

Guide to the application form to exit from a co-held water access licence

This **guide** provides instructions on how to apply to exit from a co-held water access licence under section 74 of the *Water Management Act 2000* using the application form.

Exit from a co-held water access licence

A water access licence can be held by one or more holders. Where there are multiple holders of the same licence, the holders are referred to as 'co-holders'.

The co-holders of a water access licence have individual 'holdings' in the licence, which can be held as joint tenants or tenants in common. An individual holding can also be held by more than one person as joint tenants only.

One or more holdings in a water access licence which are held as tenants in common can be separated from the licence through a 'water dealing' to exit from a co-held water access licence under section 74 of the *Water Management Act 2000*. An application for this dealing cannot be accepted if the co-holders hold the water access licence as joint tenants.

If an application to exit from a co-held water access licence is granted:

1. the co-holder's holding in the original access licence is extinguished (cancelled),
2. the co-holder is granted a new water access licence to replace their extinguished holding, and
3. the entitlement of the original access licence is reduced.

More information about exiting from a co-held water access licence is provided in this guide.

How to apply

Apply to exit from a co-held water access licence using the application form which is available from the WaterNSW website.

You can complete this application form online before printing, or manually after printing.

Online

1. Download and complete the application form in Microsoft Word
2. Print the completed form
3. The completed form must be signed by all applicants, and each co-holder of the water access licence who provides consent to the application.

Manually

1. Download and print the application form
2. Complete the printed application form by hand in capital letters with a blue or black pen
3. The completed form must be signed by all applicants, and each co-holder of the water access licence who provides consent to the application.

Need more space? If you need to provide more information in the application form than the spaces provided allow, complete the application form **by hand** and attach extra copies of the pages where extra space is required.

How to answer questions in the application form

The application form has a number of sections. Each section has questions which are identified by a number on the left hand side of the form (for example, B4 is question 4 in section B). The information provided in this guide corresponds to these references in the application form.

Ensure you provide all of the information requested in the application form. If your application form is incomplete it will not be accepted.

Pre-application discussion

It is recommended you discuss your application with WaterNSW before submitting it.

How to submit the application form

You can submit your completed and signed application form by email or post.

See contact details below.

NB: A reply will be emailed to you confirming that your email has been received.

Application fee

WaterNSW charge a set fee to cover the assessment and processing costs of applications for water dealings, including applications to exit from a co-held water access licence.

Information about fees for water dealings is available from the WaterNSW website.



Customer Helpdesk
1300 662 077 | Customer.Helpdesk@waternsw.com.au

Payment method

You can pay the application fee after you have submitted your application form.

Credit card

Pay the application fee by credit card – call the Customer Helpdesk on 1300 662 077

Cheque or money order

Pay the application fee by enclosing a cheque or money order when posting your application form. The cheque or money order must be made out to WaterNSW.

Send to:

WaterNSW
PO Box 398
PARRAMATTA NSW 2124

More information

Phone: 1300 662 077

Email: Customer.Helpdesk@waternsw.com.au

www.waternsw.com.au find out more about water licensing and compliance.

Answering questions in the application form

SECTION A: Pre-application discussion

It is recommended you discuss your application with WaterNSW before submitting it.

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- A1** Tick A1 if you have not had a pre-application discussion with us.
If A1 is selected, go to Section B. You do not need to complete A3 - A5.
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- A2** Tick A2 if you have had a pre-application discussion with us.
If A2 is selected, complete A3 - A5.
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- A3-A5** If you have had a pre-application discussion with us, provide details in A3 - A5.
This will help us to process your application.
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SECTION B: Details of original access licence

Section B identifies the co-held water access licence from which a holding/s is proposed to be exited. This is referred to as the *original access licence*.

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- B1** Insert the water access licence (WAL) number of the original access licence.
You can find the WAL number on the top right hand corner of your water access licence title search or water access licence certificate. You can also find the WAL number on the front page of your *Statement of Conditions* for the water access licence.
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- B2** An application to exit from a co-held water access licence cannot be accepted if there is any money owed in relation to the original access licence, such as water management charges or civil penalties.
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- B3** An application to exit from a co-held water access licence cannot be accepted if the co-holders hold the original access licence as joint tenants.
This does not apply to the exit of a whole holding which is held by more than one person as joint tenants.
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SECTION C: Details of the holding/s to exit from the original access licence

Section C identifies which holding/s is proposed to be exited from the original access licence.

C1 Specify the number of holdings to exit from the original access licence.
Only a whole holding may be exited. You cannot exit part of a holding.
If a holding is held by more than one person, one person cannot exit their part of the holding.

