

Administration of Crown roads

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Policy statement

This policy provides for how the department will administer Crown roads in accordance with the *Roads Act 1993 (Roads Act)*.

Our approach to the administration of Crown roads provides clarity and confidence to stakeholders that they will receive consistent and transparent treatment. Crown road applications will be assessed to determine and administer the most suitable option for the future management of a Crown road, in accordance with the provisions of the *Roads Act 1993*.

Scope

The following functions under the *Roads Act* are within the scope of this policy:

1. Transfer of a Crown road to other roads authority (s.152I) – enables transfers to an appropriate roads authority to manage the public road network in the interest of landowners/occupiers, local communities and the public.
2. Crown road closures (s.37(1)) and Crown road sales and disposals (s.42 (1) and 152B) – specifies the circumstances where either closure and/or purchase of a Crown road may be appropriate.
3. Crown road works:
 - The minister has powers as a roads authority to carry out road works (s. 71) – establishes the basis by which the department may authorise user/s to undertake road works on behalf of the minister (s.253) to address their access needs.
 - Crown road repairs and maintenance (s.108 to 110) – specifies in what circumstances the department may give directions for repair and maintenance.
4. Regulating works and structures other than road works within the road corridor (s.138).
5. Authorising occupation of roads (s.152A).

Disaster repairs to Crown roads administered by the Roads and Maritime Services (RMS) under Natural Disaster Relief Scheme are outside the scope of this policy.

Requirements

1. Transfer of Crown roads

The minister is authorised to transfer Crown roads to another roads authority. A Crown road cannot be transferred to RMS without its consent. Local councils can request the department's consideration to transfer a Crown road to council. The department may also give consideration to initiating the transfer of a crown road to council.

Although a Crown road transfer to council does not require consent, the department will consult with the affected Council before processing a Crown road transfer. Each proposed road transfer will be considered on a case by case basis.

Unless exceptional circumstances apply, the department will consider a Crown road to be suitable for transfer to another roads authority if it meets one or more of the following criteria:

- a. Council or RMS requests transfer of the Crown road, including for the purpose of s.44 of the *Roads Act*.
- b. The former Crown road provides road access to urban or rural areas or provides access within country towns, villages, local communities and public areas.
- c. Road works on the Crown road are proposed by someone other than the department, and those works require development consent under the *Environmental Planning & Assessment Act 1979*.
- d. Development consent has been granted by a council that requires use of the Crown road to service a traffic generating development.
- e. The Crown road is required to be maintained to a standard specified as a condition of development consent. (*Notably, if standards were not specified, transfer may still be relevant on the basis that road works were not required as the Crown road already conformed to council's access standards to service the development.*)
- f. The Crown road was constructed, has or is being maintained by a council to facilitate access, as part of its local road network, which may include drainage structures such as a bridge or culverts.
- g. Construction or upgrade of the Crown road is required to meet standards required by a council.
- h. A council objects to the closure of the Crown road on the grounds the road is required for public access.

The department does not consider the following claims to be valid reasons for a council to decline a department initiated road transfer:

- a. Road condition – where council objects to the transfer on the basis that the road is in a state of disrepair or does not conform to council minimum standards.
- b. Financial implications – where council objects to transfer based on (potential) costs incurred. Local councils have the ability to levy funds through development contributions, rates and grants for road repair and maintenance.

2. Crown road sales and closures

The department may close a Crown road by publishing a notice in the NSW Government Gazette. When a Crown road closure is gazetted, the land remains vested in the Crown as Crown land. Any subsequent sale of the former road is processed under the *Crown Land Management Act 2016*.

Alternatively, the department may sell a Crown road without first closing it; generally this will be suitable for land holders with an interest in purchasing Crown roads which adjoin their property. If the department determines a Crown road is suitable for sale under this method, the road ceases to be a public road upon transfer to the purchaser. This policy provides guidance to determine whether a Crown road can be sold by transferring directly to the purchaser in accordance with the *Roads Act*, or if a road will need to be simply closed under that Act instead—so it can be sold in accordance to the *Crown Land Management Act 2016*.

