

Forestry (Unlocking Production Forests) Bill 2017

KEY FEATURES

- Transfers responsibility for approving special species timber harvesting to the Resources Minister, rather than the Crown Lands Minister
- Converts most of the existing Future Potential Production Forest land to “Production Forest land”, which will be available for “forest harvesting” from 1 July 2018 (currently, the land could not be made available until April 2020).
- Forestry Tasmania will not be able to harvest Production Forest land itself, other than the coupes included in Schedule 2. However, Forestry Tasmania will be able to acquire wood harvested from coupes outside Schedule 2 from private contractors.
- Crown leases for forestry purposes will now be able to be issued for up to 10 years over Production Forest land – the Resources Minister will be responsible for issuing leases.
- Any former FPPF coupes within the World Heritage Area will revert to simple Crown land. Forest harvesting will be prevented in those coupes.
- The overall minimum wood supply (137,000m³) will remain, but can now be sourced from within or outside the Permanent Timber Production Zone. The obligation is still on Forestry Tasmania to “make available” the minimum supply, but this can now be achieved through supply contracts with private operators rather than solely through FT harvesting operations.
- Coupes adjoining the Three Capes Track will not be designated as Production Forest land (ostensibly, in order to avoid any negative impacts on tourism). This does not explicitly prevent future forestry on that coupe, but it will not be part of the current “unlocking”.

DETAILS

Special Species Harvesting

- Currently, from October 2017, applications can be made to the Crown Lands Minister for approval to undertake special species timber harvesting within FPPF land.
- The Bill does not alter the timing. Instead, the proposed changes transfer management responsibility for Crown land that is FPPF land to the Resources Minister, for the purposes of the special species harvesting provisions (s.18 of the Bill). Therefore, from October 2017, applications for approval for special species harvesting will be made to the Resources Minister (rather than the Crown Lands Minister).
- Currently, the Crown Lands Minister could only approve an application for special species harvesting if:
 - The application included a certified FPP and any other material prescribed by regulation
 - The Resources Minister had advised that the special species timber could not be sourced from within the Permanent Timber Production Zone
 - The application was consistent with the Special Species Management Plan
- Under the Bill, the Resources Minister is only required to be satisfied that the application is consistent with the Special Species Management Plan (note: this doesn't currently exist) and is accompanied by a certified FPP. The option for other material to be required, and the obligation to consider whether the timber can be sourced from outside the FPPF land have been removed.

- The Bill also removes s11(8) and (9) of the *Forestry (Rebuilding the Forest Industry) Act 2014 (Rebuilding Act)*. Those subsections currently allow the Minister to require a special species harvester to pay a prescribed fee.
- If the Bill is passed, from 1 July 2018, the current special species timber approval process will be repealed and the definition of “forest harvesting” will no longer exclude special species timber harvesting. This means that, from 1 July 2018, special species harvesting on Production Forest land will be assessed in the same way as any other harvesting proposal.

The current distinction is because special species harvesting is permitted from October 2017, while other harvesting was prohibited unless the land was converted to PTPZ land (which could not happen earlier than 8 April 2020). By opening up Production Forest land to all harvesting operations from 1 July 2018, the distinction between forest harvesting and special species harvesting is no longer necessary.

**** *Please note***, the *Rebuilding Act* requires a draft *Special Species Management Plan* to be available for public comment for at least 42 days. If a *Special Species Management Plan* is to be in place before October 2017, it should be released for public comment soon.

Production Forests

- Currently, no native forest harvesting can occur on FPPF land (other than special species harvesting, ancillary roading or installing cable harvesting equipment or native forest harvesting on Schedule 2 land). However, FPPF land could be converted to Permanent Timber Production Zone land from April 2020, or exchanged for PTPZ land elsewhere. Once converted or exchanged, the land would be available for harvesting.

Even after 2020, the conversion / exchange could occur only if the Crown Lands Minister had considered:

- The reasons for the conversion
 - The size, location and conservation values of the coupe
 - An evaluation of the demand for the resources within the coupe, and the social and economic impacts of conversion
 - FT’s intention to undertake harvesting “consistent with its forest management certification”
 - The implications of the land ceasing to be FPPF land for FT’s forest management certification.
- The Bill removes the conversion and exchange provisions and simply provides that, from 1 July 2018, FPPF land will become “Production Forest land” and be available for harvesting, subject to the following conditions:
 - For Production Forest land that is not statutory land (i.e. owned / managed by Hydro, Abt Railway Corporation etc), if done in accordance with the *Forest Practices Act 1985*¹ and a lease or licence over the Crown land.
The Resources Minister will be responsible for issuing leases and licences over this land.
 - For Production Forest land that is also statutory land, if done in accordance with the *Forest Practices Act 1985* and permission from the managing entity

¹ That is, subject to a certified Forest Practices Plan when one is required under that Act. Note, the Bill removes the current requirement for any harvesting on FPPF land to be subject to an FPP. Instead, harvesting on Production Forest land, like on other tenures, may not require an FPP if it is non-vulnerable land and is less than 100t or 1ha of clearing.

