

NSW DEPARTMENT OF INDUSTRY – LANDS & WATER

Guideline—administration of Crown roads

Published by NSW Department of Industry

Guidelines—administration of Crown roads

First published May 2018.

More information

NSW Department of Industry—Lands & Water

industry.nsw.gov.au/lands

DOC18/100824

© State of New South Wales through Department of Industry 2018. You may copy, distribute, display, download and otherwise freely deal with this publication for any purpose, provided that you attribute the Department of Industry as the owner. However, you must obtain permission if you wish to charge others for access to the publication (other than at cost); include the publication in advertising or a product for sale; modify the publication; or republish the publication on a website. You may freely link to the publication on a departmental website.

Disclaimer: The information contained in this publication is based on knowledge and understanding at the time of writing (May 2018) and may not be accurate, current or complete. The State of New South Wales (including the NSW Department of Industry), the author and the publisher take no responsibility, and will accept no liability, for the accuracy, currency, reliability or correctness of any information included in the document (including material provided by third parties). Readers should make their own inquiries and rely on their own advice when making decisions related to material contained in this publication.

Foreword

This guideline outlines the approach taken by NSW Department of Industry—Lands & Water (the department) in respect to Crown roads and operates in unison with the Administration of Crown roads—Policy.

Information is also provided on how third parties can contact the department or seek assistance.

Contents

Overview.....	1
Natural disasters	1
Council roads	1
Assistance	1
Part 1: Transfer of Crown roads	2
Transfer of a Crown road to other road authorities.....	3
Transfer of Crown road to council—granting in compensation	5
Part 2: Crown road sales and closures.....	6
Crown road purchases	7
How to lodge an application to purchase a Crown road	8
Road purchase application fees and costs	8
Assessment of road purchase applications.....	9
Twenty-eight-day period to submit interest in the sale of a Crown road	10
Road purchase assessment considerations.....	10
Legal access requirements.....	10
Easements as alternative access	11
Assessment of submissions received	11
More than one interest to purchase a Crown road	13
Establishing the purchase price of a Crown road.....	13
Road purchase payment option.....	14
Transferring a road purchase application.....	14
Road purchase applications abandoned or withdrawn	15
Crown road closure, and Crown road closure and purchase.....	15
Sale of Crown land comprising former public road.....	16
Part 3: Works on Crown roads	17
Applications to undertake road works under Section 71.....	17
Information required to support an application	17
Application process and costs	18
Planning considerations	18
Determination of road works.....	19
Repairs and maintenance.....	19
Direction to undertake repairs and maintenance.....	21
Fire trails	21
Works and structures other than road works within Crown roads.....	22
Part 4: Occupation/use of crown roads.....	23
Licence to occupy or use a Crown road.....	23

Enclosure permits for Crown roads..... 23

Definitions..... 24

Related documents..... 24

Overview

Crown roads are public roads administered by the NSW Department of Industry—Lands & Water (the department) under the *Roads Act 1993* (the Roads Act). Crown roads have played a fundamental role in the settlement of New South Wales (NSW) and comprise land corridors set aside for legal access. Road corridors of this type are commonly referred to as ‘paper roads’ or ‘road reserves’ and their use as a road is limited by a range of factors.

These guidelines support departmental staff to determine and administer the most suitable option for the future management of a Crown road, in accordance with the Administration of Crown roads—Policy (Crown Roads Policy).

This document provides guidance on how the department manages the following activities affecting Crown roads:

Part 1: Transfers of Crown roads

Part 2: Crown road sales and closures

Part 3: Works on Crown roads

Part 4: Occupation/use of Crown roads.

Natural disasters

These guidelines do not cover repairs to Crown roads as a result of declared natural disasters. For information and support regarding disaster repairs, please contact the NSW Government’s Roads and Maritime Services agency (RMS) to seek assistance under Natural Disaster Relief Arrangements.

Information on Natural Disaster Declarations is available from the Office of Emergency Management website at www.emergency.nsw.gov.au/Pages/publications/natural-disaster-declarations/Current-Natural-Disaster-Declarations.aspx

Council roads

Please contact the relevant council for enquiries about council roads.

Assistance

If you have questions or require support, please contact us:

Phone: 1300 886 235

Email: enquiries@crowmland.nsw.gov.au

Part 1: Transfer of Crown roads

When Crown roads were first established, their purpose was to provide avenues of legal access to parish portions and allotments established in the subdivision of the Crown estate. Over time, the intended use of a Crown road or land surrounding the road may change; therefore, the ownership and management of the road may also need to change. In some circumstances, Crown roads are transferred to another roads authority to manage when that is the most suitable option.

By transferring the Crown road to the responsible authority, the road can then be maintained to a suitable standard, thereby providing ongoing access to landowners/occupiers, local communities and the public.

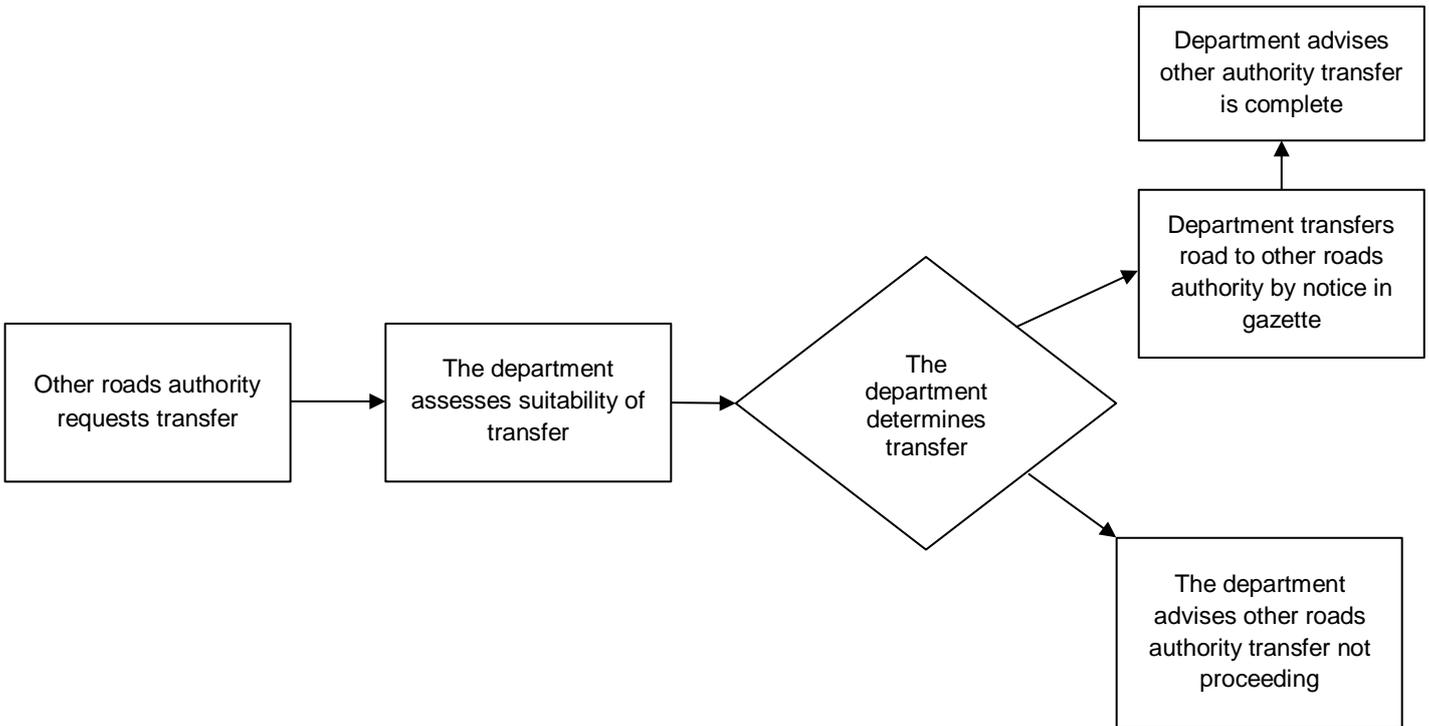


Figure 1.1 Process of transferring a Crown road at request by another roads authority

