

# Guide to the conversion of water licences to water access licences and approvals

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## Background

The *Water Management Act 2000* provides for the sustainable and integrated management of the state's water for the benefit of both present and future generations.

Under the *Water Management Act 2000*, Department of Industry Water prepares a range of statutory water management plans including water sharing plans. Water sharing plans establish rules for sharing water between the environment and for uses such as town water supplies, stock watering, industry, irrigation and Aboriginal cultural uses. The rules in the plans apply for ten years and are reviewed after five years.

Water access licences entitle holders to:

- specified shares in the available water within a particular water management area (the **share component**); and to
- take water at specified times, rates or circumstances from specified areas or locations (the **extraction component**).

Separate approvals are required to install and operate a work such as a pump, dam or bore and to use water for a particular purpose, such as irrigation.

Water access licence holders can only take water if:

- the water allocation account for that water access licence is in credit (either by an available water determination credit or trading allocation water); and
- the water is taken through a water supply work nominated on that water access licence.

The *Water Management Act 2000* recognises that a water access licence is a valuable asset. Water access licences under the *Water Management Act 2000* differ from licences under the *Water Act 1912* as they:

- provide a **clearly defined entitlement** listed on a public Water Access Licence Register that is separate from land ownership; and
- **separate** the entitlement to access water from the approvals associated with water supply works and the use of water.

'Continuing' water access licences (licences granted in perpetuity) provide:

- a clearly defined right to a share of the available water in a particular water source; and
- increased opportunities to trade water through the separation of land and water rights.

## What happens to water licences when a water sharing plan commences?

When a water sharing plan commences, the licensing and approval provisions of the Water Management Act 2000 come into effect in those water sources to which the plan applies.

On the date the plan commences, licences and authorities issued under the *Water Act 1912* are immediately replaced by:

- a **water access licence(s)** (where a prior licence has more than one 'purpose', a separate water access licence will be created with a corresponding category);
- a **water supply work approval** for the operation of all works associated with the taking or storing of water accessed via a water access licence (for example for pumps, dams, bores etc);
- a **water use approval** if the water is used for irrigation, town water supply (a water use approval is not required for uses such as domestic, stock or some industrial purposes).

From the date the plan commences, replacement water access licences have a share component and an extraction component. Licence holders must comply with both the share and extraction components.

Until they receive copies of the replacement water access licence and approval, licence holders must also continue to comply with the conditions of the former licence, except to the extent the new extraction component applies.

There are several ways to check whether a licence is in a water sharing plan area:

- search online:
  - [Water licensing > NSW Water Register](#) or
  - refer to the water sharing plan maps available under [Plans & Programs > Water sharing plans](#)
- contact us on 1300 662 077 or email [Customer.Helpdesk@waternsw.com.au](mailto:Customer.Helpdesk@waternsw.com.au), particularly if the licence location is uncertain or close to a plan boundary.

A water access licence certificate is issued after the licence holder and property details have been verified, any tenancy arrangements have been established, and any registered security interest over the land to which the former *Water Act 1912* licence was attached has been recorded.

WaterNSW does not charge fees for licence conversion.

## What is a licence category?

Water access licence categories help define the priorities between different water access licences, the conditions that apply to them and, in the case of specific purpose water access licences, define how water may be used.

Categories include regulated river (high security), regulated river (general security), unregulated river, aquifer access licences, supplementary water access licences, domestic and stock, and local water utility access licences.

Specific purpose category water access licences such as local water utility, domestic and stock, town water supply or Aboriginal cultural categories provide higher priority access to water than licences for most 'commercial' categories such as high security, general security, unregulated and aquifer.

## What is an approval?

An approval authorises its holder to carry out an activity at a specific location on a property. This means an approval cannot be traded to another property or location.

Approvals may be granted by WaterNSW to:

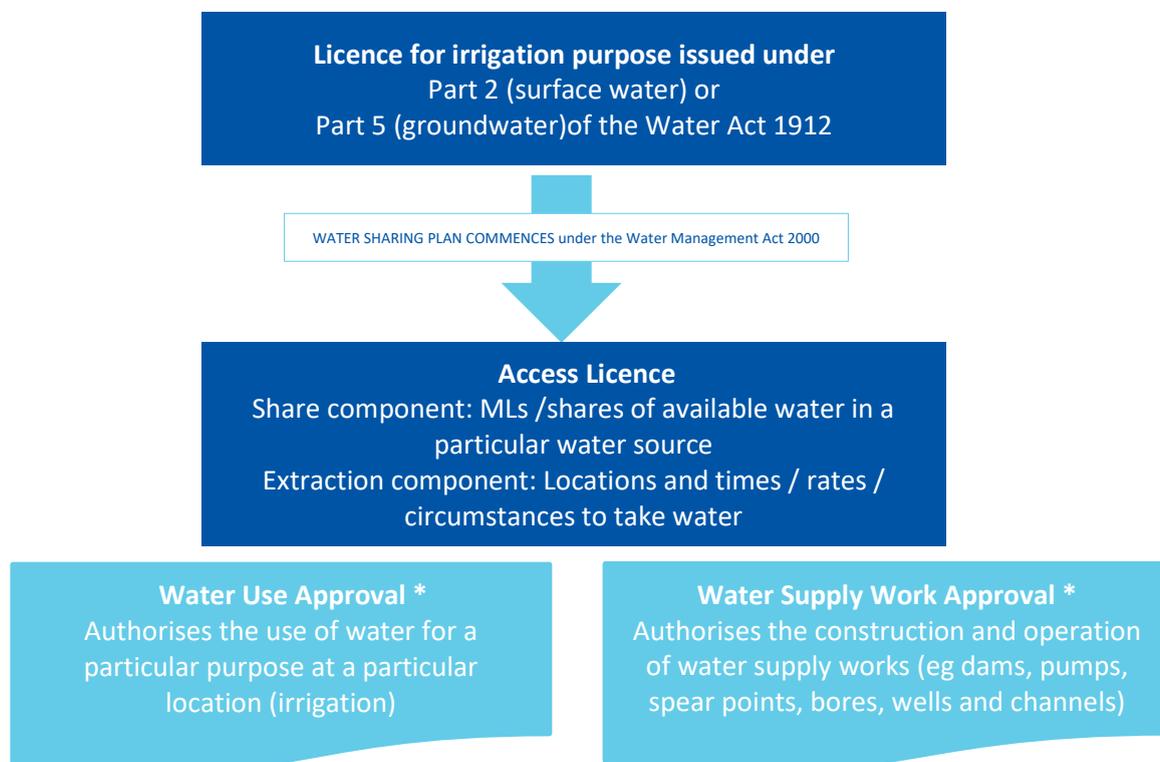
- construct and use a specified **water supply work** (for example, a pump, bore, spearpoint or well) at a particular location
- **use** water for a particular purpose (such as irrigation) at a particular location.

The diagram in Figure 1 shows a simplified example of how the different components of an irrigation *Water Act 1912* licence separate into replacement water access licences and approvals.

Replacement approvals will reflect the water supply work and use authorised by the former *Water Act 1912* licence.

To simplify water management for individual properties, if both a water supply work approval and a water use approval are required they can be combined into a single, combined approval.

**Figure 1: Example of the replacement of a Water Act 1912 irrigation licence with a water access licence and approvals after the commencement of a water sharing plan**



\* May be issued as a combined water supply work and use approval.

## The Water Access Licence Register and Register of Approvals

The Water Access Licence Register and Register of Approvals provide an up-to-date and publicly available record of every water access licence, water supply work approval and water use approval (or combined approval) in New South Wales.

Through a licence verification process, WaterNSW will ensure the lawful holder is listed on the Water Access Licence Register. After the conversion process:

- the water access licence will be listed on the [Water Access Licence Register](#) under the 'Land Titles' section of the NSW Land Registry Services (NSW LRS) website [www.nswlrs.com.au](http://www.nswlrs.com.au) and
- water supply work and water use approvals will be listed on the [NSW Water Register](#) on the WaterNSW website [www.waternsw.com.au](http://www.waternsw.com.au).

Security interests, such as mortgages in a licence may also be listed on the Water Access Licence Register. Where a mortgagee elects to register an interest that existed on conversion, no registration fee or stamp duty is payable. Registration fees, stamp duty and bank fees may apply for registration of new security interests.

### Key steps

Key steps in the conversion of a Water Act 1912 licence to a water access licence and approval to the issue of water access licence certificates are shown in Figure 2.

### Verifying the holder of the licence

At conversion, the holder(s) of a replacement water access licence or approval is established according to who owned the land to which the *Water Act 1912* licence was attached. In some cases the water access licence is granted to the lease holder of the property if they, or the previous lease holder, originally applied for the *Water Act 1912* licence and have had continual occupation of the benefitted land up to the day of conversion.

To ensure the water access licence is issued to the correct person(s) or company(s), the licence information is first checked by staff to ensure that it is up-to-date and accurate. Each licence is checked to ensure it:

- is held by the owner(s) specified in WaterNSW records and that these match with land ownership records from NSW LRS at the date of conversion
- contains the correct licence details (such as the share component).

If WaterNSW licence holder records match with the NSW LRS land ownership records, then the licence holder is automatically verified and recorded on the replacement water access licence.

If the licence holder records do not match with land ownership records, WaterNSW will request information to identify the lawful holder.

## Confirming tenancy arrangements following conversion

Those water access licences with a single holder are recorded on the Water Access Licence Register as a 'sole holder'.

