



Ministry of
Forests, Lands, Natural
Resource Operations
and Rural Development

First Nations Woodland Licence

Information Guide

July 5, 2019

Disclaimer

This document contains material to assist with the administration of *agreements* entered into under the *Forest Act*. This document contains both a summary of the legal requirements and advice/suggestions from the non-legal realm. The latter are not legal requirements that you must follow, nor are they government policy.

Warranty

While every effort has been made to ensure the accuracy of the information herein, no warranties of any kind are made as to the precision or longevity of the contents. Readers are advised to refer to the wording of the legislation and regulations themselves, and obtain legal advice from their own sources.

This information is provided as a public service by the Ministry of Forests, Lands, Natural Resource Operations and Rural Development. This document and all of the information it contains are provided "as is" without warranty of any kind, whether express or implied. All implied warranties, including, without limitation, implied warranties of merchantability, fitness for a particular purpose, and non-infringement, are hereby expressly disclaimed.

Limitation of Liabilities

Under no circumstances will the Government of British Columbia be liable to any person or business entity for any direct, indirect, special, incidental, consequential, or other damages based on any use of this information or any other document or material to which this document is linked, including, without limitation, any lost profits, business interruption, or loss of programs or information, even if the Government of British Columbia has been specifically advised of the possibility of such damages.

Copyright © 2019, Province of British Columbia

All rights reserved

This material is owned by the Province of British Columbia and protected by copyright law. It may not be reproduced or redistributed without prior written permission from the Province of British Columbia.

Permission or Questions regarding copyright

Guidance on intellectual property disposal from the Province of British Columbia's Intellectual Property Program:
<http://www2.gov.bc.ca/gov/content/governments/services-for-government/policies-procedures/intellectual-property/intellectual-property-program>

Document Change Control

Version	Date	Key Change
1	January 21, 2015	Draft
1.1	July 2019	Updated template and updated broken web links.

Questions or comments should be directed to:

Forest Tenures Branch, Ministry of Forests, Lands, Natural Resource Operations and Rural Development
ForestTenuresBranch@gov.bc.ca

Table of Contents

1	Purpose	5
2	Preamble.....	6
3	Invitation to Apply Requirements.....	7
4	Management Plan Requirements	8
5	First Nations Woodland Licence (Licence Document).....	11
6	Business Plan.....	12
7	Freedom of Information	13
8	References	14
9	ATTACHMENT A: First Nation Checklist for Tenure Agreement	15
10	ATTACHMENT B: Agreement Holder Legal Entity Information.....	18
11	ATTACHMENT C: FNWL Business Process Map	20

1 Purpose

The intent of this document is to provide information on the necessary requirements for a First Nations Woodland Licence once a Forest Tenure Opportunity Agreement (FTOA) has been approved. This document is intended as general guidance – specific licence requirements may vary depending on local circumstances.

2 Preamble

First Nations Woodland Licences (FNWL) are area based, long term forest tenure unique to First Nations' interest in the land and resources. Corporate control of the FNWL must remain with the First Nation through the term of the licence and any subsequent replacements. FNWLs recognize First Nations' asserted interests in the land and resources, including the protection of traditional use practices, the harvest and management of non- timber forest products, and other benefits.

First Nations may be eligible to obtain a FNWL if they sign a Forest Tenure Opportunity Agreement (FTOA), if there is a source of replaceable annual allowable cut (AAC) , if there is an available operating area and if approved through mandate signed by the Minister of Forests, Lands, Natural Resource Operations and Rural Development.

For more information on the process to sign FTOAs please refer to the direct award guidelines located at the First Nations Relations Branch website located at:

https://www2.gov.bc.ca/assets/gov/environment/natural-resource-stewardship/consulting-with-first-nations/agreements/forestry-agreements/policies-reports/first_nations_direct_award_forest_tenure_opportunities_guidelines.pdf

3 Invitation to Apply Requirements

After the FTOA is signed, the First Nation will receive a letter from the minister and/or the appropriate Regional Executive Director (RED) who will outline the information required prior to entering into a FNWL. The letter will provide information on any requirements needed to facilitate the issuance of the licence. The First Nation will be provided with Area and/or District staff contact information for further clarification of requirements.

