

The road purchase application process

Crown roads

Crown roads are part of the state's public road network and are administered by the NSW Department of Planning, Industry & Environment (the department) under the *Roads Act 1993* (the Act). Crown roads are often referred to as 'paper roads', as the majority are not constructed. There are many Crown roads within the public road network that are not used or required for public access. In these cases, Crown roads may be sold or closed without compromising the broader public interest.

The option to purchase Crown road/s can facilitate termination of an enclosure permit or use of the land other than for grazing. Other benefits resulting from the purchase of a Crown road may include:

- consolidation of a property
- certainty of ownership, where private residence or other infrastructure encroaches on the road corridor
- conditions of an approved Development Application
- driveway or road construction, to service low-level traffic requirements or private developments
- to facilitate land management or environmental improvements.

Before applying to purchase a Crown road

Before you apply, you should seek general agreement from other neighbouring land owners whose properties adjoin or may be affected by the proposal. This may include government land or waterway managers such as National Parks or NSW Fisheries (Recreational Fishing).

Advising the adjoining or affected land owners prior to lodging your application may also minimise possible conflict over access and future ownership once the department notifies your neighbours of the proposal. If you can obtain general agreement from the neighbouring land owners it may limit potential conflict with neighbours over access and future ownership of a Crown road.

If agreement cannot be reached with the affected landholders, an application may still be lodged and any access issues will be assessed and determined by the department. Where suitable, the department may support the sale of Crown roads on the condition that a registered easement provides continued legal access to an affected property. If the department determines a Crown road is required for access and you are unable to negotiate alternative legal access, it is likely that the road purchase application will be refused.

How to submit a road purchase application

1. Discuss your road purchase proposal with neighbours whose property may be affected.
2. Gather your Lot/DP details and complete the 'Crown Road Purchase Application' form available on the department's website www.industry.nsw.gov.au/lands/access/roads
3. Prepare a diagram clearly detailing the Crown road/s that you propose to purchase.
4. Post your application form, diagram and application fee to:

NSW Department of Planning, Industry & Environment — Crown Lands
PO Box 2215
Dangar NSW 2309

The department will provide written confirmation that your application has been received. Please note that receipting a road purchase application does not assure application approval.

The Crown road purchase application process

After an application has been received, the department will consider the suitability for the Crown road/s to be withdrawn from the public road network for the purpose of sale. The department administers road purchase applications in accordance with the statutory requirements provided for in the [Roads Act 1993](#) and [Roads Regulation 2008](#); the department's policy, Administration of Crown roads; and the supporting guidelines.

The minimum processing time for a successful road purchase application is 10–11 months. This estimate relates to applications with no complex issues or unforeseeable administrative delays. Complex negotiations during the consultation with affected land owners will generally influence processing time frames.

The processing time is from the date of application commencement and not the date of application receipt. The statewide interest in the purchase of Crown roads has led to a backlog of road purchase applications awaiting processing and should be factored into your planning.

The 28-day submission period

The department advises affected and interested parties of all proposed road purchases to ensure procedural fairness. Public consultation occurs through:

- publishing an advertisement in a local newspaper and inviting submissions from interested parties
- notifying all adjoining and affected landowners
- notifying relevant public authorities (for example, NSW Fisheries)
- listing the proposal on the department's road purchase application [online search facility](#).

Interested parties can lodge a written submission to the department within the 28-day submission period provided. Parties lodging a submission should:

- quote the relevant file reference number
- include supporting documents (for example, fencing diagrams, photos, tenure details)
- direct the submission to the listed case officer in the notice of proposal.

Assessment of submissions

The department acknowledges that each application can present unique issues. Each application is considered on a case-by-case basis, taking into account all information; this includes conclusions drawn from the department's preliminary investigation, submissions received and the negotiated outcomes during the consultation process.

Factors taken into consideration before reaching a decision include, but are not limited to:

- current use of the road for access, including any topographical or environmental constraints
- maintaining the primary (or most practicable) legal access, where already available to each property*
- alternative access needs (if any) to surrounding properties
- maintaining legal access to other Crown land (for example, reserves) or waterways
- current authorised use of the road by other parties such as enclosure permit or licence
- location of existing fences
- asset encroachments within the road reserve
- existing easements which either incorporate use of the road or pass over the road.

*Property as defined by the property identification number recorded with the Valuer General

The assessment will result in one of the following outcomes:

- the road can be purchased in either whole or part, or
- the road can be purchased conditional to registration of an easement, or
- the road cannot be purchased as it is required for public access or for other government purpose, or

- a combination of the above.

