PAP-01 Profits à Prendre

Version 1 - 24/10/2017

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1 Overview

A profit à prendre is a profit sharing arrangement whereby a registered proprietor of land allows another person to take naturally occurring produce or part of the soil from the land in return for a share of the profits from such produce or soil. Naturally occurring produce does not include crops produced by human labour or manufactured produce.

The TLA does not specifically allow for the registration of profits à prendre over freehold land and so they have not, as a general rule, been accepted for registration. However, profits à prendre lodged under s.34B of the Conservation and Land Management Act 1984 and under s.52 of the Forest Products Act 2000 will be accepted for registration (see Section 2 and Section 3 below).

Section 81R of the TLA allows for the registration of profits à prendre granted under s.91(1) of the LAA in respect of Crown land (see policy and procedure guide PAP-02 below).

2 Lodgement

Profits à prendre may be lodged at Landgate on payment of the prescribed fee. (See Search and lodgement fees). The duplicate certificate of title (if any) must be produced before a profits à prendre can be registered. If the land being burdened by the profit à prendre cannot be satisfactorily described in writing an Interest Only Deposited Plan must be prepared by a licensed surveyor and lodged at Landgate.

If the grantee of a profit à prendre is the FPC, the document is drawn in the name of the grantee and executed by the grantee under common seal.

If the grantee of a profit à prendre is a person or organisation acting through the FPC as its agent, the document is drawn in the name of the grantee but is executed by the FPC as their attorney.

Note: A current Power of Attorney should be deposited between the FPC and the grantee.
3 Effect as an Encumbrance

A profit à prendre registered under the TLA will run with the land and will not be removed on exercise of a mortgagee’s power of sale provided the mortgagee’s consent is endorsed thereon.

Profits à prendre are considered to be interests in land and therefore transfers, mortgages, surrenders, caveats and warrants etc. may be lodged in respect of such profits à prendre.

Note: Most timber share farming agreements registered as a profit à prendre contain a clause preventing the registered proprietor from selling, leasing, mortgaging or otherwise encumbering the land without the written consent of the grantee.

4 Also See

-PAP-02 Profits à Prendre - various acts