

Enclosure permits

What enclosure permit holders need to know about permits and the management of Crown roads.

Enclosure permit background

What is a Crown road?

Crown roads were established in the 1800s, when the common form of travel was by horseback or foot. While many of these roads have never been constructed, they are still legally Crown land and are not a part of the private properties they adjoin or pass through. These roads are often referred to as 'paper' or 'green' roads.

What is an enclosure permit?

An enclosure permit is an authorisation issued by the NSW Department of Industry—Land & Water (the department) to an owner of an adjoining property and allows the Crown road to be:

- used for the grazing of stock
- fenced into the owner's private land.

An enclosure permit does not give a person ownership of the Crown road or allow them to restrict access along the Crown road.

Who is responsible for issuing enclosure permits?

The department is responsible for issuing enclosure permits and has a legal responsibility to ensure that use of public land, including Crown roads, is authorised under the *Crown Land Management Act 2016*.

Penalties exist for the unauthorised enclosure, occupation or other use of Crown land.

Enclosure permit administration

How is the rent calculated for my enclosure permit?

The department determines the rent for enclosure permits in accordance with the *Crown Land Management Act 2016*. The rent for enclosure permits is currently at a concessional rate as follows:

- rent is waived for enclosure permit holders who applied to close and purchase the Crown road prior to 10 June 2006. The rent will continue to be waived until the purchase is finalised.
- enclosure permits that are part of a conservation agreement with the Office of Environment & Heritage have an annual rent of \$50
- all other enclosure permits have a concessional rent of \$148 from 1 July 2018. This amount is adjusted by the Consumer Price Index each year.

Are there pensioner rebates for an enclosure permit?

Enclosure permits are already offered at a concessional rate, so a pensioner rebate is not offered.

Customers experiencing financial hardship should contact the department.

What happens when a property with an enclosure permit is sold?

When a property enclosing a Crown road is sold, the enclosure permit remains in place and the new owner of the land is automatically liable for the payment of the enclosure permit rent. This liability includes any arrears of rent and interest.

The new owner of the land must notify the department in writing within 28 days of the date of the sale. The notification must be provided using the Enclosure Permit: Notification of Transfer Form, available from www.industry.nsw.gov.au/lands/use/enclosure-permits.

It is recommended that a conveyancing search is undertaken with the department prior to the purchase of a rural property to check the existence of any enclosure permits and the balance of the enclosure permit rent and any monies owed.

Where only part of a property is sold and an enclosure permit needs to be subdivided between two or more parties, the balance of monies owed will remain with the continuing permit. A new enclosure permit will be granted to the incoming parties and the area and description of the original enclosure permit will be amended.

Do enclosure permits have conditions?

Yes, enclosure permits are subject to terms and conditions. Conditions range from the payment of rent, control of weeds and pests, to fencing and gate requirements. The permit holder must comply with the terms and conditions.

All enclosure permits include a standard condition requiring the permit holder not to obstruct access along a Crown road, including:

- providing gates (or other means of access) where the road is required for public use
- maintaining any approaches to the Crown road in good order and condition
- not locking gates that are used for public access along the Crown road.

The conditions of an enclosure do not allow for the clearing of any vegetation (except for noxious weeds) as it may contain important remnant vegetation or operate as a wildlife corridor. There are certain times where the department may consider some clearing, for example if it is required for the construction of a fence along the boundary of the Crown road. Permit holders are encouraged to discuss any concerns regarding the terms and conditions with the department.

Does an enclosure permit allow construction on the Crown road?

No, enclosure permits only allow for the Crown road to be grazed upon and fenced into adjoining land. Structures other than fencing and gates are not permissible.

Can the area of the enclosure permit be changed?

Yes, there are three ways that an enclosure permit can be amended:

1. combination

If a permit holder has two or more enclosure permits:

- in the exact same name/s
- in the same local government area
- where the enclosure permits are within close proximity to each other
- that are associated with the same property

then the permit holder can apply to combine the enclosure permits into one, attracting a single annual rental.

2. addition

Areas of a Crown road can be added to an existing enclosure permit if the permit holder wants to enclose an additional Crown road into their property.

3. variation

An enclosure permit can be varied to reduce the authorised area. This could be the result of:

- a Crown road being retained by government or transferred to council
- the Crown road is closed and sold
- a part of the Crown road is no longer enclosed in adjoining freehold land.

Permit holders are required to submit an Enclosure Permit: Alteration Application Form, available from www.industry.nsw.gov.au/lands/use/enclosure-permits, to amend an enclosure permit.

How is an enclosure permit terminated?

To terminate an enclosure permit, the permit holder must fence the Crown road out of the adjoining property and ensure that all the terms and conditions of the permit have been complied with. The permit holder must then submit an Enclosure Permit: Statutory Declaration Form, available from www.industry.nsw.gov.au/lands/use/enclosure-permits, stating the date the Crown road was no longer enclosed in the adjoining freehold property. This will be assessed by the department and rent will continue to apply until the enclosure permit is terminated and the permit holder is notified.

Enclosure permits may also be terminated if the road is no longer a Crown road. This occurs when the management of the road has been transferred to the local council or the Crown road has been closed or sold and transferred to the purchaser, usually an adjoining owner.

The department may also terminate an enclosure permit if a permit holder is not complying with the terms and conditions of the permit or the land is no longer enclosed within their adjoining freehold.

Crown road management

Who is responsible for the upkeep of Crown roads?

The department, on behalf of the Minister for Lands and Forestry, is responsible for the administration of Crown roads, generally referred to as 'paper roads'.

These roads played a fundamental role in the settlement of NSW and are made up of land corridors set aside for future access. Crown roads are often formed by use rather than any formal construction and are not formed to any recognised road standards.

While the department is responsible for the administration and management of Crown roads, it is not a road construction authority. If a Crown road requires construction or maintenance to a higher standard, it may be suitable for transfer to local council for management.

Who manages a Crown road when an enclosure permit is terminated (that is, who is responsible for weed and pest control)?

When an enclosure permit is terminated, the department is responsible for weed and pest control.

Can environmental works be undertaken on a Crown road held under an enclosure permit?

Approval is required to undertake works on Crown roads. The department may consider proposals to undertake some environmental works on Crown roads, providing they do not inhibit access along the Crown road.

Who is liable should any damage or injury occur on a Crown road held under an enclosure permit?

As the Crown road is a public road under the *Roads Act 1993*, responsibility rests with the department. For the department to be liable for any injury, loss or damage on a Crown road, it must be proven to be negligent in the first instance.

The conditions of an enclosure permit require the holder to indemnify the department against any injury resulting from the actions by the permit holder. This indemnity does not infer that all liability rests with an enclosure permit holder—only those where injury or damage is the result of a negligent action by the permit holder.

More information

- Email: enclosure.permits@crowmland.nsw.gov.au
- Web: www.industry.nsw.gov.au/lands
- Phone: 1300 886 235

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