These requirements may include and are specified in the Checklist of Appendix 1:

- Further information on any licence(s) that must be surrendered prior to the issuance of the FNWL, if specified in the FTOA;
- If the First Nation intends to appoint a representative to hold the FNWL, documentation that the representative is legally eligible to do so in accordance with Section 43.54 of the *Forest Act* and as specified in the First Nation Tenure Regulation. The type of documentation required may include a band council resolution, proof of company registration, and shareholders listings;
- Information on the submission of a Management Plan for the FNWL area, which is required to be approved prior to the issuance of the FNWL and included in Section 6.02 of the licence document (for more information on this topic refer to the section titled “Management Plan Requirements” within this guideline);
- The First Nation must ensure that all accounts with government are current and there are not any accounts under suspension

4 Management Plan Requirements

The Management Plan must be prepared to include the information required in the FNWL licence document to describe the range of objectives that the applicant proposes to pursue. In accordance with the requirements of the *Forester's Act* the Management Plan must be signed and sealed by a Registered Professional Forester (RPF). The licensee, or a person authorised to sign on their behalf must also sign the plan.

One of the primary purposes of the Management Plan is to propose a suitable Allowable Annual Cut (AAC) for the licence area for consideration and approval by government.

A forest consultant will normally be retained to complete the analysis required for the AAC, which includes utilising the available forest inventory information and applying appropriate forest management objectives. First Nations are encouraged to contact local staff to ensure they are aware of all available information prior to starting on the Management Plan including methods for carrying out a timber supply analysis to establish an AAC. There is specific software available for this purpose. FLNRORD may assist in an analysis during the area selection process and this may be a useful tool when proposing an AAC.

Factors that will be important in developing the AAC include:

- inventories and other information referred to as described above,
- timber harvest specifications proposed for the timber resources in the agreement area,
- reductions that are necessary to facilitate the management and conservation of non-timber resource values in the agreement area, including visual quality, biological diversity, soils, recreation resources, cultural heritage resources, range land, wildlife, water and fish habitats,
- silviculture practices and forest health factors that may impact on timber production,
- the anticipated impact of the reductions to the productive portion of the agreement area due to permanent roads, landings, pits and trails, and
- any other factors that may impact on the allowable annual cut during each year

The FNWL licence document requires that a proposed Management Plan submitted must be prepared in accordance with any directions of the Regional Executive Director or District Manager, be consistent with the license Agreement, the forestry legislation, higher level plans under the *Forest and Range Practices Act*, and commitments agreed to by both parties to this agreement

A Management Plan (MP) must include the following content:

1. Description and Map of Area
2. Information regarding 6.02 (a) and (b) of licence document
 - Statement confirming MP is consistent with the Licence, Legislation, RED Direction, Higher level Plans
3. Inventories - Include existing inventories for the following:
 - timber in the agreement area,
 - non-timber forest products if applicable, and
 - prescribed products under the *Special Forest Products Regulation* if applicable.,
4. Propose an allowable annual cut for the agreement area which considers the following:
 - Timber Specifications
 - Silviculture Practices
 - Forest Health
 - Access Structure
 - Soils
 - Wildlife
 - Recreation
 - Visuals
 - Biodiversity
 - Cultural Heritage Resources
 - Water and Fish Habitat
5. AAC Proposal & Rationale – May refer to Forest Analysis and Inventory Branch Timber Supply Review

6. Management Objectives, if any, for Botanical Forest Products to be listed in Schedule C of the licence and the charging of fees for non-timber forest products.
7. Measures to Identify and Consult with Other Resource Users, First Nations, Community Member, Local Government and Government Agencies
8. Signatures: RPF (Sign and Seal) and Licensee

The FNWL Licence document specifies that FLNRORD will have a 90-day period to review the Management Plan and while staff will make best efforts to expedite a review, proponents should be aware that the review period can be a lengthy process and plan accordingly. The quality of documents submitted for review and approval will help make the process efficient.

