

Forest Practices Plans **Certification, Amendment, Variation, Refusal and Revocation**

Status: Administrative Instruction to Forest Practices Officers

Note: This set of instructions replaces the following instructions issued by the CFPO:

Instruction	Date issued
A Guide for Forest Practices Officers (part)	October 1994
Signature Page of THPs	29 May 1997
Variations to Timber Harvesting Plans	19 October 1998
Road reserves in areas covered by a THP	3 March 1999
Variations to Forest Practices Plans (Administrative Instruction 00/02)	24 March 2000
Checking road reserves and checking the requirements of local government (Administrative Instruction 2001/01)	4 June 2001
Memo to all FPOs (planning) regarding checks when certifying FPPs	19 September 2001
Retention of Forest Practices Plans and variations to plans	3 March 2003
Crown Road Reserves	12 August 2003

General requirements under the *Forest Practices Act 1985*

Summary

- **The FPA has the power to certify, refuse, amend, vary and revoke FPPs. The FPA delegates the power to certify, refuse, amend and vary FPPs to Planning FPOs. Inspecting FPOs are not delegated any of these powers.**
- **The powers delegated to Planning FPOs are indicated on their Instrument of Delegation.**
- **Prescribed forms must be used for certifying, refusing, amending or varying FPPs.**
- **The applicant has a right to appeal to the Forest Practices Tribunal if a plan is refused, amended, varied (under section 22), or revoked.**
- **A certified plan provides the authority to carry out forest practices on the land specified in the plan.**
- **A person failing to comply with a plan is guilty of an offence.**

Delegation of powers to Planning Forest Practices Officers to certify, refuse, amend or vary Forest Practices Plans

The Forest Practices Authority has the power to certify, refuse, or amend a FPP under section 19 of the *Forest Practices Act 1985*; to vary or refuse to vary a plan under sections 22 and 23 of the Act; and to revoke plans under section 24A of the Act. The FPA may delegate some of these powers to FPOs. FPOs are appointed by the FPA at two levels:

- a Planning FPO has powers delegated to him or her under sections 19, 22, 23 and 24 of the Act to certify, refuse, amend, or vary plans;

- an Inspecting FPO does not have any powers delegated to him or her under these sections of the Act.

In addition, the FPA has the power to revoke plans under section 24A of the Act. This power is not delegated to FPOs.

How does a Planning Forest Practices Officer know what powers have been delegated to him or her?

Under section 43 of the Act the FPA may delegate certain powers to FPOs, including the power to certify, refuse, amend or vary plans. The powers delegated to an FPO are shown in his or her Instrument of Delegation given to the FPO at the time of appointment.

An FPO's power to certify, amend or vary plans may be restricted to certain types of plans. Most Planning FPOs have the power to certify, refuse, amend or vary plans involving any combination of road construction, clearing, harvesting and reforestation. However, some FPOs will have more limited powers. For example, their powers may be limited to plans involving road construction only. Quarry plans can only be certified, amended or varied by FPOs who have been given specific authorisation after having completed relevant training conducted by the FPA.

FPOs should check their Instrument of Delegation if unsure which powers they have been delegated.

Forms

Forest Practices Officers are reminded to use the prescribed forms to certify, refuse, vary or amend.

Appeals

Under section 25 of the Act the applicant has a right of appeal when the Forest Practices Authority (or an FPO with a delegated authority from the FPA):

- refuses to certify a plan;
- makes amendments to a plan;
- varies a plan (under s. 22 of the Act);
- refuses an application for a variation (submitted under s. 23 of the Act), or;
- revokes a plan.

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

When an FPO refuses, amends, or varies a plan he or she should advise the applicant(s) of their right to appeal the decision to the Forest Practices Tribunal. (See also *Applicant's rights*.)

Authority of a certified Forest Practices Plan

Under section 20 of the Act *"a certified forest practices plan authorises forest practices and any operations associated with those forest practices to be carried out on the land specified in the plan in accordance with the provisions of that plan during the period specified in the plan."*

Breach of a certified Forest Practices Plan

Section 21 provides that any person (including a body corporate) who in carrying out any act, or in omitting to carry out any act, contravenes or fails to comply with the provisions of the plan is guilty of an offence. (See also *Reporting of breaches*.) Breaches must not be authorised through variations. (See *Variation not to be done to authorise breaches*.)

Certification of Forest Practices Plans

See the section above on *General requirements under the Forest Practices Act 1985* regarding powers delegated to FPOs to certify FPPs.

Summary

When certifying FPPs FPOs must, as appropriate:

- **Only certify the types of FPPs that the FPA has delegated them the authority to certify.**
- **Ensure that the FPP to be certified is of an adequate standard – use of a checklist is recommended.**
- **Make sure that all matters within the FPP are resolved; otherwise delay certification of the plan, or at least ensure that the wording in the plan provides a clear intent for future management.**
- **Ensure that Code requirements are met, including:**
 - **Code “will” statements are not negated in the FPP;**
 - **consultation and notification has occurred;**
 - **adequate coupe dispersal is achieved;**
 - **authorisation has been obtained from the CFPO where required;**
 - **specifications are placed in the FPP where required.**
- **Check that for private timber reserves any area scheduled for harvesting is also scheduled for reforestation.**
- **Ensure that rare, threatened or endangered forest or non-forest communities are not scheduled for clearing.**
- **Ensure that agreed prescriptions have been transferred from the evaluation sheets to the body of the FPP.**
- **Ensure that the harvesting prescriptions and reforestation technique specified are appropriate for the forest type.**
- **Check with the landowner or the FPA database that there is not already another current FPP for the area.**
- **Ensure that widely separated non-contiguous areas are not included under the one plan.**
- **Check that there are no existing use rights or covenants on the land that may either affect or be affected by the FPP.**
- **Ensure that local government planning approval has been obtained where required.**
- **Ensure that a risk assessment has been done where appropriate.**
- **Ensure that dam planning approval has been obtained from DPIWE where appropriate.**
- **Check that the commencement date is not prior to the date of certification.**
- **Check that, for FPPs certified from [date to be advised], the completion dates for discrete operational phases are reasonable, and that all operational phases applying under the plan have been listed on the cover**

page.

- **Ensure that at least one timber processor has been listed on the cover page if timber harvesting is to occur under the plan.**
- **Ensure that the landowner's approval has been obtained before certifying the FPP. From July 2005 the landowner, applicant, persons or organisations accepting primary responsibility for management of forest practices, and contractors (optional) will be required to sign an acknowledgement form. From July 2005 the only signatory on the FPP will be the FPO certifying the plan.**
- **Note the following with regard to landowners:**
 - **FPOs do not have to verify proof of ownership (although it is advisable to do so)**
 - **a "forestry right" may apply under the Act, but only to Crown land**
 - **the consent of all landowners must be obtained, e.g. for road reserves the consent of Crown Land Services must be obtained.**
 - **authorised agents may sign for landowners**
- **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. The FPO should also initial and date each page.**
- **Obtain a certification number from the FPA's web site.**
- **Send the FPP cover page to the FPA within 1 week of certification.**
- **Retain the originals of FPPs and variations and associated documentation.**
- **Ensure that copies of certified FPPs are distributed to all relevant parties.**

The checks below are not all mandatory for all FPPs. FPOs should exercise their judgement in determining which checks are appropriate for each individual plan. Some of the checks below should normally be undertaken well before certification of a plan to avoid time delays.

Standard of Forest Practices Plans

It is the responsibility of the Planning FPO to check any FPP presented for certification to ensure that it is of a satisfactory standard. The FPA recommends that FPOs only certify plans for areas that they are familiar with on the ground. Use of a checklist is recommended to ensure that key information is included in the FPP. A peer review process is also recommended for this purpose. The Planning FPO should only certify the plan if he or she is happy that the plan is of a satisfactory standard. (See the section on *Preparing a Forest Practices Plan* for more details on plan wording.)

If the Planning FPO is not happy with the standard of a plan presented for certification, then he or she can seek agreement from the other parties who will be signatories to the plan to the necessary changes. If the parties do not agree, the Planning FPO can either amend the plan, or refuse to certify the plan. (See the sections *Amendments to Forest Practices Plans* and *Refusal of Forest Practices Plans* below.)