Transfer of a Crown road to other road authorities

There are two types of transfers administered by the department on behalf of the minister:

1. Crown road transfer at the request of council or another roads authority
2. transfer initiated by the department, where a Crown road is assessed as having a future use that exceeds the original intention of providing an avenue of legal access.

A Crown road can be transferred to council without consent; however it is the practice of the department to consult with the affected council before processing a Crown road transfer. Each proposed transfer will be considered on a case by case basis.

These guidelines establish a set of principles that guide Crown road transfers to council. The department's aim is to reduce the volume of disputed transfers with councils by providing a clearer process and improved communication.

The criteria for determining whether a Crown road is suitable for transfer to council or another roads authority (such as the RMS) are outlined in the Requirements section of Administration of Crown Roads policy. Crown roads are considered suitable for transfer to another roads authority when they meet one or more of the following criteria:

Table 1. Criteria for the transfer of a Crown road

Criteria	Explanation
a. The road authority requests transfer of a Crown road, including for the purpose of Section 44 of the Roads Act.	To initiate the road transfer process, the request by a roads authority such as local council or RMS is to be in writing and accompanied by diagram depicting the extent of road subject of the transfer.
b. The Crown road provides formed road access to urban or rural areas or provides formed road access within country towns, villages, local communities and public areas.	These roads generally service public traffic where the road has been named by council for addressing purposes and council has traditionally maintained or repaired the road. The transfer formalises the administrative arrangements to rest with the relevant council as the appropriate roads authority to manage the road as part of their road network.
c. Road works on a Crown road are proposed by someone other than the department that require development consent under the <i>Environmental Planning & Assessment Act 1979</i> (EP&A Act).	This allows council to regulate the standard to which road access should be established and issue a construction certificate as the relevant roads authority under the Roads Act.
d. Development consent has been granted by a council that requires use of a Crown road to service a development that is causing an increase in traffic.	A key issue influencing the use of affected Crown roads is incremental traffic increasing developments and local council's role in development consent, planning and public road management. The responsibility for managing these roads would rest with Council as the relevant roads authority.
e. A Crown road is required to be maintained to a standard specified as a condition of development consent.	Transfer places the onus on council, as the consent authority, to manage the road in accordance with the requirements of the development approval. If standards were not specified by council as a condition of consent, transfer may still apply 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. A Crown road was constructed or is being maintained by a council to	This places council in a position to formally manage the road in accordance with pre-existing access and traffic conditions. This includes

Criteria	Explanation
facilitate access, as part of its local road network, which may include drainage structures such as a bridge or culverts.	road standards required and administration of compliance against its requirements.
g. Construction or upgrade of a Crown road is required to meet standards required by a council.	This delivers outcomes that are consistent with council's long- established role in managing public roads as part of the local road network for residential and rural needs.
h. A council objects to the sale or closure of a Crown road on the grounds that the road is required for public access.	This preserves the road for current and future access needs.

The road transfer criteria apply to actions undertaken in respect to roads in the past, present and future and are not limited by the date that the Crown Roads Policy and these guidelines were adopted.

The department will not support objections where it is suggested the road is not generally used by the public. Guidance provided in the above criteria supports the continued transfer of Crown roads to local councils. The established criteria are consistent with previous and present legislation and may be applied to matters arising before and after the publication of these guidelines.

The following claims are also not considered valid reasons for a council to decline a department-initiated road transfer:

- **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, and/or
- **financial implications**—where council objects to the 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.

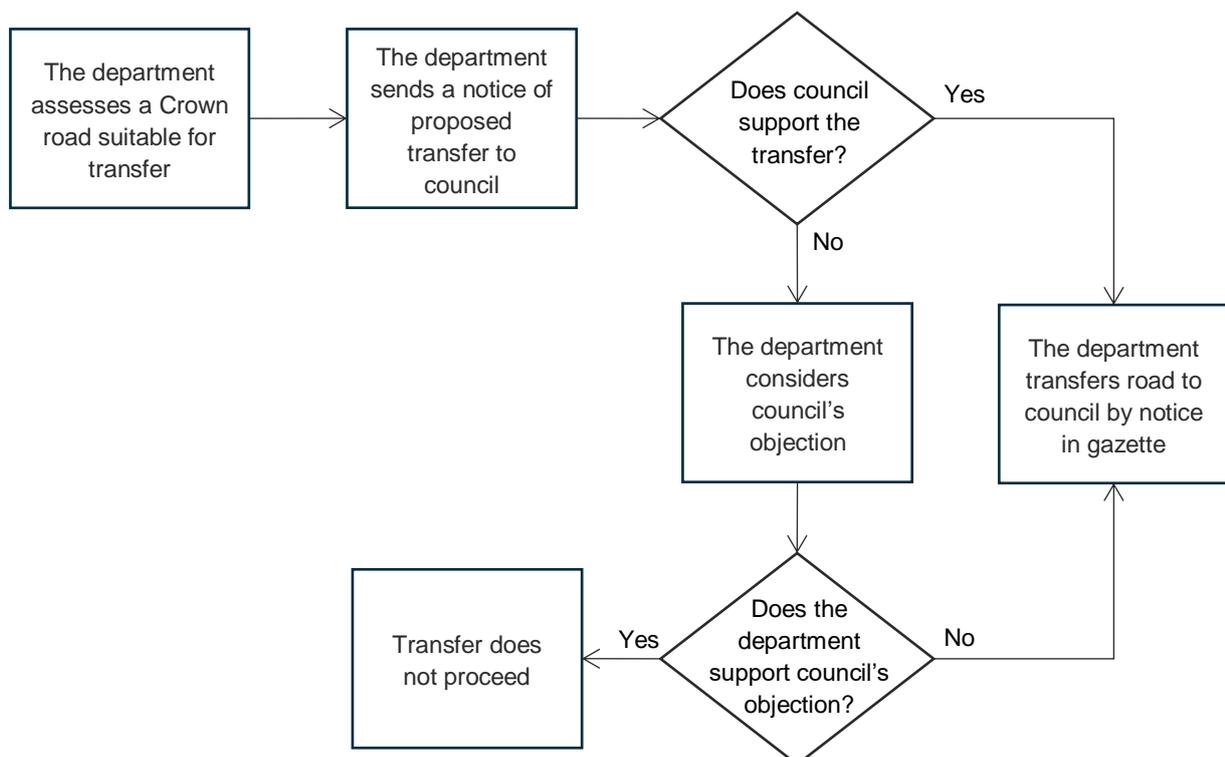


Figure 2.2 Process of departmental initiated transfer of a Crown road to local council

The department cannot transfer a Crown road to RMS without its consent, as provided in Section 152I(3) of the Roads Act.

