

Crown land conveyancing searches

What information does a Crown land conveyancing search provide?

A Crown land conveyancing search will disclose the following information about Crown land tenures at a given date:

- Crown tenure type and status
- registered holders
- lot and DP (deposited plans) identifiers
- primary due date
- annual gross rental
- current amount due (only available where the debt transfers with the land).

What is a tenure?

Crown tenure is a term used to describe any lease, licence (including permissive occupancies), incomplete purchase or enclosure permit administered under the *Crown Land Management Act 2016* (the Act).

Why is a search necessary?

When purchasing a property, especially waterfront land or rural properties adjacent to Crown land or Crown roads, or land that is subject to a Crown tenure, it is important to undertake a Crown land conveyancing search to determine the details of the Crown tenure the land is subject to or that attach to/or are associated with the property being transferred.

What is the application process for a conveyancing search?

A Crown land conveyancing search application form is available from the website of the NSW Department of Industry—Lands & Water (the department), www.industry.nsw.gov.au/lands. The application form must be lodged with the department with the relevant fee and all mandatory fields must be completed. The application fee for conveyancing searches changes on 1 July each year. Please ensure you visit the department's website for the current application form and associated fee.

Search results will not be provided unless full payment has been received. Monthly account holders can forward the completed application form directly to searches@crowmland.nsw.gov.au.

For information on how to become a monthly account holder, please contact our accounts team accounts@crowmland.nsw.gov.au

Note: A separate application is required for each individually rateable property.

Who can apply for a Crown land conveyancing search?

Solicitors, conveyancer and conveyancing agents are able to apply for a conveyancing search.

A valid reason for conducting the search must be provided on the application form and may include the sale or purchase of land. Other reasons for a search must be specified on the application form and an assessment will be made on receipt of the application as to whether the search will be conducted on those grounds.

What is an enclosure permit?

An enclosure permit (EP) is an authorisation issued by the department to an owner of an adjoining property and allows the Crown road to be:

- used for the grazing of stock
- fenced into the owner's private land.

An EP does not give a person ownership of the Crown road or allow them to restrict access along the Crown road.

When a property enclosing a Crown road is sold, the EP remains in force and the new owner/s of the land are liable for payment of the rent, including any arrears of rent and interest.

What is a Crown land licence?

A licence is an authority granted by the department under the Act, which by law, gives permission to occupy and use Crown land for a specified purpose/s. These include waterfront structures, grazing, water supply and access and many more. Licences are subject to conditions that are set out in the licence agreement with additional special conditions included relative to the purpose of the licence and specific environmental outcomes.

There are various ways to transfer or obtain a new licence. Information and the applicable forms will be issued with a conveyancing search. All applications for licences of Crown land are considered on their individual merits and, until approved, no guarantees can be given that an application will ultimately be successful.

What is an automatically transferable licence?

Licences that provide a benefit to associated freehold or leasehold land are automatically transferred as at the date of transfer of the associated land.

Examples of these licences include some domestic waterfront facilities, water supply and access facilities, access tracks or encroachments. It is at the discretion of the department to determine if a licence provides a benefit to freehold or leasehold land.

The purchaser of freehold or leasehold land (the transferee) will become liable for any rent, fees, or other amounts related to the licence, including any arrears, from the date of transfer of the associated freehold or leasehold land. Conveyancing agents must undertake adjustments at settlement for licences that automatically transfer.

If a security deposit exists on the licence account, the security will be returned to the prior holder subject to compliance with terms and conditions of the licence. A replacement security may then be requested from the transferee.

Conveyancing search results will specify whether a licence automatically transfers or otherwise.

Upon transfer of the associated freehold or leasehold land, it is the responsibility of the transferee to notify the department within 28 days. Notification should be provided via the *Automatic Transfer—Notification of Transfer* form, available from industry.nsw.gov.au/lands/use/licences.

If the current licence holder does not consent to the transfer of the licence, a request to terminate the licence must be submitted via the *Licence: Termination Statutory Declaration* form, available from industry.nsw.gov.au/lands/use/licences. The termination must be approved by the department **prior** to the transfer of associated freehold or leasehold land, otherwise the licence will automatically transfer.

A request for termination should be submitted in a timely manner to enable the department to assess the request prior to the associated freehold or leasehold land transferring.

What licences do not automatically transfer?

A licence will not automatically transfer in the following circumstances:

- The licence does not provide a benefit to freehold or leasehold land.
- The licence is not held in the exactly the same name as the associated freehold or leasehold land.
- The ownership of associated freehold or leasehold land is being changed by transmission and not a transfer. A transmission may occur where the ownership of the land is transmitted to an executor, beneficiary, mortgagee or other third party.

In these circumstances an application for the revocation of an existing licence and issue of a new licence to the purchaser/s must be submitted to the department. All applications will be considered on their individual merits and no guarantees can be given that an application will be successful.

Adjustments do not need to be made at settlement for licences that do not automatically transfer.

What is a Western Lands lease?

Western Lands leases (WLL) are granted for a variety of purposes including residence, business, grazing, agriculture, cultivation, conservation and farm tourism. A WLL may have more than one purpose.

The holder of a WLL may not transfer their lease if there is any debt owing to the department. **Any debt must be paid to the department, in full, prior to settlement.**

Minister's consent is required for the transfer of all WLLs, except where Minister's consent has been granted to remove the restriction on dealings from the title.

Rent on rural WLLs is calculated on the total area of all WLLs held by the lease holder and also takes into account the use of the land.

Rent is due on 1 July annually and is payable in advance.

What is a perpetual lease?

A perpetual lease is a form of tenure held over Crown land authorising the occupation and usage of the land. The holder of a perpetual lease may not transfer their lease if there is any debt owing to the department. **Any debt must be paid to the department, in full, prior to settlement.**

In most cases, the consent of the Minister for Lands and Forestry is required to transfer these types of Crown tenures. Upon transfer the purchaser becomes responsible for payment of annual rental and compliance with any lease conditions.

Perpetual leaseholders may be eligible to purchase the land associated with their lease. Interested leaseholders should contact the department for further information.

What is an incomplete purchase?

An incomplete purchase is a former lease that is in the process of being purchased.

The holder of an incomplete purchase may not transfer their incomplete purchase if the annual instalments are in arrears. **Any debt must be paid to the department, in full, prior to settlement.**

The Act requires that when an incomplete purchase is transferred, the balance of purchase monies must be paid within three months from the date of settlement. Schedule 4 Division 3 Section 24(5) of the Act lists the exceptions to the requirement for payment of the purchase monies upon transfer.

What are the border fence maintenance rates?

Land holders in the Western Division with lands totalling at least 1,000 ha are charged annual border fence maintenance rates.

These rates apply to all tenures including Western Lands leases, freehold, Crown leases, licences and other occupations. Rates are determined by the Border Fence Maintenance Board and are due annually on 1 January.

As the border fence maintenance rates apply to the land, all rates including arrears must be paid in full prior to the transfer of freehold or leasehold land to which these rates apply.

When is minister's consent required?

Some leases, including perpetual leases, Western Lands leases and general leases, may have restrictions on dealings that prevent NSW Land Registry Service from recording a transfer of an affected title until minister's consent has been granted. Some general leases may also have restrictions on mortgage and sub-leasing.

The relevant minister's consent application forms will be issued with a conveyancing search.

More information

- Email: searches@crowland.nsw.gov.au
- Web: www.industry.nsw.gov.au/lands
- Phone: 1300 886 235

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