

Information sheet

Infrastructure and equipment

Occupation permits under section 35 of the *Forestry Act 1959*

This information sheet assists applicants to understand the process, requirements and conditions when applying for an occupation permit under the Forestry Act 1959.

Background

There are over 400 State forests, timber reserves and forest reserves dedicated under the *Forestry Act 1959* (Forestry Act). These lands are important public assets, containing critical forest products, as well as significant environmental, landscape, recreation, community and cultural values. The Forestry Act establishes a framework for regulating the use of these forest areas.

Section 35(1)(a) of the Forestry Act allows the chief executive of the Department of Environment and Science (DES), or a delegate, to grant permits to occupy land within a State forest, timber reserve or forest reserve. This type of permit is referred to as an occupation permit.

Occupation permits are used to authorise the construction and operation of infrastructure and facilities that may be unrelated to timber production or the commercial use of other forest products. For example, the permits can authorise dams, pipelines, storage areas, navigation aids, pump stations, education facilities, scientific facilities and communications facilities. However, occupation permits are not used to authorise grazing infrastructure, which may be authorised under a stock grazing permit or a stock grazing lease.

Queensland Parks and Wildlife Service and Partnerships (QPWS&P), within DES, is the primary responsible agency for assessing and granting occupation permits applications on behalf of the chief executive of DES under the Forestry Act.

The Department of Agriculture and Fisheries (DAF) and the Plantation Licensee can also issue occupation permits on Plantation Forests.

State forests and timber reserves

Occupation permits may be granted for land within a State forest or timber reserve if the proposed use of the land is necessary and is consistent with the requirements and objectives of the Forestry Act. An application for an occupation permit will be assessed by considering the impact of the proposed activity to the following:

- cultural values;
- non indigenous cultural heritage values;
- the rights and interest of the traditional custodians of an area;
- the rights and interests of other lawful users of the area;
- timber and other forest product values;
- the conservation of soil and the environment;
- the protection of the watershed and water quality;
- any current or potential recreation uses of the area; and

- safety and equity.

Forest reserves

In some circumstances, certain State forests or timber reserves have been transferred as 'forest reserve' tenure under the *Nature Conservation Act 1992* (NCA) with the intention of being dedicated as a protected area in the future (for example, national park). In this circumstance, while the land ceases to be State forest or timber reserve, the Forestry Act continues to apply in relation to the administration and management of the land.

However, a further set of considerations and criteria under the NCA also apply to forest reserves. For example, any authorised use must be ecologically sustainable and consistent with the management principles of the proposed future tenure of the area. The nature and extent of new uses that can be authorised on a forest reserve under an occupation permit is limited, for example, only low impact uses not involving semi-permanent or permanent infrastructure or facilities.

QPWS&P will issue occupation permits for new activities on a forest reserve if the permitted use is consistent with the management principles of the proposed future tenure of the area.

Prior to a forest reserve being dedicated as a protected area, QPWS&P will notify the permittee of the upcoming transfer and advise whether the activity is compatible with the new tenure.

Occupation permit conditions and requirements

Permitted uses

Occupation permits may be granted on State forests and timber reserves for a specific purpose, including:

- water infrastructure, such as pipelines, artificial waters, water storage areas and dams;
- educational and scientific facilities;
- public infrastructure;
- recreational facilities; and
- communication facilities.

Occupation permits will not be issued for structures and associated works that can be authorised under other mechanisms, activities or works that are dealt with by revocation or short-term activities or works that do not constitute physical occupation of the area.

Co-location and other users

Occupation permit holders cannot carry out, or allow others to carry out, uses of the permit area other than for the approved purpose, without the chief executive's approval. More than one party may be permitted to operate (occupy) on the one site, but any other party seeking to occupy or use land already subject to an occupation permit (to co-locate), must submit a separate application for a permit and obtain the primary permit holder's consent.

An occupation permit does not allow an exclusive use entitlement.

For telecommunications providers seeking to co-locate infrastructure, the *Telecommunications Act 1997* (Cth) Schedule 1, Part 5 and the 'Code of Access to Telecommunications Transmission Towers, Sites of Towers and Underground Facilities' sets out obligations and procedures in relation to site sharing. QPWS&P can only grant an occupation permit, or approve a transfer or assignment of a permit, where it is consistent or compatible with an existing lawful interest in the land.