What to do when there are unresolved issues

(See also *Consent to the final version of the Forest Practices Plan* below.)

At the time of plan certification all major matters pertaining to the plan should have been resolved, otherwise plan certification should be delayed until the matters are resolved. FPOs should not certify plans that provide an “open cheque” for what happens under the plan. For example, the following statement is unacceptable:

“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 plans 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.”

It is recognized, however, that sometimes matters cannot be fully resolved at the time of plan certification, and whilst this is not desirable, it need not necessarily be an impediment to certification of a plan. Some examples follow:

Landowner undecided on intent

Using the example above where the landowner has not decided whether to regenerate to native forest or convert to pasture, the FPO should explain to the landowner that he or she must make a decision which will be reflected in the plan, but that in the event of a change of mind after the plan is certified, he or she can apply for a variation. If this situation arises it would be wise for the landowner to also be the applicant, as this would enable the landowner to initiate a variation. (Note that in some instances such as clearing of inadequately reserved RFA communities it may not be possible to vary the plan.)

Reforestation requirements cannot be specified in detail

For plans covering road construction, harvesting of native forest, and conversion to plantation, the plantation establishment phase may not occur until about two years after operations commence under the plan. It may be difficult to be as specific in terms of plan prescriptions for reforestation as would be the case for a plan involving solely plantation establishment. Two options are available:

- Prepare the plan with normal detail in the reforestation section in the knowledge that a variation is very likely to be required, or;
- Prepare the plan with basic detail in the reforestation section, but with a statement to the effect that further detail will be covered through a variation to the plan. (A variation would then be necessary before any reforestation took place.)

The important point to remember is that **a FPP must provide a clear intent for future management** so that neighbours and other parties can be advised in good faith with respect to intended operations.

Contractors not determined

Harvesting and other contractors to be allocated to a coupe may not be known at the time of plan certification. In that case a contractor could be asked to sign the Acknowledgement form (see section *Completion of the “Acknowledgement of persons or organisations operating under Forest Practices Plan No...” form*) at the time it is decided that he or she will be the contractor allocated to the coupe covered by that plan. It is also advisable that the intended contractor not be named specifically in the plan, but rather that a generic term is used in the plan such as “the harvesting contractor”. Note that the most important point for contractors is

that **all contractors who operate under the plan should be given a copy of the FPP, or at least relevant sections, and an adequate briefing on the plan.**

Advice on natural and cultural values not resolved

There have been occasions when a plan is awaiting certification but there is still an unresolved issue regarding advice on a natural or cultural value. In exceptional circumstances, by agreement with the CFPO, a plan may be certified with the proviso that it includes a prescription stating that operations not take place in the part of the plan area potentially affected until written advice is received from the FPA and a variation is done, if necessary.

Forest Practices Code requirements

The FPO should be confident that all Code requirements have been fulfilled before certifying the FPP. In particular the FPO must ensure that:

- the FPP does not contain any statements that contradict the Code (i.e. prescriptions that negate “will” statements in the Code);
- local government has been consulted if required (as per page 5 of the Code);
- local government and near neighbours have been notified (as per page 5 of the Code);
- there is adequate coupe dispersal (see *Coupe dispersal* below);
- authorisation has been received from the CFPO where required (see section *Forest Practices Code references to approval by the Chief Forest Practices Officer* below);
- specifications have been included in the FPP where required by the Code (see section *Forest Practices Code references to Forest Practices Plans* below).

Consultation and Notification

The FPO must ensure that consultation as required in the Code (see the section *Consultation*) and any other consultation he or she considers appropriate has been carried out **before certification**.

The FPO should ensure that if adjoining landowners and local government have not been notified of planned operations under the FPP at the time of certification that a mechanism is put in place to ensure that notification occurs. (See *Policy on communication of information contained within Forest Practices Plans (Notice of intent)*)

Note that a new notice should be issued if operations have not commenced within 6 to 12 months of the issue of a notice of intent, or if substantial changes to the operations are proposed (for example changing the harvesting prescription from selective logging to clearfell).

Coupe dispersal

For harvesting FPPs the coupe dispersal requirements apply as per sections C1.1 and C6 of the Forest Practices Code. Before certifying a harvesting FPP an FPO should check that these requirements would be met. For guidance in interpretation of the requirements contact the FPA or see the section *Guidelines for the size and dispersal of coupes*.

Forest Practices Code references to approval by the Chief Forest Practices Officer

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 audit.

The table below summarises all the Code references to the CFPO. For the complete wording obviously the Code should be consulted.

Code Section	Code Provision (abbreviated, with Code page number in brackets)
Building Access to the Forest	The CFPO will be consulted before quarries are opened in karst areas or in the catchment of a Category A or B karst area (p. 21)
Harvesting of Timber	<p>Clearfalling will not be permitted in areas with vulnerable karst soils unless authorised by the CFPO (p. 27)</p> <p>Operation outside Table 5 will only be undertaken in consultation with the CFPO (p. 31-32)</p> <p>Snig tracks can only cross a Class 1 or 2 watercourse where forwarders are authorised by the CFPO (p. 35)</p> <p>New caves or streamsinks found during harvesting will be reported to the CFPO as soon as possible (p. 37)</p> <p>The CFPO may exempt operations from the provisions of the Code in salvage areas, but will prescribe alternative provisions in the FPP (p. 49)</p> <p>Steep country clearfall coupes will be no greater than 50 ha unless approved by the CFPO (p. 50)</p>
Conservation of Natural and Cultural Values	Where landslides have occurred they will be reported to the CFPO (p. 53)
Establishing and Maintaining Forests	Plantations will not be permitted on sites with vulnerable karst soils unless authorised by the CFPO (p. 81)

Forest Practices Code references to Forest Practices Plans

The table below summarises the Code references to Forest Practices Plans. For the complete wording obviously the Code should be consulted. FPOs need to be aware of these requirements when certifying FPPs and monitoring compliance with FPPs.

Code Section	Code Provision (abbreviated, with Code page number in brackets)
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<p>Introduction</p>	<p>Appropriate provisions to be included in Forest Practices Plans (p. 4)</p> <p>Consultation with local government to occur prior to certification of a FPP regarding landscape, town water supply, access onto local government roads (p. 5)</p> <p>Notifications required (p. 5)</p> <p>Plans to be certified prior to commencement and at completion (p. 5)</p> <p>Relevant information in plans to be made available to interested parties (p. 5)</p> <p>All provisions to be consistent with safe working practices, other laws etc. (p. 5)</p>
<p>Building Access to the Forest</p>	<p>Approval required from DIER before building/upgrading access onto a highway (p. 6)</p> <p>Surfacing material to be removed from large drainage structures prior to expiry of FPP if not built to withstand 1 in 10 to 50 year floods (p. 11)</p> <p>Temporary watercourse crossings to be removed prior to termination of a FPP (p. 18)</p> <p>Within 2 km upstream of a town water supply or freshwater aquaculture facility intake specific conditions will be placed in a plan regarding timing and methods of road construction (p. 25)</p>
<p>Harvesting of Timber</p>	<p>Plans should include an evaluation of fire risk (p. 27)</p> <p>The responsibility for boundary marking will be stated in a FPP (p. 32)</p> <p>Trees will not be felled outside harvesting boundaries in a FPP (p. 33)</p> <p>Snig track direction will be indicated on the FPP map (p. 33)</p> <p>An FPO may specify permissible machinery use of a road in a FPP (p. 38)</p> <p>Existing stabilised tracks within 10 m of a Class 4 watercourse can be used for snigging along (thinning only) under certain conditions if specified in a FPP (p. 38)</p> <p>An FPO may specify alternatives in a FPP for operations using exclusively C6 equipment (p. 39)</p> <p>Where machine clearing is specified in a FPP following harvesting, partial restoration can be undertaken, with full restoration later (p. 39)</p> <p>Where machine clearing is not specified in a FPP following harvesting full restoration by cross drains will be undertaken (p. 39)</p>