5 First Nations Woodland Licence (Licence Document)

A draft FNWL may be obtained from Area or District staff. The intended FNWL holder is advised to study the draft agreement. It must be noted, however, that the sample document is an example only and the licensor must approve the final content of a FNWL. The licence agreement will be signed after the Management Plan is approved and after any identified licences have been surrendered.

6 Business Plan

The proponent may want to develop a business plan to assure themselves that entering into a FNWL is a viable business proposition. It is the responsibility of the First Nation to ensure that such financial viability or feasibility assessments are carried out by appropriate experts and, where necessary, lending institutions, prior to entering into a First Nations Woodlands Licence.

FLNRORD can not guarantee the FNWL will be a viable business opportunity and does not require a Business Plan to be submitted as part of the application.

For the purpose of preparing financial forecasts or statements associated with the harvesting of Crown timber, the applicant is advised that the following will apply to the FNWL:

- Stumpage must be paid on timber harvested from the Crown land part of the FNWL in accordance with the Coast or Interior Appraisal Manual
- A FNWL is subject to the payment of annual rent. The current rate is \$0.12 per cubic metre of allowable annual cut attributed to Crown land within the agreement area. This rate is subject to change.
- A holder of a FNWL is responsible for the payment of all applicable taxes and fees levied by federal, provincial and municipal government agencies. It is the responsibility of the applicant to determine what those taxes and fees will be.
- The applicant is solely responsible for the cost of preparing the application and all subsequent Plans and permits.
- The First Nation may be eligible for an Annual Rent rebate. When the Forest Tenure Opportunity Agreement (FTOA) is signed, a commitment will be made to rebate a portion of the “general rent” paid by a First Nation and associated with the replaceable ‘Bill 28’ allowable annual cut within direct award licences since 2008. The rebate will be paid when the FNWL is issued, subject to accounts being in good standing and subject to the following:
 - there being sufficient monies available in an appropriation, as defined in the *Financial Administration Act*, to enable British Columbia in any BC Fiscal Year or part thereof when any such payment may be required, to make that payment; and
 - Treasury Board not having controlled or limited, pursuant to the *Financial Administration Act*, expenditure under any appropriation.

7 Freedom of Information

Information submitted is subject to the *Freedom of Information and Protection of Privacy Act*. Consequently, the public has a right of access to the document--unless the information falls within any of the act's exceptions to disclosure.

8 References

Forest Tenures Branch has prepared a business process map that can be found here:

https://www2.gov.bc.ca/assets/gov/farming-natural-resources-and-industry/forestry/timber-tenures/first-nations-woodland-licence/first_nations_woodland_licence_award_process_map.pdf

Principles for Locating New Forest Tenures:

https://www2.gov.bc.ca/assets/gov/farming-natural-resources-and-industry/forestry/timber-tenures/timber-tenure-bulletins-policies-procedure/principles_for_locating_new_forest_tenures.pdf

First Nations Direct Award Forest Tenures Opportunities Guidelines:

https://www2.gov.bc.ca/assets/gov/farming-natural-resources-and-industry/forestry/timber-tenures/first-nations-woodland-licence/first_nations_woodland_licence_award_process_map.pdf

Features of a FNWL:

<https://www2.gov.bc.ca/gov/content?id=741E71F33D09401199EF2A8AB4DDC042>

What does the AAC Offer mean for new area-based tenures:

Discussion Document – *DRAFT PENDING*

Two excellent guidance documents for smaller area based tenures:

The Community Forestry Guidebook: Tools and Techniques for Communities in BC – FORREX Series No. 15 at <http://bccfa.ca/guidebook/>

The Community Forestry Guidebook II: Effective Governance and Forest Management – FORREX Series No. 30 at http://bccfa.ca/wp-content/uploads/2013/03/FS30_web-proof.pdf

The following Internet site offers assistance in producing Business Plans: <https://smallbusinessbc.ca/>

The First Nation Forest Council may be able to provide additional advice: <https://www.forestrycouncil.ca>

