

Fact Sheet – Department of Agriculture and Fisheries' involvement in Emissions Reduction Fund Projects

1. Background

A party that is seeking to register an area-based emissions avoidance project or a sequestration project under the Emissions Reduction Fund must seek the consent of any person or organisation that holds an eligible interest in the land on which the project is proposed to run. Where the project is on State (Crown) land, the *Commonwealth Carbon Credits (Carbon Farming Initiative) Act 2011* (CFI Act) requires the consent of the Crown lands Minister, as an eligible interest holder. In Queensland, the Minister under the *Land Act 1994* is the Crown lands Minister.

Where a person seeks the consent of the Crown lands Minister, the Minister under the *Land Act 1994* will consult with the chief executive of the Department of Agriculture and Fisheries (DAF) about the possible impact of the project on the State's interests in, proposals to deal with, or contracts involving, State-owned forest products and/or quarry material.

Native trees / native forest areas growing on State land held under a term or perpetual lease is a forest product under the *Forestry Act 1959* (Forestry Act) that is the property of the State. The stone, rock, sand, gravel, clay, earth and soil on State land held under a term or perpetual lease is quarry material under the Forestry Act that is the property of the State.

DAF is an eligible interest holder in its own right on freehold land where the State retains ownership of the forest products on the land through a forest consent area registered as a profit à prendre on title or in regard to freehold land where there is a forest entitlement area.

2. DAF's Involvement

There are three different processes through which a response from DAF is required for Emissions Reduction Fund projects on State or freehold land.

1. If the Emissions Reduction Fund project is proposed over an area that is a forest consent area or forest entitlement area, as defined in the Forestry Act, then DAF owns the forest products (e.g. trees) on the land. DAF must be contacted as an eligible interest holder in the land and DAF's consent must be sought for the project to proceed. The process for requesting DAF to provide consent as an eligible interest holder as required by the Clean Energy Regulator is provided below. See Section 4.
2. If the Emissions Reduction Fund project is over State land then the request for consent is sent to the Department of Natural Resources, Mines and Energy (DNRME). DNRME will then forward information on the application to DAF for consideration. DAF will assess the application and provide its views on the application to DNRME – usually its objection, its non-objection or its conditional non-objection. DNRME will then consider any received views and DNRME will then decide whether or not to provide consent to the project. More information on this process is provided below. See Section 5.
3. While DAF can provide consent as an eligible interest holder or provide non-objection over State land, this does not provide an exclusive right to deal with the carbon. DAF can, upon application, provide an exclusive right to deal with carbon abatement products on State land through the Forestry Act. More information on this process is provided below. See Section 6.

3. DAF's Assessment Considerations

DAF is responsible under the Forestry Act for the sale of log timber, other forest products and quarry material from State land, forest consent areas and forest entitlement areas; and for the sale of quarry material from freehold land where there is a reservation of the quarry material. Any request to deal with carbon will be assessed on how it interacts with DAF's interest in log timber, other forest products and/or quarry material.

The State through DAF has entered into a number of long-term compensable sales permits under the Forestry Act in the southern part of the State to ensure native forest commercial timber supply to the dependent regional sawmillers. The extent of the supply zone for the long-term sales permits is shown in Attachment 1. Other areas of the State land are also subject to shorter term sales permits for the supply of native forest commercial timber. Throughout Queensland, the State has entered in sales permits for the on-going provision and sale of State-owned quarry material.

3.1. Commercial Timber

One of DAF's key considerations when considering whether to provide its conditional non-objection or, in certain circumstances, a right to deal in the carbon abatement products, is the availability or not of commercial timber on the subject land. Commercial timber can include the following types of native forest log and other timber:

- cypress sawlogs;
- hardwood poles, girders, sawlogs, landscape timbers, mining timbers, railway timbers, fencing timbers, including rosewood and lancewood timbers, and other log timbers; and
- sandalwood.

3.2. Quarry Material

Another key consideration for DAF when assessing an application for a non-objection or the right to deal in carbon is the presence of an identified quarry resource. DAF may ask for an identified existing quarry area to be removed from the project area before providing its conditional non-objection or granting a right. DAF may also require the project proponent and the lessee to acknowledge, by signing a deed poll, that the State's powers under the Forestry Act to access quarry material on the project area will continue through the life of the project, and that certain areas may be accessed through the life of the project.

