CAR-02 Carbon Rights and Carbon Covenants Rights - amendments to

Version 2 – 04/01/2018

The information provided in this guide is not intended to amount to legal advice. Professional assistance may be required to determine the most appropriate action to protect your legal rights. Please read our Terms of Use on the Land Titles Registration policy and procedure guides web page. Landgate accepts no responsibility where parties print this guide and seek to rely on information that is out of date.

1 Extension of a Carbon Right

1.1 Registering an Extension

A carbon right may be extended by the registration of a Extension of Carbon Right form upon payment of the prescribed registration fee.

The duplicate title (if any) must be produced with the extension.

1.2 Consents

An extension of a carbon right will not be registered unless it has the written consent of each person who has a registered interest in:

- the affected land

and

- the carbon right.

Note: If a carbon right is in respect of Crown land, an extension of the carbon right shall not be registered unless there is compliance with s.18 of the LAA.

2 Transfer of a Carbon Right
A carbon right may be transferred by the registration of a [Transfer of Carbon Right form](#) upon payment of the prescribed registration fee.

Note: A carbon right can only be transferred in relation to the whole of the area of the affected land.

The duplicate title (if any) does not need to be produced with the transfer.

If the proprietor of the carbon right is also the proprietor of a carbon covenant entered into in relation to that carbon right, a transfer of the carbon right shall not be registered unless it is accompanied by a transfer of the proprietor’s interest in the carbon covenant. In other words, the proprietor of a carbon right must at all times be the proprietor of the relevant carbon covenant (if any).

It is possible to transfer the proprietors’ interest in the carbon right and the carbon covenant in the one document using a [Transfer of Carbon Right and Carbon Covenant form](#).

Note: If a carbon right is in respect of Crown land, a transfer of the carbon right shall not be registered unless there is compliance with s.18 of the LAA.

### 3 Mortgage of a Carbon Right

A carbon right interest in land can be mortgaged using the [National Mortgage Form (NMF)](#).

The mortgage must clearly identify in the Land Description panel the number and nature of the interest being mortgaged. For example:

“As to Carbon Right J123456 over Lot 1 on Deposited Plan 45678.”

The duplicate title (if any) must be produced with the mortgage.

Note: If a carbon right is in respect of Crown land, a mortgage of the carbon right shall not be registered unless there is compliance with s.18 of the LAA.

### 4 Surrender of a Carbon Right

A carbon right may be wholly or partially surrendered by the registration of a [Surrender of Carbon Right form](#) upon payment of the prescribed registration fee.

The surrender will not be registered unless the following, if applicable, has occurred:

- Each registered interest in the carbon right or part of the carbon right has been discharged or surrendered.

- Any carbon covenant that is registered in respect of the carbon right or part of the carbon right has been surrendered.

and

- Any caveat lodged in respect of the carbon right or part of the carbon right has been withdrawn.

The duplicate title (if any) must be produced with the surrender.

Note: If a carbon right is in respect of Crown land, a surrender of the carbon right shall not be
registered unless there is compliance with s.18 of the LAA.

**Carbon Covenants Rights – Amendments to**

5 Extension of a Carbon Covenant

5.1 Registering an Extension

A carbon covenant may be extended by the registration of a [Extension of Carbon Covenant form](#) upon payment of the prescribed registration fee.

The term of the extension cannot be longer than the term of the relevant carbon right.

An extension of a carbon covenant may be used to vary the provisions of the carbon covenant. However, it shall not be used to effect a change to:

- the proprietors of the carbon covenant or the burdened land

or

- the area of the burdened land to which the covenant applies.

The duplicate title (if any) must be produced with the extension.

5.2 Consents

An extension of a carbon covenant will not be registered unless it has the written consent of each person who has a registered interest in:

- the carbon covenant

- the burdened land

- the relevant carbon right.

Note: If a carbon covenant is in respect of Crown land, an extension of the carbon covenant shall not be registered unless there is compliance with s.18 of the LAA.

**Variation of a Carbon Covenant**

6.1 Registering a Variation

The provisions of a carbon covenant may be varied by the registration of a [Variation of Carbon Covenant form](#) upon payment of the prescribed registration fee.

A Variation of Carbon Covenant may be used to vary the provisions of the carbon covenant. However, it shall not be used to effect any of the following:

- A change to the proprietors of the carbon covenant or the burdened land.
- A change to the area of the burdened land to which the covenant applies.
- An extension or other change to the term of the carbon covenant.

6.2 Consents

A variation of a carbon covenant will not be registered unless it has the written consent of each person who has a registered interest in:

- the carbon covenant
- the burdened land
- the relevant carbon right.

Note: If a carbon covenant is in respect of Crown land, a variation of the carbon covenant shall not be registered unless there is compliance with s.18 of the LAA.

7 Transfer of Benefits under a Carbon Covenant

A carbon covenant may be transferred by the registration of a Transfer of Carbon Right and Carbon Covenant form upon payment of the prescribed registration fee.

A carbon right can only be transferred in relation to the whole of the area of the land in respect of which the relevant carbon right is registered and in respect of which the covenant applies.

A transfer of a carbon covenant shall not be registered unless it is accompanied by a transfer of the proprietor’s interest in the relevant carbon right. In other words, the proprietor of a carbon right must at all times be the proprietor of the relevant carbon covenant.

The duplicate title (if any) does not need to be produced with the transfer.

Note: If a carbon right is in respect of Crown land, a transfer of the carbon covenant shall not be registered unless there is compliance with section 18 of the LAA.

8 Mortgage of a Carbon Covenant

A carbon covenant interest in land can be mortgaged using the National Mortgage Form (NMF).

A person shall not be a mortgagee of a carbon covenant unless the person is also the mortgagee of the relevant carbon right.

The mortgage must clearly identify in the Land Description panel the number and nature of the interest being mortgaged. For example:

As to Carbon Right J123456 and Carbon Covenant J345678 over Lot 1 on Deposited Plan 45678.

The duplicate title (if any) must be produced with the mortgage.

If a carbon right is in respect of Crown land, a mortgage of the carbon covenant shall not be registered unless there is compliance with s.18 of the LAA.
9  Surrender of a Carbon Covenant

A carbon covenant may be wholly or partially surrendered by the registration of a Surrender of Carbon Covenant form upon payment of the prescribed registration fee.

The surrender will not be registered unless the following, if applicable, has occurred:

- Each registered interest in the carbon covenant or part of the carbon covenant has been discharged or surrendered.

- Any caveat lodged in respect of the carbon covenant or part of the carbon covenant has been withdrawn.

The duplicate title (if any) must be produced with the surrender.

Note: If a carbon covenant is in respect of Crown land, a surrender of the carbon covenant shall not be registered unless there is compliance with s.18 of the LAA.

10  Also see

- CAR-01 Carbon Rights & Carbon Covenants