(e)	Establishment trees <10ha	✓			
4(f)	Harvesting tree ferns	✓			
4(g)	Conservation Covenant or Vegetation Management Agreement (VMA)	✓	✓	✓	Conservation Covenant or VMA must be of a kind approved by the FPA
4(h)	Fire Management Program		✓	✓	Fire Management Program must be of a kind approved by the FPA
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)	Buildings			✓	Must be authorised under the <i>Land Use Planning and Approvals Act 1993</i>
4(k)	railways	✓	✓	✓	
4(l)	Electricity infrastructure		✓	✓	An Environmental Management System must be endorsed by the FPA

1. Criteria used by the FPA to assess Conservation Covenants and Vegetation Management Agreements (VMAs) (Reg.4(g))

1.1 Definitions (Regulation 3):

‘Conservation Covenant’ means a conservation covenant within the meaning of Part 5 of the Nature Conservation Act 2002.

‘Vegetation Management Agreement’ means an agreement that an owner of land enters into with an instrumentality or agency of the Crown for the purposes of managing native vegetation on that land.

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 DPIPWE would, if presented, be approved by the FPA for the purposes of Regulation 4(g). The development of VMAs is less advanced. The DPIPWE has had preliminary discussions with the FPA regarding the development of a generic model for VMAs as part of a broader move by the DPIPWE to encourage property-based plans. However, no standard model has to date been submitted to the FPA by the DPIPWE or any other agency.

1.2 Rationale for exemptions

A land manager should not be subject to a requirement to obtain an FPP for minor clearing or harvesting, where such activities have been already been assessed and approved under an appropriate covenant or VMA. However, it should be noted that the primary purpose of conservation covenants and VMAs is to provide for the long term retention and management of native vegetation so as to maintain or enhance its conservation values. Any harvesting or clearing of native vegetation under a covenant or VMA should be restricted to small scale activities or minor developments. Conservation Covenants and VMAs are essentially broadly-based, strategic documents of good intent and they should not be seen as a means of avoiding the normal controls on clearing and harvesting that parliament has specifically put in place through the FPP process.

1.3 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:

- (a) environmental assessments have been conducted to a standard equivalent to that required under the *Forest Practices Code* and associated administrative procedures; and

- (b) 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*; and
- (c) the loss of any significant natural and cultural values is offset through improved conservation outcomes elsewhere upon the land covered by the instrument; and
- (d) 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 a forest practices plan to be obtained in accordance with s.17 of the Act; and
- (e) 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; and
- (f) the relevant land owner/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.

2. Criteria used by the FPA to assess Fire Management Programs (Reg. 4(h))

2.1 Definitions (Regulation 3):

'Fire management work' means burning off vegetation and constructing firebreaks and access tracks where:

- (a) the sole purpose of the work is to reduce fire hazards or control wildfires; and*
- (b) trees affected by the work are not harvested or cleared for any other purpose; and*
- (c) reasonable precautions are taken to avoid harming natural and cultural forest values, including forest cover and regeneration;*

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. No standard model has to date been submitted to the FPA. Given the lack of a generic model for Fire Management Programs, the FPA has adopted an interim approach that seeks to ensure that landowners are not discouraged from carrying out important fire management activities, whilst also ensuring that such activities are not simply used as a means of clearing forests or clearing and converting threatened native vegetation communities. This approach was provided in writing to the State Fire Management Council on 3 November 2006. This council comprises representatives of the major fire management bodies in Tasmania,

including the Tasmania Fire Service, Parks and Wildlife, Tasmanian Farmers and Graziers Association, Local Government Association, Forestry Tasmania and the Forest Industries Association of Tasmania.

2.2 Rationale and criteria for exemptions

As stated above, the FPA has adopted an interim policy to recognise approved fire management works for the purposes of Regulation 4(h) – refer to Attachment 1.