3.3. Forest Consent Areas

A forest consent area is an area of land where the State retains ownership of the commercial timber on freehold land through a forest consent agreement which is registered as a profit à prendre on the title of the land. A forest consent area and a forest consent agreement, as well as the contained forest products, are administered by DAF under the Forestry Act.

A forest consent area is shown on the title of the land as a registered interest. Spatial information on the location of forest consent areas can be obtained by searching for forest consent areas on the Queensland Spatial Catalogue website

(<http://qldspatial.information.qld.gov.au/catalogue/custom/index.page>).

DAF is likely to object to a carbon abatement project over a forest consent area where the project outcomes conflict with DAF's ability to access the commercial timber on the land and/or to access a significant quarry resource on the land.

3.4. Forest Entitlement Areas

A forest entitlement area is an area of State-owned land within a parcel of freehold land where the commercial timber and the land on which it stands have been reserved to the State on a deed of grant or freeholding lease. Forest entitlement areas are administered by DAF under the Forestry Act.

A forest entitlement area is shown on the title of the land as an exclusion on title. Spatial information on the location of forest entitlement areas can be obtained by searching for forest entitlement areas on the Queensland Spatial Catalogue website

(<http://qldspatial.information.qld.gov.au/catalogue/custom/index.page>).

DAF is likely to object to a carbon abatement project over a forest entitlement area where the project outcomes conflict with DAF's ability to access the commercial timber on the land and/or to access a significant quarry resource on the land.

3.5. Freehold Land with Quarry Material Reservation

The State retains the ownership of quarry material on some parcels of freehold land. The quarry material is reserved to the State under the deed of grant for the land. In those circumstances where there is a known significant quarry resource on the land the State, through DAF, may either object to a carbon abatement project in relation to the identified quarry resource, or may seek amendments to the carbon project area to appropriately exclude the quarry resource.

Spatial information on the location of DAF quarry material interests can be obtained by searching for quarry material on the Queensland Spatial Catalogue website

(<http://qldspatial.information.qld.gov.au/catalogue/custom/index.page>).

4. Eligible Interest Holder Consent for Freehold Land

A carbon abatement interest over freehold land can be registered on title where a number of conditions are met, including the requirement that all holders of a registered interest in the land whose interest may be affected by the proposed carbon abatement interest consent to the proposed grant.

DAF is an eligible interest holder where there is a forest consent area, forest entitlement area, or where there is an existing quarry resource or sales permit interest on the freehold land.

Parties seeking a carbon abatement interest where DAF is an eligible interest holder may apply in writing to DAF / the chief executive responsible for native forestry under the Forestry Act. The application must include the following:

- the type of carbon abatement interest proposed as listed in the Commonwealth Government's Emissions Reduction Fund (see <http://www.cleanenergyregulator.gov.au/ERF/Pages/default.aspx>);
- the Lots on Plan covered by the carbon abatement right / project application;
- a map showing the area to be considered for the application where this does not include the whole Lot/s on Plan;
- spatial data identifying the carbon estimation areas and the exclusion areas for the project (shapefile - .shp);
- the proposed length of the interest (e.g. 25 years, 100 years);
- a copy of the signed carbon abatement interest agreement;
- a copy of the eligible interest holder consent form Parts A and B from the Clean Energy Regulator;
- contact details for provision of a written notice of DAF's decision; and
- any other relevant information that will allow DAF to assess the application.

The application must be sent to the following address:

Manager Sales and Resources
Forest Products
Department of Agriculture and Fisheries
Level 5 41 George Street
GPO Box 46
BRISBANE QLD 4001

DAF will then make a decision within 10 business days on whether to provide consent. A response will be sent to the applicant detailing the decision. The decision may either be:

- consent is provided;
- consent is provided subject to conditions; or
- consent is not provided.

DAF will provide reasons in writing to the applicant where consent is not provided or provided subject to conditions.

5. Eligible Interest Holder Consent for State Land

Requests for consent or the right to deal in carbon over State land are coordinated by the Department of Natural Resources, Mines and Energy (DNRME) as the land owner. An application for a carbon abatement interest over State land is submitted to DNRME for consideration. The application will be referred by DNRME to DAF for consideration. DAF will assess the application and provide its requirements back to DNRME, and DNRME will then provide the State's decision to the applicant based on the requirements of DAF and any other interests.

