

# CEO GUIDELINE

## TO SUPPORT THE BIODIVERSITY CONSERVATION REGULATIONS

### SANDALWOOD LICENSING

#### Legislative basis for these guidelines

1. A flora taking (sandalwood) licence (**sandalwood licence**) provides lawful authority to take sandalwood (other than plantation sandalwood) under State law<sup>1</sup>.
2. A sandalwood licence may authorise the holder of the licence to take sandalwood from private land or from Crown land.
3. In accordance with part 5 of the *Biodiversity Conservation Act 2016* (**BC Act**), the Department of Biodiversity, Conservation and Attractions (**DBCA**) is implementing the *Santalum spicatum* (Sandalwood) Biodiversity Management Programme 2023 (**Programme**) to provide for sandalwood conservation, protection, and management while facilitating ecologically sustainable use. Programme strategy 8, management action (a) requires DBCA to develop sandalwood licensing guidelines that are to be read and reviewed with the Programme.
4. Regulation 10(1) of the *Biodiversity Conservation Regulations 2018* (**BC Regulations**) provides that the Chief Executive Officer (**CEO**) of DBCA may issue guidelines for the purposes of Part 4 of the BC Regulations, which establishes a licensing scheme. This CEO Guideline implements that action.
5. The CEO may delegate the exercise of licensing functions to DBCA officers. Where these guidelines refer to ‘the CEO’ doing something this should be read as also referring to the CEO or their delegate.

#### Purpose of these guidelines

6. The purpose of these guidelines is to address the following matters as they relate to sandalwood licences:
  - 6.1 application processes;
  - 6.2 assessment process; and
  - 6.3 conditions that will ordinarily be imposed where a licence is issued.

#### Application process

##### When an application may be made

7. An application to take sandalwood within a financial year must be received by 4pm on 31 March prior to the commencement of the first financial year to which the licence applies (**the cut-off date**), unless the CEO or a person authorised by the CEO has approved the making of an application after the cut-off date.
8. The power to authorise the making of an application after the cut-off date is not intended to be exercised in relation to late applications. It has been included to cater for other circumstances – for example, if a licence is cancelled and as a result an additional allocation of sandalwood becomes available.

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<sup>1</sup> These guidelines do not address the requirements of any applicable Commonwealth law including the *Native Title Act 1993* (Cth) (**NTA**). DBCA will address any requirements of the NTA separately and on a case-by-case basis. DBCA will only issue a flora taking (sandalwood) licence if it is satisfied that any requirements have been met. Any need to comply with the NTA may affect DBCA’s ability to process applications in a timely way.

### How an application must be made

9. An application must be:
  - 9.1 submitted using the approved *Flora Taking (Sandalwood) Licence Wild Stands Application Kit (application kit)*; and
  - 9.2 include all the information required by the application kit, including the sandalwood establishment and sustainability plan and consent to enter lands.
10. The prescribed licence application fee is payable at the time that an application is made.

### **Assessment process**

#### Quantitative limits

11. The *Sandalwood (Limitation on Removal of Sandalwood) Order (No. 2) 2015 (Sandalwood Order)* limits the quantity of living and dead sandalwood (other than plantation sandalwood) that may be taken from Crown land and private (alienated) land during a financial year.
12. The Sandalwood Order provides that in calculating the number of tonnes, the following is not to be included:
  - 12.1 leaves;
  - 12.2 bark;
  - 12.3 branches that have a diameter of less than 25 millimetres at the larger end, when stripped of bark.
13. The CEO will seek to ensure that the quantity of sandalwood that is taken in any financial year, whether authorised by licence issued under the BC Act or by another form of lawful authority, will not exceed the limits in the Sandalwood Order.
14. For this purpose, each year the CEO will:
  - 14.1 estimate the number of tonnes of sandalwood that is available to be allocated to be taken under sandalwood licences<sup>2</sup>;
  - 14.2 identify acceptable applications having regard to the Stage 1 criteria below; and
  - 14.3 convene a panel to rank acceptable applications having regard to the Stage 2 criteria below and grant sandalwood licences up to the available allocation.