Transfer of Crown road to council—granting in compensation

A Crown road can be considered for transfer to council so that council can administer the closure of a road for the purpose of giving it to an adjoining landholder. Once closed, the land can be given in compensation for land acquired from that landholder for a road opening. This activity is carried out in accordance with Section 44 of the Roads Act.

Before transferring the road, council must gain consent from the department for the road to be used for the purpose of giving in compensation. If a Crown road is unconstructed, it will still vest in the Crown upon closure unless council undertakes construction or works on the road. If the road vests back to the Crown, the transfer of the land must be administered in accordance with the *Crown Land Management Act 2016*. Councils should contact the department to discuss what might be required for the road to vest in council if closed.

Council should provide the proposal in writing, stating that consent is being sought and include the following supporting documentation:

- a diagram, clearly showing the Crown road sought for transfer
- an undertaking that construction has or will take place on the road prior to closure, and therefore would vest in the council upon closing
- a survey of the proposed road opening. If a survey is not available, a diagram will be acceptable if it provides sufficient context to gauge the proposed change to the public road network.

The department will advise council if more information is required prior to making the decision.

Once consent is given, council can lodge a road transfer application and the department will arrange for the transfer of the road to council. The department will administer the transfer of the Crown road to council and publish a notice of the transfer in the NSW Government Gazette. Once the road transfer has been gazetted, the road becomes a council road.

Part 2: Crown road sales and closures

The department recognises that many Crown roads within the public road network are not required to maintain public access. In these cases, Crown roads may be sold or closed without compromising the broader public interest. Roads may be sold in two ways.

Firstly, the department administers Crown road sales in accordance with Section 152B of the Roads Act ('Road purchases'). Sale of a Crown road under this section is suitable when the purchaser of the road is an adjoining landholder.

Alternatively, when a person wanting to purchase a Crown road does not own the adjoining land, the department may consider closing the road under Section 37 of the Roads Act *before* administering the sale of the land ('Road closure and purchase'). The sale of a closed road would then be administered in accordance with the *Crown Land Management Act 2016*.

Most Crown road sales will be road purchases—that is, to adjoining landholders, in line with Section 152B of the Roads Act.

Before determining when a road is suitable for sale (under Section 152B) or closure (under Section 37), the department will consider the access needs of surrounding properties to establish whether a road must be retained within the public road network.

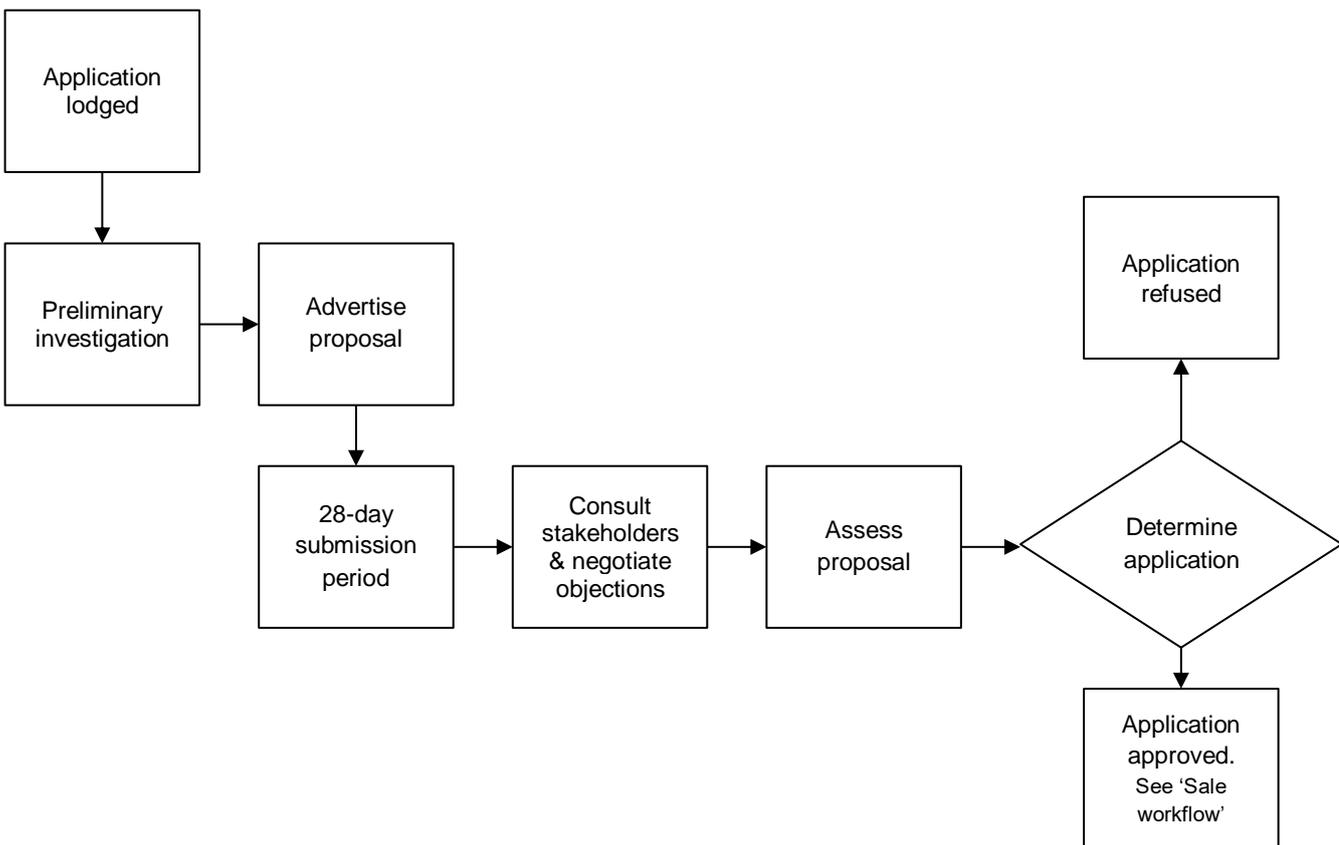


Figure 3. Actions undertaken to determine suitability of road for sale (or closure)

An online search facility is available to support stakeholder consultation for proposals to sell or close a Crown road. The online notices are available at the department's website for 28 days, commencing on the date the notice of proposal is published in a local newspaper. This allows interested parties to search, view and submit a response to current proposals.

The steps and estimated time frames for processing applications are available on the department's website at www.industry.nsw.gov.au/lands/access/roads. These estimated time frames are based on an application that received no objections during the 28-day submission period.

If a Crown road is determined to be suitable for sale, the department will administer the sale of the road, preparing the contract for sale along with other required actions to progress the road purchase until it is transferred to the purchaser as freehold land.

Sections B1 to B15 outline the process for Crown road sales to adjoining landholders under Section 152B of the Roads Act. Section B16 outlines the process for other Crown road sales, which require separate processes for closure prior to sale.