Where there are multiple holders of a water access licence, each holder has a co-holding in the licence and is known as a 'co-holder'.

Any water access licence that has two or more co-holders must have the tenancy arrangements for these holders recorded on the water access licence certificate. There are three tenancy types:

- **Tenants in Common in Equal Shares.**
- **Tenants in Common in Unequal Shares** (where the co-holders specify the various shares within the water access licence, for example 1/3 and 2/3 holding).
- **Joint Tenants** (where each co-holder jointly holds an equal share of the entire licence or holding). Water access licence holders may also select to undertake multiple variations of these tenancy types on the one water access licence.

Key differences between these arrangements are as follows:

- If a **tenant in common** dies, that co-holding remains intact and passes to the beneficiary of their estate.
- If a **joint tenant** dies, the entire licence is put into the name of the surviving joint tenant(s).

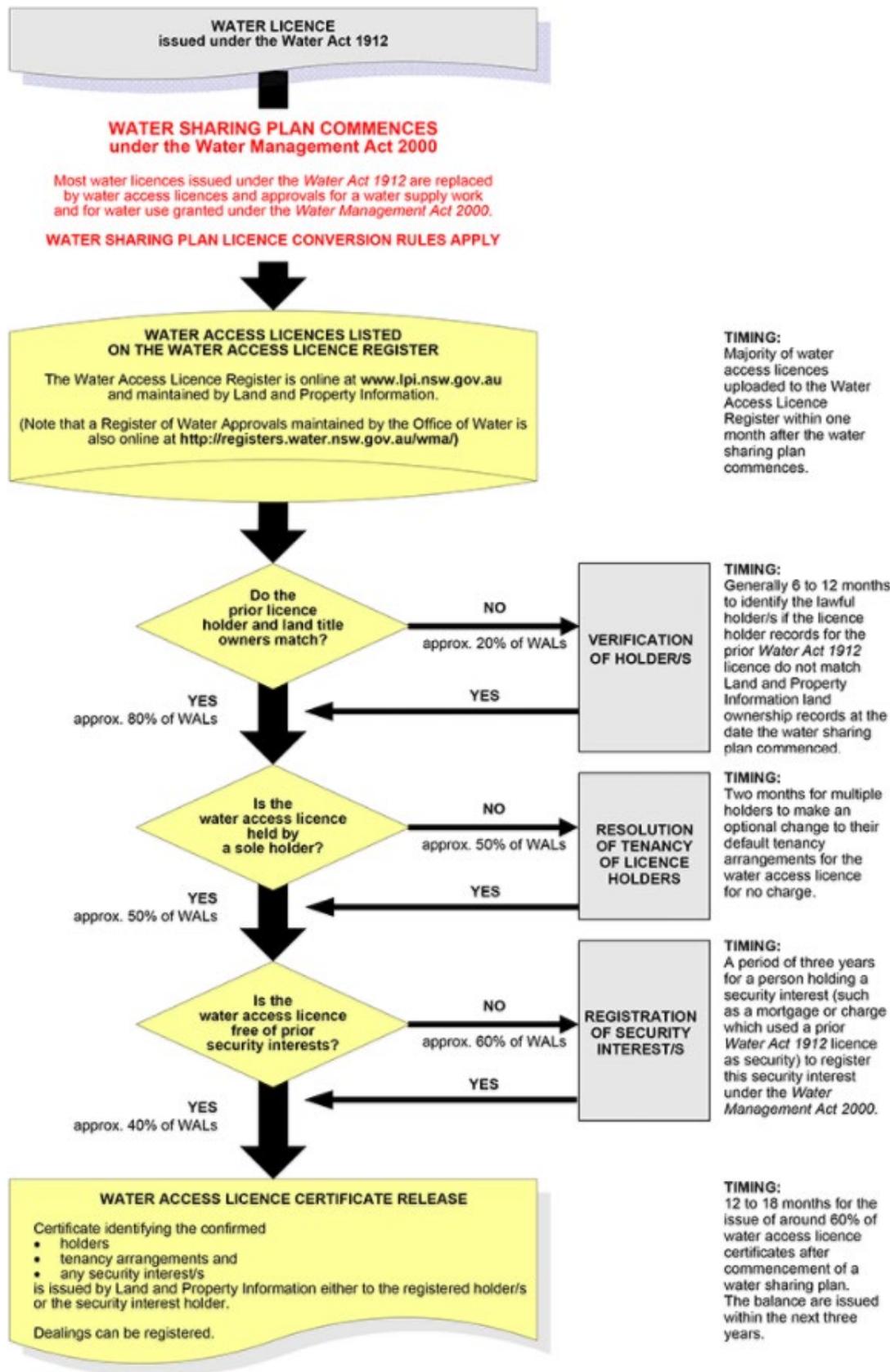
If a replacement water access licence (at conversion to the *Water Management Act 2000*) has two or more holders, the holders are usually recorded as '*Tenants in Common in Equal Shares*'.