C2 The *Water Access Licence Register* provides a record of water access licences and identifies each water access licence by the WAL number. The Register records the co-holders of the water access licence and their share of the licence, but does not identify each holding in the licence by a unique number or other unique identifier.

If you want more than one holding to exit from the original access licence, then for the purpose of answering the questions in the application form you need to create a unique name to identify each holding.

For example, each holding could be identified by the co-holder's name, such as '*John Smith's holding*'.

As another example, each holding could be identified by a reference letter, such as ' *Holding A*', ' *Holding B*' and ' *Holding C*'.

C3 If you want more than one holding to exit from the original access licence, you can choose how many new water access licences are granted to replace the exited holdings.

One new water access licence can replace all of the exited holdings, or one new water access licence can replace each of the exited holdings, or you can request a combination of these options. One holding cannot be replaced by two or more new water access licence (as you cannot subdivide a holding).

If you request a combination of these options, provide details about which exited holdings are to be replaced by the same new water access licence using the holding identifiers created for each holding.

Example of how many new water access licences can replace exited holdings

For example, if the original access licence has ten holdings and you want three holdings to exit, then you can choose whether you want:

- 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.

SECTION D: Applicants

Section D identifies the applicants, who are the co-holders of each holding to exit from the original access licence listed in C2.

D1 If you want more than one holding to exit from the original access licence, insert the holding identifier to identify each holding.

D2 Insert the number of co-holders of the holding to be exited.

D3-D6 The name can be a person's name or the name of a legal entity, such as a company or corporation.

D7-D10 If there is more than one co-holder of the holding, provide details for the other co-holder/s.

D21 Specify whether any extra copies of page 2 of the application form have been attached.

This is important to ensure your application form is received in full.

SECTION E: Consent provided for this application

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.

Section E identifies which type of consent has been provided for the application.

Each co-holder who consents to the application as described in section E must sign Section H.

E1 Tick E1 if all of the co-holders of the original access licence consent to the application.

If E1 is selected, the entitlements of the original access licence may be distributed between the original access licence and the new water access licence/s as requested in Section F of the application form.

E21 Tick E2 if consent for the application is provided by co-holders who hold a majority share of the holdings in the original access licence.

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

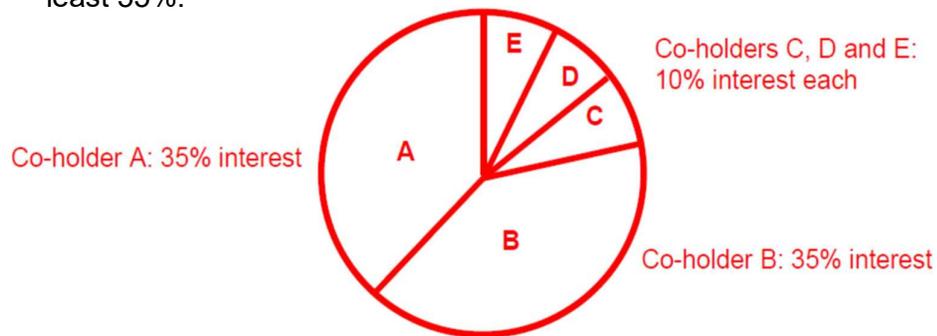
This is illustrated in the example below.

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



If E2 is selected, 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 bears to the original access licence.

Go to Section G. Do not complete Section F.

E3 Tick E3 if the application is made in accordance with an order of the Supreme Court.

Attach a copy of the order to the application form.

If E3 is selected, the entitlements of the original access licence must be distributed between the original access licence and the new water access licence/s as specified in the order.

Go to Section G. Do not complete Section F.

SECTION F: All co-holders consent – instructions for distribution of entitlements

If all of the co-holders of the original access licence consent to the application, complete Section F to request how the following entitlements of the original access licence are distributed between the original access licence and the new water access licence/s:

- share component
- extraction component, in relation to a volume limit or restriction
- water allocation account balance
- carryover water allocation balance (if applicable)

Information about these entitlements is provided in relation to F4 – F7.

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- F1** Tick F1 if all of the co-holders request the entitlement of the original access licence is distributed between the original access licence and the new water access licence/s in the same proportions as the holding/s to exit bears to the original access licence.

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

Example of distribution of entitlements in same proportions

Using the example from E2, co-holder A with a holding of 35% wants to exit from the original access licence.

All of the co-holders agree the entitlement of the original access licence should be distributed between the original access licence and co-holder A's new water access licence 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 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.