The steps in administering the sale of a Crown road are:

1. The department prepares contract for sale
2. The department sends the contract to the interested party
3. The interested party returns the agreement to purchase
4. The purchaser pays the invoice from the department
5. The department compiles the plan and lodgement documents
6. NSW Land Registry Services (NSW LRS) registers the plan and documents
7. The department prepares the transfer form for the purchaser
8. The purchaser sends the signed form and stamp duty to Revenue NSW
9. Revenue NSW forwards the form to the department
10. The department lodges the form with NSW LRS
11. NSW LRS registers the form and forwards the Certificate of Title
12. The department sends the Certificate of Title to the purchaser.

Crown road purchases

The department processes applications to purchase a Crown road in accordance with Section 152B of the Roads Act. This section of the Roads Act allows the department to sell a Crown road without first closing it to a landholder whose property adjoins the road.

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's decision will be made in accordance with the Crown Roads Policy, these guidelines and the statutory requirements provided for in the *Roads Act 1993* and the *Crown Land Management Act 2016*.

Where an application is successful and progresses to sale, the road will cease to be a Crown road once the transfer to the purchaser has been registered by NSW Land Registry Services.

The option to purchase Crown road/s can give the purchaser benefits such as the termination of their associated enclosure permit or the ability to use the land for purposes other than grazing. Other benefits resulting from purchase of a Crown road may include:

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

In determining whether a Crown road is suitable for sale, the department recognises that each case is unique. The policy and these guidelines provide a framework to establish when a Crown road is suitable for sale or when it should be retained for access within the public road network.

While there are varying complexities and factors which need to be considered, the following criteria must be satisfied:

- the party with an interest to purchase is not an affiliated holder of a Crown account with a balance in arrears. Any amount in arrears must be paid in full to the department before the sale can proceed
- the department has confirmed that the road is not required for access to freehold or government-owned land, nor as a public access in the state road network
- landholders and government authorities reasonably known to have potential interest in the road have been consulted, and their requirements addressed to the department's satisfaction, within the time frame set by the department.

How to lodge an application to purchase a Crown road

There are three steps to apply to purchase a Crown road:

1. discuss your proposal to purchase the road with adjoining and affected landowners
2. lodge a Road Purchase Application Form and a diagram showing the Crown road you wish to purchase. The application form is provided on the department's website.
3. Pay the application fee.

The department recommends that applicants discuss the proposal to purchase the Crown road with adjoining and other affected landowners. This may include government land managers such as National Parks (Office of Environment & Heritage) or NSW Fisheries when the Crown road provides legal access to a national park or a waterway.

To avoid or minimise potential conflict between neighbours over access and future ownership of a Crown road, applicants should try to obtain the general agreement of adjoining landholders before lodging an application. By approaching surrounding landholders before lodging an application, access needs can usually be identified and alternative access arrangements addressed with those parties at that time. This can reduce the time spent resolving access requirements for surrounding properties.

The department acknowledges that agreement with all freehold land owners and government land managers may not always be reached. If agreement cannot be reached with the affected landholders, an application can still be lodged with the department and the access issues will be assessed and determined by the department. If the department determines a road is required for access, it is likely that the department will decline the road purchase application.

A road purchase application form can be found on the department's website and should be completed in full before sending to the postal address provided on the form. The form should be lodged with a diagram that clearly identifies the location of the Crown road, and a cheque in payment of the application fee.

The application allows the department to investigate whether the sale of the road is in line with departmental policy and statutory requirements. If the department determines roads under application are unsuitable for sale, the application will be refused. The application fee is not refundable when a road is refused for closure.

Road purchase application fees and costs

A fee schedule can be found on the department's website. Fees are payable at two stages during the road purchase process:

1. initial application fee (non-refundable)
2. Contract of Sale and Transfer fees if the application is successful.

The initial application fee is not a deposit should the application proceed to sale. The application fee is to cover the administrative costs associated with the preliminary investigations such as:

- surrounding access requirements
- status validation
- Crown tenure searches
- advertisement in newspapers and on the department's website

-
- stakeholder consultation undertaken on behalf of the applicant to determine the suitability for proceeding with the sale of road/s.

Additional fees are payable if the application progresses to sale, which incorporate costs to:

- create title to the road/land, including any easements or restrictions
- prepare the contract for sale
- prepare the transfer for sale of the road
- lodge the transfer with NSW Land Registry Services.

A plan of road closure must be registered for title creation and transfer purposes. In most cases, the plan can be compiled and lodged by the department and the plan compilation fee will be charged to the applicant.

Please refer to the department's website for a listing of all current fees associated with a road purchase application.

There are circumstances where the department is unable to compile a road closure plan. This occurs when the road has previously been held in freehold ownership (prior title) or when NSW Land Registry Services requires the road plan to be drawn by a registered surveyor. In such cases, the department will not charge a plan compilation fee or a plan registration fee to the applicant, as the surveyor will be required to organise lodgement directly with NSW Land Registry Services.

Engaging and payment of a registered surveyor for lodgement of a survey plan for the purpose of a road closure is the responsibility of the road purchaser. The department will not enter into this process other than to provide a letter of instruction to the road purchaser to be passed on to their engaged surveyor.

Assessment of road purchase applications

Applications will be acknowledged as they are received. There are often many applications being assessed by the department, which may impact on the processing time. Applications are processed in order of the date of application unless extenuating circumstances require the application to be given priority.

If an application requires consideration for priority processing, a request must be provided to the department in writing, including the reason/s why. If supporting evidence is not provided, your request may not be granted by the department.

Once an application has been received, a preliminary investigation is undertaken to identify the following:

- access needs of the public road network and properties in the vicinity of the application
- historical status of the road, whether the road is a Crown road
- adjoining land titles and any existing easement requirements affected by the application
- other potential statutory or historical impacts that may affect the administrative procedure required at any stage of the application
- a suitable value per hectare to be applied to the road. This will generally be in line with the statutory land value of the property which adjoins the road, in particular the applicant's property, provided by the Valuer General. Where the road is required for development, engagement of a registered valuer may be required at the expense of the applicant if the road is approved for sale.

The preliminary investigation also provides information for stakeholder consultation and the statutory notice to propose the sale of the road in a local newspaper. To provide procedural fairness to all affected and interested parties, the department advises of its intention to consider the sale of Crown roads by:

- advertising the proposal in a local newspaper, inviting submissions from all interested parties
- notifying relevant authorities, in particular government land managers, other roads authorities and utility agencies, inviting submissions
- writing to the adjoining landholders and other reasonably affected landowners to notify them of the proposal, inviting submissions
- providing an online, map-based notification system with instructions for making an online submission.

Twenty-eight-day period to submit interest in the sale of a Crown road

The 28-day period set for submissions is a statutory minimum under the *Roads Act*. The department encourages all interested parties to send submissions within this time; however, if a reasonable objection is received at any stage prior to the proposal being determined, the department maintains the right to take the objection into consideration.

At the conclusion of the submission period, it may take time to resolve any objections received. The time taken will vary depending on the complexity of the issues raised.

When an objection requires a negotiated outcome between the applicant and the objector, the department will provide time for the parties to reach an agreed resolution. If agreement cannot be reached within a reasonable time, the department will proceed to make a decision based on available information, generally from the stakeholder consultation process and the preliminary investigation.

