

Exit from a co-held access licence (s74)



Under The *Water Management Act (2000)* s74, a co-holder in a water access licence may apply to exit the licence. The holding in the licence is extinguished and one (or more) new water access licences are granted to reflect the extinguished entitlements. This achieves the same outcome as subdivision and transfer dealings, but in one transaction.



Note

WaterNSW can provide general advice on water access licence dealings. Please seek independent advice that considers your specific circumstances.

When might this dealing apply?

Under the *Water Management Act (2000)*, an application to exit may be made with the consent of all the co-holders in water access licence; with the consent of co-holders who hold a 'majority (share) of the holdings' in the water access licence; or following an order of the Supreme Court. Exit from a co-held licence takes effect when the new water access licence is recorded in the water access licence register.

To surrender a holding in a co-held water access licence, a dealing to exit from the co-held water access licence must occur first. The new water access licence created by the dealing, can then be surrendered.

Limitations to keep in mind.

The ability of the exiting co-holder to reach agreement with fellow co-holders (consent) impacts on how this transaction is structured and drives the allocation of the share component, the extraction component (including any restrictions) and distribution of water in the water allocation account (including any allocations from previous years).

Schedule 1B of the *Water Management Act (2000)* sets out the provisions for each component of the new water access licence and the original water access licence following the exit of the holding/s depending on the consent detailed by the application to exit.

Consent types recognised by the *Water Management Act* include:

- **All co- holders consent** – If all co-holders consent to the application, distribution of the share component, the extraction component, and water in the water allocation account is by private agreement.

- **Majority consent** – If co-holders with a majority share (more than 50%) of the holdings consent to the application, the share component, extraction component and water in the water allocation account is distributed between the original licence and the new licence in the same proportions as the extinguished holding/s have to the original water access licence. This requirement protects the interests of the co-holder/s who did not consent to the application.
- **Supreme Court order** – If the application to exit from a co-held water access licence is made in accordance with an order of the Supreme Court, the share component, extraction component and water in the water allocation account of the original licence is distributed between the original licence and the new licence according to the order.

For detailed examples of how to calculate entitlements see the [Exit from a co-held access licence appendix](#).

A dealing to exit from a co-held licence cannot be recorded in the Water Access Licence Register if the holding/s to be extinguished are subject to a security interest, and the holder of the security interest has not provided consent to the dealing.

When is this dealing type prohibited?

An application to exit a co-held water access licence cannot be made if there is any money due for the licence, including civil penalties; the co-holders hold the licence as joint tenants; the dealing is prohibited by the *Access Licence Dealing Principles Order 2004* or other dealing rules; or the water access licence is suspended.

How do I go about it?

Use the [Exit from a co-held water access licence form, guide](#) and [Exit from a co-held access licence appendix](#). It is recommended you discuss your application with WaterNSW before submission.

You will need to indicate consent (or otherwise) of the co-holders of the water access licence. Consent determines distribution of entitlements – share

component, extraction component and water allocation account balance.

The new water access licence is subject to the same mandatory conditions as the original. Different discretionary conditions may be imposed.

The nominated water supply work on the new licence is the same as the original water access licence, unless the nomination of the water supply work is withdrawn, a different work is nominated or an order of the Supreme Court provides otherwise. The nomination of a different work could include nomination of "no work" by the new licence. A new nominated work must be assessed separately – if refused, the dealing to exit may still be granted. In this case, the new licence must nominate the same work as the original water access licence.

If the holder of the new licence wants to change any of its other components, they may make a subsequent application for further changes to the new water access licence.

As the granting of a new water access licence under s74 is a general dealing, the exit from a co-held water access licence takes effect when the new water access licence is recorded in the water access licence register.



Schedule a meeting at waternsw.com.au/licensing with one of our Water Regulation Officers to discuss your dealing.

More information

Contact our Customer Service Centre on [1300 662 077](tel:1300662077) or email Customer.Helpdesk@waternsw.com.au

We take your privacy seriously. Please have your approval, licence, customer or tax invoice number ready when you call so we can quickly access your details.

Appendix: Exit from a co-held access licence (s74)

Under The *Water Management Act 2000* s74, a co-holder in a water access licence may apply to exit the licence. The holding in the licence is extinguished and one (or more) new water access licences are granted to reflect the extinguished entitlements.

Because multiple co-holders are involved in this dealing, special provisions apply.

The purpose of the 'Fact sheet appendix' is to explain how these provisions work:

- Obtaining consent to exit the co-holding
- Determining how many new water access licences may be granted
- Distribution of entitlements between co-holders

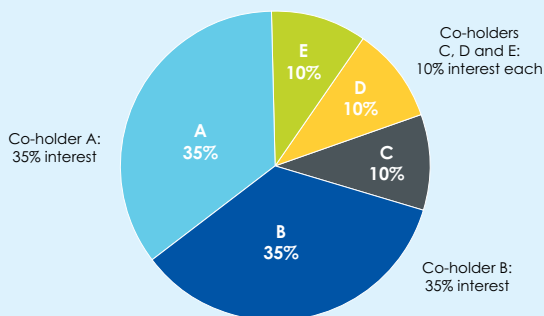
Obtaining consent to exit co-holding

The *Water Management Act 2000* specifies three different ways consent can be provided for an application to exit from a co-held water access licence. Consent can be obtained from all co-holders of the original access licence; co-holders who hold a majority share* of the holdings in the original access licence; or through an order of the Supreme Court.