DAF is likely to object to a carbon project to deal in carbon abatement products on State land where there is a conflict between the State's commitments through sales permits issued under the Forestry Act and the requirement under a carbon abatement interest to manage the land in a certain way including retention of the commercial timber.

DAF is not likely to permit the same land and its contained trees / native forest areas to be used both for the production and harvesting of commercial timber and for carbon abatement interests.

DAF is likely to either object to a carbon abatement interest covering / including an identified quarry resource, or to seek amendments to the project area to exclude the quarry resource. DAF is likely to also provide its conditional non-objection subject to the lessee and project proponent signing a deed poll acknowledging DAF's ongoing access requirements to quarry material within the project area.

DAF is however unlikely to object to an early season savannah burning related project irrespective of whether or not DAF has commercial timber and/or quarry material interests on the land.

In summary, DAF is likely to object to an application to deal in carbon abatement products where the land is:

- State forest;
- timber reserve;
- State land that contains commercial timber and is within the supply zone shown in Attachment 1;
- State land that is subject to a current or proposed sales permit under the Forestry Act that would conflict with the carbon abatement right being sought; or
- State land that is subject to a known quarry resource.

Applications will be considered on a case by case basis by DAF.

DAF will make a decision within 10 business days on whether to provide consent. A response will be sent to the applicant detailing the decision. The decision may either be:

- consent is provided;
- consent is provided subject to conditions; or
- consent is not provided.

DAF will provide reasons in writing to the applicant where consent is not provided or provided subject to conditions.

6. Application for the Grant of a Right to Deal

The owner of land may apply to the chief executive of DAF for the grant of a right to deal with carbon abatement product, as detailed in section 61M of the Forestry Act. DAF may, upon application, provide the grant through section 61N of the Forestry Act of the right to deal exclusively in carbon on State land. DNRME as the State land owner will coordinate the responses from DAF and other agencies in regard to an application for a right to deal in carbon over State land.

A party seeking the grant of a right to deal with a carbon abatement product may apply in writing to DNRME. The application must include the following:

- the type of carbon abatement interest proposed as listed in the Commonwealth Government's Emissions Reduction Fund (see <http://www.cleanenergyregulator.gov.au/ERF/Pages/default.aspx>);
- the Lots on Plan covered by the carbon abatement right application;
- a map showing the area to be considered for the application where this does not include the whole Lot/s on Plan;
- spatial data identifying the carbon estimation areas and the exclusion areas for the project (shapefile - .shp);
- the proposed length of the interest (e.g. 25 years, 100 years);
- a copy of the signed carbon abatement interest agreement;
- contact details for provision of a written notice of the decision; and
- any other relevant information that will allow proper assessment of the application.

DAF will make a decision on whether to grant a right to deal within 10 business days. A response detailing the decision will be sent to DNRME if the application relates to State land or to the applicant if the application relates to freehold land. The decision may either be:

- non-objection or issue of right;
- non-objection or issue of right, but with conditions; or
- objection or refusal.

DAF will provide written reasons for its decision where the application is refused or granted with conditions.

6.1. Native Title and the Grant of a Right to Deal

Where an applicant applies to DNRME for a right to deal with carbon abatement products on the land, native title may first need to be addressed. DAF will assess each application for a carbon abatement right to determine the appropriate method of addressing native title if applicable.

It will be the applicant's responsibility to address native title as per the requirements identified by DAF. This may require the applicant to enter into an Indigenous Land Use Agreement (ILUA) for the grant

of the right to deal. The right to deal will not be granted until any appropriate native title process is completed to the satisfaction of DAF.

6.2. Request for Review of Decision

Under section 61P of the Forestry Act, the applicant may apply to the Minister responsible for native forestry under the Forestry Act for an internal review of DAF's decision. The application must be made within 42 days after notice of the decision is given to the applicant, be in writing and include details of the grounds on which the applicant seeks review of the decision.

After reviewing the original decision, the Minister must, under section 61PA of the Forestry Act, make a further decision to confirm the original decision of DAF, or substitute a new decision. The Minister will give written notice of the review decision to the applicant.

Attachment 1 Map showing the Supply Zone for Long-Term Sales Permits issued under *Forestry Act 1959*

