

# Guideline

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## Carbon rights on state land

### Purpose

This guideline provides information to project proponents for carbon sequestration projects or emissions avoidance projects on state land in Queensland under the *Land Act 1994* (the Land Act).

### Rationale

Under the *Carbon Credits (Carbon Farming Initiative) Act 2011* (Cth) (CFI Act), a project proponent seeking to register an emissions avoidance project or a sequestration project under the Emissions Reduction Fund (ERF) is usually required to seek consent from the holder of an eligible interest in the land on which the project is proposed. Where the project is on crown land (also known as state land), the CFI Act requires the consent of the crown lands minister, as an eligible interest holder.

For leases, licences or trust land under the Land Act, the minister administering the Land Act is an eligible interest holder.

The Land Act also provides for registration of a carbon abatement interest over state land where the lessee holds the exclusive legal right to the economic benefits associated with carbon sequestration on the land. The document creating the interest requires the consent of the minister administering the Land Act<sup>1</sup>.

### Native Title

Where native title has been determined to exist, the CFI Act requires consent of the registered native title body corporate to an application for a declaration of a project as an eligible offsets project.

It is the proponent's responsibility to ensure that native title is addressed for an ERF project under the *Native Title Act 1993*(Cth) where native title continues to exist.

## Guideline

### Eligible interest holder consent

Sections 28A and 44 of the CFI Act require the consent of eligible interest holders in the project area for an eligible offsets project, which may include the crown lands minister (in Queensland, the minister administering the Land Act), or a mortgagee.

A lessee may apply to seek the crown lands minister (or authorised delegate) consent for a sequestration offset project on state land if the project is declared as an eligible offsets project by the Clean Energy Regulator.

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<sup>1</sup> Section 373T of the Land Act states a document creating a carbon abatement interest for land must not be registered without the consent of the relevant minister for the land – if the land is unallocated state land, trust land, lease land or licence land – the minister administering the Land Act.

The state of Queensland owns forest products on state land and the carbon stored in those forest products. The Chief Executive of Department of Agriculture and Fisheries (DAF) is responsible for state-owned forest products under the *Forestry Act 1959* (the Forestry Act).

Before giving eligible interest holder consent on leasehold land under the Land Act, the crown lands minister, (or authorised delegate) will consult with the chief executive DAF to determine whether an ERF project may impact the state's access to quarry material and forest products (i.e. vegetation) under the Forestry Act. The lessee will be advised if they are required to enter into an agreement with the DAF chief executive in relation to the proposed impact of the project on forest products on the land that are the property of the crown under section 45 of the Forestry Act.

## **Emissions avoidance projects**

A lessee may apply to the Commonwealth Clean Energy Regulator for the declaration of an eligible emissions avoidance project under the CFI Act. An example of an emissions avoidance project is a project that reduces emissions from savanna burning.

### **Savanna burning**

Savanna fires release methane and nitrous oxide into the air, which are strong greenhouse gases. Emissions from savanna fires can be reduced by:

- shifting burning from the late dry season (approximately October - November) towards the early dry season (approximately March - April), and
- reducing the area that is burnt each year

For an emissions avoidance project a lessee may apply to seek the crown lands minister (or authorised delegate) consent to the project on state land if the project is declared as an eligible offsets project by the Clean Energy Regulator. The DAF chief executive will be consulted to provide their objection or non-objection to the proposed impact of the project on forest products that are the property of the crown.

The lessee must comply with all lawful requirements of the local government and any department within the Queensland or Commonwealth governments. For example the lessee may have other statutory obligations including obtaining a permit to do so under the *Fire and Emergency Services Act 1990* and any other permits and approvals.

Under the CFI Act, a project proponent must have the legal right to carry out the project, so for example, a project proponent for a savanna burning emissions avoidance project must have the legal right to undertake fire management in their proposed project area. Where interests in the land are shared, agreements should be in place between the relevant parties to make clear who has the legal right to carry out fire management.

