

Transfer of a Western Lands Lease

November 2015

The consent of the Department of Primary Industries - Lands Minister administering the *Western Lands Act 1901* (or his delegate) is required prior to the transfer of a Western Lands Lease.

General

Provision exists under s.18G of the *Western Lands Act 1901* for an application to be made for the consent of the Minister to deal in leased lands.

This action is necessary prior to the registration of any dealing involving the transfer of the lease with Department of Primary Industries – Lands (the Department). Any transfer of this nature lodged with the Department will not be registered unless it is accompanied by evidence in the form of notice that Ministers Consent has been granted.

Applications

Applications for the consent of the Minister to the transfer of a lease must be made 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 (the dealing that will give effect to the transfer on lodgement with the Land & Property Information NSW) 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 Rangeland Management 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 Rangeland Management 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.

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.

If an Australian registered company wishes to purchase a Western Lands Lease it may be necessary for the registered lessee to alter the standard conditions attaching to the lease.

These conditions will require the incoming lessee to keep the Western Lands Commissioner advised of contact details for the company secretary, any change in the company shareholding and provide company financial statements on request. This matter can be dealt with simultaneously with the consent application.

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.

Existing notices

Provision exists under the *Western Lands Act 1901* for the Western Lands Commissioner to impose Notices on lessees to undertake or to refrain from certain activities.

These activities could include the de-stocking of certain areas or the rehabilitation of damaged or degraded areas. These Notices may be in place when a lease is offered for sale. If this is the case, these restrictions and or requirements may be re-issued to any incoming leaseholder for some period into the future.

For current fees, please refer to the [Fee schedule](#) on the Department's website or contact the Department.

More information

For more information, please contact the Department:

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T: 1300 886 235 (Australia wide)

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