When the 28-day submission period ends and the affected stakeholders have been consulted, the application will be assessed and determined by the minister's delegate. The assessment will result in the following outcome:

- the road can be sold (or closed) in either whole or part
- the road can be sold (or closed), conditional to registration of an easement
- the road cannot be sold (or closed) as it is required for public access or other government purpose; or
- a combination of the above.

After the determination is made, the applicant and relevant interested parties will be provided with a notice of the outcome in writing. If the applicant was successful in securing approval for the purchase of Crown road/s, they will generally receive a letter of offer for the sale of the road at that time.

Road purchase assessment considerations

When assessing a proposed road sale, the department considers all information, including the conclusions drawn from the preliminary investigation, submissions that were received, and the negotiated outcomes between relevant interested parties. 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.

Legal access requirements

The department will not support the sale of a Crown road that is essential for access, unless legal access is retained by alternative form of access (for example, right of carriageway). When considering a road for sale, the department must determine whether the sale of the road will affect access requirements for surrounding properties and the public road network.

In cases where an applicant owns multiple properties, the department will require the applicant to maintain legal access to those other properties if the sale of a road will result in a loss of legal access. Accessing an affected property through private property is generally not accepted by the department.

The department may consider the sale of Crown road where unique access limitations exist in the road reserve. For example, the road may be impassable for access due to a cliff located across the road reserve. In cases where such consideration is sought, the interested party must put their concerns in writing to the department, with supporting reasons and/or evidence, for consideration. When the department is not in agreement, the application to purchase the road will be refused unless alternative legal access is maintained.

When a road provides the only legal access or is used as a primary access to a property other than the applicant's, the application to purchase will likely be refused. In this situation, the road will only be considered for sale or closure if an alternative legal access can be formally agreed upon by all interested parties, prior to the road being approved for sale (or closure).

Easements as alternative access

Alternative legal access to an affected property can be secured by registration of an easement to connect to a legal road network. Typically, an easement would be registered over the road reserve to benefit the property to which the road provides access. Generally, the department can arrange for the easement to be registered during the sale/plan registration stage.

The department cannot create an easement over freehold land. Such easements must be created privately by the landowners requiring and affected by those proposed easements. Once an easement is in place, any disputes between the parties are private matters and the department is not able to assist.

Easements may be created by means of a Section 88B instrument under the provisions of the [Conveyancing Act 1919](#), registered with the plan of survey or a compiled plan prepared by the department. The department will advise if an easement is required as a condition of sale (or closure). A fee is payable for each registered easement. This will not be payable until a contract for sale is entered into, when the department issues an invoice for the sale and associated costs and fees.

The sale or closure of Crown roads that are not currently used for access but provide the only legal access to a property will likely be refused unless an access easement is established. All owners of the property requiring access must provide their agreement in writing to the department before a determination can be made.

If the formed track used to access an affected property is not located within the road reserve but passes through the applicant's (or other) private land, the sale or closure of the road may be supported if an access easement is registered over the track. Registering the easement will formalise it as a legal access to the affected property. The cost of negotiations, legal services, surveying and other costs associated with formalising legal access over freehold land must be privately arranged between the applicant and other interested parties. The department will not be involved in the negotiations or associated costs.

If all parties have interest in entering negotiations to establish an easement, the department will offer time to reach an outcome. However, if the department determines the time required is unreasonable, the application may be refused. At a later time, if agreement is reached outside the application process, a new application and application fee can be lodged at that time for the department's consideration. The application fee will not be refunded as the fee relates to costs which would have already been incurred by the department in the processing of the application.

Assessment of submissions received

While Crown roads are available as a passage for the state's future access needs, the department recognises the need to strategically consider which roads are necessary and should be retained within the public road network.

Submissions received during the public submission period can provide 'on the ground' information from road users in the vicinity of proposals to sell Crown roads. The department will assess all submissions received, for submissions of objection, where it is established that the sale or closure of the road is likely to be supported, the objector will be provided with an opportunity to respond to the department's assessment. If no new information is received within the time specified by the department, a decision will be made, based on the existing information on hand.

When considering a submissions, the inclusion of supporting documentation (for example, fencing diagrams, Crown tenure details, photographs to evidence use of the road) can help the department make an informed decision. When making a submission, interested parties should always quote the file reference number and direct the submission to the case officer whose details are found within the notification.

The department will assess submissions of objection critically, in conjunction with conclusions from the preliminary investigation, other related submissions that may have been received and any related communications between the department and interested parties. The department will determine whether an objection is to be upheld or overruled.

Submissions of objection to close a road that provides an unformed secondary access to a property that is already serviced by an all-weather road maintained by council would need to have special circumstances to be upheld. Objections will generally not be upheld if they are to the sale or closure of a secondary access to a property that does not provide practical access, due to landform or topographical constraints (for example, internal property access that is limited by impassable land feature, a waterway or in times of flooding).

Where an objector can provide evidence that there is a planned need for future use of the road (usually subdivision), the objection may be given consideration. Examples of evidence may be a development approval or other documentation from council, to demonstrate the intended planned use of the road.

However any objection, on the basis of a perceived or potential future use, will be critically reviewed with consideration being given to:

- suitability for access, including any limitations as a practical access road posed by vegetation or terrain
- the surrounding road network and the standard to which the roads are constructed (wet weather, gravel, bitumen, etc.)
- assessing the impact or suitability of the objector incorporating internal 'access roads' within the property subdivision (for example, overall property size), against the impact or suitability of using the road for the potential future use. When the property size indicates access requirements for a subdivision can be incorporated into the subdivision, the objection may not be upheld
- local council's position on the issue, for example land use zoning, environmental constraints building/development permitted under existing council planning instrument. Council's will be consulted on all proposed Crown road sales (and closures).

Where a property incorporates more than one lot, the department is required to maintain legal access to the property as a whole. It is accepted that individual lots may result in loss of legal access, the departments policy is to maintain at least one legal access at minimum to that property. Objections received on the basis of maintaining legal access to individual lots will be critically assessed and where the objection is on the basis of development requirements supporting documentation will be required. Comment from local council may also be sought for these types of objection

Objections on the basis that unauthorised assets (for example, dams, sheds, and cattle yards) are encroaching on the road corridor will be taken into consideration, along with access requirements. If a road purchase application is lodged to resolve encroachment of the applicant's assets, the closure may be refused if the road is identified by the department as necessary for legal access to a freehold or government-owned land.

If the owner's preference is to purchase the road rather than remove or dismantle the asset, the applicant will need to establish a practical and legal alternative access to the affected properties. All affected parties must first reach agreement prior to the department making a decision.

While all objections are taken into consideration, objections that do not relate to the access requirements of surrounding properties or the public road network may not be upheld. In these circumstances, the department will acknowledge the objection, offering a short time frame to provide more information if necessary and to confirm the objector has sufficient understanding of the proposal.

More than one interest to purchase a Crown road

When the department proposes to sell a Crown road, it will apply procedural fairness in considering all submissions of interest. If the department receives a submission that includes an expression of interest to purchase part of, or the entire road, the department is required to take that interest into consideration.