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Permit duration and renewal

Occupation permits are granted for a fixed term and will generally be granted for up to 10 years for private and/or commercial infrastructure and activities; and up to 20 years for permanent infrastructure in the public interest or that serves a public good. The term will be set according to the nature, circumstances, and requirements of the permitted use, and in consideration of other management values of the area.

A permittee may apply to renew a permit prior to its expiration date. QPWS&P may approve and issue a new permit after an assessment of the application and the existing occupancy. A permit renewal application should be submitted at least 6 months prior to the expiry of the current permit.

Maximum permit area

The area of the occupation permit will be determined by QPWS&P, according to the natural and cultural values, circumstances and requirements of the permitted use and following consideration of other management requirements of the proposed area, including fire management. Activities conducted under the authority of the occupation permit must only be undertaken within the permit area.

Fees and charges

Different fees apply for different uses authorised under an occupation permit. Fees are indexed annually and are set out in an approved fee schedule. Please refer to the 'Fees and services – Communications facility authority and occupation permits' page on the DES website at www.des.qld.gov.au.

Land subject to an occupation permit is rateable under the *Local Government Act 2009* (Qld) and may also attract local government authority rates. QPWS&P provides local government agencies with details of occupation permits within their local government area for rates purposes.

Permit conditions

Permit conditions address a range of matters including access, maintenance of access, rehabilitation, fencing, erosion and the management of fire, wildlife, and vegetation. The permit holder is required to hold public liability insurance, and to indemnify the State from death of or injury to persons or loss of damage to property. The *Operational policy – Insurance and indemnity requirements for QPWS managed areas* is available at the DES website at www.des.qld.gov.au.

An occupation permit holder is considered a land occupier under the *Fire and Emergency Services Act 1990* and as such obligated to protect property, report of fires and respond to fire where appropriate. Fire management is a shared risk.

An occupation permit holder is also considered a land occupier under the *Biosecurity Act 2014* and as such is obligated to not introduce restricted matter or spread it, and the requirements regarding declared plants.

Transfer and termination

Occupation permits may be transferred or assigned to other entities with the consent of the chief executive, after being satisfied that the new permittee is an appropriate entity to manage the activity.

Occupation permits may expire, be surrendered or cancelled. If this occurs, the permittee must remove all infrastructure and rehabilitate the site (as per the Terms and Conditions of the permit, and the Environmental Management Plan, which must be submitted with an application) to a satisfactory state as determined by QPWS&P within three months unless otherwise stipulated.

Any equipment, infrastructure or structures not claimed by the permittee within three months will become the property of the State, and will be removed from the area unless it can be repurposed for management use by QPWS&P. QPWS&P may seek reimbursement of costs for the removal of equipment, infrastructure or structures

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associated with a terminated occupation permit, or for any additional rehabilitation work required on the former permit area.

Where a terminated occupation permit is the primary authority in a co-location arrangement, removal of infrastructure and rehabilitation may not be required if a co-user wishes to take on primary user status over the site. Arrangements for the transfer of ownership of infrastructure is entirely the responsibility of the primary and co-user. Please refer to the *Operational policy – Occupation permits* for more information on this matter.

How to apply

Applications for occupation permits can be made via Online Services on the DES website at www.des.qld.gov.au.

When applying through Online Services, the following information is required:

- the name of the State forest, timber reserve or forest reserve with relevant lot on plan details;
- an A4 authority plan, or survey plan, or digital spatial data showing the location of the proposed activity;
- an Environmental Management Plan which details the activities proposed and an assessment of the environmental impacts of the proposed activity (including any potential impact to Aboriginal and Torres Strait Islander cultural heritage values, and how the applicant proposes to ensure the cultural heritage duty of care is met);
- justification for the proposed location and an outline about why alternative sites located off the QPWS estate are not considered suitable; and
- details about any proposed co-location arrangements where a primary occupation permit exists at the site. If co-locating is proposed, a letter of non-objection from the primary user of the site must be attached.

Assessment of application

An occupation permit may only be granted where the proposed use of the land is consistent with the requirements and objectives of the relevant legislation and policies, and with the unique values of the subject area. Please allow at least 40 days for an application to be assessed. Please allow a further 40 days if further information or documents are requested by QPWS&P during the application process.

Native title

The *Native Title Act 1993* (Cth) (NTA) recognises that First Nations peoples have rights and interests to their traditional lands and waters deriving from their traditional laws and customs.

