



# **GENERAL BULLETIN**

**Number 2**

**Revised December 15, 2006**

(Original January 28, 2005)

## **Managing Through Transition – FSP Opportunities**

### ***Introduction***

Under FRPA, the primary operational plan for the holders of major licences will be the Forest Stewardship Plan (FSP). Until the end of transition all existing Forest Development Plans remain in effect. An FSP can be prepared anytime, but will need to be in place before further permits can be issued once a licensee's FDP is no longer in effect unless a Cutting permit has been applied for before the FDP expires or the area is subject to Section 196 of FRPA..

The initial transition timelines were extended until March 31, 2007, due to a number of the following circumstances:

- Initial delays in stabilising the legislation.
- Uncertainty on how an increasing suite of objectives and various Government Actions Regulation (GAR) orders applied in the FRPA model.
- Lack of clarity as to how existing HLP's objectives that were developed in the Code world and to apply to FDP's, will apply to the FSP's under FRPA.
- Hesitancy by some licensees to initiate the development of a FSP due to unfamiliarity with the legislation and a lack of understanding of the flexibility and efficiencies allowed for in the FRPA legislation.
- This hesitancy is also resulting in FSP's not being submitted until the latter portion of transition. With this reality, there is potential pressure in some districts to complete all of the FSP approval processes in a timely manner.
- A number of other major government initiatives have been completed and many of these, Bill 28 in particular, have lingering uncertainties with volumes and operating areas available to both licensees and BCTS.
- Some new or small licensee who requires FSP's may not currently have the experience, or resource capacity, or the desire to complete a conventional FSP for their operations.
- Uncertainty on the meeting the FN consultation requirements under this model

## ***Discussion***

These circumstances, singly or combined, have contributed to some licensees delaying their development of their FSP's for submission within the legislative transition time frames. In order for licensees to develop FSP's for submission within the legislative time frames, each district office and licensee needs to analyze the specific situation they are in, determine what options are available to them and choose a course of action that allows them to meet the legislative deadlines in the most efficient manner possible for all parties. At the end of transition, we must be sure that actions taken provide a continued supply of cutting permits and road permits.

As the end of transition timeline approaches, this bulletin outlines some key opportunities/options available to both agencies and licensees to assist in managing the planning transition from FDP's to FSP's and are presented for consideration.

### **Opportunities for Districts**

A number of activities could and should be done internally by government (i.e. districts) to ensure the most efficient business model and management process is in place to aid in the review and approval mechanism for FSP's. These include but are not limited to:

#### **1. Efficient District Review Process**

A different process is required for districts in review FSPs rather than FDP's, primarily due to the content requirements and approval tests themselves. It is recommended that each district review their existing FDP review process and, using continuous improvement principles, map out and streamline their FSP business process and develop a supporting management process. Starting points for this activity are the provincial FSP process and the district process. Both of these diagrams are found in the Administrative Guide for FSP's located on the PFIT website at: <http://www.for.gov.bc.ca/rco/pfit/index.htm>.

##### Pros:

- Provides a consistent review process for all FSP's and is relatively consistent across the province (meets key FRPA objective).
- Provides understanding of the total process.
- Provides understanding for staffs various roles in the process.
- Target timelines are predetermined to ensure timely decision making.
- Using an associated management process, district management teams can analyse and identify areas for improvement and determine action plans to gain improvement.
- Staff gains a better understanding of the differences between a FDP and a FSP.
- Encourages the sharing of resources between districts where appropriate.
- Increases ability of other staff (regions, other districts) to assist early FSP reviews.

Cons:

- Since we are potentially operating under two regimes in the short-term, it will take some time developing another process.
- Following a management process requires a high degree of rigour, consume some time and take commitment to lead.

## 2. Proactive District/Licensee Communication

FRPA is moving us from a prescriptive regime (i.e. the FPC) to a more results based approach for licensees, woodlot owners and range agreement holders. It also contains a transition period where the complexities of this transition can be very involved. Many districts have maintained over the years, committees such as a TSA Steering Committee or a District Implementation Team. In order to enhance communication and deal with issues with a cooperative, proactive approach, it will be necessary for teams such as these to be inclusive and functioning at a high level. These teams can then report implementation issues up through their representatives on the Regional Implementation Team for appropriate actions. One of the tasks this group could manage, is working with the all the various licensees, develop tentative implementation schedules. These schedules could then be used to assess district resourcing issues and developing alternative strategies to deal with specific issues. Each district, in conjunction with licensees, develop a submission schedule based on best information available associated with other initiatives, etc.