	<p>39)</p> <p>Where safety concerns are present a contractor may move a landing up to 50 m provided an FPO is notified (p. 41)</p> <p>Landings will not exceed 0.2 ha, except that landings up to 0.3 ha may be authorised in a plan (p. 41)</p> <p>Landings will not be permitted within 40 m of a streamside reserve or Class 4 machinery exclusion zone unless designated in a FPP and provided specific measures are placed in the plan to protect water quality (p. 42)</p> <p>Trees within streamside reserves will only be fallen where authorised in a FPP and within certain conditions (p. 46)</p> <p>Where authorised in a FPP feller bunchers can go to within 5 m of a Class 4 watercourse in native forest with certain conditions applying including that responsibility for marking will be stated in the plan (2 dot points – p. 46)</p> <p>Watercourse protection measures will need to be carefully considered in FPPs for plantations within streamside reserves (p. 47)</p> <p>Where authorised in a FPP feller bunchers can go to within 5 m of watercourses in plantations with certain conditions applying including that responsibility for marking will be stated in the plan (p. 47)</p> <p>On high to very high erodibility soils the FPO will specify additional measures to the above point in the FPP (p. 48)</p> <p>The CFPO may exempt operations from the provisions of the Code in salvage areas, but will prescribe alternative provisions in the FPP (p. 49)</p>
<p>Conservation of Natural and Cultural Values</p>	<p>Natural and cultural values will be evaluated during the preparation of FPPs (p. 51)</p> <p>On high to very high erodibility soils a specialist should be consulted during preparation of a FPP (p. 52)</p> <p>A soils or geotechnical specialist will assess areas with slopes greater than the threshold slope angle for landslide hazard before operations proceed under a FPP (p. 53)</p> <p>Wider streamside reserves should be specified in a FPP where necessary to protect certain values (p. 57)</p> <p>Catchment areas corresponding to town water supply intakes will be identified in FPPs (p. 57)</p> <p>Within 2 km upstream of a town water supply or freshwater aquaculture facility intake specific prescriptions will be placed in FPPs regarding timing of operations, use of chemicals, camps, methods of road construction, and management of fuels etc. (p. 57)</p> <p>Revegetation etc. of road batters will be specified in the FPP within</p>

	<p>within water supply and other significant catchments (p. 58)</p> <p>Within 2 km upstream of known domestic water intakes additional measures may be prescribed in the FPP (p. 58)</p> <p>During preparation of a FPP the operational area will be assessed for botanical values (p. 60)</p> <p>During preparation of a FPP the operational area will be assessed for zoological values (p. 61)</p> <p>FPOs will obtain endorsed management prescriptions with regard to threatened species for operational areas of FPPs and incorporate them in the plan (p. 64)</p> <p>Relevant legislation and processes (cultural heritage) will be delivered through FPPs (p. 71)</p> <p>During preparation of a FPP known sites and Aboriginal potential zones will be identified and specialist advice obtained (p. 72)</p> <p>Protection requirements (cultural heritage) will be listed in a FPP (p. 72)</p> <p>During preparation of a FPP the operational area will be assessed for geomorphological values (p. 73)</p> <p>FPPs will specify significant (geomorphological) features for an area and protection measures (p. 73)</p>
<p>Establishing and Maintaining Forests</p>	<p>Persons/organisations responsible for reforestation will be listed in the FPP (p. 74)</p> <p>Reforestation factors will be considered and detailed (as per list) in the FPP (p. 74)</p> <p>Plantation treatments (as per list) need to be considered and appropriate prescriptions placed in the FPP (p. 78)</p> <p>Table 10 is to be applied in a practical manner unless alternative measures are prescribed by a specialist and included in the FPP (p. 78)</p> <p>Advice will be sought from a soil specialist before plantations are established on sites with high or very high erodibility soils, and appropriate prescriptions placed in the FPP (p. 80)</p> <p>Entry of machinery into cleared streamside reserves to carry out drainage works will be detailed in the FPP (p. 81)</p> <p>During plantation establishment no machinery will be permitted within 10 m of any Class 1, 2 or 3 watercourse except at points designated in a FPP (p. 82)</p> <p>During plantation establishment no machinery will be permitted within 10 m of any Class 4 watercourse except at points designated in a FPP, or as permitted in “other situations” (p. 83)</p> <p>Construction of fire breaks and access tracks will not be permitted within streamside reserves or Class 4 machinery exclusion zones</p>

	<p>except to access crossing points designated in a FPP (p. 84 and p. 88)</p> <p>The FPP for the area will specify the establishment and maintenance treatments most likely to achieve full stocking (p. 86)</p> <p>FPPs will state whether the area is covered by a forest management plan (p. 91)</p> <p>The FPP for areas to be reforested but not covered by a fire management plan should specify measures to be provided for the protection of the new forest from fire (p. 91)</p> <p>Where applicable weed control measures will be specified in the FPP (p. 93)</p>
Appendix 3	<p>For operations on very high erodibility class soils drainage depressions will be marked on FPPs, crossed only at designated points, and crossings minimised (p. 113)</p>

Private timber reserves

See also the separate section on *Private Timber Reserves*.

A FPP that covers a private timber reserve must specify reforestation measures to take place after any harvesting. It is not permissible, for example, for harvesting to be followed by clearing. 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 Forest Practices Code and such other activities which the FPA considers to be compatible with establishing forests, or growing or harvesting timber.”

Protection of rare, vulnerable or endangered forest or non-forest communities

There is currently a moratorium on the clearing or conversion of any rare, vulnerable and endangered forest and non-forest communities. FPOs cannot authorise the any clearing or conversion of these communities except on the specific authority of the CFPO in exceptional circumstances. (See the section *Interim protection of rare, vulnerable and endangered forest or non-forest communities on private and public land* for more details.)

Transfer of prescriptions from evaluation sheets to Forest Practices Plans

It is essential that any prescriptions agreed during preparation of evaluation sheets be transferred to the body of the Forest Practices Plan. Prescriptions not transferred to the body of the plan do not have any legal effect as the evaluation sheets are only supporting documents to the plan. (See the instruction on *Natural and cultural values evaluation sheets*.)

Harvesting prescriptions and reforestation techniques

Appropriate reforestation techniques are listed in Table 9 of the Forest Practices Code, and are detailed in the Forestry Tasmania Native Forest Silviculture Technical Bulletin series referenced in the Code.

An FPO must not certify a plan unless he or she is 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 plan cannot be achieved, and therefore the plan will be non-compliant at expiry, e.g. clearfalls on some grassy sites can lead to “failed” regeneration and it then becomes almost impossible to return a natural forest to some sites.

The person responsible for reforestation should have sufficient expertise or access to expertise to undertake reforestation. FPOs should **not** certify plans 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 plan.

Where a landowner who does not have expertise in reforestation agrees to take responsibility for reforestation the FPO should explain the requirements and, if possible, indicate to the landowner where information and assistance can be obtained. The landowner should also be informed of the consequences of not complying with the plan should reforestation be ineffective due to their actions (or lack of action). Consideration could be given to including a statement in any documentation that companies ask landowners to sign making it clear that the landowner understands their legal obligations with regard to forest establishment.

The FPP must prescribe a standard stocking survey and the standard to be achieved on PTRs, State forest, 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 his or her land to a fully restocked forest, it is appropriate to set a stocking standard according to the landowner’s wishes. It is highly desirable that stocking surveys be conducted by persons with appropriate expertise. If the FPO has any doubts about this 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. If the landowner is to undertake monitoring and regeneration surveys it may be appropriate to specify a simplified stocking in the FPP to at least achieve “ecological stocking” as defined in Technical Bulletin No. 6.

Can two Forest Practices Plans cover the same area?

On occasions an FPO may be asked to certify a plan when there is already an existing plan 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 over which there is already a separate FPP for road construction. If there is any reason to believe that there may be another plan already extant over the area (e.g. there is evidence of relatively recent forestry activity within the proposed plan area for the plan you are considering for certification), the FPO should check with the landowner, or contact the FPA and request a check of the FPA database.