Although dated, the Coast forest Region has developed the following guidance document:

https://www2.gov.bc.ca/assets/gov/farming-natural-resources-and-industry/forestry/timber-tenures/managing_your_new_timber_tenure_v2.pdf

9 ATTACHMENT A: First Nation Checklist for Tenure Agreement

Option	Name of First Nation: Contact Information and Address of Applicant	
*Option	Licence to be Managed By:	
	<p>The managing company or individual will provide the security deposit?</p> <p style="text-align: center;">Yes <input type="checkbox"/> No <input type="checkbox"/></p> <p>The managing company or individual will receive all documentation and pay all stumpage and annual rent invoices</p> <p style="text-align: center;">Yes <input type="checkbox"/> No <input type="checkbox"/></p> <p style="text-align: center;">OR</p> <p>The managing company or individual will receive appraisal information and receive and pay stumpage invoices only</p> <p style="text-align: center;">Yes <input type="checkbox"/> No <input type="checkbox"/></p>	
*Option	Corporation:	BC Registration #:

* Note: For the purposes of the application a Band Council Resolution must be attached.

Security Deposit Calculation and Description
<p>As required under Section 8 (1) (a) and 9 (1) (b) of the <i>Advertising, Deposits, Disposition and Extension Regulation</i>, a security deposit is required. This amount must be submitted in cash or by another approved security as set out in the attached information page,</p> <p>“Approved Security.” : Security Deposit = {AAC} m³/yr times \$0.10/m³</p>
Annual Rent Calculation and Description
<p>The holder of a FNWL is required to pay the government annual rent. Annual rent will be invoiced in accordance with legislation after execution of this licence. Annual Rent = {AAC} m³/yr times \$0.12/m³</p>
Approved Security - Cash, Certified Cheque, Bank Draft, Money Order
<p>Personal cheques are not acceptable as securities. Securities are recommended rather than cash for security deposits, as interest on cash will not be paid. Cheques, money orders and bank drafts must be payable to the Minister of Finance. When cash is submitted, the security is held in the name of the licence holder and returned to the licence holder, upon satisfactory completion of all applicable obligations under the forest licence, <i>Forest Act</i> and <i>Forest and Range Practice Act</i>. The refunded security will not be submitted to any other party.</p>

Approved Security - Irrevocable Letter of Credit

Irrevocable Letters of Credit that demand a draft or certificate will not be accepted. The following “evergreen clause” must be included in an Irrevocable Letter of Credit in order for it to be acceptable as a security deposit:

“This Letter of Credit shall be deemed to be automatically extended (for one year from the present or any future expiry date) without any formal amendment unless thirty days prior to the present expiry or any such future expiry date as automatically extended we shall notify you in writing that we elect not to extend the Letter of Credit for any further period and at the same time forward to you together with such written notice of election a bank draft payable to the Minister of Finance in the amount of (Deposit) less any amount previously paid under this Letter of Credit.”

When an irrevocable letter of credit is submitted with an application, the applicant may be the licence holder or any other party, as determined by the licence holder. The applicant is the party putting up the security and entered as such on the irrevocable letter of credit. The licence number must be referred to in the irrevocable letter of credit and the beneficiary is to be made out to the Minister of Finance.

Management Plan

Management Plan requirements are outlined in Section 6.02 of the FNWL document

10 ATTACHMENT B: Agreement Holder Legal Entity Information

The Applicant is solely responsible for ensuring that the legal entity who will be the intended holder of the FNWL is lawfully constituted, in good standing and authorized to carry on the business described in the application in accordance with all applicable federal, provincial and municipal legislation, including statutes, regulations and by-laws.

The FNWL may be held by a entity as outlined in the *First Nation Tenures Regulation* and as described: http://www.bclaws.ca/EPLibraries/bclaws_new/document/ID/freeside/104_2011

An Indian Band as defined in the *Indian Act* is not eligible to hold a FNWL.

The following are legal entities that may be eligible provided they meet criteria within the *First Nation Tenures Regulation*. The documentation that must be included in the application, if that legal entity is intended to be the agreement holder, is described under each entity. A photocopy of the documents is required to be submitted with the Applicant's application and if further requested, certified copies must be submitted.

