

LICENCES

Automatic licence transfer—guidelines

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More information

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Introduction

The NSW Department of Planning, Industry and Environment—Crown Lands (the department) has ownership, control and management of Crown land in New South Wales under the *Crown Land Management Act 2016*. The department grants licences to people for the use of Crown land and in particular circumstances, these licences will automatically transfer when they are associated with and provide a benefit to other land that is transferred.

Overview

This document provides support and procedural guidance pertaining to the automatic transfer of licences. These guidelines also specifically deal with the eligibility of licences that automatically transfer and the precautions that should be taken by purchasers and conveyancing agents when purchasing land.

Assistance

For further information or assistance in relation to automatic licence transfer, please call the department on 1300 886 235 or email enquiries@crowmland.nsw.gov.au.

Automatic licence transfers

Section 5.27 of the *Crown Land Management Act 2016* (CLMA) allows the automatic transfer of a licence when the holder of the licence transfers the other land, known as the benefitting land.

On transfer, the transferee will become liable for compliance with the terms and conditions of the licence, payment of rent and any other fees or amounts that are outstanding on the licence (including any arrears).

Automatic transfer criteria

Section 5.27 of the CLMA applies to licences if:

- a licence has been granted over Crown land, and
- the holder of the licence is the owner or lessee of the 'other land', and
- the holder of the licence is transferring the 'other land' to a new owner or lessee, and
- the licence benefits the other land (eg: access to a waterfront)

Licences that do not meet all of the above criteria will not automatically transfer and the transferee will need to submit an application [Licence: Revocation of existing tenure and issue of a new licence](#) or [Licence: Revocation of existing domestic waterfront tenure and issue of a new licence](#) (available from industry.nsw.gov.au/lands/your-account/forms) within 28 days of transfer of land, as the existing licence will need to be terminated and a new licence granted to the transferee. No guarantee can be given to the approval of this application until it is fully assessed.

It is at the Minister's discretion whether to automatically transfer licences if they are not fit for purpose. Section 5.23 of the CLMA gives the Minister the power to revoke a licence at will, or with notice to the holder if specified in the licence. This includes reasonably revoking a licence for waterfront access before the licence is automatically transferred, regardless of whether the licence holder has provided consent.

Section 5.27(2) allows a licence holder to apply to the Minister to have the licence revoked on or before the transfer of the other land. If the licence is not revoked before the other land or a lease over it is transferred by its holder (usually via sale), section 5.27(4) requires the licence to continue in force and the transferee becomes liable for any rent, fees or other amounts under the licence.

Licences that will automatically transfer include, but are not limited to, the examples listed in the table below.

Further examples are also shown in Annexure A.

Table 1. Licences and eligibility for transfer

Licence type	Eligible (Y/N)
Licences for domestic waterfront facilities that directly adjoin freehold or leasehold land	Yes
Licences for domestic waterfront facilities that are separated from the benefitting land by a reserve or public road and are within close proximity. <i>**Assessed on case by case basis, waterway strategies & policies, life of the structure, insurance coverage and conditions specific to the waterway and departmental guidelines</i>	Yes**
Licences for domestic waterfront facilities that are not utilised in conjunction with freehold or leasehold land or are not within close proximity	No
Licences for pump sites, pipelines, bore sites, channels or other water supply facilities that deliver water to and/or from freehold or leasehold land	Yes
Licences for infrastructure such as levee banks, drainage or irrigation channels and other structures that benefits freehold or leasehold land.	Yes

Licence type	Eligible (Y/N)
Licences for stand-alone structures and/or facilities that do not provide a benefit to freehold or leasehold land	No
Licences that supply a service to and/or from freehold or leasehold land, such as access, sewerage treatment, electricity supply, telephone or transmission lines	Yes
Licences for grazing and/or agricultural activities that are managed and utilised in conjunction with freehold or leasehold land	Yes
Licences that authorise access or structures that facilitate access across Crown land in order to gain access to freehold or leasehold land	Yes
Licences that authorise a pipeline and pump site on the Murray River, where the benefitting freehold or leasehold land is in Victoria	Yes
Licences where the holder is deceased and the associated freehold or leasehold land changes ownership changes by an executor or similar party via transmission	No
Licences where the associated freehold or leasehold land changes ownership by a mortgagee in possession	No

Please note: Licences will only automatically transfer where the benefitting land is transferred after 1 July 2018.