In some instances there may already be a plan in existence, in which case the options are:

- ensure that the FPP boundary (as shown on the FPP map) for the new plan does not overlap with that of the existing plan, or;
- vary the existing plan to terminate it on or before the commencement date for the new plan, or;
- vary the existing plan to incorporate the changes required, or;

- certify the plan after thorough checking to ensure there will be no inconsistencies between the two plans. However, advice should first be sought from the FPA, as there may be legal issues involved.

Note that to avoid the likelihood in future of having two plans covering the same area, it is best to draw FPP boundaries on FPP maps as close to the edge of operational boundaries as is reasonably practicable, but including any areas reserved under the plan.

Inclusion of non-contiguous areas under the one Forest Practices Plan

Sometimes an FPO may be asked to certify an FPP covering two or more non-contiguous areas. There is no absolute rule limiting the extent to which this can be done, so FPOs must largely exercise their own judgement, within reason.

By way of example, it is acceptable to cover harvesting of two or more patches of timber separated by agricultural land under the one plan. However, separate plans will normally be required for separate properties owned by the one landowner, or where there are two landowners involved. One plan might be sufficient if the areas were relatively close to each other and required very similar FPP prescriptions. If the areas proposed for harvesting contained quite different natural and cultural values, forest types etc., then quite different prescriptions may be required for each area in the plan. Thus if both areas were covered under the one plan the prescriptions required in the plan could be lengthy and potentially confusing to interpret. The general rule of thumb is that non-contiguous areas should be included under the one plan only if:

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

Existing property rights and covenants

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

The landowner should also be made aware that the Forest Practices Plan might constrain other activities on his or her property within the plan 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.

Local government planning approval

FPOs are aware that the approval of local government may be required for forestry operations on non-PTR private land. It is the responsibility of the landowner or applicant to ensure that proper approvals from Council are obtained prior to the commencement of operations. It is clearly not the responsibility of FPOs to obtain the approval. However, the FPO should confirm that the landowner/applicant has complied with their responsibilities prior to certifying the FPP. The FPO should also be aware of any conditions that have been imposed by a Council permit. Where relevant these should be included in the FPP or in the

instructions to the operators. Conversely, Council requirements that are not relevant to the Forest Practices Code (for example load limits on roads), should not be included in the FPP, and Council should be made aware that it must take responsibility for enforcement of such requirements. Remember that cooperation with local government is important for the credibility and continued operation of the forest practices system.

Councils often request a copy of the Forest Practices Plan with a development application. Some Councils ask specifically for a certified plan whereas others ask for a draft plan. FPOs should try and resolve issues of particular interest to Councils, such as entry onto Council roads, prior to submission of the FPP to Council. Councils should be accommodated with a “final” plan wherever possible. Changes to a certified plan as a result of Council’s approval can be made by variation.

See also the section on application of the *Land Use Planning and Approvals Act 1993*

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. Before certifying a plan an FPO must ensure that a risk assessment has been undertaken, where appropriate, and that where the risk was determined to be unacceptable, modifications were made to the FPP to bring the risk within acceptable limits. (See *Risk assessment procedure*.)

Dam planning approval

As per page 49 of the Forest Practices Code, FPOs must ensure that dam planning and construction approvals have been obtained from DPIWE (where required) before certifying salvage operations within storage areas for new dams. A streamlined approval process now applies for dam FPPs (see *Streamlined approval process for dams*).

Period of plan

The *Forest Practices Act* requires (section 18(2)(c)(i)) that an estimate of the period during which forest practices are to be carried out be provided in the plan. The “Commencement date for forest practices (including harvesting of tree ferns)” and the “Estimated completion date for forest practices (including harvesting of tree ferns)” on the cover page represent the period of the plan. The commencement date must not be earlier than the date the FPO certifies the plan. Failure to follow this procedure may render the plan legally invalid. The period of the plan should allow sufficient time for completion of all activities under the plan. This includes successful reforestation as indicated in a stocking survey. For complex plans including road construction, harvesting and reforestation generally a period of 4 years will be sufficient. Plans should not be certified to cover significantly longer periods without consultation with the CFPO. Quarry plans can be certified for an initial period of up to ten years. Generally it is advisable to make all plans expire at the same time of the year. This makes it easy to check once annually for which final Certificates of Compliance are due. (See also *When must the final Certificate of Compliance be lodged?*.)

Discrete operational phases

Note: This section applies to all FPPs certified from [date to be advised].

Under the 2005 amendments to the *Forest Practices Act* there is a new requirement (section 18(2)(c)(ii)) that, if applicable, a FPP is to provide an estimate of the period during which

each operational phase of the plan is to be carried out. Discrete operational phases under a plan include the:

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

The completion date for each discrete operational phase has to be recorded on the plan cover page. The FPO should check that the completion dates are reasonable and realistic. The last date should be the same as, and definitely not after, the expiry date (“Estimated completion date for forest practices (including harvesting of tree ferns”) of the plan. It is advisable to set the completion dates for discrete operational phases at fixed times of the year, e.g. 31/3, 30/6, 30/9, and 31/12. This makes it easier to monitor when Certificates of Compliance are due. (See also *When must Certificates of Compliance for discrete operational phases be lodged.*)

The FPO should also check that all the operational phases covered under the plan are listed on the top of the cover page, and also near the bottom of the cover page where completion dates for discrete operational phases are recorded.

Timber processors

Section 18(2)(d) of the *Forest Practices Act* requires that the name of the timber processor(s) by whom the timber harvested under the FPP is intended or expected to be processed be stated in the FPP as a minimum. The name of at least one timber processor must be listed on the cover page of the FPP. Where no timber is to be harvested under the FPP, there is obviously no need to name a processor.

The fact that a timber processor is not listed on a FPP will not preclude the processor from receiving timber nor affect the validity of the plan. Similarly, the fact that a processor listed on a plan does not receive timber will not affect its validity. A processor also cannot incur any liability for a breach of the Act merely because the processor is listed on a plan.

Changes to arrangements for obtaining signatures from 2005

Changes to the Forest Practices Plan signature page

The FPA has received legal advice that has led to the need to change the requirements for completion of the FPP signature page. The advice applies equally to variations.

Effective from 1 August 2005, FPPs will only need to be signed by the FPO certifying the FPP, i.e. landowners, applicants, contractors and timber processors will not be required to sign FPPs. (Landowners and applicants should, however, be asked to initial and date each page of the FPP.) The requirements with regard to landowners, applicants, contractors and timber processors are covered in the following sections.

Completion of the “Acknowledgement of persons/organisations in relation to Forest Practices Plan No.....” form

Following are the new requirements to apply from 1 July 2005.

Landowner approval

Section 18(4) of the *Forest Practices Act* requires that **the written approval of the landowner(s) must be given prior to the certification of a plan. An FPO must not certify a plan under any circumstances until that approval has been given.**

Failure to comply with this provision will render the FPP invalid, meaning that operations under the plan would be in breach of section 17 of the Act.

As from 1 July 2005 landowners will be required to give approval for an FPP to be submitted for certification by signing the Landowner consent section of the ***Acknowledgement of persons/organisations in relation to Forest Practices Plan No.*** form rather than by signing the FPP itself. See also the section below ***Verification of landowner.***

Acknowledgement of applicant

The person applying for certification of the FPP should be asked to complete the Acknowledgement of applicant section of the form ***Acknowledgement of persons/organisations in relation to Forest Practices Plan No.*** This will ensure firstly, that there is no potential for dispute as to who applied for certification of the plan, and secondly, that the applicant is aware of their responsibilities with regard to lodgement of compliance reports with the FPA.

Completion of the “Acknowledgement of persons or organisations with primary responsibility for management of forest practices” form

Effective operation of the forest practices system is dependent on regular oversight of forest practices by FPOs and other trained supervisors. These people are mostly employed by forest managers and timber processors who accept a responsibility to ensure that a high level of compliance with FPPs is achieved. Statements are commonly placed in FPPs indicating that responsibility has been taken by a forest manager or timber processor for certain aspects of the plan. This co-regulatory approach has been endorsed by Parliament in the way that the *Forest Practices Act* has been drafted.