QPWS&P applies the Queensland Government Native Title Work Procedures (NTWP) when deciding occupation permit applications. The NTWP operate to ensure that State government dealings in relation to land or waters are valid with respect to native title. In certain circumstances, an Indigenous Land Use Agreement (ILUA) may need to be negotiated with native title parties or claimants for an occupation permit to be validly granted.

Aboriginal and Torres Strait Islander (First Nations) Cultural Heritage

First Nations cultural heritage refers to the knowledge and lore, practices and people, objects and places that are valued, culturally meaningful and connected to identity and to Country for First Nations peoples. QPWS&P managed land and waters are typically rich in cultural heritage, both tangible and intangible. QPWS&P is committed to working in partnership with First Nations peoples to protect and conserve First Nation's cultural heritage and values. This commitment is based on respect for Aboriginal and Torres Strait Islander knowledge, culture and traditional practices. The right to enjoy, maintain, control, protect and develop cultural heritage for First Nations peoples is recognised and protected under the *Human Rights Act 2019* (Qld).

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The *Aboriginal Cultural Heritage Act 2003* (Qld) and *Torres Strait Islander Cultural Heritage Act 2003* (Qld) (the CH Acts) are the primary legislation that protect First Nations cultural heritage in Queensland. The CH Acts apply to all areas of Queensland, all land types and tenures, including protected areas, State forests, marine parks, and other tenures managed by QPWS&P. The CH Acts require anyone who carries out a land-use activity to exercise a duty of care to take all reasonable and practicable measures to ensure their activity does not harm First Nations cultural heritage. Prosecution or penalty provisions may apply where the cultural heritage duty of care has not been complied with, or where a person has harmed First Nations cultural heritage.

The cultural heritage duty of care can be met in various ways under the CH Acts, including in compliance with the cultural heritage Duty of Care Guidelines. The Guidelines are available from the Queensland Government website. Applicants for occupation permits must outline how they propose to meet their cultural heritage duty of care in the draft Environmental Management Plan which is submitted with their application. Records of some, but not all, significant sites and areas are kept in an online Aboriginal and Torres Strait Islander Cultural Heritage Database and Register, administered by Department of Seniors, Disability Services and Aboriginal and Torres Strait Islander Partnerships (DSDSATSIP). Database and Register search request forms are also available from the DSDSATSIP website. However, the duty of care applies regardless of whether cultural heritage has been previously identified or recorded in any database or register.

Offences and penalties

Offence provisions apply to unlawful occupation or use of land under the Forestry Act. Permit holders are obliged to comply with the conditions of their permit, the Forestry Act (including subordinate legislation) and any other relevant State legislation (for example, transport legislation). The offence provision(s) under the Forestry Act that may apply depends on the nature of the breach and level of interference or damage to forest products. A Penalty Infringement Notice (PIN) may apply for minor breaches, and the penalty amounts for a PIN vary according to whether an individual or corporation is in breach. Court prosecution may apply for more serious breaches, where the maximum penalties under the Forestry Act may apply. A breach of such conditions may also result in cancellation or suspension of the permit, or its non-renewal.

Reference materials

Operational Policy – Occupation permits

Application Form – Occupation permits under section 35 of the Forestry Act 1959

Operational Policy – Management of Indigenous Cultural Heritage on QPWS estate

Procedural Guide – Managing Indigenous Cultural Heritage

Operational Policy – Insurance and indemnity requirements for QPWS authorities

Operational Policy – Revocation of QPWS managed areas

DSDSATSIP Aboriginal Cultural Heritage Act Duty of Care Guidelines

Queensland Government Native Title Work Procedures

Further Information

Please contact QPWS&P Major Projects and Estate Management via email at QPWS.estate@des.qld.gov.au or visit the DES website at www.des.qld.gov.au for more information.

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Human Rights Act 2019 compatibility

DES is committed to respecting, protecting and promoting human rights. Under the [Human Rights Act 2019](#), DES has an obligation to act and make decisions in a way that is compatible with human rights and, when making a decision, to give proper consideration to human rights. When acting or making a decision in relation to occupation permits, officers must comply with that obligation (refer to [Comply with Human Rights Act](#) or visit <https://www.forgov.qld.gov.au/humanrights>).

Disclaimer

While this document has been prepared with care, it contains general information and does not profess to offer legal, professional or commercial advice. The Queensland Government accepts no liability for any external decisions or actions taken on the basis of this document. Persons external to the Department of Environment and Science should satisfy themselves independently and by consulting their own professional advisors before embarking on any proposed course of action.

Approved By

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Signature

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