



CROWN LAND MANAGAGEMENT

Automatic licence transfer—guidelines

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Introduction

The NSW Department of Industry 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. In particular circumstances when ownership or use of other land is transferred, certain Crown land licences can automatically transfer as part of the process when this provides a benefit to transferee.

Overview

These guidelines provide support and procedural guidance about the automatic transfer of licences. They also specifically deal with the eligibility of licences that automatically transfer and the precautions that purchasers of land and conveyancing agents must take.

Assistance

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

Automatic licence transfers

Under Section 5.27 of the *Crown Land Management Act 2016* (CLM Act), Crown land licences that provide a benefit to freehold or leasehold land (referred to from now on as 'benefitting land') will automatically transfer when the benefitting land changes hands.

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

For a licence to be eligible for automatic transfer:

- the licence must provide a benefit to freehold or leasehold land (this land does not need to adjoin the licenced area or be located within New South Wales)
- the licence must be held in the same name(s) as the associated freehold or leasehold land
- ownership of the benefitting land must be changed by a transfer and not a transmission. A transmission may occur where the ownership of land is transmitted to an executor, beneficiary, mortgagee or other third party. This would not be eligible for an automatic transfer as it is not covered by section 5.27 of the CLM Act.

Licences that do not meet all of the above criteria will not automatically transfer and the transferee must lodge a 'Licence: revocation existing tenure and issue new licence application' form (available from industry.nsw.gov.au/lands/your-account/forms) with the department, as we will need to terminate the existing licence and grant a new licence to the transferee. We cannot guarantee that we will grant the licence until we have fully assessed the application.

Examples of licences that do and do not automatically transfer are shown in the Table 1, but are not limited to this list. Further examples are also shown in Annexure A.

Table 1. Licences and eligibility for transfer

Licences that automatically transfer	Licences that do not automatically transfer
<ul style="list-style-type: none"> • Licences for domestic waterfront facilities that directly adjoin freehold or leasehold land • Licences for domestic waterfront facilities that are separated from associated freehold or leasehold land by a Crown reserve, council land or a road. • Licences for pump sites, pipelines, bore sites, channels or other water supply facilities that deliver water to and/or from freehold or leasehold land • Licences for infrastructure such as levee banks, drainage, irrigation or other similar structures that provide a benefit to freehold or leasehold land • Licences that supply a service to and/or from freehold or leasehold land, such as access, sewerage treatment, electricity supply, telephone or transmission lines • Licences for grazing and/or agricultural activities that are managed and used in conjunction with freehold or leasehold land. • Licences that authorise access or structures that facilitate access across Crown land in order to gain access to freehold or leasehold land. • Licences that authorise a pipeline and pump site on the Murray River, where the benefitting freehold or leasehold land is in Victoria 	<ul style="list-style-type: none"> • Licences for standalone structures and/or facilities that do not provide a benefit to freehold or leasehold land • Licences for domestic waterfront facilities that are not used in conjunction with freehold or leasehold land • Licences where the holder is deceased and the associated freehold or leasehold land changes ownership changes by an executor or similar party via transmission • Licences where the associated freehold or leasehold land changes ownership by a mortgagee in possession

Licences will only automatically transfer where the benefitting land is transferred by the holder after 1 July 2018.

Transfers of land that occurred before 1 July 2018 are not subject to the automatic transfer provisions of the CLM Act. Therefore proponents will need to lodge a 'Licence: Revocation of existing tenure and issue of a new licence' from (available from industry.nsw.gov.au/lands/your-account/forms) with the department. We will terminate the licence and, if appropriate, grant a new licence granted to the purchaser. We cannot guarantee that we will grant the licence until we have fully assessed the application.

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. We highly recommend that all conveyancing agents and solicitors undertake a Crown land conveyancing search before settlement. This will identify the presence of any licences that may automatically transfer and any arrears payable. Conveyancing agents can then undertake the appropriate adjustments at settlement.

Adjustments are only required for licences that automatically transfer. Where a licence is revoked and a new licence granted to the purchasers, no adjustments are needed.

Notations on title

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

When a licence automatically transfers, the transferee must notify us of the transfer of the land within 28 days by submitting the 'Licence: automatic transfer notification' form (available from industry.nsw.gov.au/lands/your-account/forms) along with the associated fee.

The following procedure explains what happens when you 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 us of the transfer within 28 days by lodging the 'Licence: automatic transfer notification' form at the address shown on the form. The form must be accompanied with the fee, together with copies of any additional documentation listed on the form.