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- F2** Tick F2 if all of the co-holders request the entitlements of the original access licence are distributed in different proportions than the holding/s to exit bears to the original access licence.

Specify these different proportions in F4 – F7.

F3 If you want more than one holding to exit from the original access licence, insert the holding identifier to identify each holding.

F4-F7 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 megalitres (ML), as illustrated in the example below.

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%.

Example of how to specify the distribution of entitlement in F4 – F7

Using the example from E2, co-holder A with a holding of 35% wants to exit from the original access licence.

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 in F4 – F7 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 licence. The sum of these entitlements (50% + 50%) totals 100%.

If the share component of the original access licence is 3 units, then co-holder A's application form could also specify in F4 that 1.5 units are to remain with the original access licence, and 1.5 units are to be distributed to the new water access licence.

F4 *Share component* means the specified number of shares in the available water which may be extracted from the water source. Share component may be described in a number of ways, such as a maximum volume over a specified timeframe (ML) or as a specified number of units.

The share component of a water access licence is specified on the water access licence certificate. You can also access specific information about a water access licence, including its share component, on the NSW Water Register – go to www.waternsw.com.au and click on 'NSW Water Register' in the quick links.

F5 *Extraction component – volume limit or restriction* means a volumetric limit or restriction on the amount of water which can be extracted which is specified in the extraction component of the licence. This is different to any volumetric limit or restriction on the amount of water which can be extracted which is specified in the conditions of the licence.

The extraction component of a water access licence is specified on the water access licence certificate.

F6 *Water allocation account balance* means the amount of water credited to the original access licence through water allocations during the year since 1 July, minus the amount of water which has been extracted during the year since 1 July.

If the application is granted, the distribution of the water allocation account balance occurs at the time the water dealing is registered with NSW Land Registry Services (LRS). Any credits or liabilities against the water allocation account of the original access licence will apply to the new water access licence in the proportion specified in F6.

F7 *Carryover water allocation balance* means any unused water allocations which are carried over from one water year to the next in the water allocation account of the original access licence.

Note that carryover of unused water allocations is not permitted for some categories of licences in some water sharing plan areas.

If the application is granted, the distribution of any carryover water allocation balance occurs at the time the water dealing is registered with LRS. Any credits or liabilities for carryover against the water allocation account of the original access licence will apply to the new water access licence in the proportion specified in F7.

F8 Specify whether any extra copies of page 3 of the application form have been attached. This is important to ensure your application form is received in full.

SECTION G: Change water supply work nominated by new water access licence

Water allocations credited to the water allocation account of a water access licence can only be taken or extracted from a water source by a nominated water supply work listed on the licence.

If this application is granted, the new water access licence/s which replaces the exited holding/s will nominate the same water supply works as the original access licence unless you apply to change the works nominated by the new water access licence/s.

Do I need to complete this section?

Complete Section G if you want to apply to change the water supply works nominated by the new water access licence/s.

What water supply work/s is nominated by the original access licence?

The approval number or interstate licence number of the water supply works nominated by the original access licence is specified on the water access licence certificate.

You can access specific information about a water access licence, including its nominated works, or a water supply work approval on the NSW Water Register – go to www.waturnsw.com.au and click on *NSW Water Register* in the quick links.

How to identify nominated works

If you want to remove or add nominated water supply works from a new water access licence, identify the works in G2 or G3 as follows:

- For nominated works in NSW - specify the approval number. If the approval lists more than one work, you will be removing or adding all of the works listed on the approval.
- For nominated works in an interstate water tagging zone - specify the State and interstate licence number (for example, Victoria – allocation bank account; South Australia – entitlement; Queensland – Development permit).

What happens if my application to change the nominated works is refused?

An application to change the nominated works in Section G is decided separately to your application to exit from the original access licence.

If your application to change the nominated works is refused, your application to exit from the original access licence could still be granted. In this case, the new water access licence/s will nominate the same works as the original access licence.

For more information about changing a nominated work, go to www.waturnsw.com.au and follow the customer links to dealings.

G1 If you want more than one holding to exit from the original access licence, insert the holding identifier to identify which holding the new water access licence will replace.

G2 Tick G2 to request that a water supply work is removed from the list of works nominated by the new water access licence.

Identify the water supply work/s to be removed by specifying the NSW approval number or interstate licence number.

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- G3** Tick G3 to request that a water supply work is added to the list of works nominated by the new water access licence.

Identify the water supply work/s to be added by specifying the NSW approval number or interstate licence number.