Pros:

- A comprehensive implementation team would present a proactive positive approach to identify and resolve challenges prior to there being an impact upon workflow. The use of the management process also promotes a management by data approach versus by conjecture.
- This would help provide some of the analysis necessary to manage by data and determine where the pinch points exist.
- Helps districts determine if there will be resourcing *spike* requirement which would have to be addressed.
- Encourages communication between district staff, especially where an FSP covers more than one district.
- Encourages upfront communication between licensee and district where alternative results or strategies are being proposed.
- Speeds the FSP preparation and adjudication process.
- Facilitates knowledge transfer between all parties.

Cons:

- Dependent on the licensees being able to predict when they will be able to submit a FSP.

## Options for Licensees

As the end of transition timeline is fast approaching, the following options may be considered in addition to simply preparing a regular FSP. The final choice of option(s) will require a licensee to undertake an analysis of their situation to determine their readiness to move into the FRPA world and the potential way they could accomplish this:

### 1. Scenario 1 – Limited Area FSP

It may be advantageous for the licensee to consider easing into the FRPA world on a limited area basis and utilizing the flexibility provided to their operations under the new legislation (e.g. maximize the size of the forest development units (FDU's), use of joint submission opportunities for licensees, etc.). A licensee should realize that they would be still developing a FSP that meets all the associated tests and content requirements.

The following situations may be suited to the limited area FSP approach:

- Low levels of standing timber inventory (STI) available combined with a minimal amount of the required FPC assessments complete and not enough field time to get very far ahead with assessments.
- New areas of development, a strong GIS analysis department and need for maximum flexibility in operating areas, and/or;
- A need for maximum flexibility in areas where there is not a lot of higher level plans in place (i.e. not a lot of additional objectives requiring results and strategies).

Pros:

- Allows licensees to move into the FRPA world in the area they are comfortable moving into and capitalize on the flexibility and advantages provided for in the legislation.
- Allows the licensee to operate under FPC for other areas of their operations.
- Due to the limited area it helps reduce uncertainties associated with other initiatives such as Timber Reallocation.
- FDU's allow total flexibility where operations will be in the future.

Cons:

- Large FDU's bring higher risks associated with consultation and public review and comment.
- Where there are older LRMP's, may significantly increase the amount of results and strategies required to address the objectives.
- Will have to develop a complete FSP package with no shortcuts.

## **2. Scenario 2 – Maximizing the Amount of Wood under Permit Prior to FDP Expiry**

Some companies may have a significant amount of area in approved, limited and fully protected Category A cut blocks in their approved FDP, or be in a position that they will not be preparing a FSP, for example a NRFL holder with two years left in their licence. For companies in that situation, the opportunity exists to maximize the amount of wood they have under permit by having issued cutting permit (CP) and Road Permits (RP) under their existing FDP. Using this strategy, they should have enough wood under permit with appropriate access enable them to operate without a FSP in place. The four year requirement to harvest a cutting permit would still time bound the maximum amount of time that they could actually carry out activities, but may be of little consequence.

### Pros:

- Alleviates a company's immediate potential wood flow problems after the expiry of their FDP, if there is no FSP in place.
- It provides a viable option to a licensee if unable to move to FRPA due to uncertainty of harvesting area.
- Likely best suited to NRFL's where the term of the FDP ends with a short period left in their licence (e.g. second half and it would not be cost effective to prepare a FSP for the remainder of the licence).

### Cons:

- Not all companies have a high number of Category A cut blocks or all the required assessments to satisfy the needs of the FPC.
- Given the four year life of cutting permits now in legislation and current forest health problems in certain areas (which are altering harvesting operations annually) this may increase some company's risk of investment loss.
- Unable to make certain amendments to issued harvest authorities, such as minor changes to the outside boundary.
- May be a large amount of work for a short period of time.
- Adds to the workload spike expected over remainder of calendar year.
- In bark beetle areas, it may push harvest into green permits verses focus on the beetle infested wood.