Step 2—Department issues a receipt for the fee and updates the account

When we receive the notification form, we will issue a receipt for the administration fee, confirm the transfer date and update the licence account. We will also assess any unauthorised encroachments or changes to the authorised use and/or occupation of Crown land under the licence. If we identify unauthorised encroachments, use or occupation, we may take compliance action with the new licence holder.

Step 3—Department provides copy of licence terms and conditions

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

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

We will also send notifications to relevant authorities, such as local councils, to let them know about 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, we will issue a copy of the existing strategy to the new holder. If the transferee wants to amend the current strategy, they must complete the supplied 'Request for revision of Land Management Strategy' form and send it 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.

Termination of a licence before transfer

If a transferee does not want a licence to automatically transfer, the existing licensee may ask us to terminate their licence before the transfer of the benefitting land. The existing licensee must submit the 'Licence: termination statutory declaration' form (available from industry.nsw.gov.au/lands/your-account/forms) to the department. If we do not receive and approve the request before 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. This includes removing any structures built on the land and any fencing of the land before the licence is terminated. We may carry out a field inspection to make sure the existing licensee has met all the requirements.

The following procedure explains what happens when a transferee does not want a licence to automatically transfer to the purchaser of associated benefitting land. It outlines the steps the existing licensee needs to take before the settlement of the transfer of the benefitting land.

Note that submitting the 'Licence: termination statutory declaration' form does not guarantee the licence will be terminated. A licence is not terminated until the department has assessed the request and issued written confirmation of its decision.

Step 1—Request termination of licence

Before the settlement or transfer of benefitting land, the existing licensee must request a termination of their licence by sending us a 'Licence: termination statutory declaration' form (available from industry.nsw.gov.au/lands/your-account/forms), along with photographs of the licence area.

Step 2—Department assesses termination request

We 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 that 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

We will notify the licensee in writing when we have terminated the licence. We will also notify the relevant authorities, such as local councils, to tell them we have processed the termination. Once the licensee has received written confirmation, settlement of the property transfer 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
CLM Act	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
leasehold	Crown land held under a Crown lease or a weekly tenancy arrangement with the Lands and Water Division of the NSW Department of Industry. 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 CLM Act
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.

Annexure A—automated transfer scenarios

This annexure details 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 structures built on Crown land that adjoins their land. These structures allow Mr and Mrs Smith to access the water and they contribute to the public's use and enjoyment of the Georges River.

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.

