



Transfer of a Western Lands Lease

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

General

Provision exists under Section 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 the Department of Lands. Any transfer of this nature lodged with the Department of Lands 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 (Form 14), 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 (the dealing that will give effect to the transfer on lodgement with the Department of Lands) 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.

Investigation of those applications involving the transfer of rural leases will generally involve a

physical inspection of the property by a departmental Compliance Officer and the preparation of 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 Compliance 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, or
- withhold consent to transfer pending certain specified works being undertaken, or
- 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 lands for a purpose other than the stated purpose of the lease (eg 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. Further details on the process to change a lease purpose is contained the department's information sheet titled 'Alteration of purpose or conditions of a Western Lands Lease'.

If the application is approved, a letter of consent will be returned to the lodging party. The letter of consent

is to be lodged at the Department of Lands along with the necessary transfer documents.

Company ownership of Western Lands Leases

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 statement that there is no foreign shareholding in the company or alternatively evidence of the Foreign Investment Board's approval to the foreign ownership.
- A current company search.
- Information as to what resources the company has available that will allow it to exercise its stewardship over the land and meet the associated land management costs.

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. Enquiries of this nature should be directed to the Far West Regional Office of the department.

Associations purchasing Western Lands Leases

If an Association (incorporated under the Associations Incorporation Act 1984) 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. The Far West Regional Office of the department can provide further details on this matter.

Trustee ownership of Western Land Leases

Section 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 Section 82 (3) of the Real Property Act to register the trust in a form of caveat. The title is transferred directly into the names of the trustee (ie. 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.

The application form for Minister's Consent to Transfer (Form 14) is to be completed by the vendors and the trustee(s). The Form 14, Contract of Sale, and Transfer documents should not make any reference to the trust arrangement.

Existing notices

Provision exists under the Western Lands Act 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.

Cost

The application fee for Consent to Transfer is currently \$186 and is payable on lodgement.

For further information and applications forms contact the Department of Natural Resources PO Box 1840, Dubbo NSW 2830 or telephone 02 6883 3000.

Authorised by G Wise
Western Lands commissioner
December 2004

For more information

For more information on Western Division issues contact your local Department of Natural Resource office.

Far West Regional Office – Dubbo	(02) 6883 3000
Bourke	(02) 6872 2144
Broken Hill	(08) 8087 8400
Cobar	(02) 6836 1575
Condobolin	(02) 6895 2033
Walgett	(02) 6828 1272

Visit the DNR website: www.dnr.nsw.gov.au

Note: This information does not constitute formal legal advice.