The department will initially advise all interested parties of the multiple interests to purchase roads and offer time for interested parties to enter into discussions to negotiate an agreed outcome privately. When a decision has been reached, each party must notify the department in writing of the agreed outcome.

If the department is unable to obtain an update or response to whether agreement has been reached from an interested party, the department may consider the interest abandoned, excluding that party from consideration for the sale of road/s.

If an agreed outcome cannot be reached between those with an interest, the department will make a decision regarding the sale of the road. This decision may include the option to retain the Crown road. When deciding on which party should be offered sale of road, the department will either:

- retain the road (refuse sale of the road)
- offer a part sale of the road to each interested party. A full survey plan may be required, dependent upon how the road is to be apportioned. A survey plan will be privately arranged with a registered surveyor at the purchaser's expense; or
- offer the sale of the road in full to one party.

When determining road purchase applications, factors taken into consideration include, but are not limited to:

- **fence location**—identifies which property the road is fenced into or whether it is fenced at all. A decision based on fence locations is in line with existing occupation/use of the enclosed lands.
- **current enclosure permit status**—determine if the road is currently held under an enclosure permit. This consideration only has merit in rural areas. Being the holder of an enclosure permit in higher value urban or semi-urban areas will generally not form the basis for decisions that relate to competing interests to purchase. The financial status of any relevant enclosure permit account will also be considered.
- **access requirements**—determine if the road is required for legal access to property held by either party or to any other property.

Establishing the purchase price of a Crown road

The purchase price 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.

When the road under application is located in a higher value area, the department may require the applicant to privately engage a valuer (accredited by the Australian Property Institute). The valuer will determine a suitable value for the purchase price of the road in accordance with current market values and other relevant valuation principles. A privately engaged valuation may also be required when Crown road/s are purchased for a commercial undertaking or development.

If a full valuation is to be carried out by a privately engaged valuer, it is important that the applicant provide a letter of instruction from the department to the valuer. If a valuation is sought prior to the instruction being issued, the applied principles within the external valuer's report may not be in line with departmental requirements and the valuer's report and proposed value may be rejected by the department's valuation officers.

In all cases where a private valuation is required the:

- engaged valuer will be paid directly by the purchaser of the road

-
- valuation report will be assessed by the department's valuation officers. If a valuation is considered unreasonable, the department may reject the value offered.

Road purchase payment option

The department offers two payment options for the purchase price:

1. payment in full (being the total price)
2. payment by three equal instalments. 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.

Transferring a road purchase application

If an applicant sells the property associated with the road purchase application, the applicant may transfer that application to the new owner of that property prior to entering into a signed contract of sale for the road and payment of the department's initial tax invoice for the purchase price. Any road purchase where the application has proceeded beyond this stage can only be continued to finalisation with that purchaser, or deemed abandoned, whereupon a new application is required. To effect a transfer of the application, the applicant is required to:

1. complete, sign and lodge a Transfer of Road Purchase Application form with the department within 90 days of registration of the transfer of sale for the property to new owners
2. arrange for the new owners to also sign the form to indicate their acceptance of the transfer of the application.

If the department does not receive written confirmation that the application is to be transferred from the applicant (transferor) to the new land owner (transferee) within 90 days of registration of the transfer of sale to the new owners, the department will consider the application abandoned and terminate the application.

Road purchase applications abandoned or withdrawn

An applicant can request their road purchase application be withdrawn at any stage prior to entering into a contract for sale. Applicants must send a written request to withdraw to the department. The department will advise the applicant when the application has been terminated and advise if a refund of the application fee is available. The department will not refund any fees where resources have been expended or fees paid by the department during the processing of the application.

An application is taken to have been abandoned if any requirement of a notice/written request is not provided within the time specified by the department on that notice. Applicants should carefully read all correspondence received from the department to ensure any information required, or monies owing to the department are provided within the time specified. When an applicant does not provide the requested information, the department may consider the application abandoned and terminate the application. The department will advise the applicant when the application has been terminated and advise if any refund of the application fee is available. The department will not refund any fees where monies have been expended during the processing of the application.

Crown road closure

The sale of a closed Crown road is a distinctly separate process from a Crown road purchase under the *Roads Act 1993*. A road closure for the purpose of sale is administered infrequently by the department, where the interested party does not own land that adjoins the road or the road was closed previously and sale of the road did not eventuate (see Part 2, 'Sale of Crown land comprising former public road'). Sale of a closed road is administered under the *Crown Land Management Act 2016*.

Crown roads are not exclusively closed for the purpose of sale. Roads can be closed to be retained as Crown land for the purpose of adding to a Crown reserve, licence or lease to be used for other purposes. If the department determines that a Crown road poses a hazard or environmental risk, the department may decide closure of the road is required to reduce that risk.

The department may close a Crown road by publishing a notice in the NSW Government Gazette. There are two purposes for a Crown road closure:

1. closure of road for the purpose of sale to a non-adjointing landowner
2. closure of road to be retained as Crown land.

When a Crown road closure is gazetted, it becomes Crown land. The land ceases to be a road and the public right of passage over the prior road is extinguished. The sale of Crown land must be administered in accordance with the *Crown Land Management Act 2016*.

Before applying to close a Crown road (other than through the Crown road purchase application process), the interested party must first consult the department by sending their proposal in writing, by email or post, with a diagram to clearly show the road under interest. The department recommends that applicants include any information and supporting documentation regarding the purpose of the purchase. For example, if the proposal relates to a development, include a copy of the development application or approval.

The department will then consider the proposal and whether the closure and sale of the Crown road would be in line with the *Crown Land Management Act 2016*. If the proposed purchase of the road is supported by the department, a road closure application will be provided at that time.

After the application form and fee has been received, the department will consider the suitability of the Crown road being closed and removed from the public road network. The department's decision will be made in line with the Crown Road Policy, these guidelines and the statutory requirements provided for in the *Roads Act 1993* and the *Crown Land Management Act 2016*.

When assessing a proposed road closure, the department considers all information and conclusions from the preliminary investigation, stakeholder consultation from the 28-day submission period and negotiated outcomes between interested parties. Where an application is successful, the road will cease to be a Crown

road when the notice of closure is published in the NSW Government Gazette. The sale process can then be undertaken in accordance with the *Crown Land Management Act 2016*.

For detailed information regarding the advertised 28-day submission period, the department's legal access and stakeholder objection considerations, refer to Part 2 of these guidelines, from 'Assessment of road purchase applications' through to 'More than one interest to purchase a Crown road'.

Sale of Crown land comprising former public road

Where a road vested in the Crown was previously closed and not sold, the former road is now Crown land. Crown land forming part of a former public road may not be dealt with otherwise than under the *Crown Land Management Act 2016* (as per Section 42 of the *Roads Act 1993*). If you have an enquiry about the purchase of Crown land (including previously closed roads vested in the Crown), please email cl.sales@crowmland.nsw.gov.au.

Part 3: Works on Crown roads

The *Roads Act 1993* introduced the concept of road authorities and the means by which a roads authority may build, maintain, protect and regulate the use of roads. A roads authority may carry out road work on any public road for which it is the authority. Road works broadly include any kind of work, building or structure on or within a road reserve which facilitates the use of a road as a road.