Society incorporated under the *Society Act*;

- i. a copy of the certificate of incorporation of the society issued by the Registrar of Companies under Section 3 of the *Society Act*, or in the alternative, a Certificate of Good Standing issued by the Registrar;
- ii. a copy of the constitution and by-laws of the society certified by the Registrar of Companies pursuant to Section 3 of the *Society Act*;
- iii. a list of the names and addresses of the individuals who are the current directors and shareholders of the society, as of the date that the application for the FNWL is submitted by the Applicant;
- iv. the address of the office of the society;
- v. a copy of the last annual report filed with the Registrar of Companies; and
- vi. a copy of the band council resolution that the society has been appointed as the First Nations' representative to hold the first nations woodland

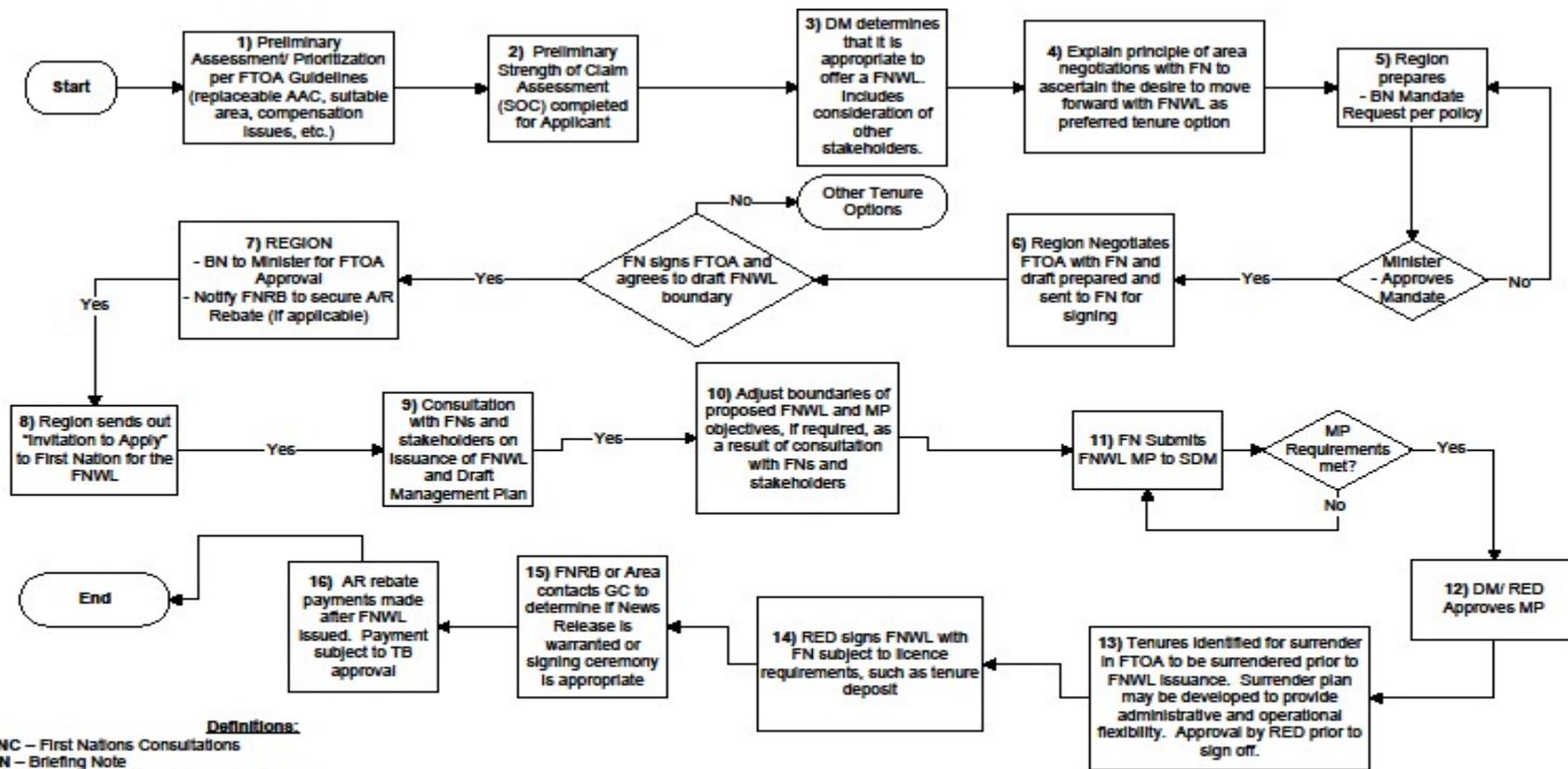
Note: Holding a first nations woodland licence must be one of the purposes of the society, and the society must not be prohibited under section 2(2) of the *Society Act* from holding a first nations woodland licence.