Transfers of land that occur prior to 1 July 2018 will not be subject to the automatic transfer provisions of the CLMA and therefore proponents will need to lodge the [Licence: Revocation of existing tenure and issue of a new licence](#) or [Licence: Revocation of existing domestic waterfront tenure and issue of a new licence](#) as the existing licence will need to be terminated and a new licence granted to the purchaser. No guarantee can be given to the approval of this application until it is fully assessed.

Transfer of debt and conveyancing searches

When a licence automatically transfers, the transferee will become liable for the payment of rent, fees and any other amounts (including any arrears) on the account at the time of transfer. The department highly recommends that all conveyancing agents and solicitors undertake a Crown land conveyancing search prior to settlement. A conveyancing search will identify the presence of any licences that will automatically transfer and any arrears that are payable. Conveyancing agents will then need to undertake the appropriate adjustments at settlement.

Please note that adjustments will only need to be undertaken for licences that automatically transfer. Where a licence needs to be revoked and a new licence granted to the purchasers, adjustments are not required.

Notations on title

Over time, the department will place notations on the certificates of title for freehold or leasehold land that benefits from an automatically transferable licence. The notation, shown below, alerts conveyancing agents and prospective purchasers that freehold or leasehold land may be associated with a tenure. The conveyancing agent or solicitor should undertake a conveyancing search with the department if the following notation is recorded on the certificate of title of a property being transferred.

Please note that this folio may be associated with a Crown tenure that is subject to payment of an annual rent. For further details, contact the local NSW Department of Industry office at (local office location).

Notifying the department of an automatic transfer

The following procedure explains how to notify the department of an automated transfer.

Step 1—Notify the department of the transfer

Once freehold or leasehold land has transferred, the transferee must notify the department of the transfer within 28 days by lodging the [Automatic Transfer: Notification of Transfer](#) form at the address indicated on the form. Where transferring a domestic waterfront licence use the [Automatic Transfer: Notification of Transfer of domestic waterfront facilities](#). The forms must be accompanied with the fee shown on the form, together with copies of any additional documentation listed on the form.

Step 2—Department receipts fee and updates the account

Once the notification form has been received, the department will receipt the administration fee, confirm the transfer date and update the licence account. The department will also assess any unauthorised encroachments or changes to the authorised use and/or occupation of Crown land under the licence. If the department identifies unauthorised encroachments, use or occupation, the department may undertake compliance action with the new licence holder.

Step 3—Department provides copy of licence terms and conditions

The department will provide the transferee with a copy of the terms and conditions of the licence and an acknowledgement letter. The department will issue an account notice to the transferee separately, advising the balance of the licence account.

For licences issued prior to electronic record keeping, the department may not have a copy of the terms and conditions. In these instances, a new set of terms and conditions will be issued to the transferee.

The department will also send notification to relevant authorities, such as local councils, to notify them of the automatic transfer.

Step 4—Revision of Land Management Strategy (applicable only to grazing licences)

Where a Land Management Strategy forms part of the terms and conditions of a grazing licence, the department will issue a copy of the existing strategy to the new holder. Should the transferee wish to make any amendments to the current strategy, they will be required to complete the 'Request for revision of Land Management Strategy' form and return to the department for consideration. If the department accepts the revised Land Management Strategy, this will then form part of the terms and conditions of the licence.

Revoking or altering a licence prior to transfer

Section 5.23 provides the Minister with the power to revoke a licence where the Minister sees fit. The Minister may reasonably revoke a licence before the licence is automatically transferred, regardless of whether the licensee has provided consent.

