PAP-02 Profits à Prendre - various Acts

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1 Profits à Prendre under the Conservation and Land Management Act 1984

Section 34B of the Conservation and Land Management Act 1984 (the Act) gives the CEO of the Department of Parks and Wildlife (DPaW) the power to enter into a timber share farming agreement in respect of any land with the owner of that land.

A timber share farming agreement under the Act is an agreement by which the right to establish, maintain and harvest, or the right to maintain and harvest, or the right to harvest, a crop of trees on land is acquired by:

- the CEO of DPaW

- another person through the CEO of DPaW acting as an agent

or

- the CEO of DPaW and by another person through the CEO of DPaW acting as an agent.

The timber share farming agreement provides for rights, obligations and powers relating to:

- payment of money or the giving of other consideration by, or the division of the crop or the proceeds of the crop between, the parties to the agreement

- access to the land and, where appropriate, the undertaking of work or the provision of facilities thereon by those parties

and

- other matters.
The CEO of DPaW cannot enter into a timber share farming agreement with the lessee or licensee of any land unless the registered proprietor of the land, and any person occupying the land with the consent of the registered proprietor, has given approval in writing to the agreement.

A timber share farming agreement is not a lease or licence to which s.136 of the P&D Act applies therefore the consent of the Western Australian Planning Commission is not required.

A timber share farming agreement may be registered under the TLA as a profit à prendre and it is assignable (transferable).

Note: Pursuant to clause 51 of the Conservation and Land Management Amendment Act 2000, the rights, obligations or powers held by CEO of DPaW with regard to profits à prendre have been transferred to the Forest Products Commission.

2 Profits à Prendre under the Forest Products Act 2000

Section 52 of the Forest Products Act 2000 (the Act) gives the Forest Products Commission (FPC) the power to enter into a timber share farming agreement in respect of any land with the owner of that land.

A timber share farming agreement under the Act is an agreement by which the right to establish, maintain and harvest, or the right to maintain and harvest, or the right to harvest, a crop of trees on land is acquired by:

- the FPC

- another person through the FPC acting as an agent

or

- the FPC and by another person through the FPC acting as an agent.

The timber share farming agreement provides for rights, obligations and powers relating to:

- payment of money or the giving of other consideration by, or the division of the crop or the proceeds of the crop between, the parties to the agreement

- access to the land and, where appropriate, the undertaking of work or the provision of facilities thereon by those parties

and

- other matters.

The FPC cannot enter into a timber share farming agreement with the lessee or licensee of any land unless the registered proprietor of the land, and any person occupying the land with the consent of the registered proprietor, has given approval in writing to the agreement.

A timber share farming agreement is not a lease or licence to which s.136 of the P&D Act applies therefore the consent of the Western Australian Planning Commission is not required.

A timber share farming agreement may be registered under the TLA as a profit à prendre and it is assignable (transferable).
3 Transfer of Profits à Prendre under the Conservation and Land Management Act 1984 and the Forest Products Act 2000

A profit à prendre can be assigned (transferred) to another person or organisation without the necessity for the Forests Products Commission to act as an agent.

Transfers of profits à prendre are to be prepared using a Transfer of Profit à Prendre form and may be lodged at Landgate on payment of the prescribed fee. They will be endorsed on the relevant title.

Before it is lodged, it must be stamped at the Office of State Revenue (Stamp Duties Division).

The duplicate (grantees copy) of the profit à prendre (if any) must be produced with the transfer.

Note: This requirement would only apply to profits à prendre lodged before 13th January 1997. From this date no duplicate profits à prendre have been accepted for registration.

4 Surrender of Profits à Prendre under the Conservation and Land Management Act 1984 and the Forest Products Act 2000

Before the expiry of its term, a profit à prendre can be surrendered by the grantee.

If the grantee is the CEO of DPaW (see Section 2) the profit à prendre is now surrendered by the Forest Products Commission pursuant to the transitional provisions of the Conservation and Land Management Amendment Act 2000.

The Forest Products Commission has created a Surrender of Profit à Prendre form to be lodged at Landgate to effect the surrender. Alternatively, the surrender could be prepared on a Blank Instrument Form in a manner similar to a surrender of easement (see paragraph 7.2.1 - Removal of Easements – Surrender in EAS-03 Easements - removal) or by using a Surrender Form S1, modified by substituting the references to a lease to a Profit à Prendre.

Surrender of a Profit à Prendre as to part of a lot is required to be supported by a new Interest Only Deposited Plan prepared by a licensed surveyor.