To ensure that a person or organisation that is allocated responsibilities under a FPP is aware of, and accepts those responsibilities, FPOs should ask the person or the representative of the organisation to complete the appropriate section of the form ***Acknowledgement of persons or organisations with primary responsibility for management of forest practices.*** Provision has been made on the form for persons or organisations to take primary responsibility for individual forest practices (discrete operational phases) of a plan.

Completion of the “Acknowledgement of persons or organisations with specific responsibilities under Forest Practices Plan No.” form

Responsibilities for specific actions such as marking harvesting boundaries may be assigned under an FPP. To ensure that persons or organisations who are assigned such responsibilities understand and accept those responsibilities, they should be asked to sign the ***Acknowledgement of persons or organisations with specific responsibilities under Forest Practices Plan No.*** form.

Completion of the “Acknowledgement of persons or organisations operating under Forest Practices Plan No.” form

Contractors who previously would have signed the FPP signature page or the form *Acknowledgement of Contractors additional to primary contractors listed in the FPP No.....*, will no longer be asked to sign those forms from July 2005, but may instead be asked to complete the relevant part of the form *Acknowledgement of persons or organisations operating under Forest Practices Plan No.* This requirement is not obligatory, but is recommended by the FPA so that there is a record that the contractor is aware of the existence of the FPP, and the requirement to comply with the provisions of the FPP.

Verification of landowner

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

Proof of ownership

A Forest Practices Plan 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 signed by the landowner (or authorised agent). The question of how much proof of ownership has to be sighted before a FPO signs a FPP has been raised. For ease of administration and reducing red tape the FPO can accept the word (and signature) of the person giving his or her consent for the FPP to be submitted. The FPO is not liable if he or she accepts the 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.

Land subject to a forestry right

Section 18(4)(b) of the *Forest Practices Act* provides that if the land is subject to a forestry right the written approval of the holder of the forestry right be obtained prior to certification. In such cases it is not necessary to also obtain the written approval of the landowner. A “forestry right” as defined under the Act is limited essentially to situations such as the timber concessions over State forest that were held by various pulp and paper companies. Rights to timber on private land, leasehold and joint venture arrangements on private land do not constitute forestry rights as defined under the Act. Therefore it will be necessary in such circumstances to obtain the written approval of the landowner for submission of a FPP for certification.

Where land is subject to a “forestry right” as defined under the *Forestry Rights Registration Act 1990*, the approval of the landowner must still be obtained for submission of an FPP for certification, i.e. the landowner’s signature must be obtained.

Forest Practices Plans covering areas with two or more landowners

Where an application is being made by a number of owners under section 18(1) of the Act for certification of a plan, each landowner must sign a memorandum of approval under section 18(4)(b). That is, an FPO cannot validly certify a FPP until all the landowners have approved the plan to be submitted for certification, i.e. until all have signed the Landowner consent part of the Acknowledgement form.

Road reserves

Forest Practices Officers are aware of the need to obtain the consent of the Crown Land Services Division of the DPIWE prior to conducting any forest practices within Crown road reserves. In the past some FPPs have been

certified without an adequate check on whether the land contained a Crown road reserve. The problem is specific to those reserves that are not apparent on the ground, i.e. they do not have a constructed road or fenceline etc. It is a breach of s.17 of the Act and also an offence under the legislation that relates to Crown land to harvest road reserves and convert them to plantations without the knowledge or consent of Crown Land Services.

An agreement exists with Crown Land Services for gaining approval for forest operations on Crown road reserves. The agreed procedures avoid duplication with respect to the assessment of natural and cultural values. The procedures are as follows-

- FPOs will ensure that road reserves are identified and fully considered when preparing the natural and cultural evaluations for FPPs. The evaluation sheets will be submitted to the FPA specialists in accordance with current procedures.
- The FPA specialists will continue to liaise with the Threatened Species Unit and the Resource Management and Conservation Branch of DPIWE on any provisions relating to threatened species or vegetation communities that have a high priority for conservation.
- Crown Land Services and the Resource Management and Conservation Branch of DPIWE 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.
- FPOs will forward FPPs that contain Crown road reserves to Crown Land Services to seek landowner's consent as required under s.18(4)(b) of the *Forest Practices Act*. (NB It is not necessary to forward supporting documentation such as the evaluations for natural and cultural values.)
- Crown Land Services will, wherever possible, give consent to FPPs within 5 working days.

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 Crown Land Services with respect to these matters.

All road reserves are shown on land titles – this information is available through the Internet (www.thelist.tas.gov.au) for a fee. Crown Land Services can be contacted on 62336404 (southern Tasmania) or 63362234 (northern Tasmania).

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. (See *Upgrading roads*.)

Authorised agents

The Landowners consent part of the Acknowledgement form provides that an “authorised agent” of the landowner may sign the form on behalf of the landowner. The person so signing is thereby declaring that they have that authority from the landowner. The FPO does not have to verify that the person is an authorised agent for the landowner. If the FPO is in any doubt he or she may wish to advise the person that they can only legally sign as the landowner if authorised to do so by the landowner.

Absentee landowners

In some cases it will be difficult to obtain a landowner's signature consenting to a FPP being submitted for certification, e.g. where the landowner lives interstate or overseas. In this case a

property manager or solicitor who is authorised in writing to conduct business relating to the property on his or her behalf, may sign as an authorised agent for the landowner.

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 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 each party should normally be obtained as landowners. In some cases one party only may sign if authorised to do so by the other owners .

Electronic acknowledgements

Under the *Electronic Transactions Act 2000* a facsimile or email transaction is recognised legally in Tasmania. Therefore an FPO may accept an electronically transmitted signature of a person completing one of the Acknowledgement forms if satisfied as to its authenticity.

Consent to the final version of the Forest Practices Plan

Occasionally changes may be deemed necessary to a plan after the landowner has consented to the plan but prior to certification. To ensure that the landowner has consented to the final version of the plan, **the FPO, the applicant and the landowner(s) should initial and date all pages of the plan.** Where the applicant or landowner is a company or other entity, the person who initials each page of the plan should be the same person who signed the *Acknowledgement of persons/organisations in relation to Forest Practices Plan No....* form for the company or other entity.

Obtaining a certification number

Planning FPOs are reminded that the instructions from the FPA require them to obtain a certification number from the FPA at the time that they certify the FPP. The FPP certification numbering system operates on the FPA web page. <http://www.fpb.tas.gov.au>. Follow the link from "Forest Practices Plans Certification Numbering" at the top of the page. The username is your 3 letter initials. The password is the same as your username. It is strongly recommended that you change your password after you first log in. Please do not log in on behalf of other people. The system is straightforward. You are prompted to enter a FPP number and the date it was certified. This date must be today's date or before. You cannot obtain a certification number for a plan that has not been certified. Apart from changing passwords, you can also list the numbers that are allocated to you. If you forget your password, please call the FPA to arrange for a new one to be allocated.

Submission of the cover page of the Forest Practices Plan to the Forest Practices Authority

The FPO certifying the FPP should submit a copy of the FPP cover page to the FPA as soon as possible (and within 1 week) after certification of a FPP. The FPP cover page is required for the FPA to maintain its Forest Practices Plan database. The database is used for answering enquiries, undertaking monitoring etc. It is not necessary to send a copy of the whole FPP to

the FPA (but see the section below regarding *Retention of the original copies of Forest Practices Plans and variations*).

Retention of original copies of Forest Practices Plans and variations

Forest Practices Officers are reminded that they act in the capacity of officers of the FPA when certifying Forest Practices Plans and variations to plans. FPOs must, on behalf of the FPA, maintain a copy of the original FPP plus any variations to the plan. FPOs should also keep the notification and evaluation forms and any other relevant planning information on file.

The Forest Practices Officer who certifies the plan must keep the plan and any variations in a secure place. The FPO upon request by the FPA must make the original copy available to the FPA or to an officer appointed by the FPA to conduct audits. If an FPO cannot securely store FPPs (e.g. if they are retiring or transferring to a new position) they must transfer their FPPs to another FPO in the same work location, or forward the originals to the FPA in Hobart. FPPs must be retained for a minimum of three years (preferably five years) after their date of expiry.