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- G4** Complete G4 if you ticked G3 to add a nominated water supply work/s to the new water access licence.

If the holder/s of the new water access licence will not be the same as the holder/s of an approval specified in G3, the written consent of each approval holder is required for the work to be added to the list of works nominated by the new water access licence.

This requirement does not apply if the nominated work is to be removed from the new water access licence.

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- G5** To remove or add a water supply work which is located in an interstate water tagging zone, you need to attach the completed forms required by the interstate agency (the 'State of Destination' forms). State of Destination forms comprise an essential component of the application.

Queensland does not require the completion of the 'State of Destination' form but the applicant must supply a copy of the current Development Permit and a Works/Meter Verification Notice endorsed by the 'State of Destination'.

Interstate water tagging protocols to the Murray Darling Basin Agreement provide that a water access licence can only nominate one interstate water tagging zone in the Murray Darling Basin. If a work in an interstate water tagging zone is added to a water access licence, any works in another interstate water tagging zone will be removed from the water access licence. However, this limitation does not apply in relation to interstate water tagging between New South Wales and Queensland.

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- G6** Specify whether any extra copies of page 4 of the application form have been attached.

This is important to ensure your application form is received in full.

SECTION H: Declaration of applicant/s and consent of other co- holders

Declaration of applicants

The applicant/s is the holder of the holdings to exit from the original access licence as specified in Section D of the application form.

Each applicant must agree to the declaration on page 5 of the application form, provide their name and contact details, sign the completed application form and write the date when it was signed.

Ensure you understand your legal obligations before signing the application form. You may need to obtain independent legal advice.

Consent of co-holders of the original access licence

Each co-holder of the original access licence who provides consent to the application must provide their name and contact details, sign the completed application form and write the date when it was signed.

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- H31**
- If the co-holder is a company, insert the Australian Company Number (ACN).
 - If the co-holder is an organisation incorporated in NSW and does not have an CAN, insert the Australian Business Number (ABN). Attach a copy of the certificate of incorporation to the application form.

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- H43/H45** Insert the position of the person/s who is signing the application form for and on behalf of the company or corporation.
- For a company, the application form must be signed by two directors of the company, or a director and company secretary in accordance with section 127 of the *Corporations Act 2001*
 - For a proprietary company with a sole director who is also the sole company secretary, the application form must be signed by that director
 - For other types of organisations, the application form must be signed by the duly authorised officer.

Note. There is no Section I. Go to Section J.

SECTION J: Application contact person

The role of the application contact person is to assist WaterNSW in processing this application. WaterNSW may contact the application contact person to discuss the details contained in this application or to request additional information about this application.

Changes to any details of an application must be in writing, and signed and dated by all applicants and the co-holders who are providing consent to this application.

Do I need to complete this section?

You do not need to complete Section J if:

- there is only one applicant, or
- you would like the first applicant listed in Section H to be the application contact person.

Complete Section J if you would like to nominate an application contact person other than the first applicant listed in Section H. The application contact person may be another applicant or a third party such as a solicitor, farm manager or water broker.

SECTION K: Declaration of NSW approval holders

Do I need to complete this section?

Complete Section K if:

- you are applying to ADD nominated water supply works to a new water access licence in G3, and
- the holder/s of the new water access licence will not be the same as the holder/s of the approval for the nominated works.

Declaration of approval holders

Each approval holder who provides consent to the nomination of a water supply work by the new water access licence in G3 must agree to the declaration on page 8 of the application form, sign the completed application form and write the date when it was signed.

Ensure you understand your legal obligations before signing this document. You may need to obtain independent legal advice.

K8 Refer to H43 / H45 on the previous page for information about signing the application form for and on behalf of a company or corporation.

Registration with NSW Land Registry Services

If the application is granted, it must be registered by NSW Land Registry Services (LRS) on the WAL Register to take effect. WaterNSW will provide a Notification form for this purpose. The water access licence certificate for the original access licence (if one has been issued) and the consents of any security holders must be lodged with the Notification form. LRS charges fees to register water dealings on the WAL Register.

Registration must take place within six months of the application being granted or the consent is automatically revoked. On registration of the Notification form, LRS will issue a new edition of the water access licence certificate for the original access licence, and a new water access licence certificate for the new water access licence/s.

Disclaimer: The information contained in this publication is based on knowledge and understanding at the time of writing (October 2017). However users are reminded of the need to ensure that the information upon which they rely on is up to date and to check currency with WaterNSW or with the user's independent adviser.

Published by WaterNSW.