The department's role in the administration of Crown roads differs considerably from the traditional functions undertaken by local councils and Roads and Maritime Services (RMS) in delivering funded road services for public needs. Road construction, maintenance and traffic management are not core business functions of the department.

The department's responsibility is based on the administration of legal access along unformed Crown roads and the closure of Crown roads. The focus, on behalf of the minister as a roads authority for Crown roads, is not to duplicate funded road services provided by other roads authorities. Accordingly, road transfer may be relevant as outlined in Part 1 of these guidelines.

The department may authorise road works to be carried out on its behalf. This guideline provides clarity on how the department administers road works for Crown roads that do not meet the criteria for road transfer. It establishes the basis by which road users may lodge an application and seek approval from the department to undertake road works.

Enquiries to undertake road works under Section 71

These guidelines set out the enquiry and application process for Crown road works, including how requests for road works are determined under the Roads Act.

The department does not have the capacity to undertake activities in the same way other road authorities provide funded road work services. The department has developed an application process where a user/s of a Crown road may seek consent under Section 71 of the Roads Act to undertake small-scale road works to manage their access needs.

Works on Crown roads generally fall into two categories:

- maintenance of a road in use for access to deal with general wear and tear
- road works to establish access along an unformed road.

The department does not have the capacity to undertake the activities referred to above in the same way other road authorities provide funded road work services. However, under S.71 of the Roads Act the department may authorise a road user to undertake roads work on its behalf.

The road work determination process is initiated when a Road Works Enquiry Form is lodged with the department. The form is available on the website industry.nsw.gov.au/lands/access/roads. The form provides the department with enquirers contact and property details along other mandatory information, enabling the department to assess whether the proposal meets the criteria for small scale road works as outlined in Section C.3 of this guideline. The department will also assess whether alternative road management options are suitable, such as road transfer (see section A.1 of the guideline).

If the department determines the proposed road works may be suitable, a Road Works Application Form will be provided. Applications may be lodged by a road user (landowner, resident or an entity) that uses or requires access via the affected Crown road. The department may also accept an application lodged by a contractor, project manager or consultant on behalf of a road user.

Information required to support an application

Applicants must provide supporting documentation when lodging forms. Where applicable, supporting documentation should include:

-
- clear diagram showing location of the works within the road corridor, property boundaries, orientation (north arrow), other features such as proximity to houses, cross street, creek crossings
 - recent photographs showing the subject road corridor
 - description of the extent of any vegetation clearing, soil excavation or deposition (cut and fill), structures
 - Review of Environmental Factors - Form available on the departments website www.industry.nsw.gov.au/lands/access
 - details of plant and equipment to be used
 - contractor's details (if known).

Application process and costs

Applications are considered on a case-by-case basis where the proposed work is required to establish or maintain access. The time taken to process applications often depends on the quality of the supporting documentation provided.

There is no fee charged by the department at this time for processing an application. However, costs may be incurred by the applicant for services such as a boundary survey, engagement of an environmental consultant and a works contractor, if required. All costs related to the works are the responsibility of the applicant.

The department will evaluate applications on the basis of small-scale road works on Crown roads that comprise the following characteristics:

- minimal slashing of undergrowth or tree clearing
- light grading of the natural terrain—a maximum 500 mm cut and fill; the department may approve a lesser amount of cut and fill, if circumstances require
- slight crowning of the surface to establish cross fall drainage
- form cross-banks and/or mitre drains or comparable effective devices to control water and sediment run off, and/or
- place gravel, road base or stones to stabilise the surface or fill potholes.

The department is unlikely to support applications for road works in situations where the extent of the works is greater than the scope outlined above or where the work involves one of the following:

- Crown road is more suitable for transfer to another roads authority as the proposed works require development consent under Part 4 of the EP&A Act
- the standard of road construction requires engineering design works to accommodate requirements such as natural terrain and vegetation constraints that have potential significant environmental impacts
- construction of structures such as pipe culverts, concrete causeways or bridges
- where a watercourse crossing exceeds controlled activity exemptions on waterfront land under the *Water Management Act 2000*—note that waterfront includes the bed of any watercourse, whether perennial or intermittent. Please see the Dictionary in the *Water Management Act 2000* for a more detailed definition.
- Crown roads that are on steep or highly erodible land, within protected riparian areas and susceptible to erosion, or land that is otherwise environmentally sensitive
- areas, items, features or places of cultural heritage significance under the *National Parks and Wildlife Act 1974*.

Planning considerations

Applicants are required to consult with council to determine whether a road work proposal requires development consent under council's planning instruments.

If development consent from council is required, the department cannot process a road work application. In these circumstances, council is required to make a determination as they will generally be the responsible consent authority under the *Environmental Planning & Assessment Act 1979*.

However, in such cases, the department would need to issue landowner's consent (on behalf of the minister) to lodge the development application in respect of the Crown road. Council would assess the road standard required and would administer compliance against those requirements.

Where development consent is granted by council, it would trigger the need to transfer the road to council **prior** to council issuing a construction certificate. The road will then be managed by council and no longer be classified as a Crown road.

If development consent is not required, or if a Crown road is located in an unincorporated area (not within a local government area), the department is the determining authority under Part 5 of the EP&A Act and is required to consider the environmental impacts of the proposed works (development) prior to granting an approval. In order to assess the potential impacts of road works, the department requires the applicant to prepare a Review of Environmental Factors (REF). An REF considers the likely impacts the activity may have on the environment and will assist the department to make a determination on whether the works may proceed.

A guideline for preparing an REF can be found on the department's website. An appropriately experienced and/or qualified person may be engaged by the applicant to complete the REF at the applicant's expense. In some cases an Environmental Consultant may need to complete the REF, especially where native vegetation needs to be cleared.

Determination of road works

The department will determine whether a road work application can be approved to proceed or is refused. If approved, a Deed of Agreement will be issued which will include specific conditions for the works. The Deed of Agreement must be signed by both the department's authorised delegate and the applicant or nominated representative for the applicant. Under the Deed of Agreement, the applicant becomes an agent who undertakes the works on behalf of the department.

Repairs and maintenance

The Roads Act enables the department to issue a direction to a person/road user who benefits from Crown road access to repair and maintain the road. The preferred approach is to deal with Crown road repairs and maintenance under an application to authorise road work by the road user (Section 71 of the Roads Act). However, these provisions provide the ability to issue a direction where there is a need, in limited circumstances, to treat and conserve access conditions due to a potential hazard.

The provisions enable the minister to direct users of Crown roads to:

- undertake specified action to repair or maintain a Crown road (Section 108 of the Roads Act)
- where that direction is not complied with, undertake the works and make a direction to pay the costs (Section 109 of the Roads Act)
- contribute to the costs of repairs and maintenance (Section 110 of the Roads Act).

These provisions will only be used in specific circumstances, such as where the department determines the:

- surface presents an unacceptable risk to road users and/or the environment, **and**
- road is unsuitable for closure or transfer, **and/or**
- work does not require development consent or additional assessment.

The department will determine if there is a risk to road users and/or the environment. If the assessment determines urgent action is required, the immediate concerns will be addressed via regulation of traffic (temporary closure), signage or some other means to limit the exposure of road users to the hazard, prior to any consideration about road works.