Distribution of copies of Forest Practices Plans 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 after certification. Copies should be provided to the applicant, the landowner, the principal processor, and any contractors who will operate under the plan. The plan should include a list of the people who are to be provided with a copy of the plan.

Amendments to Forest Practices Plans

Reminder - amendments are changes made to a Forest Practices Plan **before** certification of the plan. Amendments will rarely be required. FPOs should seek advice from the FPA before amending a plan.

The term “amendment” has sometimes been used loosely by FPOs 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 this and the next section.

A Planning FPO can amend a plan presented for certification under section 19 of the Act as he or she considers necessary, and certify the plan as so amended by:

- 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 plan;
- inserting new specifications in the plan or amending or omitting specifications contained in the plan as submitted;
- identifying, for the purposes of section 25A(1) of the Act, the discrete operational phases of the plan.

The appropriate form for amendments must be used.

Following are two examples of situations where an amendment to a FPP would be required:

- an FPP presented to an FPO for certification is found to contain a prescription that is not in accordance with a "will" statement in the Forest Practices Code. (Alternatively, this circumstance could normally be remedied by getting the parties to agree to the change and having them sign and date a new plan.);

- A landowner wishes to become an “affected owner” under the *Nature Conservation Act 2002*. In this case a FPP would be certified subject to amendments made for the purpose of protecting rare or endangered species of flora or fauna. If this situation arises contact the FPA for advice before proceeding.

Amendments need to be dealt with within 28 days of a request for certification of a FPP. The Act requires that the applicant and the owner of the land be informed in writing of proposed amendments. The applicant can appeal against amendments proposed by the FPO (section 25 of the Act).

In practice amendments are rarely required, as things tend to be resolved between the parties involved before the FPP is finalised.

Variations to Forest Practices Plans

Reminder - variations are changes made to a Forest Practices Plan **after** certification of the plan.

Summary

- **FPOs should use Section 22 forms when they are acting as an agent of the FPA to make changes that are necessary to improve the standard of the FPP.**
- **FPOs should use Section 23 forms when extending the life of a plan or making changes of an operational nature (i.e. changes sought by the applicant).**
- **Only Planning FPOs are authorised to certify variations to FPPs. A different FPO to the one that certified the original FPP can certify a variation, but contact should be made with the original certifying FPO.**
- **Appropriate wording should be used in plans to minimise the likelihood of a variation being required in future.**
- **Minor changes that do not affect the integrity of a plan do not require a variation.**
- **Significant changes to a plan require a variation.**
- **It will sometimes be necessary to remove wording from a FPP through a variation.**
- **The plan period can be extended or reduced by variation. However, a plan cannot be extended once it has expired. A plan should be extended where necessary to enable a stocking survey to be undertaken.**
- **For FPPs certified from [date to be advised], the completion date for a discrete operational phase will need to be extended by variation if operations will not be completed by the date specified in the plan.**
- **Checks are required when operational prescriptions are to be changed by variation. New evaluation sheets will be required. The operational area under a FPP can be reduced or extended (by up to 20 ha or 10% of the operational area whichever is lesser) by variation.**
- **Where site preparation prescriptions cannot be provided in detail at plan certification, a later variation may be necessary to provide more detailed prescriptions.**
- **It is not necessary to vary a plan for a change of landowner (property sale) or change of contractor.**
- **The applicant cannot be changed by variation.**
- **Variations cannot be made to retrospectively legitimise breaches that have occurred.**
- **New notices of intent must be sent out where, under a variation:**
 - **major changes are proposed to operational prescriptions, or;**
 - **the operational area will be extended resulting in a neighbour not previously notified now being within 100 m of the operational boundary.**
- **Variations may sometimes need to be referred to local government.**
- **The FPA must be notified of changes to cover page information occurring through variations, especially changes to the areas of RFA communities harvested or cleared, and, from [date to be advised], changes to the expiry date of discrete operational phases or the plan itself.**
- **Each variation must be numbered sequentially.**
- **The signature of the landowner must be obtained before certifying a (section 23) variation. Under new arrangements to apply from July 2005 the landowner and applicant will be required to sign an acknowledgement form. The only signatory on the variation form itself will be the FPO who**

certifies it.

- **Signatures transmitted electronically are acceptable if the FPO is satisfied as to their authenticity.**
- **The FPO, applicant and landowner(s) should initial each page of the variation to demonstrate that they are consenting to the final version of the variation.**
- **FPOs must retain the originals of variations.**
- **Copies of variations must be distributed to all relevant parties.**

Types of variations

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; in fact they ensure proper consultation and rights of appeal.

The *Forest Practices Act 1985* provides for two types of variations to certified FPPs; a variation instigated by the FPA, and a variation requested by the applicant.

Variation instigated by the Forest Practices Authority (Planning FPO)

Section 22 of the Act provides that the FPA may vary the provisions of a certified plan 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. For example, an FPO may initiate a variation in order to protect an eagle's nest that is discovered during the course of logging operations. In other words, the FPO is clearly operating as an agent of the FPA. This section should not be used to make changes sought by other parties, such as extending a plan or changing the plan from native forest regeneration to plantation.

In the example given above where a variation is needed in order to protect an eagle's nest, if the applicant and landowner are agreeable it will actually be simpler and easier to do a variation under section 23 (see section below). The need to do a section 22 variation will only arise where either the applicant or the landowner is not prepared to submit a variation for certification.

A variation under section 22 does not take effect until 14 days after the service of the notice on the applicant.

Variation requested by the applicant to a Forest Practices Plan

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

Section 23 of the Act provides that the applicant to the plan may seek a variation, provided that he or she has 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. Planning FPOs 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 section 23, he or she must inform the applicant of the refusal, and the reasons for the refusal (as required under section 24(2) of the Act). The other parties should also obviously be informed.

Who can certify variations?

For consistency the FPO that certified the original plan should generally certify any variations required to that plan. Where a different FPO is intending to certify a variation they should contact the original certifying FPO and discuss the variation. This will also ensure that they take account of any previous variations, and correctly number the current variation. (See *Numbering of variations.*) Once the variation has been certified the FPO should provide a copy of the variation to the original certifying FPO for their records.

A Planning FPO may not have the power to certify variations for all types of plans, depending on his or her Instrument of Delegation. (See *How does a Planning FPO know what powers have been delegated to him or her?*)

When is a variation required?

Appropriate wording of Forest Practices Plans 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. moving the location of a landing by a small distance, 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”. See also *Does slight modification of an operational boundary require a variation?*

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 plan certification. Plans 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. (See *What to do when there are unresolved issues* and *Variation to incorporate a site preparation plan into a Forest Practices Plan*).

Generally it is best to avoid specifically naming a person in a plan when allocating responsibilities. Preferably state “the landowner” or “the harvesting contractor” etc. instead. This removes the need to vary the plan 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 a plan if that person becomes unavailable to perform that responsibility.

See also *Preparing a Forest Practices Plan*.

Minor changes not requiring a variation

Minor changes which 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;
- minor changes to landing locations;

- minor modifications to boundaries (see *Does slight modification of a boundary require a variation?*);
- change in contractor.

If required the changes can be noted with the original copy of the FPP.