### 3. Creation of a “Transition” FSP

A company may find that their current FDP contains cut blocks and roads with a significant amount of site level planning investment that the company wishes to utilize when moving to a FSP. FRPA legislation contemplated transition issues and provides some tools to facilitate this. Legislation provides that the following components of a FSP submission must be deemed approved by the minister.

- Under Section 7(1)(a) of FRPA, the parts of a FSP that pertain to areas subject to a cutting permit, road permit or timber sales licence that are in effect on the date the FSP is submitted.
- Under Section 7(1)(b) and Section 23(b) of FPPR, the parts of a FSP that pertain to cutting permits, road permits or timber sale licence with a term that begins after the date of submission.
- Under Section 7(1)(b) and Section 23(c) of FPPR, the parts of a FSP that pertain to cut blocks and roads that have been included in a FDP as defined in Section 196 FRPA.

Companies can, in effect, roll over into an FSP existing cutting permit, road permit, timber sale licences and approved Category A cut blocks and roads already included in their approved FDP. A company can choose to submit an FSP containing **only** cut blocks and roads deemed approved by legislation as part of the plan. This creates, in effect, a transition FSP and in doing so, the FSP is deemed to have received the minister’s approval.

**Note:** It is recommended that a Transition FSPs only be used where there is a need to fill a short-term gap after the FDP expires and until a full FSP can be prepared and approved. Accordingly, it is recommended that the term of the FSP not be more than one year.

**Note:** For cut blocks and roads that fall within the provisions of Section 196(2) (i.e. cut blocks for which all assessments have not yet been completed) the rollover needs to be included in a FSP submission prior to the FDP expiring . Cut blocks and roads to which Section 196(2) applies are also subject to the occurrence of certain events listed in that section.

#### **Content Requirement of Transition FSP**

The content of a transition FSP that exclusively contains roll over cut blocks and roads will be less than a full FSP. The areas of cut blocks and roads in effect become small FDU’s and should be shown on a map. There is no ability to add content since they are considered to have received minister’s approval as they are. The practice requirements outlined in Part 4 of FPPR will apply, however, they will not have measures for natural range barriers of invasive plants, nor contain results/strategies for objectives not covered by the practice requirements in FPPR. The plan should be also signed by the person required to prepare the plan and the appropriate professional. It is also recommended that items listed in Section 14(3) of FPPR be identified for the FDU’s specified in the plan.

The transition FSP will carry over the FDP stocking standards (and thereby avoid any requirement to submit for approval) if cutting permit(s) or licence to cut(s) are already in place [FRPA, Section 197(5)] or the cut blocks have a site plan prepared before the replacement of the FDP by the transition FSP (FRPA, Section 197(3) and FPPR, Section 110). The licensee may choose to specify other stocking standards in the FSP, however, these new stocking standards would now be subject to Delegated Decision Maker approval under FRPA.

### **Transition FSP First Nation Consultation**

FN consultation remains a fiduciary responsibility of the Crown based on the Crown making land use decisions that may impact a FN's rights or title. While not an absolute, it is likely that there is no requirement to conduct FN consultation on a transition FSP since the cut blocks and roads included in the FSP have likely already gone through a FN consultation process under a FDP planning process which is very similar in scope to the FSP. As well, if we are making the assumption that the Crown is not making a land use decision in the form of a DDM determination, because the legislation has already deemed the plan approved, then there is no land use decision to base the consultation on. There may be an argument that there is still a land use decision at play here, but it would seem reasonable to assume that the "deemed approved" provisions in legislation (which forms the land use decision) have already gone through FN consultation during the legislation development process.

### **Transition FSP "Approval Test"**

A transition FSP is not approved by a DDM, but rather is approved directly by legislation. Cutting permits, road permits and timber sale licences identified in a transition FSP, and in effect prior to approval of a FSP, are not affected by the approval or refusal of a FSP (Section 19, FRPA). Other cut blocks and roads contained in a transition FSP (Section 196) are already deemed approved as provided for in legislation. The assumption is that these cut blocks and roads identified in the plan form "the parts, if any, of the forest stewardship plan" in total, i.e. "the parts" of the plan form the whole of the FSP, therefore, the whole plan is deemed approved if it conforms to legislation. The one area a DM has some discretion is under FRPA, Section 196(2)(b) where if the FSP contains any of these types of cut blocks or roads, the DM considers that the forest development units are inconsistent with the events outlined in FRPA, Section 196(2)(a).