Section 7.3 allows the Minister to direct that any of the following be altered or revoked (whether conditionally or unconditionally) on the application, or with the consent of the holder of the holding concerned:

- (a) the conditions attaching to a holding or the land to which a holding relates,
- (b) the purpose of a holding.

Step 1 – Assess land

Undertake assessment of benefitting land prior to transfer.

Check licence purposes, area, unauthorised structures stated in Schedule 2 or Schedule 3 diagram and compare with existing structures using Nearmap/aerial imagery.

Record compliance breach where relevant.

Identify required changes to make the licence fit for purpose.

If licence area increases, a new licence agreement is required.

If licence area decreases, an alteration of licence is required.

Step 2 – Advise transferee of changes

Complete steps to generate the Auto transfer letter requesting consent to vary the licence conditions (to ensure they are fit for purpose) giving 28 days from date of letter to return licence agreement.

If licence holder provides consent within the timeframe, execute amended licence and issue to holder.

Step 3 – Transferee doesn't consent to changes or no response received

If the transferee does not respond within the 28 day timeframe, send the auto transfer reminder letter advising if the signed licence agreement is not received within 14 days the licence will be revoked under section 5.23.

If the transferee does not consent to the changes, determine the reasons why and if valid and required, issue the licence with the original terms and conditions. There may be situations, other than domestic waterfront occupancies, where it may be more appropriate for the licence holder to cease occupation of the Crown land and terminate the licence.

Request termination of licence

Termination of a licence prior to transfer

If a transferee does not want a licence to automatically transfer, the existing licensee may request that the department terminate their licence **before** the transfer of the benefitting land. The existing licensee must submit the [Licence: Termination Statutory Declaration form](#) to the department. If the request is not received and approved by the department prior to the sale or transfer of the benefitting land, the licence will automatically transfer to the transferee, if all automatic transfer criteria are met.

The existing licensee must pay any outstanding amounts on the licence and may have to restore the licence area to its former condition, including the removal of any structures constructed upon the land and any fencing of the land prior to the licence being terminated. A field inspection may also be undertaken to ensure that all requirements have been met.

The following procedure explains what happens when a transferee does not want a licence to automatically transfer to the purchaser of benefitting land. It outlines the steps that are to be taken by the existing licensee prior to the settlement of the transfer of the benefitting land.

Note: Submitting the Licence: Termination Statutory Declaration form does not guarantee termination of the licence. A licence is not terminated until the department has assessed the request and issued written confirmation of its decision.

Step1—Request termination of licence

Prior to settlement or transfer of benefitting land, the existing licensee must request a termination of their licence by lodging a [Licence: Termination Statutory Declaration](#) form along with photographs of the licenced area.

Step 2—Department assesses termination request

The department will assess the request for termination and contact the licensee if they need to carry out any further actions before the licence is terminated. This may include paying outstanding amounts on the licence, removing any structures from the land or remediating any damage to the land.

Removing structures from Crown land may also require an approved development application from the local council. You will need to make enquiries with your local council to find out if this applies to your situation. We may need to do field inspection before the licence is terminated.

Note: if the benefitting land transfers before the licence is terminated, then the licence will automatically transfer. The transferee will then become liable for the licence and will have to apply for a termination if they do not wish to hold the licence.

Step 3—Department terminates licence

The department will notify the licensee in writing once the licence has been terminated. The department will also notify the relevant authorities, such as local councils, to advise that the termination has been processed. Once written confirmation has been received, settlement of the transfer of the property can proceed.

Definitions

Please refer to the 'Licensing of Crown land' policy (available at industry.nsw.gov.au/policies) for definitions of terms used in these guidelines. Table 2 defines other terms that are not referenced in the policy.

