

APPLICATION FOR PERMANENT TRANSFER OF SURFACE WATER RIGHTS

Transferor * (Vendor)

Full Name(s) _____

Address _____

Transferor's Licence or Authority Number _____

River/Stream Name: _____

Volumetric entitlement authorised _____ Megalitres

Volume proposed to be transferred _____ Megalitres

OR Authorised Area proposed to be transferred _____ Hectares

Transferee * (Purchaser)

Full Name(s) _____

Address _____

Transferee's Licence or Authority Number (if any) _____

OR Location of proposed licensed work:

Lot _____

DP _____

Portion _____

Parish _____

County _____

Stream _____

Has transferee applied for (please circle):

New licence	Replacement licence	New authority	Replacement authority	Other _____ (Specify)
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Dated this _____ day of _____ 20__

Signature(s) _____ Signature(s) _____

Of transferor* _____ Of transferee* _____

The Common Seal of _____)

Was affixed hereto by authority of the Board)

In the presence of _____)

Secretary

Director

Attach sheet if insufficient room for applicants and/or signatures. In case of company, company seal is to be affixed and Director and Secretary to sign (otherwise if Memorandum or Articles so require).

APPLICATION FEE \$250.00

AGREEMENT FOR SALE OF SURFACE WATER RIGHTS

The Particulars

A. Vendor: _____ (Full name and address)

B. Purchaser: _____ (Full name and address)

C. Vendor's Solicitor _____ (Address and DX)

D. Purchaser's Solicitor _____ (Address and DX)

E. Vendor's Licence/Authority Number _____

River _____

Entitlement or Authorised Area _____ megalitres/hectares.

F. Vendor's capacity (eg. owner of land): _____

G. Purchaser's capacity (eg. owner of land): _____

H. Water rights (Volumetric entitlement & Authorised Area) sold _____ megalitres
or _____ hectares

I. Price (in words)

a) Price \$ _____

b) Deposit \$ _____

c) Balance \$ _____

E. The Deposit is payable to: _____

Date of making this Agreement: _____ day of _____ 20____

DECLARATION BY TRANSFEROR

STATUTORY DECLARATION

OATHS ACT, 1900, NINTH SCHEDULE

I/We _____

Of _____

In the State of New South Wales, hereby solemnly and sincerely declare and affirm that:

1. I am/we are applications as Transferor(s) in an Application for Approval of Transfer of Surface Water Rights (“the Application”).
2. Set out in the annexed Certificate as to Title are:
 - a) The title details to my/our land in respect of which the entitlement, or part thereof, which is proposed to be transferred is presently held; and
 - b) The names and addresses of any persons or parties holding (having) any registered or unregistered interest in respect of the said lands.
3. I/We have the necessary authority to transfer the water rights set out in the Application.
4. True copies of all document(s) evidencing the contractual or other arrangements between the parties to the Application relevant to the Application are annexed hereto.

And I/We make this solemn declaration according to the law in this behalf made and subject to the punishment by law provided for any wilfully false statement in any such declaration.

Taken and declared at _____ in the)
 Said State this _____ day of)
 _____ 20____ before me _____)

 Justice of the Peace

 Signature(s) of declarants

CERTIFICATION AS TO SEARCHES

I have examined the searches made by _____ on _____

in respect of the following lands:

I hereby certify that the searches disclose that the following parties are registered proprietors and encumbrances of the subject lands.

Name

Address

Owner: _____

Encumbrancee: _____

Dated this _____ day of _____ 20__

Solicitor

AFFIRMATION BY ENCUMBRANCEE/S

1. I/We _____ of _____ state that I/We have an interest as _____ in the following lands:

2. I/We understand that _____ (“the applicant”) has applied to the Department of Water and Energy for approval to transfer surface water rights held under Licence/Authority No. _____ currently held in respect of those lands to _____ of _____.

3. I/We hereby affirm that the applicant is the appropriate person/corporation to make the application and I/We make no objection to the application.

Dated this _____ day of _____ 20__

signature(s) of encumbrancee(s)

UPDATE OF CERTIFICATION

On the _____ day of _____ 20____

I certify as to the identity of the registered encumbrances as disclosed by searches undertaken by _____ in respect of lands being _____

I hereby certify that further searches undertaken by _____

at _____ on _____

disclose the following variations to the earlier information:

Dated this _____ day of _____ 20____

Solicitor

THE CONDITIONS OF SALE

Upon the making of this Agreement for Sale of Water Rights (herein called “this Agreement”), the Vendor agrees to sell and the Purchaser agrees to purchase the water rights as described in H of the Particulars for the price stated in I of the Particulars, and upon and subject to the following conditions;

1. Deposit and Price

- a) Upon or before the making of this Agreement, the sum stipulated as deposit in I of the Particulars shall be paid by the Purchaser in accordance with J of the Particulars and shall be held as stakeholder until completion when, and by virtue of which, the deposit shall vest in the Vendor and shall be accounted for by the Vendor upon receipt of an order from the Purchaser or the Purchaser’s Solicitor authorising such payment, which order shall be given on completion.
- b) The deposit or any part thereof may be paid by cheque. If the deposit is not paid as provided in this Agreement or if any cheque for the deposit is not honoured on presentation, the Purchaser shall immediately and without notice be in breach of an essential obligation under this Agreement.
- c) The balance of the price as stated in I of the Particulars shall be paid as stipulated in the First Schedule.
- d) If the Vendor has stipulated a Solicitor in C of the Particulars any moneys payable under this Agreement to the Vendor by the Purchaser or the Vendor’s agent shall be paid to that Solicitor or as that Solicitor may direct in writing.