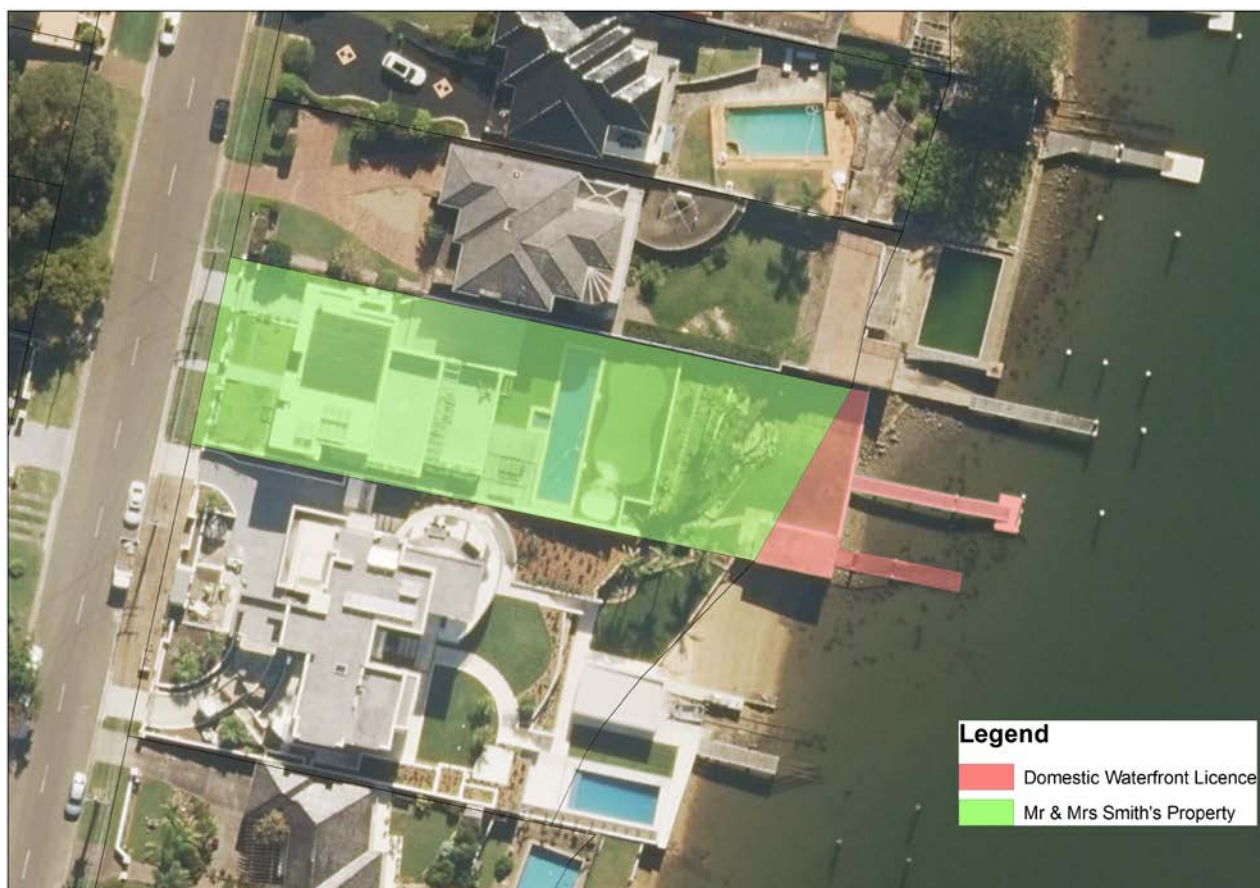


Figure 1. Mr and Mrs Smith's property and the adjoining domestic waterfront licence area

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 built on Crown land at a nearby waterway.

Mr Jones has since sold his property, but 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 on which she grazes cattle. 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.

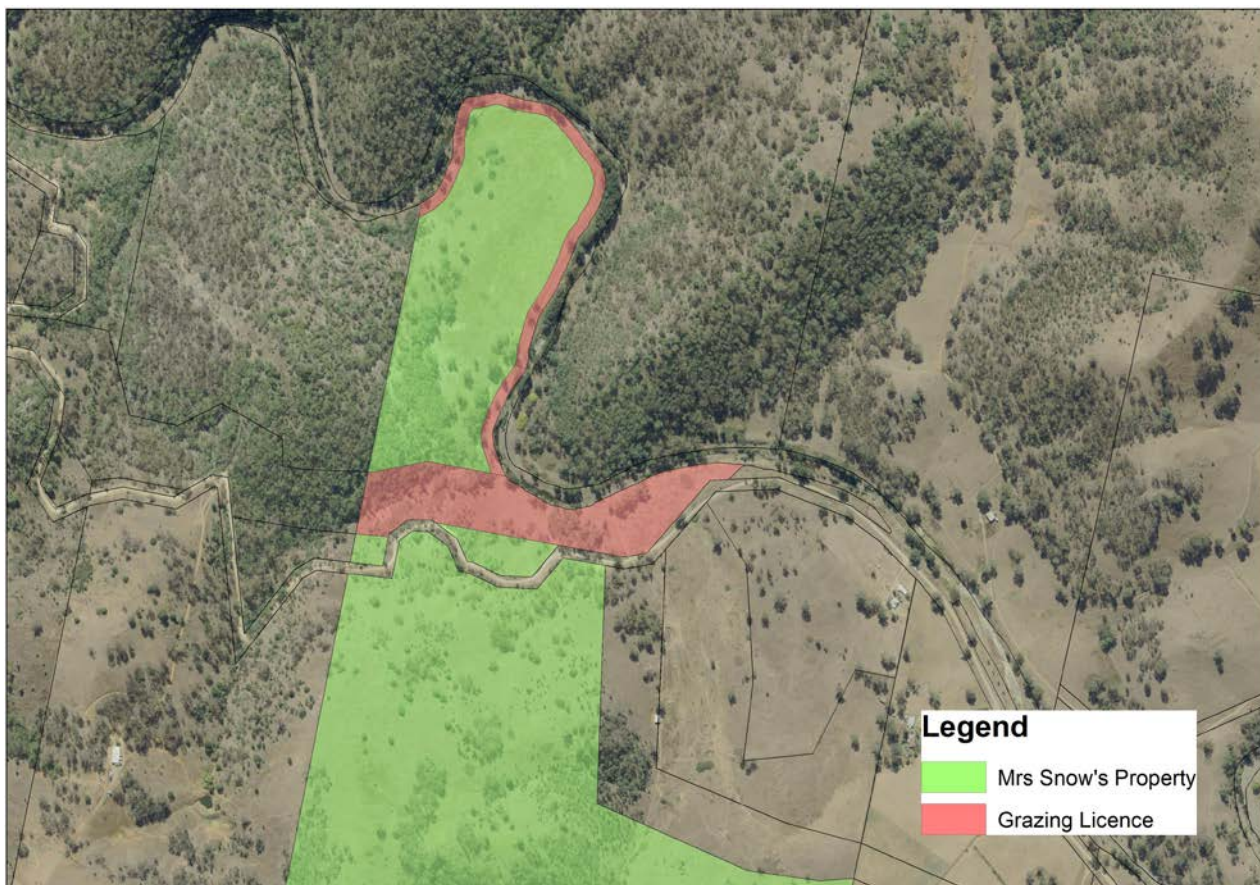


Figure 3. Mrs Snow's property and the adjoining grazing licence area

Scenario 4

Grazing Holdings 123 Pty Ltd owns a property in north western NSW that is used for pasture and stock grazing. 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 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 a 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.