The use of Sections 108 and 110 of the Roads Act will be limited to specific situations where the options for road transfer (including if development consent is required), sale to adjoining owners and the process for applying for road works under Section 71, have been exhausted. These sections of the Act will only be applied where the identified hazard presents a risk to road users and/or the environment.

Section 108 of the Roads Act provides for directions to be given to road users to undertake repairs and maintenance works. The department will undertake an assessment of the road condition. Where the direction to undertake the works is not complied with, Section 109 allows the minister to undertake the works and direct recovery of costs from the person(s) that failed to comply with the original direction under Section 108.

Section 110 provides for the minister to make directions to road users to contribute towards the repair or maintenance of the road they use. The direction will advise how the direction is to be complied with and the period in which the required payment(s) must be made.

Direction to undertake repairs and maintenance

If the department determines the road is to remain a Crown road, user/s may be directed to undertake works or meet the costs of the department facilitating the works. These directions will only be issued where the Crown road is not generally used for access by the public and the parties so directed, benefit from the use of the road.

The purpose of a direction to undertake works is intended to repair the Crown road surface to its previous condition where possible. If the direction to undertake works is not complied with, the minister may authorise the works to be undertaken by another party and recover costs from the person/s listed in the direction.

Directions to undertake repairs and maintenance will:

- be provided to the road user in writing
- include details of what work is required
- state a time frame in which the works should be completed
- include contact details for comments, enquiries or concerns.

The department may issue a direction for road user/s to contribute toward the repairs and maintenance of a Crown road. Parties who receive these directions may make a submission on the appropriateness of this course of action and address whether they have the financial or other capacity and capability to contribute to or undertake the work. If you have concerns about a direction, please write to the department, including your reasons for concern and, where possible, also provide supporting documentation. The department will take the concerns into consideration and will advise of the outcome.

Fire trails

Amendments to the *Rural Fires Act 1997* enacted in July 2017 introduced a new legislative basis for the establishment and maintenance of an enhanced fire trail network throughout NSW, as identified in Fire Access and Fire Trail (FAFT) Plans. The amended *Rural Fires Act 1997* provides new processes and obligations to plan, identify, construct and maintain fire trails in accordance with *BFCC Policy 1/2017 – Fire Access and Fire Trails to agreed Fire Trail Standards*. The policy, standards and supporting *Fire Trail Design, Construction and Maintenance Manual* are available on the NSW Rural Fire Service website (www.rfs.nsw.gov.au).

Registered and unregistered fire trails exist on Crown roads across NSW. The department continues to actively participate on our local bush fire management committees to identify those fire trails to be identified in FAFT Plans. This includes fire trails to be registered as well as those not proposed to meet the gazetted *Fire Trail Standards*. In the near future, all registered fire trails will be mapped and available for viewing on a public register accessed through the NSW Rural Fire Service website.

Works on fire trails generally include either:

- **construction or upgrade**—to establish fire trails in approved areas and bring them up to the specified fire trail standard, or
- **maintenance**—such as vegetation management of track verges, track surface capping or drainage works, or the installation of gates, signage and fencing.

All fire trail construction, upgrade or maintenance activities on a Crown road, are also subject to the Roads Act and the department's approval processes in line with policy and legislation, including the *Rural Fires Act 1997* and the *Environmental Planning and Assessment Act 1979 (EP&A Act)*. To ensure bush fire management needs are met, the applicant for works on fire trails located on Crown roads must consult and gain approval from the department prior to implementation.

Works and structures other than road works within Crown roads

This section applies to obtaining consent prior to carrying out an activity within a Crown road corridor not connected with road work, as outlined in Part 3, 'Applications to undertake road works under Section 71' above.

Section 138 of the Roads Act, 'Works and structures', enables the department to control the activities of public utility authorities, adjoining landowners and any other person to undertake work to install and maintain infrastructure within Crown roads not directly related to the use of a road for public access. Consent is required under Section 138 from the department to:

- erect a structure or carry out a work in, on or over a public road
- dig up or disturb the surface of a public road
- remove or interfere with a structure, work or tree on a public road
- pump water into a public road from any land adjoining the road
- connect a road (whether public or private) to a classified road.

Proposed activities by public authorities may include the installation of utility services for telecommunications, electricity, water and sewerage supply. However, certain public utility service providers may operate under legislation which may override the need for Section 138 consent. For example:

- utility service providers operating under the *Pipelines Act 1967* are exempt
- telecommunication carriers that operate under federal legislation may not need to seek consent.

However, departmental consent is required for anyone to carry out works for the installation of **private structures** within a Crown road reserve not related to public access. For example, works may be associated with installing a private water pipeline for domestic purpose or a water transfer pipe owned and operated by a mining company.

Sections 139 (conditions), 140 (revocation of consent) and 142 (maintenance of the structure) of the Roads Acts are also relevant to the department's consideration under Section 138 of the Act. As outlined in Part 3, 'Planning considerations', the department as a determining authority under Part 5 of the EP&A Act is also required to consider the environmental impacts of a proposed activity/structure prior to granting consent under Section 138.

For information regarding works and structures on Crown roads, contact the department on 1300 886 235 to discuss the application process and requirements. Note that granting consent under Section 138 of the Roads Act authorises the activity to occur but a licence under Section 152A will be required to authorise the occupation of the road corridor by the structure.

Part 4: Occupation/use of crown roads

A landholder who owns land that adjoins a Crown road can apply for a licence or permit to occupy or use the adjoining Crown road. Application forms for a licence or permit may be obtained from the Crown Lands website and lodged with the prescribed application fee to the department.

Licence to occupy or use a Crown road

A licence application will be assessed in line with Section 152A(4) of the Roads Act. If an activity associated with a licence requires works to be considered, this component of the application will be dealt with under Section 138 of the Roads Act—see Part 3, 'Works and structures other than road works within Crown roads' above.

If approved, the licence will be issued by the department in accordance with the *Crown Land Management Act 2016*, as per Section 152A of the *Roads Act 1993*, granting a non-exclusive right to occupy and/or use a Crown road.

Licences are granted subject to terms and conditions that are set out in the licence agreement and will be subject to the payment of rental.

Enclosure permits for Crown roads

An enclosure permit is an authorisation issued by the department to an owner of an adjoining property allowing a property owner to enclose a Crown road or watercourse within their property by fencing. This formally authorises the use of the road for grazing, in accordance with Division 5.8 of the *Crown Land Management Act 2016* and Section 152A of the Roads Act.

The value of an enclosure permit to a landowner is not only the land's grazing value but also the saving in the cost of fencing the road out of their adjoining property.

Enclosure permits are granted subject to payment of annual rent and a set of terms and conditions that must be complied with. An enclosure permit does not permit the holder to:

- restrict legal access along the road
- claim ownership of the road
- clear any vegetation from the road.

More information and how to apply for an enclosure permit is available on the department's website industry.nsw.gov.au/lands/use/enclosure-permit

Definitions

Table 2. Definitions

Word	Meaning
The policy	Administration of Crown Roads—Policy
The department	NSW Department of Industry—Lands & Water
Person	For the purposes of this policy, a landholder or road user

Related documents

- Administration of Crown Roads—[Policy](#)
- Guidelines—administration of Crown roads ([this document](#))
- [Crown Land Management Act 2016](#)
- [Roads Regulation 2008](#)
- [Roads Act 1993](#)