The transition FSP is not required to make the plan publicly available for review and comment (Section 18, FRPA). Since the plan is deemed approved, it is not being submitted for approval, which is a condition of the legislation requirement to complete public review and comment (Section 20, FPPR).

Transition FSP's should be submitted to the DM to verify content and adjudicate Section 196(2)(b), if applicable. Having done this, the DDM should provide written confirmation that the plan meets legislation requirement and confirm the date the FSP becomes effective. The transition FSP will then go into effect on the date confirmed by the DDM, and will then replace the part of the area of the FDP that is in the area under the FSP (Section 197(1), FRPA).

## **Operation Planning and Practice Issues Associated with Transition FSP**

Operations within effective CP's and RP's may be subject to either Code practice requirements (if the FSP is silent) or at the election of the licensee in the FSP, FRPA practice requirements [Section 197 (4-7)]. However, licensees need to consider that use of this election may trigger DDM approval as well as public review and comment requirements and FN consultation.

Where no CP exists on the date the transition FSP is deemed approved, operations within FRPA, Section 196 cut blocks and roads would be subject to compliance with FRPA practice requirements.

Site plans prepared for these cut blocks before the date of the FSP approval would continue in effect and can be amended under the Code. If a site plan has not been prepared, then one would need to be under FRPA before the commencement of harvesting.

However, either the practice requirements of the Code or of FRPA would apply to these blocks depending on the circumstances set out in Section 197, and the choices made by licensees.

Content cannot be added to Section 196(1) blocks since they have already been approved in accordance with Section 196, FRPA and have full plan protection. Section 196(2) blocks might need to be amended should an event described in Subsections 196(2)(a) or (b) occur.

Should a licensee acquire from another FDP holder approved Category "A" cut blocks (or roads) within an FDP that is in effect, (prior to expiry) the licensee can include them in its FSP. It is the licensee's responsibility to ensure that any necessary inter-licensee agreements are in place and that the correct commitments from the FDP are carried over in relation to the identification of the cut block under Section 196.

**Note:** The approval of the new FSP showing the former licensee's cut block will replace any FDP that was in effect in relation to the rolled-over cut blocks, as per FRPA, Section 197(1).

### **4. Prepare a "Multi-Licensee FSP"**

FRPA allows for multiple licence FSPs. If the new licensee is able to reach an agreement with another licensee, then the FSP is simply a "multi-licensee FSP" and follows normal approval tests. The FSP itself would specify the licences to which it applies and a person authorized on behalf of the new licensee would need to sign the FSP.

While the FSP itself may provide results or strategies that specify areas or conditions that apply to each licence holder, FPPR, Section 106.3 provides that a “co-holder of an FSP” is exempt from compliance with FSP results or strategies to the extent that the results or strategies applies to an area subject to a CP or RP held by another co-holder of the FSP or a timber sale licence or road permit issued by a timber sales manager. Any inter-licensee agreements or arrangements, such as “cost recovery for planning or wood delivery conditions” should not be part of the FSP; however, supporting documentation to the FSP may include a due diligence statement regarding the existence of external agreements between the co-holders.

#### **5. Join an approved FSP.**

Although not explicitly stated in the legislation, FRPA does provide that licensees can be added to a previously approved FSP. This option allows for licensees to rapidly gain operational access to their tenure. Joining an approved FSP is currently considered an amendment to plan content, i.e. signature of the person required to prepare the plan (Section 5(3) of FRPA). It could require the minister’s approval under FRPA, Section 16(1) if the amendment does not meet the minor amendment requirements in FRPA, Section 20, or it meets the list requirements of Section 29 of the FPPR. Such an amendment would also trigger the review and comment provisions for these amendments. If the change is simply adding a new licensee and nothing more, this would not expect to need approval, however, this type of change would require FN information sharing and consultation, that explains the proposed amendment and requests information regarding the First Nation’s aboriginal interests and how these interests may be impacted by the proposed amendment. While FN consultation remains the responsibility of the Crown, licensees may wish to facilitate this by forwarding, a letter of notification to potentially affected FN groups and provide an opportunity for review and comment of the plan amendment. It is important that the FN group(s) have a clear understanding who is operating in the FSP area and who to dialogue with post FSP approval, or minor amendment and prior to harvest authority issuance.