The decision to approve a Crown road purchase rests with the minister administering the [Crown Land Management Act 2016](#) or a delegate of the minister. The department advises the applicant and all objectors/relevant parties upon decision of the road purchase application.

Easements

Easements to maintain legal access

A registered access easement may allow the purchase of a Crown road while maintaining legal access to an affected property. Affected parties have to agree to their property access changing from Crown road to registered easement (for example, right of carriageway or right of access). When a road under application is the only or a formed primary legal access, the department will not support the sale of the road unless the affected property owner provides written agreement to the road being sold with an easement registered over that road to maintain their legal access.

Easements for existing infrastructure

The proposed road purchase may impact existing infrastructure on the Crown road (for example, transmission lines). Assets of this type generally have registered easements over the adjacent freehold lands but not over the Crown road. Registering an easement over the affected Crown road site may allow the purchase of a Crown road to proceed, while maintaining the easement connectivity for the existing infrastructure over the road.

Where affected parties agree to an easement proposal, a Section 88B Instrument ([Conveyancing Act 1919](#)) will be lodged with the plan for registration by NSW Land Registry Services. The fee for each easement imposed on title is payable by the road purchase applicant. A plan of survey may be required if the road for closure and/or the proposed easement does not comply with NSW Land Registry Services compiled plan guidelines. The cost of a plan of survey is payable by the road purchase applicant.

Following easement registration, disputes between parties becomes a private matter in which the department cannot assist.

Application and purchase costs

The following fees apply in addition to the value of the road for purchase:

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| • Road purchase application fee | \$673.20—paid upon application lodgement |
| • Purchase processing fee | \$312.40 |
| • Plan compilation fee [±] | \$353.10 |
| • NSW Land Registry Services lodgement fees (adjusted annually) | |
| ○ Transfer dealing | \$292.30 |
| ○ Amendment of a folio of the Register [^] | \$146.40 |
| ○ Section 88B Instrument (if required) | \$146.40 for each easement |
| ○ Deposited plan | \$308.20 for each lot |
| • Stamp Duty (Ad Valorem) | |
| • GST (improved land only) | |

[±]The plan compilation fee covers the cost of a compiled plan prepared by the department from a range of source documents. The applicant may require the services of a registered surveyor in more complex instances at the applicant's cost.

[^]The amendment fee is only required when road purchase is paid in instalments. The department lodges a dealing form upon payment of the final instalment, to remove a titling notation regarding balance of purchase monies.

The purchase price of Crown roads will generally be based on the land value of the applicant's adjoining land. This value is set in accordance with the Valuer General's Register of Land Values (the land values used to determine local council rates). The value used is the 'general' base date type as at the date the application was lodged with the department.

The department offers two options for road purchase payment to successful road purchase applicants:

- payment in full (being the total price), or
- payment by three equal instalments.

The invoice (for the full purchase price or first instalment) will include any associated purchase costs. Late payment fees apply to debts that remain in arrears after 28 days from the due date.

The department maintains the right to withdraw the offer and sell the road to another interested party if the first payment (either whole or instalment amount) is not made within 28 days of the due date.

Paying by instalments

This payment option allows the purchaser to purchase the roads by paying the purchase price by three equal payments over two years. The first invoice includes payment of fees and costs. The subsequent instalment will be due 12 months from the first invoice. The final payment is paid 24 months after the first invoice. This payment option includes conditions of purchase and obligations of the purchaser. More details are outlined in the Schedule 2 of the Roads Regulation 2008 under the *Roads Act 1993* available at www.legislation.nsw.gov.au.

When the road sale is transferred to the purchaser, the title will include a notation in the second schedule to protect the Crown's interest in the land until the department receives the full purchase price of the road and associated fees and costs. Sale of the property cannot occur until the purchase price is paid in full.

Unsuccessful road purchase applications

Any existing Enclosure Permit will continue over Crown roads which do not proceed to sale. The department may also consider applying an Enclosure Permit to Crown roads in unsuccessful road purchase applications to formalise the use of the road for the purpose of grazing. The holder of the Enclosure Permit is required to pay annual rent or take steps to fence the road out of freehold property. More information can be found at the department's website <https://www.industry.nsw.gov.au/lands/use>.

An Enclosure Permit allows a property owner to enclose a Crown road within their property. The permit alleviates the need and expense of having to fence the road out of the property, but:

- does not provide the holder with any title to the Crown road
- requires the land to remain available for access if required
- authorises grazing as the only permissible use of the land.

More information

Please direct Crown road purchase enquiries to the Newcastle roads project team:

Email: roads.newcastle@crowmland.nsw.gov.au

Phone: 1300 886 235 (Option 2, Option 1)

Web: www.industry.nsw.gov.au/lands

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