Corporation incorporated or registered under the *B.C. Company Act*;

- i. the memorandum of incorporation, and all amendments thereto, as defined in Section 1 and required under Section 5 of the *Company Act*;

- ii. the certificate of incorporation of the company issued by the B.C. Registrar of Companies under Section 9 of the
Company Act;
- iii. the articles of incorporation and all amendments thereto, as defined in Section 1 and required under section 6 of the *Company Act*;
- iv. a list of the names and addresses of the individuals who are the current directors of the company, as of the date that the application for the FNWL is submitted by the Applicant;
- v. the notice of offices setting out the current addresses of the registered office and the records office of the company, as required under Section 8 of the *Company Act*;
- vi. the most recent annual report of the company required to be filed with the Registrar of Companies under Sections 333 and 334 of the *Company Act*;
- vii. instruments of continuation of the corporation, if any;
- viii. the charter of the corporation, if any and

11 ATTACHMENT C: FNWL Business Process Map



Definitions:

- FNC – First Nations Consultations
- BN – Briefing Note
- FNWL – First Nations Woodland Licence
- FTOA – Forest Tenure Opportunity Agreement
- GC - Government Communications and Public Engagement
- A/R – Annual Rent
- MP – Management Plan
- RED – Regional Executive Director
- NR – News Release
- FNRB – First Nations Relations Branch

Version 6A
January 21, 2015

1. During this phase, initial work should be carried out on available AAC, possible locations for a FNWL, potential compensation claims and general information on the ability to land the FNWL. Confirm that there is replaceable AAC available for the proposed tenure. Document volume source as Bill 28 AAC and other AAC or both. Ensure forest industry is engaged early when selecting operating area for the FNWL. In addition, opportunities to provide volume based tenures to FNs should also be explored as work is underway to locate suitable areas for a future FNWL. This can be accomplished by obtaining a mandate, when required, to offer a volume based tenure as an interim step as the FNWL area selection is underway. These tenures may be surrendered when the FNWL is considered for issuance.
2. During this step, complete an initial SOC for the First Nation to assist in determining an appropriate area to focus efforts on locating the FNWL based on approved AAC allocation and Strength of Claim information, where there is uncertainty this may be supported by First Nations Relations Branch and the Regional Strength of Claim working groups. Locate area that supports the AAC from above and within the core of the traditional territory and ideally within an area of potentially high Strength of Claim areas for the applicant First Nation. Ideally, for ease of management, the area should be contiguous (not required) and consideration should also be given to age class structure and representative forest types. Forest Analysis and Inventory Branch Staff (FAIB) may be available to complete a preliminary review and estimate using MAI of the TSA to match an area to the AAC.
3. During this phase, the district manager or RED should review the information and assess the ability to successfully issue the FNWL.
4. Discuss the proposed area, AAC and any other factors with the First Nation to ascertain the desire to continue forward to obtain a FNWL.
5. Prepare and obtain a mandate request as per the FTOA guidelines for the FNWL opportunity. Once Minister has approved the mandate, begin preparing the Forest Tenure Opportunity Agreement (FTOA) for FN and the Minister's signature. The FTOA must be in place (*Forest Act*) in order to direct award the FNWL. This is outlined in the FTOA Guidelines and requires maps of the area, decision note and invitation letters.
6. Region and District staff with the support of FNRB will begin discussions with the First Nation on the content of the FTOA to direct award the FNWL. This may take some time to respond to concerns that may be expressed by the First Nation. The goal here is to reach an agreement on the content requirements of the FTOA.
7. Once the FN has returned a signed version of the FTOA, a Minister's approval package will be completed. This will include the FN signed FTOA, a decision note outlining all concerns and impacts that are known, including licence holder impacts, compensation etc. The package to be routed normally with a final review by FNRB. Once the FTOA has been approved by the Minister, notify FNRB to ensure that, if there will be an annual rent rebate, that the funding can be confirmed and made available for when the FNWL is issued.