Shortly after conversion, water access licence holders will be given an opportunity to alter the tenancy arrangements at no charge using a *Tenancy Nomination* form. Once notified in writing, the water access licence holders have two months to change the tenancy.

After this two month period, holders may change their tenancy arrangements by lodging a dealing directly with NSW LRS under section 71M of the *Water Management Act 2000*. (Note that dealings cannot be lodged with NSW LRS unless the title has been released or, in the case of prior surface authorities, a notation on the Water Access Licence Register provides for the registration of dealings). A fee applies to undertake this dealing.

Water access licence holders wishing to change to joint tenancy should first obtain independent advice about possible legal and capital gains tax implications.

Figure 2: Key steps in licence conversion and issue of water access licence certificates



## What happens to security interests held in relation to a 'prior' licence?

Any security interest, such as a mortgage or charge which used a *Water Act 1912* licence as security (by virtue of it being part of the land or otherwise) will continue as an equivalent interest in any water access licence that replaces this entitlement, provided that the person holding the security interest indicates they want that interest registered against the replacement water access licence on the Water Access Licence Register.

A period of three years after conversion is provided to register interests. WaterNSW will then instruct NSW LRS to release the water access licence certificate and allow registration of water access licence dealings.

Alternatively, if water access licence holders want to buy, sell or change their replacement water access licence by means of a water access licence dealing within the three year period for registering prior licence interests, they need to initiate a resolution of prior licence interests. Once these security interests are resolved, WaterNSW can then instruct NSW LRS to register 'claimed' interests (if any) and release the water access licence certificate for dealings.

A water access licence number search is available in an online [Security Interest Conversion tool](#) to assist both licence holders and security interest holders to identify prior licence interests in a water access licence.

## Release of the water access licence certificate

Water access licence certificates are issued by NSW LRS once the licence conversion process is completed.

The water access licence certificate should be kept in a secure location, as it must be produced to register most water dealings such as the sale, subdivision or change of an access licence category.

In some cases, the water access licence certificate may be sent to a bank or financial institution. This will typically occur if the water access licence was part of the security for a loan and there is an agreement for the mortgagee to hold the water access licence as security against the loan.

## What happens to previous licence applications?

Any outstanding licence applications (those not completed before the water sharing plan commenced, such as the renewal, or permanent or temporary transfer of existing licences), will be completed under the *Water Act 1912*. If the application is approved, the conversion process under the *Water Management Act 2000* commences from the date the application is completed.

## What is required for new developments?

Both water access licences and approvals are generally required for any new developments (for example irrigation) and must be issued before water can be taken or a water supply work constructed.

Applications for new water access licences such as for domestic, town water supply and Aboriginal cultural purposes are not restricted. However, in most areas new water access licences for commercial purposes are not available and will need to be purchased on the water market.

A water sharing plan may also specify exemptions that may allow access to water for purposes such as stock, Aboriginal commercial or research.

## What are water access licence dealings?

The *Water Management Act 2000* provides for a range of water transactions defined as water access licence dealings or water dealings. The most common water access licence dealing is water trading: the buying and selling of licences or annual water allocations. Other dealings include subdividing or consolidating licences or changing the category of the licence.

While water ordering, water accounting and trade of account water (known as temporary trades) can proceed immediately after conversion, most other dealings can only be carried out after release of the water access licence certificate.

Further information on water access licence dealings is provided at [www.waternsw.com.au](http://www.waternsw.com.au).

## Where do I get more information?

### WaterNSW

- Phone: 1300 662 077
- Email: [Customer.Helpdesk@waternsw.com.au](mailto:Customer.Helpdesk@waternsw.com.au)
- [www.waternsw.com.au](http://www.waternsw.com.au)
- Online NSW Water Register for up to date information on approvals and other consents and activities under the *Water Management Act 2000* including:

#### Water access licences:

- licence conditions
- available water determinations
- water allocation assignments (formerly known as temporary trades)
- assignment of shares (formerly known as permanent trades).

#### Water access licence and use statistics:

- summaries by water source of the number of licences, available water determinations and water usage
- summaries by water source of water allocation assignments.

For *Water Act 1912* licences and authorities, you can check if your *Water Act 1912* licence or authority has been converted to a water access licence and approval under the *Water Management Act 2000*.

### **NSW Land Registry Services**

- Phone: 1300 396 076
- To search for water access licences go to the [Water Access Licence Register](#) under '*Public Registers*' in the '*Land Titles*' section at [www.nswlrs.com.au](http://www.nswlrs.com.au).

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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.

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