Crown roads are not exclusively closed for the purpose of sale. Roads may be closed to vest in the Crown for the purpose of adding it to a Crown reserve, license or lease so that it can be used for other purposes. If a Crown road is identified as a hazard by the department, the department may decide closure of the road is required to remove the risk it poses to the public or the surrounding environment and remediate the issue.

2.1 Crown road closures (s.37(1))

It may be appropriate to close a Crown road if the road is not required for public access and one or more of the following circumstances apply:

- a. The road is to be added to a crown reserve or tenure to be used for other purposes
- b. Land within the road corridor is identified as suitable for sale under the *Crown Land Management Act 2016*
- c. Closure of the road is required to address a hazard identified by the department
- d. Closure of the road is required to address environmental or land management concerns identified by the department.

The department will consider a range of factors when determining a proposed road closure. Each of the following criteria must be fulfilled:

- a. The road is not required to be retained within the public road network
- b. Any landholders and government authorities reasonably known to have potential interests or access requirements have been consulted and their requirements addressed to the department's satisfaction within the time frame set by the department.

2.2 Crown road sale (s.152B)

The department will consider a range of factors when determining a proposed road sale. At a minimum, each of the following criteria must be fulfilled:

- a. The road is assessed as not required to be retained within the public road network
- b. Landholders and government authorities reasonably known to have potential interests or access requirements have been consulted and their requirements addressed to the department's satisfaction within the time frame set by the department.

2.3 Sale of land arising from the closure of a public road (s.42(1))

The Roads Act maintains that when a Crown road and an unconstructed council road are closed, the land ceases to be a road and becomes (or if it was a Crown road, remains) Crown land when it is closed. Once a road is closed, the department has to manage the land in accordance with the *Crown Land Management Act 2016*. This includes in relation to the sale of an unconstructed council road.

The proceeds from the sale of Crown land that was previously an unconstructed council road will go to the department. Councils should consult the department before proposing the closure of an unconstructed council road as the department's agreement is required for the road to be added to the Crown estate upon closure. This includes when the purpose of the road closure is to sell the closed road.

3. Works on Crown Roads

The department does not provide public road services such as road construction, maintenance or traffic management. This policy establishes the basis by which the road user/s may seek an approval from the department to undertake road works to address their access needs.

3.1 Authorised Crown road works (S. 71)

Applications to undertake authorised road works on a Crown road will be considered where the Crown road does not satisfy the criteria for road transfer. Road work proposals considered by the department generally relate to routine maintenance to conserve pre-existing access conditions, or to determine road works to establish access along a Crown road over the natural terrain.

Works on Crown roads are evaluated on the basis of whether it is feasible to undertake works in consideration of the potential impacts on the road reserve, adjoining lands and local environment.

The department cannot endorse the following:

- a. Road works outside Crown road corridors
- b. Works on Crown roads located on steep or highly erodible land, within protected riparian areas and susceptible to erosion, or land that is otherwise environmentally sensitive
- c. Construction of new structures such as pipe culverts, concrete causeways or bridges

- d. Construction, upgrade or maintenance of a Crown road to satisfy the gravel road or sealed standards of another roads authority.

3.2 Works directed by the department - repairs and maintenance

The department may direct a person to conduct repairs or maintenance on a Crown road that is not generally used for access by the public, if a hazard is identified by the department that to present an unacceptable and immediate risk to the road users and/or the environment.

- *s.108 – Direction to undertake works*

When the department considers the condition of a road presents a hazard, it may direct relevant landholder/s who benefit from use of the road, to repair or maintain the road – specifying the type of works and the time for completion. The costs for undertaking the works are to be paid by the person/s or party that the direction was issued to.