Where a FPP is varied landowners need to be consulted according to the Act. There is no point in contacting the landowner for every minor change. This problem can be overcome by having a general agreement with the landowner beforehand 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 (but noting that the wording in a plan may obviate the need for a variation in some cases as discussed above under *Appropriate wording of Forest Practices Plans to reduce the need for subsequent variations*):

- (a) Road construction, timber harvesting, tree clearing and forest establishment plans:
- substantial road re-alignment;
 - construction of an access track (not in the original plan) for log cartage;
 - construction of a borrow pit (not in the original plan) under a road construction FPP;
 - any changes to boundaries or total areas to be harvested or reforested including not proceeding with part of the area under the plan (see *Variation to extend or reduce the area of operations under a Forest Practices Plan*);
 - substantial changes in landing locations, or provision of additional landings;
 - change from a predominantly uphill to a predominantly downhill snigging system;
 - change from conventional to cable harvesting or vice versa;
 - change in the reforestation prescription. (See *Variation to change operational prescriptions*);
 - change of management objective e.g. from reforestation to agriculture;
 - change in the method of application of chemicals;
 - substantial changes in natural and cultural value prescriptions or classifications (e.g. soil erodibility class);
 - a change that has the potential to adversely impact on natural or cultural values unless additional prescriptions are applied, e.g. moving a landing to a point within 40m of a streamside reserve;
 - changes in watercourse classifications and therefore streamside reserve widths;
 - addition of class 4 watercourses not shown on the FPP map (unless provided for in FPP wording and provided appropriate measures are taken);
 - changes in responsibilities under the plan. (See *Appropriate wording of Forest Practices Plans to reduce the need for subsequent variations*);
 - where the original FPP states that a variation will be required (e.g. see *Variation to incorporate a site preparation plan into a Forest Practices Plan*);
 - extension of the period of a plan or, from [date to be advised], the period in which a discrete operational phase is to be carried out. (See *Variation to extend or reduce the period of a Forest Practices Plan* and *Variation to change the completion date for a discrete operational phase*.)
- (b) Quarry plans*:
- extending quarry operations boundaries;
 - significant changes to quarry development and rehabilitation sequence;
 - moving from level 1 to level 2 production volumes.

* Variations that relate to level 2 forest quarries must be sent to the Director of Environmental Management in DPIWE.

There may be a fine line between minor and major changes. Use common sense 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.

Removal of Forest Practices Plan 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 plan wording is being voided through the variation, e.g. where the harvesting prescription is changed.

However, in some cases addition of a new provision to a plan through a variation will lead to the plan being self-contradictory unless an existing provision in the plan is at the same time formally removed from the plan through the same variation.

Variation to extend or reduce the period of a Forest Practices Plan

Extension of the period

The expiry date of an FPP is the “Estimated completion date for forest practices (including harvesting of tree ferns)” on the cover page. The only way to extend the period of a FPP is through a variation. However, once a plan has expired it ceases to exist legally and therefore cannot be extended. If a plan does expire before all intended activities are completed then operations should immediately cease until a new plan can be drawn up and certified.

It is appropriate to extend the period of a plan in some circumstances. If expiry of a plan is imminent but more time will be necessary to undertake a stocking survey for reforestation, the plan should be extended by variation to allow the stocking survey to be undertaken at the appropriate time. The FPA obviously would prefer to see full compliance reported at the termination of FPPs where this can be achieved.

Where the period of a plan is extended the FPA must be notified so that it can amend its records regarding the due date for the Certificate of Compliance.

Reduction of the period

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

FPOs should not bring forward the expiry date on any plan under which operations have already commenced unless they are satisfied that all the operations under the plan (including, where appropriate, any stocking survey for regeneration) can be completed by that date.

Where the period of a plan is reduced the FPA must be notified so that it can amend its records regarding the due date for the Certificate of Compliance.

Variation to change the completion date for a discrete operational phase

Note: This section applies from [date to be advised].

On the cover page of a FPP a completion date is specified for each discrete operational phase under the plan. Where a particular discrete operational phase, e.g. timber harvesting, will not be completed by the completion date the applicant will need to seek a variation to the plan to extend the completion date for that discrete operational phase. It is likely that the completion date for other subsequent discrete operational phases, e.g. forest establishment and assessment of reforestation, will also need to be extended at the same time.

The completion date for a discrete operational phase could also be brought forward by variation if considered necessary.

Note that continuation of operations relating to a discrete operational phase after the completion date stated in the plan for that discrete operational phase would constitute a breach of the plan.

Under section 25A of the Act an interim compliance report must be lodged with the FPA within 30 days after the completion date for that discrete operational phase as specified in the plan. (See also *Certificates of compliance*.)

The FPA must be notified of changes to the completion dates for discrete operational phases.

Checks when certifying variations

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

Variation to extend or reduce the area of operations under a Forest Practices Plan

Note that new evaluations for natural and cultural values may be need to be completed if the area of operations is being increased through a variation. (See also *Natural and Cultural Values Evaluation Sheets*.)

The circumstances relating to extending or reducing the area of operations through a variation are discussed under several headings below.

What if the areas recorded in the Forest Practices Plan are subsequently found to be inaccurate?

The planned area of operations under a 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. However, 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 Forest Estate policy. (See *Do copies of variations need to be sent to the Forest Practices Authority?* for provision of advice to the FPA on changes to areas under a variation.)

Does slight modification of an operational boundary require a variation?

It is accepted that operational (harvesting, clearing and forest establishment) boundaries on FPP maps are not necessarily shown with a high level of precision. If the boundary as shown on the FPP map is an approximation, i.e. it hasn't been surveyed, **it is advisable to use wording in the FPP such as “the harvest boundary is as shown approximately on the FPP map”**. Thus a slight difference between the boundary shown on the FPP map and the final actual boundary is acceptable under these circumstances. However, any **increase** in the operational area under a Forest Practices Plan beyond the above will require a variation

before any activity occurs on the expanded operational area. In dealing with these situations FPOs should err on the side of caution, and consult with the FPA if in doubt.

Examples of situations **requiring a variation**:

- 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;
- 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.

Examples of situations **not requiring a variation**:

- 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;
- 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.

A **decrease** in the operational area under a Forest Practices Plan will also require a variation. Variations for decreases in operational areas should be done as soon as possible, and in any event, before the plan expires. If a variation hasn't been done then a breach of the plan will have to be recorded on the Certificate of Compliance. The consent of the landowner must always be obtained for any decrease in operational area.

The degree to which boundaries can be extended via a variation is discussed under ***How much can boundaries be extended under a variation?*** below.

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 a plan should not exceed 20 ha or 10% of the operational area covered by the plan, whichever is the lesser. If an increase in area beyond these limits is desired clearance from the CFPO should be obtained or a new FPP prepared. New evaluation sheets for natural and cultural values will be needed for any variation involving an increase in operational areas beyond the area covered by the original evaluation sheets.

Details of any changes to FPP cover page information resulting from a variation, particularly a change to RFA community areas, must be sent to the FPA. (See ***Do copies of variations need to be sent to the Forest Practices Authority?***)

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

Additional notices of intent will need to be sent out if the extended operational boundary will be within 100 m of neighbours not previously notified.

Where operational boundaries are extended by variation care should be taken to ensure that any property or reserve boundaries are correctly identified. (See ***Determination of property boundaries*** and ***Determination of informal reserve boundaries.***)

What if it is decided not to proceed with some areas under a Forest Practices Plan?

A variation should be done. Otherwise a technical breach of the plan will later have to be recorded on the Certificate of Compliance. Details of any changes to FPP cover page information resulting from a variation, particularly changes to RFA community areas, must be sent to the FPA. (See *Do copies of variations need to be sent to the Forest Practices Authority?*)

Variation to change operational prescriptions

Sometimes a landowner may wish to change the operational prescriptions for part or all of the area under a FPP, e.g. by changing the reforestation prescription from native forest to plantation. Any such change, where permissible, must be covered by a variation. Note that:

- if conversion to another land use is proposed, check that no part of the property is within a private timber reserve (see *Private timber reserves*);
- if changes are proposed to operational prescriptions that are not covered by the original evaluation sheets, new evaluation sheets will be required to cover the changes to the FPP (see *Natural and cultural values evaluation sheets* and *Protection of rare, vulnerable or endangered forest or non-forest communities*).

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

A mix of silvicultural treatments may apply under some FPPs, e.g. various partial harvesting systems may be combined with clearfelling. The final proportions may vary according to forest type and site factors. If it becomes apparent during operations that the final proportions are likely to be significantly different to that stated in the plan 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 >5 ha or 10% of the operational area is affected (whichever is the lesser).