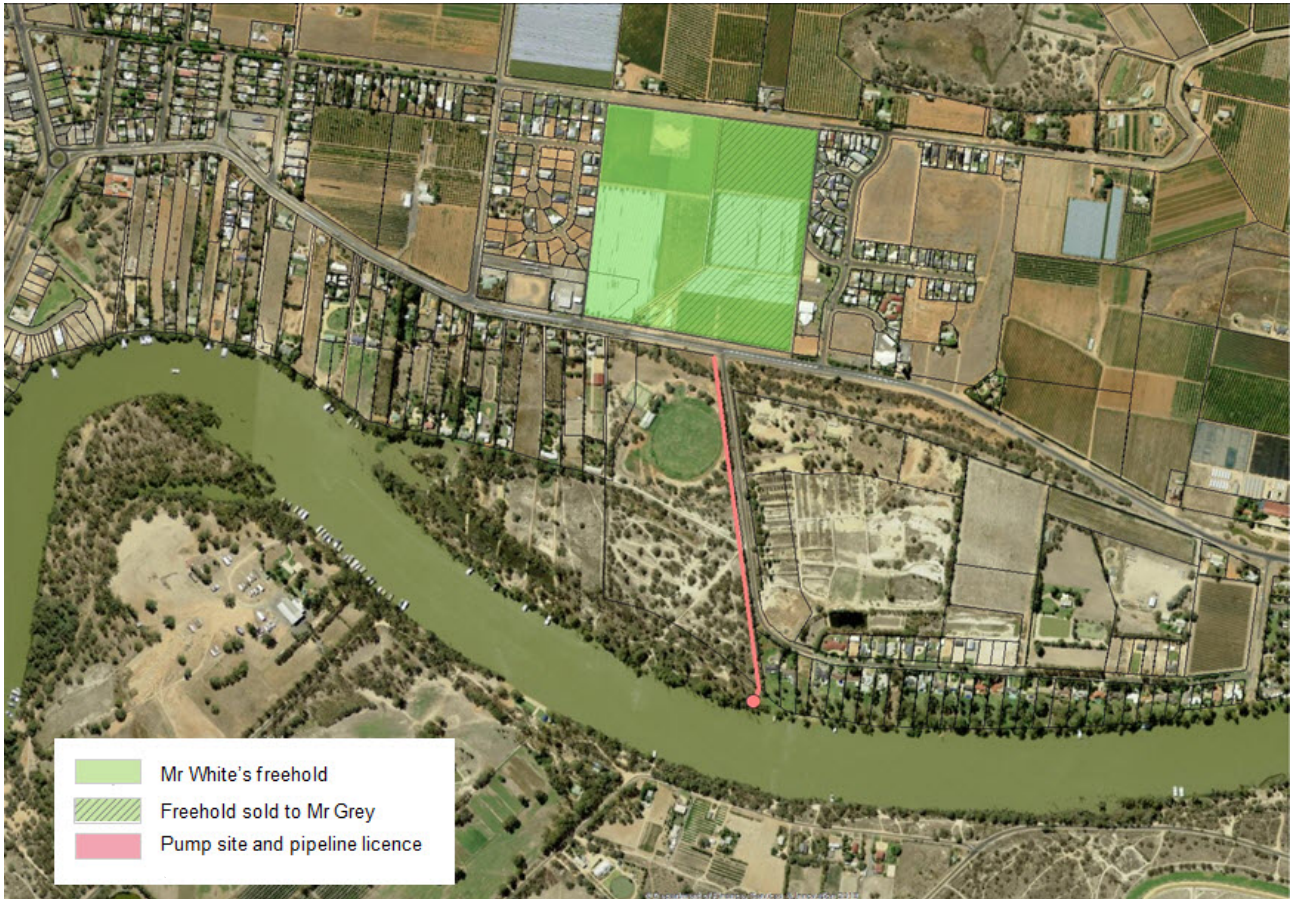


Figure 5. Mr White's property in relation to the pump site and pipeline licence area

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