#### Stage 1 criteria

15. Without limiting regulation 76 of the BC Regulations, the Stage 1 criteria are:
  - 15.1 the application was received by DBCA prior to the cut-off date, or the CEO or a person authorised by the CEO has approved the making of an application after that date;
  - 15.2 the prescribed fee has been paid;
  - 15.3 the applicant has not been involved in a 'disqualifying event' as defined in regulation 76(1).
  - 15.4 where the land from which sandalwood is to be taken is Crown land that is to be managed for a particular purpose, the applicant has demonstrated that the taking of the sandalwood is consistent with that purpose;
  - 15.5 where the application is to take living sandalwood from locations subject to commercial sheep or goat enterprises, the applicant has indicated that they will accept a licence with conditions that require:

<sup>2</sup> The available quantity of sandalwood will be declared in the Flora Taking (Sandalwood) Licence Wild Stands Application Kit for the relevant season.

- (a) permanent exclusion of commercial grazing from remnant vegetation areas that contain living sandalwood as demonstrated by covenants on the title of the land;
  - (b) construction of livestock exclusion fencing; and
  - (c) control of feral herbivores in grazing exclusion areas for the first five years of establishing regeneration.
- 15.6 the application and associated sandalwood establishment and sustainability plan meet any requirements in applicable regional protocols for sandalwood conservation, protection and management that are included in the application kit.
- 15.7 the applicant has provided sufficient evidence that the applicant has obtained consent to enter lands proposed in their application. This means that:
- (a) applications related to private land must be made by the land owner or occupier and accompanied by written owner or occupier consent.
  - (b) applications for lands subject to native title that is not subject to a third party interest, require the native title holders or registered native title claimant/s written authorisation before entry.
  - (c) applications for lands subject to native title that is also subject to a third party interest such as a pastoral lease, in addition to 15.7(b), also requires written authorisation from the third party interest before entry.
16. The CEO may refuse to issue a licence where the application does not satisfy one or more of the Stage 1 criteria.

#### Stage 2 criteria

17. The stage 2 qualitative criteria will guide assessment of the applicant's sandalwood establishment and sustainability plan. The stage 2 qualitative criteria are:
- 17.1 whether the quantity of sandalwood applied for exists at the location;
  - 17.2 the extent to which the applicant took all of the sandalwood authorised under past licences;
  - 17.3 if applied for, the take of living trees will not threaten the continued occurrence of sandalwood at the location;
  - 17.4 the likelihood that the applicant's proposed sandalwood establishment and sustainability plan will improve sandalwood populations' health, condition and abundance at the location through:
    - (a) a seeding strategy;
    - (b) use of seed of an appropriate provenance;
    - (c) retaining specific sandalwood trees, or patterns, or locations of sandalwood trees, or populations of trees in the landscape;
    - (d) works that would protect remaining or planted sandalwood, such as fencing and pest control;
  - 17.5 the likelihood that activities performed under the authority of the licence will avoid negative impacts on other biodiversity components such as threatened species and ecological communities; and
  - 17.6 the likelihood that activities performed under the authority of the licence will not have negative impacts on Aboriginal cultural heritage.
18. Following an assessment of applications against the stage 2 criteria, the CEO may:

- (a) determine that applications assessed as not demonstrating or providing sufficient sandalwood establishment and sustainability measures will not be issued a licence;
- (b) rank remaining applications from the highest to the least likelihood of sandalwood establishment and conservation; and/or
- (c) allocate available quantities of sandalwood in the order that follows the application rankings from the highest to the least likelihood of sandalwood establishment and conservation.

### Field inspections

- 19. A field inspection may be conducted to confirm the information contained in an application and associated sandalwood establishment and sustainability plan.
- 20. The CEO may delay making a decision on an application until the inspection report has been provided and the applicant has paid the prescribed inspection fee.

### Decisions on licence applications

- 21. Most new applications will be determined within six months of the application cut-off time.
- 22. Should an application require special consideration, the applicant will be kept informed regarding the progress of their application.
- 23. If an application is unsuccessful, the applicant will be given written notice of the decision and provided with reasons for the decision.