Table 2. Terms and definitions

Word	Meaning
benefitting land	Freehold or leasehold land held which is benefitted by or from the presence of an existing Crown land licence
CLMA	The <i>Crown Land Management Act 2016</i>
freehold	Land held under freehold title (or as fee simple)
holder	The person/s or entity referred to as the holder of a licence
holding	means each of the following— <ul style="list-style-type: none"> any lease or licence under this Act (including one that is a continued holding), any incomplete purchase, any other continued holding (except a permit or permission).
leasehold	Crown land held under a Crown lease or a weekly tenancy arrangement with the Crown Land Division of the NSW Department of Planning, Industry and Environment. Leasehold does not include rental tenancies of freehold land or the subleasing or sublicensing of a Crown lease.
licence	An authority issued over Crown land and/or Crown roads. The term 'licence' includes Permissive Occupancies granted under prior legislation, which are referred to as licences in accordance with the CLMA.

Word	Meaning
licensee	The person or entity to whom Crown land is licenced.
Minister	The minister administering the <i>Crown Land Management Act 2016</i> and his/her delegate
tenure	A lease, licence or permit issued by the department over Crown land or a Crown road.
transferee	The person or entity to whom freehold or leasehold land has been transferred.

Related documents

- *Crown Land Management Act 2016*
- Licensing Crown Land Policy
- Domestic waterfront licences—guidelines.

Annexures

Table 3. Annexures

Letter	Title	Details
A	Automated transfer scenarios	Describes the scenarios in which a licence may or may not automatically transfer.

Annexure A—Automated transfer scenarios

This annexure details the example scenarios in which a licence may or may not be automatically transferable.

Scenario 1

Mr and Mrs Smith own a property on the Georges River and they also hold a domestic waterfront licence for the structures constructed on Crown land that adjoin their land. These structures facilitate access for Mr and Mrs Smith to the water and contribute to the collective use and enjoyment of the Georges River by the public.

Mr and Mrs Smith have recently sold their property and this domestic waterfront licence **will** automatically transfer at the time of settlement because of the benefit it provides to this property.

