



FACTSHEET

CROWN LAND AND RELATED ISSUES

This factsheet covers the following topics:

- Crown Land;
- Native Title; and
- Aboriginal Land Claims.

CROWN LAND

Crown land is land that is owned by the State Government. It includes:

- Lands within the Crown public roads network;
- Lands held under lease, licence or permit;
- Lands retained in public ownership for environmental purposes;
- Crown reserves; and
- Other unallocated Crown land.

It does not include national parks or state forests.

In NSW, Crown land is administered by the Department of Primary Industries under three main Acts:

- *Crown Lands Act 1989*;
- *Crown Lands (Continued Tenures) Act 1989*; and
- *Western Lands Act 1901*.

A number of other Acts also relate to Crown land, including:

- *Commons Management Act 1989*;
- *Trustees of Schools of Arts Enabling Act 1902*;
- *Public Reserves Management Fund Act 1987*;
- *Wentworth Irrigation Act 1890*; and
- *Hay Irrigation Act 1902*.

In October 2015, the NSW Government indicated that new Crown land legislation is being developed to replace these Acts.¹

¹ Response to Crown Lands Legislation White Paper, NSW Department of Industry, Skills and Regional.



Roads

Crown roads provide public access to privately owned and leasehold land. The majority of these roads are located in rural areas and many have never been constructed, so may contain significant native vegetation.

Crown roads are administered under the *Crown Lands Act 1989* and the *Roads Act 1993*.

Enclosure Permits

An enclosure permit allows a landowner to enclose Crown land within their property and use it for grazing, subject to an annual rent. It does not give the permit holder any title to the land and requires the land to remain available for public access.

Application forms and information about the annual rent payable for an enclosure permit are available on the Department of Primary Industry website.

Multiple enclosure permits can be amalgamated where the land is held in the same name, is located in close proximity within the same government area, and is operated as the one property.

Purchasing Crown Roads

Purchasing a Crown road allows the landowner to acquire freehold title over their enclosure permit and stop paying annual rent.

Applications

A Crown road must be closed under the *Roads Act 1993* before it can be purchased. Application forms are available on the Department of Primary Industries website.

The decision to close a Crown road is made by the Minister responsible for the *Crown Lands Act 1989* (or their delegate).

Valuation

The purchase price of a Crown road is usually based on the land value of the adjoining land, as at the date the application is lodged. If you disagree with the valuation, you can write to the Department of Primary Industries outlining the reasons why (for example, the land cannot be used for cropping or grazing).

Payment options

The payment options are as follows:

- Pay the purchase price in full; or
- Pay the purchase price in three equal instalments.

The payment (or first instalment), together with associated purchase costs and fees, must be paid within 28 days. If the payment is not made within 28 days, the sale may be withdrawn and the land offered to another party.

Where applicable, an invoice will be sent to the purchaser each year for subsequent instalments.



Sale of property enclosing a Crown road

When a property enclosing a Crown road is sold, any enclosure permit granted in respect of the road remains, and the new owner of the land is liable for payment of the annual rent (including any arrears), or any instalments owing if the road has been purchased (which must be paid immediately). The new owner must notify the Department of Primary Industries within 28 days.

A Crown land conveyancing search will disclose relevant information about Crown land holdings, including whether an enclosure permit has been granted in respect of the land being sold. A copy of the search, setting out the location of the enclosure permit by way of a map and other relevant details, should be attached to the contract for sale of land.

As these parcels of land are often not fenced separately, they may be included in land cropped or laid out for irrigation, even though this is not a permissible use of the land. The implications of this should be explained to the purchaser client.

Leases and Licences

The Department of Primary Industries administers leases of, and licences over, Crown land.

Leases

A lease of Crown land grants an exclusive right to occupy and use the land for a specified period of time and for a specified purpose, subject an annual rent.

Leases are usually granted when exclusive use of the land is required for longer term commercial ventures, for example, agricultural initiatives, irrigation, marina sites and caravan parks.

The lease is recorded on the title of the land. Generally, there is no right to purchase leased land (unless the terms of the lease specify otherwise).