- *s.109 – Action to address noncompliance with s.108*

If a person does not comply with a direction to undertake works, the department may have the works completed and recover the costs from that person.

- *s.110 – Direction to contribute*

Where a Crown road provides access for a small number of landholders, and primarily only benefits those landholders, the department may direct those landholders to pay some or all of the costs of repair or maintenance works.

3.3 Works on Crown roads other than road works (S. 138)

Section 138 enables the department to issue permits to regulate various activities on Crown roads that are not directly related to the use of a Crown road for access. The department's consent is required for anyone to erect a structure or carry out a work on or over a Crown road. Sections 139 (conditions), 140 (revocation of consent) and 142 (maintenance of the structure) are also relevant to the department's consideration of an application under s.138 of the Act. There is an expectation that public authorities will consult the department prior to undertaking any works under s.138.

3.4 Authorised occupation of roads (S.152A)

The minister may authorise certain activities or occupation on a Crown road such as grazing—where issue of an enclosure permit is not applicable), encroachments and other temporary uses of a Crown road by way of a licence granted under the *Crown Land Management Act 2016*, in accordance with section 152A of the *Roads Act*.

Guidelines

A separate document—Crown Roads Guidelines is available to support this policy and other Crown roads administration matters.

Roles and responsibilities

- *Department of Industry – Lands & Water:* Administration of Crown public roads including closure, sale, transfer and approving select road works applications – authorising activities and occupations.
- *Local councils:* Closure of council public roads.

Safety considerations

There are various Crown roads in NSW that have been established by use rather than construction—this means that they have not been formed to a specific road construction standard and are used as trails for access purposes. Users of Crown roads are encouraged to drive to conditions. Over time the intended use of a Crown road or land surrounding the road may change and the future management of the road may also need to change. This policy provides framework for the department to consider the most suitable option for the future management of Crown roads.

Delegations

Crown Lands Other (Minister) Instrument of Delegation 2018.

Definitions

- Carry out road work – includes carry out any activity in connection with the construction, erection, installation, maintenance, repair, removal or replacement of a road work
- Council – has the same meaning as defined in the *Local Government Act 1993*
- Formed Crown road – a Crown road that has been constructed in some way to be used as a road. Formed Crown roads form part of the constructed road networks that services urban or rural areas
- Person – for the purposes of this Policy is a landholder or road user
- Road corridor – the legally defined road corridor whether formed or not formed
- Road works – as defined in the *Roads Act* and includes any kind of work, building or structure such as a roadway, footway, bridge, tunnel, road-ferry, rest area, transit way station or service centre or rail infrastructure that is constructed, installed or relocated on or in the vicinity of a road for the purpose of facilitating the use of the road as a road, the regulation of traffic on the road or the carriage of utility services across the road – but does not include a traffic control facility
- Suitable for transfer – a Crown road which has been identified and assessed under the policy's key transfer principles as appropriate to transfer to local government
- The department – NSW Department of Industry – Lands & Water
- The minister – the Minister for Lands and Forestry
- Traffic generating development – any development that results in an increase in vehicular traffic on a Crown road

Legislation

- *Crown Land Management Act 2016*
- *Environmental Planning and Assessment Act 1979*
- *Roads Act 1993*
- *Roads Regulation 2008*
- *State Environmental Planning Policy (Infrastructure) 2007*

Related policies

- Sale of Crown Land Policy
- Sale or Lease of Crown land by Direct Negotiation Policy

Other related documents

- Crown Lands Circular 2011/51 Procedural Fairness.

Superseded documents

This policy replaces:

- Crown Lands Circular 2009/19 Dealing with Applications to Construct Crown roads.
- Office Practice Guidelines – Chapter 31 – Roads.
- Policy (POL005) Transfer of formed Crown roads to Local Government.

Revision history

Version	Date issued	Notes	By
1.0	01/07/2018	Developed to support the <i>Crown Land Management Act 2016</i> .	Alison Pepper, Director Tenure & Business Programs

Contact

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