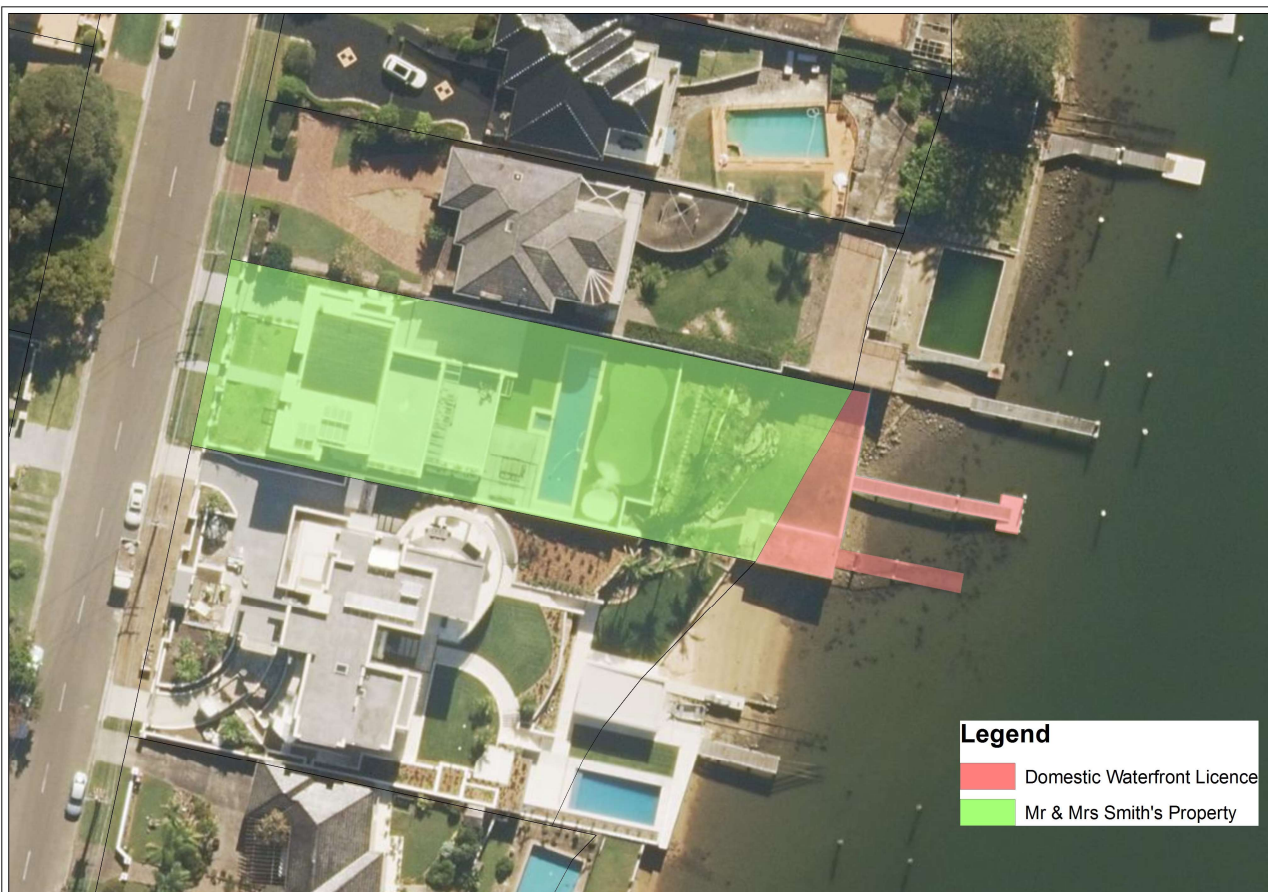


Figure 1. Mr & Mrs Smith's property and the adjoining domestic waterfront licence area

Scenario 2

Mr Jones owns a property on the Mid-North Coast that does not adjoin a waterway; however he does hold a domestic waterfront licence for structures constructed on Crown land at a nearby waterway.

Mr Jones has since sold his property; however this licence **will not** automatically transfer as it does not provide a benefit to Mr Jones' property.



Figure 2. Mr Jones' property in relation to the domestic waterfront licence area

Scenario 3

Mrs Snow owns a property in the Northern Tableland that she grazes cattle upon. Mrs Snow also holds a grazing licence over Crown land that is within and adjoining her property. Mrs Snow manages her property and grazing licence jointly by rotating the stock between paddocks on her property and the Crown land.

As the land is jointly managed, the grazing licence will automatically transfer when Mrs Snow sells her property.