### **Licence conditions**

- 24. Without limiting regulations 55, 67, 83, 85 or 86, the CEO will ordinarily impose licence conditions that:
  - 24.1 limit the quantities of living sandalwood and dead sandalwood that may be taken;
  - 24.2 provide that sandalwood will be considered to be dead sandalwood where it meets the following criteria:
    - (a) no leaves of any colour;
    - (b) no bark, or sufficiently loose bark that may be separated from the sap wood by hand; and
    - (c) no indication of human caused pre-mortem injury including but not limited to cuts, artificial holes, chain marks, ringbarking, machinery or vehicle impact;
  - 24.3 impose, in relation to living sandalwood, requirements that —
    - (a) subject to paragraph (b), a sandalwood tree taken under the licence must be not less than 400 mm in circumference when measured over the bark at a point approximately 150 mm above ground level; and
    - (b) a sandalwood tree with multiple stems taken under a licence must have each individual stem be not less than 400 mm in circumference when measured over the bark at a point approximately 150 mm above ground level;
  - 24.4 impose requirements with respect to the establishment and maintenance of sandalwood, including requiring compliance with the applicant's sandalwood establishment and sustainability plan;
  - 24.5 set restrictions that are specific to particular sandalwood regions;

24.6 require maintenance of records including:

- (a) the quantities of sandalwood taken under the licence;
- (b) proof of seed acquisition; and
- (c) global positioning system (GPS) records of harvested trees and seeded locations.

### Duration of licences

25. Sandalwood licences granted for private lands will be issued for a period not exceeding 12 months.

### Terms used in these Guidelines

*application kit* means the *Flora Taking (Sandalwood) Licence Wild Stands Application Kit*.

*biodiversity components* has the same meaning as in the BC Act.

*CEO* has the same meaning as in the *Conservation and Land Management Act 1984* (CALM Act).

*Crown land* has the same meaning as in the *Land Administration Act 1997*.

*DBCA* has the same meaning as 'department' in the CALM Act.

*disqualifying event* under regulation 76(1) a 'disqualifying event' means:

- (a) failing to provide adequate or sufficient information in connection with the making of the application; or
- (b) making a false or misleading statement in, or in relation to, an application under a 'designated Act';<sup>3</sup> or
- (c) contravening, or failing to comply with, a condition of a licence under the BC Act or a 'repealed Act';<sup>4</sup> or
- (d) being the holder (or former holder) of a licence that has been suspended or cancelled under the BC Act or a repealed Act; or
- (e) being found guilty of a 'designated offence'.<sup>5</sup>

*ecologically sustainable use* has the same meaning as in the BC Act.

*occupier* has the same meaning as in the BC Act.

*owner* has the same meaning as in the BC Act.

*panel* is three to five suitably knowledgeable DBCA employees who will assess licence applications with or without an independent overseer.

*plantation sandalwood* means sandalwood that is planted and grown on previously cleared lands as a commercial crop.

*private land* has the same meaning as the BC Act.

<sup>3</sup> 'Designated Act' is defined as the BC Act, the *Animal Welfare Act 2002*, the *Biosecurity and Agriculture Management Act 2007*, the *Conservation and Land Management Act 1984*, the *Environmental Protection Act 1986*, the *Forest Products Act 2000*, the *Sandalwood Act 1929* or the *Wildlife Conservation Act 1950*.

<sup>4</sup> 'Repealed Act' is defined as the *Sandalwood Act 1929* or the *Wildlife Conservation Act 1950*.

<sup>5</sup> 'Designated offence' is defined as an offence against a designated Act, or against any regulations made under a designated Act.

*programme* means the *Santalum spicatum* (Sandalwood) Biodiversity Management Programme 2023.

*registered native title claimant/s* means a person or persons whose name/s appear as 'the applicant' in relation to a claim that has met the conditions of the registration test and is on the National Native Title Tribunal: Register of Native Title Claims on the date that a sandalwood licence is to be issued.

*sandalwood* has the same meaning as in the BC Act.

*sandalwood licence* means a flora taking (sandalwood) licence issued pursuant to regulation 67 of the BC Regulations.

*sandalwood order* means the *Sandalwood (Limitation on Removal of Sandalwood) Order (No. 2) 2015* published in the *Gazette* on 11 September 2018 at pages 3232 to 3242.

*specifically controlled sandalwood* has the same meaning as in the BC Regulations.

*supply* has the same meaning as in the BC Act.

*take* has the same meaning as in the BC Act.