Following the approval of the FTOA, a preliminary timber supply analysis may be completed using all of the current TSA assumptions and any spatial net-downs by FAIB. This initial analysis may be provided to the FN to rationalise the area and volume offered. If the FN

wishes to use a different set of assumptions to support their Management Plan objectives they should complete their own analysis, which is an essential element of the Management Plan submission and will be approved by the DM with the MP.

8. Once the FTOA has been approved, prepare and send the invitation to apply letter to the First Nation for the proposed FNWL. This phase may be completed by the Minister when approving the FTOA or completed by the RED following the approval of the FTOA.
9. FN consultation on the issuance of the FNWL and the DRAFT Management Plan. In order to create efficiencies any consultation should be co-ordinated - decisions can all be included in a single consultation process if appropriate to do so.
10. If required adjust boundaries of the FNWL to accommodate any First Nations concerns as a result of the consultation process. Ensure that these adjustments or other concerns are addressed in the Management Plan prior to approval.
11. Management Plan and AAC rationale developed and submitted by the applicant. If completed, the preliminary AAC provided by FLNRORD can be used by the applicant for their first AAC, provided it is consistent with MP Objectives. Content requirements for the MP are outlined in Section 6 of the FNWL tenure document. First Nation submits MP to FLNRORD District office for review and approval by District Manager **.
12. FLNRORD tenures staff will complete the review of MP for approval by the Statutory Decision Maker. Currently the Delegation Matrix has assigned this approval to the RED. Efforts should be made to have the MP approved and the FNWL document signed at approximately the same time.
13. If required and outlined within the FTOA "C", the First Nation must surrender any forest tenures (containing Bill 28 AAC) before the FNWL is issued. To maintain operational flexibility, surrender plans for these tenures may be approved by the RED. These plans would outline the rationale for the surrender plan, timing and when the licence will be surrendered. Ideally, tenures should be surrendered prior to the issuance of the FNWL, however when there are operational or administrative actions to be completed, a surrender plan can be used.
14. RED provides the FNWL document to the First Nation for review and signature and once returned the RED signs FNWL and approves the Management Plan with the First Nation subject to requirements to hold the FNWL, such as tenure deposit. The applicant must provide adequate documentation for the legal entity that will hold the tenure. For a FNWL the entity must be controlled by the FN. It may be a consideration at this stage to carry out a signing ceremony with the First Nation and the RED or other decision maker and this should be discussed with the First Nation prior to execution of the document.
15. The decision maker will notify FNRB that the FNWL has been approved, whether or not a surrender plan has been approved and FNRB will then arrange for the First Nation to receive any eligible annual rent rebate subsequent to the FNWL being approved or in accordance with an approved surrender plan. Annual Rent rebates will only be paid once the FNWL is issued.

16. FNRB contacts GCPE to determine if News Release is appropriate, RED also informs Government Communications (News Release) when documents are executed.

Notes:

* Once the AAC is removed it automatically reduced the AAC of the TSA as per the *AAC Administration Regulation*.

** In order to create efficiencies, where possible FNs may want to consider submission of their Management Plan, AAC rationale and the FSP (or Woodlot Licence Plan if they qualify) concurrently. *Forest and Range Practices Act* (FRPA) requirements of the FSP must still be met that will include public consultation and FN consultation for the FSP.