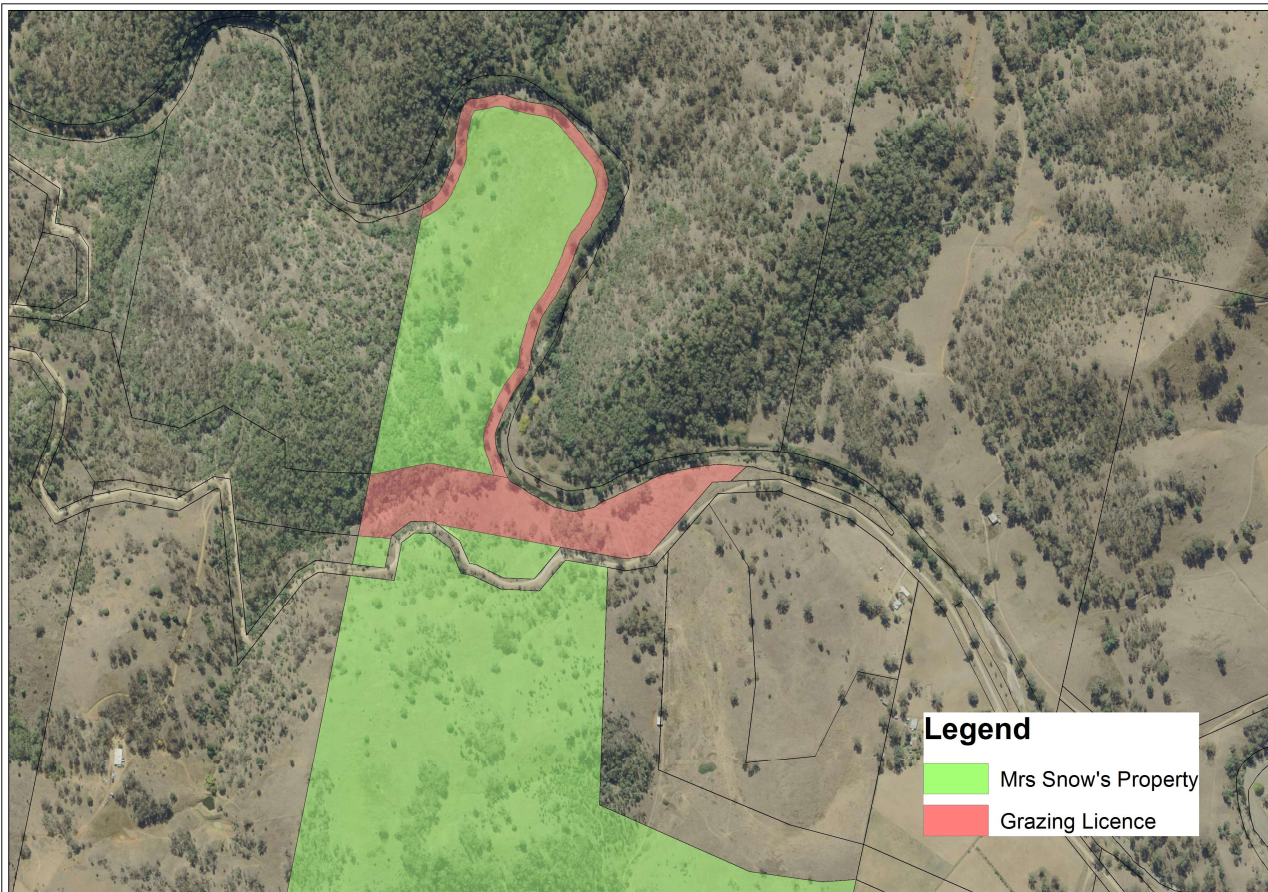


Figure 3. Mrs Snow's property and the adjoining grazing licence area

Scenario 4

Grazing Holdings 123 Pty Ltd owns a property in north western NSW that is used for pasture and the grazing of the stock. Grazing Holdings 123 Pty Ltd is also a part of a water scheme that benefits a number of property owners in the region. The water scheme holds a Crown land licence for a bore site and network of pipelines that are located on Crown land.

Although this licence provides a benefit to the property owned by Grazing Holdings 123 Pty Ltd, it **will not** automatically transfer as the licence is held in the name of the water scheme.

Scenario 5

Mr and Mrs Citizen own a property that is not connected to town water and have a pump and pipeline that draws water from the nearby waterway. As part of the pump and pipeline are on Crown land, Mr and Mrs Citizen have a Crown land licence.

As this licence provides a benefit to Mr and Mrs Citizen's property, this licence **will** automatically transfer when the property is sold.



Figure 4. Mr and Mrs Citizen's property in relation to the pump site and pipeline licence area

Scenario 6

Mr White owns several lots which are irrigated for an orchard. He also holds a Crown land licence because the pump site and pipeline are on nearby Crown land. Mr White sells one lot that is being supplied with water to Mr Grey while Mr White retains the other lots.

This licence is eligible to automatically transfer. As the licence will now benefit both Mr Grey and Mr White, the licence will automatically transfer to both names.