Variation to incorporate a site preparation plan into a Forest Practices Plan

In circumstances where it is not practicable to provide site preparation prescriptions in detail in the original FPP, (e.g. for plans involving harvesting of native forest followed by plantation establishment), the following approach may be taken:

- provide minimum reforestation details in the original FPP, and include a statement that a variation will be prepared to cover specific site preparation aspects in more detail;
- when the variation for site preparation is done ensure that all pages of the document identify it as part of the variation to the FPP, and that the wording is appropriate for a FPP, (i.e. avoid wording that is too specific, which may lead to another variation being subsequently required). However, FPOs must avoid “open cheque” provisions wherever possible and ensure that the original FPP represents the most likely planned outcomes.

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

See also *Landowner’s responsibilities*.

Generally there is no need to vary a FPP for a change in landowner, contractor etc. Where a landowner purchases a property over which there is a FPP he or she inherits the responsibilities of the previous landowner under that plan. Sometimes the new landowner’s requirements will be different to those of the previous landowner, e.g. they may desire to clear the land rather than reforest it. In these circumstances it is appropriate to allow a variation to the plan provided appropriate checks are made where necessary, (e.g. the land may be a

may be a declared private timber reserve, or it may contain an RFA community that cannot be cleared).

It would normally be appropriate to vary a FPP to re-allocate responsibilities where a landowner or contractor was allocated responsibilities by name in the text of the plan.

Where one contractor has completed works on a section of a coupe and a new contractor is to complete works on the remainder of the coupe the new contractor may be concerned that he or she will assume responsibility for any non-compliances by the original contractor. In such circumstances it is recommended that an audit of the original contractor's operation be carried out prior to the commencement of the new contractor's operation.

Can the applicant be changed by variation?

No, because under the Act, the applicant is the person who first applied to have the plan certified. However, the applicant's rights and responsibilities can be consigned to another party (see also *Applicants*.)

Variation not to be done to authorise breaches

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 a plan 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.

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

See also the *Policy on communication of information contained within Forest Practices Plans (Notice of intent)*.

Under normal circumstances, no. However, there are two circumstances where it may be necessary to send out new Notices of intent.

Where the operational area under a plan is increased by variation, notifications should be sent out to any neighbours not previously notified that are within 100 m of the proposed new operational boundaries.

In addition, new notifications must be sent to relevant parties (including neighbours and local government) where major changes are proposed to operational prescriptions, (e.g. changing the harvesting prescription from partial harvesting to clearfall).

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

See also *Local government planning approval*

There will be circumstances where a proposed variation to a FPP will need to be referred to local government or another government authority. Generally referral to local government will be limited to FPPs for private property where the variation relates to aspects controlled under the planning permit. Examples of matters that Councils may have a particular interest in would include a reduction to areas reserved for landscape protection under a plan, a change to the silvicultural prescription from native forest to plantation within a town water supply catchment, and an alteration to the agreed location for a new road planned to access onto a Council road.

Variations will rarely need to be referred to other agencies, but it will sometimes be necessary to consult with another agency before certifying a variation, e.g. where infrastructure such as Telstra cables may be affected.

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. (See *Do notices of intent have to be sent out when a variation is done?*)

Do copies of variations need to be sent to the Forest Practices Authority?

Copies of variations do not normally need to be sent to the FPA. However, a copy of any variation involving changes to the FPP cover page information must be sent to the FPA so that the FPA can amend the FPP database. This is particularly important in the case of changes to the areas of RFA communities to be harvested or cleared, and, for FPPs certified from [date to be advised], changes to the completion dates for discrete operational phases or to the expiry date of the plan. Changes relating to RFA communities must also be notified with the Certificate of Compliance (See *Changes to RFA communities.*)

The certifying FPO must retain the original of the variation, and a copy should be supplied to the FPO who certified the original FPP if different to the FPO who certified the variation.

Numbering of variations

Each variation must be numbered sequentially for future reference (i.e. variation no. 1, variation no. 2 etc.). This links the variation with the acknowledgement document signed by the applicant and the landowner (see next section *Changes to arrangements for obtaining signatures for (section 23) variations from 2005*). It also helps to ensure that anyone implementing the variation is aware of the existence of other variations. Copies of all variations containing prescriptions should be provided to contractors. The FPP number and variation number should be clearly shown on each page of the variation including the map.

Changes to arrangements for obtaining signatures for (section 23) variations from 2005

From July 2005 new forms will apply for FPPs and variations. The procedure to apply is described in more detail in the section *Changes to arrangements for obtaining signatures from 2005*. The main change is that only the FPO will sign the actual variation form. The applicant and landowner will be required to sign an acknowledgement form. The procedures are discussed below.

Landowner approval for a variation

As with the original FPP, **the approval of the landowner(s) must be obtained before the FPO certifies any variation (under section 23)**. The landowner will be required to sign the form *Acknowledgement of persons/organisations in relation to a variation to Forest Practices Plan No....* rather than the actual variation form as has applied in the past.

Is the approval of all landowners always required?

Yes. Sometimes variations are requested that will only affect one landowner on a multiple-landowner FPP, e.g. for a plan covering both private property and a Crown road reserve a variation may be submitted asking for an additional landing on the private property section. The Crown road reserve may be unaffected. The *Forest Practices Act* requires that the

consent of all landowners be obtained to any variation to a plan, so in this case the consent of Crown Land Services would still be required for the variation.

Acknowledgement of applicant for a variation

Before the variation is certified, the person who applied for certification of the original FPP should be asked to complete the appropriate section of the form *Acknowledgement of persons/organisations in relation to a variation to Forest Practices Plan No....*

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 a FPP, e.g. a change to the organisation with primary responsibility for reforestation. In this case the form *Acknowledgement of persons/organisations in relation to a variation to Forest Practices Plan No....* should be used to record the agreed change in responsibilities. The person or organisation assuming the responsibilities through the variation should be asked to complete the form.

Contractors

There is no need to record a change to contractors operating under a FPP by completing a variation (provided contractors aren't allocated responsibilities under the plan directly by name). New contractors to operate under a FPP can be asked to complete the form *Acknowledgement of persons/organisations in relation to Forest Practices Plan No.....*

FPO certification of variation

Once the *Acknowledgement of persons/organisations in relation to a variation to Forest Practices Plan No....* form referred to in the above sections has been completed the FPO can certify the variation. Under the new arrangements to apply from July 2005 the FPO will be the only signatory to the variation form itself.

Electronic acknowledgements

Under the *Electronic Transactions Act 2000* a facsimile or email transaction is recognised legally in Tasmania. Therefore an FPO may accept an electronically transmitted signature of a person completing one of the Acknowledgement forms if satisfied as to its authenticity.

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. This makes it clear that they are agreeing to the final version of the variation. See also *Consent to the final version of the Forest Practices Plan*.

Retention of original copies of variations

The procedure outlined under *Retention of original copies of Forest Practices Plans and variations* should be followed.

Distribution of copies of variations

The procedure outlined under *Distribution of copies of Forest Practices Plans and variations* should be followed.

Refusal of Forest Practices Plans

Planning FPOs have the power to refuse to certify or vary a FPP (section 19 of the *Forest Practices Act*). The prescribed form must be used. The applicant and the landowner have the right to appeal against the refusal.

The reason for the refusal must be stated on the form and must be justifiable. Situations that may require refusal of a plan include:

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

Amendment of the plan 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 FPA before refusing plans.

Revocation of Forest Practices Plans

Revocation occurs when an existing certified plan is voided. Plans can be revoked by the FPA where considered necessary. The FPA has delegated the authority to revoke plans to the CFPO, but not to FPOs. Therefore, FPOs are asked to contact the CFPO if they consider that revocation of a FPP has become necessary. The main circumstances where revocation may be necessary are:

- where a certified plan is found to be significantly deficient;
- where a property subject to a FPP is sold and the new owner does not wish to proceed with the FPP, a revocation or variation could be used to terminate the FPP.

Revocations under section 24A of the *Forest Practices Act* cannot occur until the applicant and landowner have been given the opportunity to make submissions in relation to the proposed revocation. The prescribed form must be used for the revocation. Revocations do not come into effect until 14 days after service of the notice on the applicant.