* A majority share of the holdings means the proportion of the co-holders' interest in the original access licence as conferred by their holdings and must be more than 50%.

Example of majority share of holdings

As an example, a water access licence is held by five co-holders. There are two holdings of 35% each and three holdings of 10% each as shown in the circle diagram below.



In this example, a 'majority share of the holdings' could be:

- two holdings of 35% each, totaling 70%, **or**
- two holdings of 35% each, plus one or more holdings of 10% each, totaling at least 80%, **or**
- one holding of 35%, plus two or more holdings of 10% each, totaling at least 55%.

If consent is gained from co-holders who hold a majority share of the holdings in the original water access licence, the entitlements of the original access licence must be distributed between the original access licence and the new water access licence/s in the same proportions as the holding/s to exit has to the original access licence.

If consent is unable to be reached, the co-holder/s who wish to exit can apply to the Supreme Court. Seek independent legal advice if this is the only path to achieving consent.

Determining how many new water access licences may be granted

Only a whole holding may be exited – a part holding cannot be exited. So, if a holding is held by more than one person, one person cannot exit their part of the holding.

Identifying holdings:

If more than one holding is needed from the original licence, then for the purpose of the Exit a co-holding application, create a unique name to identify each holding. For example, each holding could be identified as 'Holding A', 'Holding B' and 'Holding C'.

How many new holdings?

To exit more than one holding from the original water access licences, nominate the number of new water access licences to be granted to replace the exited holding/s.

One new water access licence can replace all the exited holdings, or one new water access licence can replace each of the exited holdings, or a combination of these options can be requested.

If a combination is required, provide details about which exited holding is to be replaced by which new water access licences using the holding identifiers created for each holding as outlined above e.g. 'Holding A' etc.



Note

One holding cannot be replaced by more than one new water access licence – a holding cannot be sub-divided as part of Exiting a co-held water access licence.

Example: How many new water access licences replace exited holdings

If the original access licence has ten holdings and three holdings need to exit, then the choices are:

- one new water access licence to replace all three exited holdings, **or**
- three new water access licences to replace each of the exited holdings, **or**
- combination – one new water access licence to replace one of the exited holdings, and one new water access licence to replace two of the exited holdings.

Distribution of Entitlements

If all co-holders consent, they can request the entitlement of the original access licence be distributed between the original access licence and the new water access licence/s. In this case entitlements are in the same proportions to the original access licence.

The meaning of distributing the entitlements in the same proportions is illustrated by the example below.

Example: distribution of entitlements in same proportions

Co-holder A with a holding of 35% (as shown in the example above) wants to exit from the original access licence. All co-holders agree the entitlement of the original access licence should be distributed from the original access licence to co-holder A's new water access licences in the same proportions as co-holder A's holding bears to the original access licence.

Co-holder A's new water access licence is granted with 35% of the entitlements of the original access licence. The remaining entitlements of the original access licence are reduced to 65%.

If the original access licence has 1000 units of share component, co-holder A's new water access licence will be granted with 350 units and the share component of the original access licence will be reduced to 650 units.

Remaining co-holders can request the entitlements of the original access licence be distributed in different proportions than the holding/s to exit bears to the original access licence.

More information

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Specifying distribution of entitlements

The distribution of the entitlement between the original access licence and the new water access licence/s may be specified as a fraction or percentage of the entitlements of the original access licence. The distribution of the share component may also be specified by units or megaliters (ML) The sum of each type of entitlement to be distributed between the original access licence and the new water access licence/s must equal 100%.

Using the example above of co-holder A exiting from the original licence, here is how a change from the original access licence might occur.

Example of how to specify the distribution of entitlement

Co-holder A asks the other co-holders if 50% of the entitlements of the original access licence can be distributed to co-holder A's new water access licence (which represents more than co-holder A's 35% holding). The other co-holders decide to agree to co-holder A's request.

Co-holder A's application form specifies that 50% of the entitlements of the original access licence are to remain with the original access licence, and 50% of the entitlements are to be distributed to the new water access licences. The sum of these entitlements (50% + 50%) totals 100%.

If the share component of the original access licence is 350 units, then co-holder A's application form could also specify that 175 units are to remain with the original access licence, and 175 units are to be distributed to the new water access licences.



Note

Share component means the specified number of shares of available water which may be extracted from the water source. Share component may be described in several ways, such as a maximum volume over a specified timeframe (ML) or as a specified number of units.

WaterNSW recommends seeking independent advice on this dealing to ensure the co-holder fully understands the impact on their interests.