

Transfer of a western lands lease

The consent of the Minister administering the *Crown Lands Management Act 2016* (or his delegate) is required prior to the transfer of a Western Lands Lease.

Minister's consent to the transfer is required prior to the registration of any dealing with NSW Land Registry Services. If a Real Property Transfer Form is lodged with NSW Land Registry Services to affect the transfer of a restricted Western Lands Lease without the letter of consent, the dealing will be requisitioned.

Applications

Applications for the consent of the Minister to the transfer of a lease must be lodged with the Department of Industry-Lands & Water on the approved form accompanied by the application fee.

The application form must be completed by both the Vendor and Purchaser and accompanied by a certified copy of the contract of sale (including any special conditions attaching to the contract).

If a contract has not been entered into then a certified copy of the Real Property Transfer form should be forwarded instead.

It is in the interests of all parties to a transfer to ensure that an application for Ministers Consent is made as soon as possible after contracts for the sale of the property have exchanged. This will ensure that the department's investigation of the proposal does not delay settlement of the sale.

Investigations

Every application received is appropriately investigated. Those involving the transfer of residential, business or similar type leases are generally straight forward and may be processed within three weeks of receipt unless an inspection is required.

Investigation of those applications involving the transfer of rural leases will generally involve a physical inspection of the property by a departmental officer and the preparation of a report on their findings. This requirement leads to investigation times for rural transfers exceeding that of residential and business transfers by several weeks.

On inspection of a rural property, the department's officer will make observations of the lessee's compliance with lease conditions. These conditions include maintenance of boundary fencing, weed and feral animal control and maintenance of native vegetation. They will also make observations on compliance with conditions attaching to any cultivation consent or clearing licences that have been issued over the lands.

If during the inspection a breach of lease, licence or consent conditions is identified, the department may choose to either:

- refuse consent to transfer
- withhold consent to transfer pending certain specified works being undertaken
- grant consent to transfer subject to specified undertakings being given by the parties to the transfer.

If the prospective purchaser indicates in the application that they intend on using the Crown land for a purpose other than the stated purpose of the lease (e.g. agricultural pursuits where the lease purpose is grazing), a change of purpose will be necessary prior to the transfer.

The purchaser may elect to pursue the change of lease purpose after the transfer has been completed providing they acknowledge that the transfer has been approved on the basis that the lands can only be used

for the granted lease purpose. The outcome of an application to change the lease purpose cannot be confidently predicted until the proposal is properly assessed.

Western Lands Lease cannot be transferred in arrears

Subject to the *Crown Lands Management Act 2016* a Western Lands Lease cannot be transferred if there is any debt to the Crown outstanding on the lease. In order for an application for Minister's consent to be considered all debt must be paid in full.

Company ownership of Western

The transfer of a lease to a company is possible provided the following information is forwarded with the application.

- The name, address and contact number (business and after hours) for the public officer of the company.
- A current company search.

Associations purchasing Western Lands Leases

If an association (incorporated under the *Associations Incorporation Act 2009* wishes to purchase a Western Lands Lease, evidence must be provided to the department that the association's constitution has been amended to include a number of special clauses.

These clauses make provision for the department to maintain contact details for the association's public officer and reversionary provisions for the lease in the event that the association becomes defunct.

Trustee ownership of Western Land Leases

s. 82 of the *Real Property Act 1900* restricts the Registrar General from registering a trust in the first schedule of a Certificate of Title.

There are however provisions under *s. 82 (3)* of the *Real Property Act 1900* to register the trust in a form of caveat. The title is transferred directly into the names of the trustee (i.e. Trustee Pty Ltd) and the trust is registered in the form of a caveat. The Registrar-General keeps a copy of the trust deed which is checked before any further dealings are registered.

The trustee's records would have to indicate that the land was purchased for the Trust. An application form for Minister's Consent to Transfer is to be completed by the vendors and the trustee(s). The Contract of Sale and Transfer documents should not make any reference to the trust arrangement.

For current fees, please refer to fees on the department's website or contact the department.

More information

T: 1300 886 235 (Australia wide)
E: enquires@crowland.nsw.gov.au
W: www.industry.nsw.gov.au/lands

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