- For Production Forest land not listed in Schedule 2, Forestry Tasmania cannot undertake harvesting (but can acquire wood taken lawfully from these coupes)

Schedule 2 coupes can be harvested by Forestry Tasmania (these are already available under the Rebuilding Act).

- Essentially, the Bill makes these coupes available 18 months earlier and without the requirement to demonstrate need, impacts on natural values, social or economic impacts, or consistency with FSC certification.

The Bill also avoids the need for FPPF land to be converted to PTPZ in order to be available for harvesting – FPPF land simply becomes available for harvesting on 1 July 2018. Despite this, the option to declare Production Forest land to be Permanent Timber Production land remains (subject to advice from the Minister that the land is “required for the supply of forest products or for the purpose of an adjustment of the boundary of any land”).

World Heritage Area

- The Bill proposes a new s.34A which provides that any area of FPPF land (listed in Schedule 1 of the Rebuilding Act) that is also within a World Heritage Area ceases to be Production Forest land and becomes Crown land.
- The Bill does not seek to apply a reserve category to that land. It would be open for the Crown Lands Minister to proclaim the land to be reserved under the *Nature Conservation Act 2002*.
- The new s.34A(2)(b) will provide, in relation to the WHA land, that “forest harvesting may not be undertaken on that land”. It would also be inconsistent with the Strategic Management Statement within the TWWHA Management Plan to allow harvesting on the land.
- Section 8 of the Rebuilding Act that allowed conversion of land reserved as part of the Tasmanian Forest Agreement Act that “has been excluded from the World Heritage List”. This provision has been repealed.

Land adjacent to Three Capes Track

- The Minister has indicated that existing FPPF coupes adjacent to the Three Capes Track will not be made available under the “Unlocking” Bill.
- “Production forest land” that will be made available under the Bill is defined as land listed in Schedule 1. I have not done a full comparison of the existing and proposed Schedule 1, however the proposed Schedule 1 excludes Lots 293 and 294, which appear to be in the vicinity of the Three Capes Track.
- While it is not explicit in the Bill, in my view the underlying tenure of the Production Forest land is Crown land. So, if the Three Capes coupes are no longer “production forest land”, they will revert back to simply being unallocated Crown land.
- This land is not subject to the restrictions applying to Production Forest Land, and is otherwise able to be managed like any other piece of Crown land.
- While responsibility for Crown Land that is also “prescribed production forest land” will be transferred to the Resources Minister, responsibility for Crown Land that is not production forest land remains with the Crown Lands Minister.
- Theoretically, the Crown Lands Minister could lease the Three Capes coupes for forestry purposes for 10 years or convert the land to permanent timber production land. Equally, the Minister could proclaim the coupes as a reserve.

Wood supply

- Under s.16 of the *Forest Management Act 2013*, Forestry Tasmania “must make available” 137,000m³ of eucalypt veneer and sawlogs from permanent timber production zone land. The Bill amends this by removing the requirement for the wood to be sourced from PTPZ land.
- The Minister has stated that FT will “not manage the land and will not harvest the trees”, therefore there will be no implications for FT’s FSC certification. However, FT remains responsible for “making available” the timber to industry and is given express authority to meet that obligation by acquiring timber from PTPZ or other land. It remains to be seen whether the FSC auditors consider the notional separation created by the Bill relieves FT of the obligation to ensure that wood supplied to meet its statutory obligations is sourced in accordance with FSC forest management certification standards.
- The Minister has also stated that the legislation “will only be available for harvesting by the private sector and that they must have third-party certification.” There is nothing in the Bill that requires FSC or industry certification – all that is required is that a certified forest practices plan is obtained, along with any required Crown lease / licence.

It is open for the Minister to make the lease conditional upon the lessee having / obtaining FSC certification, but that is not currently a statutory requirement.

Crown leases for forestry purposes

- The Bill amends the *Crown Lands Act 1976* to specifically allow for Crown land to be leased for forestry purposes. “Forestry purposes” is not defined.
- Such leases will be granted for no more than 10 years.
- In deciding whether to grant a lease, and on what conditions, the Minister is to take into account the special species management plan and any likely impact of harvesting the leased land on access to special species timber resources identified in the plan (Part 6, clause 23 of the Bill).
- Unlike leases for other rural purposes, the Bill:
 - exempts leases for forestry purposes from the requirement to be offered by way of public auction (s.31, *Crown Lands Act*)
 - excludes forestry lessees from any entitlement to compensation for improvements where the lease is not renewed.
- As outlined above, the Resources Minister will be the portfolio Minister for Production Forest land. The land may be leased “to any person at such rent and on such terms and conditions as the Portfolio Minister considers appropriate” (s.39A(3), *Crown Lands Act*). The Minister could impose conditions regarding the manner in which forestry operations are conducted, or any certification required to be held by the lessee, but is not explicitly required to do so.

As above, the Minister is to have regard to access to special species timber in setting any lease or licence conditions.