Where there is no consideration for the surrender, and the Profit à Prendre being surrendered was originally created under a timber sharefarming agreement under the Conservation and Land Management Act 1984 or the Forest Products Act 2000, duty assessment by the Office of State Revenue is not required.¹

¹ [Paragraph replaced 01/11/2019]

Lodgement Fees are payable upon lodgement of the surrender at Landgate.

The duplicate copy of the Profit à Prendre (if any) should be produced, as it can be used as an instrument of security. If it cannot be located, the registered proprietor should provide a statutory declaration (similar to that needed to support an application to replace a lost title (see COT-03 Application for Lost Title) negating its deposit as a security. It is preferable, but not essential, that the duplicate title be produced.

Note: This requirement would only apply to profits à prendre lodged before 13 January 1997. From this date, no duplicate profits à prendre have been accepted for registration.
Where the term in the Profits à Prendre has been extended by the lodgement of a caveat and that term is still current, the Profit à Prendre may be surrendered in the manner set out above, with the additional requirement that any caveat lodged to protect the extension should be withdrawn at the same time.

5 Removal by Withdrawal of Caveat

If a withdrawal of such a caveat were lodged at Landgate on its own and the term of the Profit à Prendre had expired, then the Profit à Prendre would also need to be removed from the certificate of title. The withdrawal of caveat should have filed with it a letter from the grantee (Caveator) to the Registrar of Titles requesting the removal of the Profit à Prendre on the grounds of the expiry of both the original term and the extension.

6 Expired Profits à Prendre

Where a Surrender is not obtainable and the Profit à Prendre has expired and the above removal option is not available, an Application under section 184 of the TLA should be made to remove the expired Profit à Prendre.

The registered proprietor of the land in a title or the Interest Holder can apply on an Application form, for the removal of a Profit à Prendre on the grounds that it has expired. The application should be supported by a statutory declaration made by the applicant that:

- Recites his or her ownership or interest of the relevant land.
- Quotes the Profit à Prendre registration number.
- Refers to the term of the Profit à Prendre by reference to the details or clauses in it, and thus the expiration of that term.
- Refers to any provisions in it for its extension, and whether it was so extended.
- Refers to the expiration of any such extension and negates any other form of condition of the Profit à Prendre (e.g. as a result of a relevant management plan created under Part V of the Conservation and Land Management Act 1984).

and

- Requests the removal of the Profit à Prendre as an encumbrance on the title.

A letter from the Forests Product Commission, as assignees in law of the benefit of the Profit à Prendre, confirming its expiration would assist the applicant in establishing his or hers claim to have it removed.

The duplicate certificate title (if any) is required to be produced where an application is made under s.184 of the TLA.

7 Profits à Prendre under the LAA in Respect of Crown Land

Section 81R of the TLA permits the Registrar of Titles to register on a certificate of Crown land title or qualified certificate of Crown land title, a profit à prendre granted by the Minister for Lands
(the Minister) under s.91(1) of the LAA in respect of Crown land.

With regard to profits à prendre, the Minister may:
- grant a profit à prendre for any purpose
- fix or extend the duration of them
- determine fees and conditions in respect of them
- review them

or

- with the consent of the grantee, amend the provisions of them.

Under certain circumstances it is possible for the co-existence, on the same area of Crown land, of a profit à prendre and a mining or petroleum right (see s.91 (5) of the LAA).

7.1 Preparation of the Document

When approval is given, the Deed of Grant of a Profit à Prendre (the Deed) will be prepared by the Department of Lands upon payment of a prescribed fee. The Deed will then be forwarded to the client (the grantee) for signing and the payment of stamp duty at the Office of State Revenue (Stamp Duties Division). When the Deed is returned to the Department of Lands it will be signed on behalf of the Minister (as the grantor).

7.2 Lodgement

Upon payment of the prescribed fee, the Department of Lands will lodge the Deed at the Document Acceptance counter, where it will be allocated a document number, receive a registration date and time and then processed for registration.

7.3 After Registration

While a profit à prendre is shown as an encumbrance on a certificate of Crown land title or qualified certificate of Crown land title, the Registrar of Titles may accept for registration a deed to amend, extend or surrender the profit à prendre.

Where a certificate of title is created and registered in respect of Crown land that is encumbered by a profit à prendre, the profit à prendre continues until it is surrendered or it expires.

The grantee(s) of a profit à prendre is not permitted to assign (transfer) their interest to a third party.

The grantee(s) of a profit à prendre may surrender it as to the whole or any part of it.

8 Also See
- PAP-01 Profits à Prendre
- ENC-01 Application - Remove Expired Encumbrance Section 184
- CAV-05 Caveats - removal