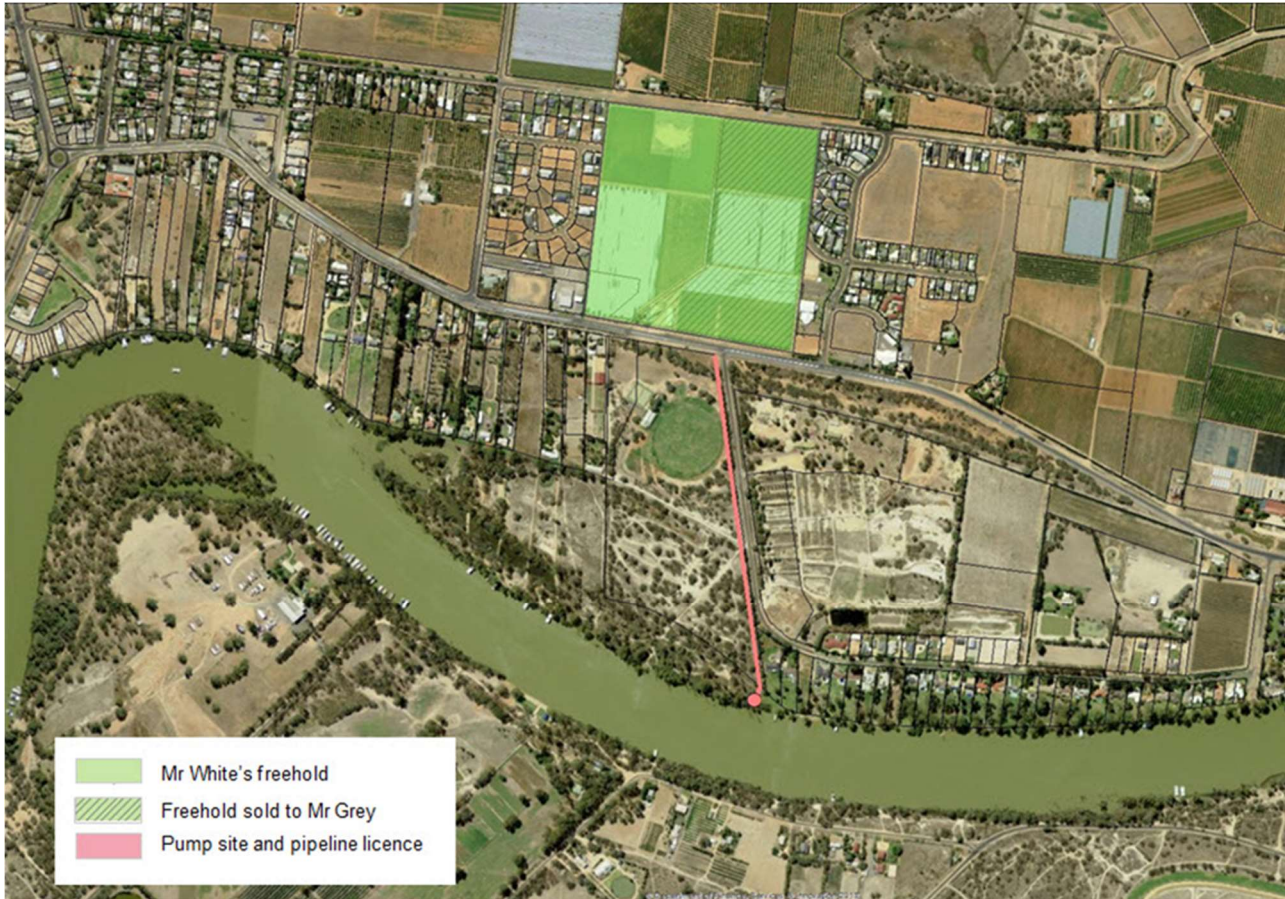


Figure 5. Mr White's property in relation to the pump site and pipeline licence area

Scenario 7

Mr and Mrs Smith own a house block and they also hold a licence for the sole purpose of grazing. This licence does not benefit the house block and therefore is not covered by section 5.27 of the Crown Land Management Act. The licence **will not** automatically transfer.



Figure 6. Mr and Mrs Smith's property in relation to the grazing licence area