3. Criteria used by the FPA to assess electricity infrastructure (Reg.4(l))

3.1 Definitions (Regulation 3)-

‘Electricity infrastructure’ has the same meaning as in the Electricity Supply Industry Act 1995 and includes:

a) communications equipment used for or in connection with such infrastructure; and

(b) structures and works used for or in connection with such infrastructure or communications equipment; and

(c) access tracks used for or in connection with such infrastructure, communications equipment or structures and works; and

(d) structures and works used for or in connection with such access tracks

Regulation 4(l) provides an exemption from the requirement for an FPP where:

- there is an easement or the land owner has given consent to the construction or maintenance of electricity infrastructure; and
- the clearance and conversion is undertaken in accordance with an environmental management system (EMS) endorsed by the FPA.

There is no generic ‘model’ for endorsed EMS, and each one is assessed on a case by case basis. To date, the FPA has endorsed three EMSs and one is in progress.

3.2 Rationale for exemptions

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.

3.3 Criteria applied by the FPA in assessing EMSs

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

- (a) 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
 - (b) 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
 - (c) 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 Permanent Forest Estate Policy.
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Attachment 1

Statement of how the Forest Practices Authority will interpret Forest Practices Regulation 5(1)(h)

1. Legislative context

- a. Forest Practices Regulation 5(1)(h) provides that a forest practices plan is not required for:

the clearing of trees in the course of fire management work carried out under a Fire Management Program of a kind that the Authority, by instrument in writing, has approved for the purposes of this paragraph.

- b. The regulation came into effect on 1st August 2005 with the objective of exempting fire management activities (including fire suppression and prescribed burning) from the requirements of the *Forest Practices Act* where such activities cause ‘clearing’ (e.g. firebreak construction or the burning and subsequent destruction of trees, including seedlings) and where such clearing is incidental to, or necessary for, proper fire management.

2. Principles

- a. The Forest Practices Authority (FPA) supports and encourages the wise use of prescribed burning to:
 - i. manage fuel loads within forested environments
 - ii. promote regeneration and natural ecological processes
 - iii. ensure human safety and the protection of assets and infrastructure.
- b. The FPA recognises that activities such as mechanical clearing and the construction of fire breaks are an integral part of prescribed burning and wildfire suppression programs.
- c. The FPA notes that prescribed burning and associated mechanical clearing activities may also have detrimental effects on forest ecology, including forest soils and water values, and may be used as devices to destroy forest cover and prevent regeneration.

3. Rationale for approved Fire Management Programs

- a. The rationale behind the requirement for Fire Management Programs to be ‘approved’ by the Forest Practices Authority is to ensure that:
 - i. Fire suppression and fuel management activities related to section 2.a above are 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 activities 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.
 - ii. Planned burning 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 a change in land use, such as grazing, agriculture or infrastructure, where such

clearing would otherwise require approval under the forest practices plan process. This matter is particularly important with respect to Tasmania's obligations to protect threatened forest communities and forest regeneration after logging.

4. Interim interpretation by the Forest Practices Authority

- a. The FPA will regard the following fire management activities to be exempt from the requirements for a forest practices plan pursuant to the Forest Practices Regulations:
 - i. any activity related to the suppression of wildfire
 - ii. any planned use of fire or associated activity that is carried out only for the purposes described in section 2.a above.
- b. Where the FPA is of the belief that fire management activities are undertaken with a view to causing the clearing of forest for reasons not solely related to those purposes described in section 2.a, then the FPA will not regard those activities to be exempt from the requirements for a forest practices plan.
- c. Fire management activities that are directly associated with forest practices, such as forest road construction, harvesting and regeneration or land clearing, are not 'exempt' activities and must be prescribed within the relevant forest practices plan that covers those activities in accordance with the *Forest Practices Code*.
- d. The FPA believes that fire management activities should, wherever possible, be:
 - i. planned and documented
 - ii. subject to appropriate assessments to avoid undue damage to natural and cultural values
 - iii. undertaken by persons who are trained and accredited
 - iv. 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).

5. Review and continuing improvement

- a. The FPA will review this statement as required on the basis of new knowledge and operational experience to ensure that it provides a practical and effective framework for contributing to the objectives of the *Forest Practices Act* with respect to the achievement of sustainable forest management within Tasmania's forests.
- b. Specifically, the FPA will, in consultation and cooperation with fire and land management authorities, seek to implement an accreditation process to recognize and encourage fire planning and management programs that can be formally exempted from the requirements for a forest practices plan on the basis of meeting the criteria listed in section 4.d above.

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