#### **6. Consider Development of a “Limited Content” FSP for Forest Health or Wildfire Salvage Purposes.**

Many licensees have been specifically awarded new tenures (particularly NRFLs) for mountain pine beetle control and/or salvage or salvage following wildfires. Many of these licences contain terms that direct harvesting to specific timber types and/or timber conditions, have very limited terms, or minimal AACs. Additionally, many forest health or salvage situations often require rapid operational response in order to reduce the potential loss of timber values and/or spread of forest pests. In these situations, it may be possible to develop a “limited content FSP”. Utilization of this option would require considerable initial discussions between the licensee and district staff in order to clearly understand its applicability. However, in some situations it may be possible to develop a limited content “FSP template” that provides suitable stewardship in these unique forest health situations.

In order to reduce the minister's "risk" in approving a limited content FSP, the FSP may simply provide undertakings to comply with practice requirements (see FRPA Administration Bulletin #3, Question 7) for example, specify some incremental results or strategies by incorporating any relevant guidance such as that provided in the "Guidance on Landscape and Stand-Level Structural Retention in Large Scale Mountain Pine Beetle Salvage Operations" (Chief Forester 2005) or other relevant strategies. It is possible that these types of results or strategies could be time bound, situation or geographic area specific, but would need to be provided in relation to established objectives. These incremental results or strategies could be bundled in relation to one objective (such as the objective set by government for timber in FPPR, Section 6) or could be specified in relation to numerous objectives, e.g. "in relation to the following five higher level plan objectives for biodiversity, the following results or strategies apply: ...".

In situations where there is some question as to whether the limited content FSP will meet the approval tests, the minister may want to use FRPA, Section 25 (sanitation exemption) and FRPA, Section 17 (approval in emergency cases) to clarify the necessary content. FRPA, Section 17 is a carte blanche approval of the whole plan with no specific instructions or directions to the licensee specified in this section (assumed to be in the FSP) while FRPA, Sections 25-27 is ordering the licensee to do specific treatment or treatments to address a problem identified as an emergency by the ministry. Section 17 could be used to develop a limited content FSP to separate salvage from control, since salvage emergencies no longer exist.

Due consideration for other tenure holders FSP in the area would need to still occur and it may be useful for the new licensee to include a strategy for collaboration in areas of common interest.

This FSP option would not likely be appropriate for large or complex areas, areas that have multiple values at high risk, or where the licensee intends to provide innovative or challenging results and strategies that may result in questions relating to the approval tests.

Pros/Cons

## **7. Mixing and Matching of the Above Options.**

The above options can be mixed together to optimally address the various situations that a licensee may be operating under. For example, if a company is short on approved Category A blocks (full or partially protected) they could amend their FDP between now and the end of transition as per Scenario 2 to increase their Category A cut blocks then proceed with a transition FSP for the first term.

Pros:

- Easily rolls over what a licensee has under the Code into the FRPA world with a minimal amount of effort.
- Limited approval test.
- This option is totally within the current legislative framework.

Cons:

- This is predicated upon a licensee having enough Category A cut blocks in their existing FDP or being able to get there through the amending FDP process prior to the FDP expiring.
- If used to a large extent, delays the full implementation of FRPA.
- Additional workload for staff due to a multi-stage process.
- Confusion in public review and comment.
- Heavy workload burden on FN.

### ***Summary***

This bulletin outlines a number opportunities and options, and does not provide a specific recommendation. The bulletin provides a means to recognize that there are a number of opportunities available to both districts and licensees that will assist in the transition to FRPA. It does require each organization to assess where they are at and where they need to be. Once that assessment is complete, an action plan should be developed to assist in managing through transition. In addition, successful implementation requires strong communication between all parties and appropriate infrastructure should be in place to facilitate this.

### ***Further Information***

Additional information regarding FRPA and FSP content and development may be found in the Administrative Guide to Forest Stewardship Plans (AGFSP) on the Provincial FRPA Implementation website at: <http://www.for.gov.bc.ca/rco/pfit/index.htm>.

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