

Notice

To Lodging Parties

8 July 2008

No 152

Forest Property Agreements

This notice replaces that portion of Notice to Lodging Parties No.132 dealing with Forest Property Agreements.

The *Forest Property Act 2000* (FPA) was amended by the *Forest Property (Carbon Rights) Act 2006*¹. This notice now reflects those amendments.

FOREST PROPERTY AGREEMENTS

The FPA allows for two types of agreements to be created:

- **Forest property (vegetation) agreements**

These separate the forest vegetation from the owner of the land (transferor) to another (transferee).

The agreement may reserve the right to take any edible fruits from the forest vegetation to the transferor.

- **Forest property (carbon rights) agreements**

These separate the ownership of the carbon rights from the vegetation (transferor) to which it relates to another (transferee).

The requirements as to the form and content of the agreement are set out in section 6 of the FPA.

An application to the Registrar-General to note either agreement is to be made on panel form A3 (See Annexure A) with a prefix of AG. The actual agreement must be attached to the application.

A Forest Property Agreement will appear as an endorsement. It may be registered over the whole or portion of the land in a Certificate of Title or Crown Lease. If lodged over portion, a plan must be deposited in the General Registry Office to identify the land to which the agreement relates.

The agreement (or an interest in one) may be transferred, mortgaged or encumbered². Existing panel forms dealing with Encumbrances (ie TE, ME and E2) are to be used. For other dealings, such as Foreclosures, Powers of Sale, Caveats, etc. the existing document and prefixes for non fee simple dealings may be used.

¹ GG 14/12/2006 page 4304 passed. GG 17/05/2007 page 2019, and commenced on 01/07/2007.

² Section 8 FPA

A transaction is ineffective unless consents as required by the FPA are obtained or dispensed with.

The agreement may be varied by agreement between the owner of the land and the owner of the carbon rights and/or forest vegetation³. The application to note the variation can be made on panel form A3 (See Annexure B) with a prefix of VA. The agreement to vary must be attached.

An application to revoke or determine an agreement is to be made on panel form A3 with a prefix of AX. (See Annexure C for suggested wording to be used in “Specify Nature of Application” panel for each scenario)

Any consent required by the Act must be endorsed in the appropriate document and be witnessed.

An application to terminate or discharge by Court Order is to be made on panel form A3 with a prefix of OD. (See Annexure C for suggested wording to be used in “Specify nature of Application” panel.) A copy of the Court Order must to be attached.

Dealings with land, the subject of an agreement, should include the agreement as an encumbrance.

Unlike a lease with a certain time frame agreements with expiration dates will not automatically be deleted or cancelled once that time frame has passed. These will only be deleted when a new CT is to issue or an application to revoke or terminate is received.

A forest property agreement made before the commencement of the *Forest Property (Carbon Rights) Act 2006* continues as a forest property (vegetation) agreement, with a reservation of edible fruits to the owner of the land.



Graeme Borrett
Deputy Registrar-General

³ Section 10 FPA

APPLICATION

ANNEXURE A

TO NOTE FOREST PROPERTY AGREEMENT

CERTIFICATE(S) OF TITLE AFFECTED

If less than whole, the portion the agreement is over to be described precisely.

ESTATE AND INTEREST

APPLICANT (Full Name and Address)

Application can be made by either party to the agreement.

SPECIFY NATURE OF APPLICATION

The Applicant applies pursuant to section 11 of the Forest Property Act 2000 to note the attached ... *(insert either vegetation or carbon rights)*... agreement dated the Day of betweenand on the above Certificate(s) of Title (or Crown Lease).

Actual agreement must be attached.

DATED

.....
Signature of APPLICANT

.....
Signature of WITNESS - Signed in my presence by the APPLICANT who is either personally known to me or has satisfied me as to his or her identity. A penalty of up to \$2000 or 6 months imprisonment applies for improper witnessing.

.....
Print Full name of Witness (BLOCK LETTERS)

.....

.....
Address of Witness
Business Hours Telephone No

Execution and witnessing must comply with the normal requirements of the Registrar-General in relation to any instrument. Any consents required by the Act to register the agreement must be completed on Annexure form B2 or if the Court dispenses with any consents a copy of the Order.

APPLICATION

ANNEXURE B

TO VARY FOREST PROPERTY AGREEMENT

CERTIFICATE(S) OF TITLE AFFECTED	Insert Certificate(s) of Title affected by the agreement.
ESTATE AND INTEREST	
APPLICANT (Full Name and Address)	
Application can be made by either party to the agreement.	
<p>SPECIFY NATURE OF APPLICATION</p> <p>The Applicant applies pursuant to section 11 of the Forest Property Act 2000 to register the attached agreement dated the Day of Betweenand which varies Agreement , on the above Certificate(s) of Title (or Crown Lease).</p>	
<p>Actual agreement to vary must be attached. Note if the land the subject of the agreement is varied the following will need to be added, "which varies the position of the agreement to in GP....."</p>	
DATED	
<p>..... Signature of APPLICANT</p> <p>..... Signature of WITNESS - Signed in my presence by the APPLICANT who is either personally known to me or has satisfied me as to his or her identity. A penalty of up to \$2000 or 6 months imprisonment applies for improper witnessing.</p> <p>..... Print Full name of Witness (BLOCK LETTERS)</p> <p>.....</p> <p>..... Address of Witness Business Hours Telephone No</p>	<p>Execution and witnessing must comply with the normal requirements of the Registrar-General in relation to any instrument. Any consents required by the Act to register the agreement must be completed on Annexure form B2 or if the Court dispenses with any consents a copy of the Order.</p>

Wording to be used in “SPECIFY NATURE OF APPLICATION” panel in panel Form A3 when:

a) determined by the passage of time or the occurrence of a certain event,

The applicant applies pursuant to section 11 of the Forest Property Act 2000 and clause of Forest Property Agreementto note the determination of the agreement on the above Certificate(s) of Title (or Crown Lease).

b) revoked by agreement between the parties

The Applicant applies pursuant to section 11 of the Forest Property Act 2000 to note the attached agreement dated the Day of between and which revokes Forest Property Agreement on the above Certificate(s) of Title (or Crown Lease).

Note: The agreement to revoke MUST be attached

c) the Forest Property Agreement itself provides for unilateral revocation or revocation in some other way:

The Applicant applies pursuant to section 11 of the Forest Property Act 2000 and clause(s)..... of Forest Property Agreement to note the revocation of the agreement on the above Certificate(s) of Title (or Crown Lease)

d) terminated by an order of court

The Applicant applies pursuant to section 11 of the Forest Property Act 2000 and the attached Order of Court to note the termination of Forest Property Agreement on the above Certificate(s) of Title (or Crown Lease)

e) discharged by an order of court

The Applicant applies pursuant to section 11 of the Forest Property Act 2000 and the attached Order of Court to note the discharge of Forest Property Agreement on the above Certificate(s) of Title (or Crown Lease)