## **Registration of carbon abatement interest**

Under the Land Act, a carbon abatement interest, for land, means an interest in the land consisting of the exclusive right to the economic benefits associated with carbon sequestration on the land.

A carbon abatement interest for land is created by registering the document creating the interest in the appropriate register. In some circumstances, the consent of the relevant minister is required.

A lessee may apply for registration of a carbon abatement interest under the Land Act for state land.

In instances where the **lessee holds** exclusive legal rights to the carbon, i.e. the lessee is the owner of the trees and the carbon stored in those trees e.g. for freeholding leases, then the lessee will need to consider the following:

- 1) Pay the outstanding purchase price and meet any other requirements to allow a Deed of Grant to issue; or
- 2) Apply for the registration of a carbon abatement interest – note the term of the freeholding lease must be longer than the term of the carbon abatement interest.

## **Term of lease**

Carbon sequestration projects can have either a 25 or 100 year term, which creates potential for projects to be contracted beyond the current term of a lease.

To ensure that the term of the project is within the term of the lease and where the lease is a 'rolling term lease', the lessee may apply for an extension of the rolling term lease. The Land Act provides for one extension application at any time during the current term of the lease.

For tenures that are not rolling term leases, the Land Act provisions allow for an early renewal application to be made only after 80% of the existing term of the lease has expired unless, in the minister's opinion, special circumstances exist. Special circumstances are considered in instances where the lessee has the project declared as an Emissions Reduction Fund project with the Clean Energy Regulator.

The Department of Natural Resources, Mines and Energy (the department) will consider providing eligible interest holder consent for cases where after extension or renewal, the term of the lease (either a rolling term lease or term lease) covers the majority of the term of the carbon sequestration project.

## **Trust land**

A trustee of a reserve can apply for eligible interest holder consent and to register a carbon abatement interest for a carbon sequestration offsets project.

The department will support a carbon sequestration offsets project on a reserve when the project is compatible and consistent with the purpose of the trust land. For example a reserve for sport and recreation may not have sufficient space for planting trees with sporting grounds and other structures, however a carbon offsets project may be compatible with an environmental reserve.

There are other options for carbon sequestration offsets projects that can be considered over reserves, which include a covenant or a trustee lease.

A proponent from a not-for profit organisation may also approach the department to plant trees on trust land as a carbon offset project. These projects offset carbon by providing for organisations and individuals to contribute to the project that then reduces greenhouse gas emissions and their overall carbon footprint. These projects are not registered under the CFI Act.

## Legislation

Sections 28A, 43 and 44 of the *Carbon Credits (Carbon Farming Initiative) Act 2011* (Cth) (CFI Act).  
*Native Title Act 1993* (Cth) (the NTA).

Section 45 of the *Forestry Act 1959* (the Forestry Act)

Sections 373R to 373W of the *Land Act 1994* (the Land Act) – creation and registration of carbon abatement interests.

## Related documents

[Department of Agriculture and Fisheries' involvement in Emissions Reduction Fund Projects Fact Sheet](#)

## Human rights

The department is committed to respecting, protecting and promoting human rights. Under the *Human Rights Act 2019*, the department 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. To the extent an act or decision under this document may engage human rights under the *Human Rights Act 2019*, regard will be had to that Act in undertaking the act or making the decision.

## Approval

Position	Name	Date
Executive Director	Heidi Roberts	25 August 2020

## Version history

Version	Effective Date	Comments
1.00	25/08/2020	New document

## Further information

- Refer to <https://www.qld.gov.au/environment/land/state/use/carbon-rights>
- Contact your nearest business centre (<https://www.dnrme.qld.gov.au/our-department/contact-us>) or
- Email to [SLAMLodgement@dnrme.qld.gov.au](mailto:SLAMLodgement@dnrme.qld.gov.au)
- Call 13 QGOV (13 74 68).

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