If a Solicitor is not stipulated any such moneys shall be paid to the Vendor or as the Vendor may direct in writing.

2. Passing of Title

Title to the Water Rights the subject of this Agreement shall not pass until completion, which shall take place within fourteen (14) days of the Purchaser being notified by the Department of Water and Energy (herein called “the Department”) that the Application for Transfer of Water Rights lodged by the Vendor and Purchaser has been approved and the Department’s requirements for issue of an entitlement (as referred to in Clause 4) to the Purchaser have been satisfied.

3. Application for Approval of Transfer of Water Rights

- a) The Vendor and Purchaser acknowledge that it will be necessary for them to apply to the Department for approval of the transfer of the Water Rights set out in H of the Particulars and in this regard the Vendor and Purchaser covenant that they will apply forthwith to the Department for that approval and will each use due diligence in supplying the information, evidence and consents required of each of them by the Department in complying with all other requirements of the Department (which term includes the requirements of the Water Act, 1912 and the Regulations made thereunder).

- b) Payment of the application fee with the application shall be the responsibility of the Purchaser.
- c) The Vendor acknowledges that the water rights set out in H of the Particulars are to be transferred in full and shall be exclusive of any water rights which the Department of Water and Energy may require to be surrendered.

4. Application for Licence

- a) In this Agreement “entitlement” means a permit, license, authority or group licence issued under Part 2 of the Water Act, 1912 or any renewals thereof.
- b) The Vendor and Purchaser acknowledges that it will be necessary for the Purchaser to apply to the Department for an entitlement which authorises the use of the Water Rights set out in H of the Particulars or includes the authorisation of the use of those Water Rights.
- c) The purchaser covenants:
 - 1) to apply forthwith to the Department for an entitlement referred to in the previous paragraph;
 - 2) to use due diligence in complying with the requirements of the Department (which term includes the requirements of the Water Act, 1912 and the Regulations made thereunder) in respect of that application and
 - 3) subject to clause 6(b) to use due diligence in pursuing that application (where applicable) in hearings of a Land Board or the Land and Environment Court.

5. Right to Transfer

The Vendor covenants that the Vendor:

- a) is the holder of an entitlement which has attached to it sufficient water rights to satisfy the Vendor’s obligations under this Agreement;
- b) has obtained all necessary consents (except for the approval of the Department), including consents of mortgagees, lessors or lessees of the Vendor’s land, to enable the Vendor to effect the required transfer of water rights.

6. Default

- a) Unless otherwise provided in this Agreement, if either party defaults in the observance or performance of any obligation under this Agreement, which is or the performance of which has become essential, the other party shall be entitled by notice in writing serviced on the defaulting party to terminate this Agreement and thereafter either:
 - 1) to sue the defaulting party for breach of contract; or
 - 2) in the case of the Purchaser being the defaulting party the deposit paid shall be forfeited. If the Vendor is the defaulting party the deposit and any other moneys paid by the Purchaser pursuant to this Agreement shall be refunded in full to the Purchaser and the Purchaser’s costs and expenses shall be payable by the Vendor and shall be recoverable by the Purchaser as liquidated damages provided that proceedings for the recovery thereof shall be commenced within 12 months of the termination of this Agreement.

- b) If the Purchaser complies with Clause 4(c) but is not able to obtain an appropriate entitlement, or it is not economically practical for the Purchaser to pursue further the entitlement application owing to the anticipated costs of further compliance with the requirements of the Water Act including attendance at Land Boards or the Land and Environment Court, either party shall be entitled by notice in writing served on the other party to terminate the contract and the Purchaser shall be entitled to a refund of the deposit and any other monies paid by the Purchaser pursuant to this Agreement. Neither party shall be liable to pay to the other party any sum for damages, costs or expenses if the contract is terminated under this clause.

7. Service of Notices

- a) Service of any notice of document under or relating to this agreement shall be sufficiently served:
 - 1) if delivered personally;
 - 2) if left at the last known place of abode or business in or out of New South Wales of the person to be served;
 - 3) if sent by post in an ordinary letter or a certified or registered letter addressed to the person to be served, by name, at that person's aforesaid place of abode or business, and if that letter is not returned through the post office undelivered; and such service shall be deemed to be made at the time when the letter would in the ordinary course be delivered.
 - 4) If effected on the Solicitor for the party in any manner provided in subclauses (ii) or (iii);
- b) A notice be given or document signed or served on behalf of any party by that party's Solicitor shall be deemed to have been given, signed or served by that party personally.

8. Interpretation

- a) Words importing the singular number or plural number shall include the plural number and single number respectively.
- b) Where any party consists of more than one person the liability of such persons to the other persons shall be joint and several.

FIRST SCHEDULE

The balance of purchase price shall be paid by bank cheque on completion.

SIGNED by the
Vendor in the _____
presence of _____

SIGNED by the
Purchaser in the _____
presence of _____

Witness _____

Witness _____