Licences

A Crown land licence grants the licensee a right to occupy and use the land for a particular purpose, subject to an annual rent.

A licence is usually issued for occasional or short term use of the land, for example, waterfront structures (jetties and boat ramps), stock grazing, water supply (pipelines for domestic use and irrigation), and sporting events.

A number of licences may be issued in relation to the same area of land at the same time.

Annual rent

Application forms and information about the annual rent payable for leases and licences are available on the Department of Primary Industry website. Concessions are available for eligible individuals and organisations.

Conveyancing issues

The vendors and purchasers in a conveyance involving a lease of Crown land will need to deal with certain issues prior to finalising the special conditions of exchange of contract, including who is responsible for:

- The application fee;
- Any rent and debt owing to the Crown; and
- The obligations under the lease including rent and any conversion costs.



Perpetual Leases

It is not unusual for leases of Crown land to be perpetual. A certificate of title will be issued for a perpetual lease.

In July 2004, the *Crown Lands Act 1989* was amended to include special arrangements for the conversion of perpetual leases to freehold, to encourage lease holders to purchase the land.

The purchase price of a converted perpetual lease is 3% of the land value, or the notified capital value recorded in the Department of Primary Industries records, whichever amount is lower. The purchase price may not be paid by instalment.

For applications made after 9 March 2009, market-based rent is payable until the application has been finalised.

Application forms and information about the annual rent payable for perpetual leases are available on the Department of Primary Industry website.

Other Continued Tenure Leases

The holders of the following types of leases may also apply to convert the lease to freehold:

- Perpetual leases where the rent is predetermined;
- Term leases (conditional leases, Crown leases and prickly pear leases held for a term of years); or
- Special leases.

However, the purchase price will be the market value of the land or the notified value as recorded in the Department of Primary Industries records. Generally, the purchase price must be paid in full within 6 weeks.

Covenants

A covenant may be imposed on converted land for the purposes of protecting the environment, protecting or managing natural resources, or protecting cultural heritage or other significant values of the land or any item or work on the land.²

In April 2012, the NSW Government announced that it would remove the need for covenants on leases unless the land has been assessed as having high conservation values.

A covenant may also be imposed on converted land to restrict the separation of multiple lots, and/or the land in question from being subdivided.³

Incomplete Purchases

Prior to 1 July 2004, the purchase price of certain tenures could be paid by annual instalments over a period of up to 32 years. Notifications remain on the certificate of title until the purchase price is paid in full.

Where an incomplete purchase is transferred with money still owing, all outstanding money must generally be paid in full within 3 months. An exemption exists for inter-family transfers.

² Crown Lands Act 1989, section 77A.

³ Crown Lands Act 1989, section 77B.



Minister's consent

Minister's consent is generally required to purchase Crown land, or to deal with (e.g. transfer, sublease or vary) a lease of Crown land. Some exemptions apply.

Clause 27 of the Contract for Sale of Land applies if land cannot be transferred without consent under legislation. It provides that:

- The purchaser must properly complete and then serve the purchaser's part of an application for consent to transfer of the land within 7 days after the contract date;
- The vendor must apply for consent within 7 days after services of the purchaser's part.

If consent is refused, then either party can rescind.

If consent is given subject to one or more conditions that will substantially disadvantage a party, then that party can rescind within 7 days after receipt by service of written notice of the conditions.

Generally, if consent is not given or refused:

- Within 42 days after the purchaser serves the purchaser's part of the application, the purchaser can rescind; or
- Within 30 days after the application is made, either party can rescind.

NATIVE TITLE

Native Title is a form of property right that recognises the rights and interests that Aboriginal and Torres Strait Islander people may have in land and water, based on their traditional laws and customs.

An application must be made under the *Native Title Act 1993* (Cth) for native title to be recognised. Schedule 1 to the Act lists NSW land that cannot be the subject of a native title claim because it is covered by certain types of leases, including Crown land leases.

The National Native Title Tribunal will notify people who have a legal interest in the land or water covered by a native title claim, including any lease or licence holders. A native title application determination does not prevent existing tenure holders from exercising their rights under a lease or licence.

Information about applications, determinations and decisions made under the *Native Title Act 1993* (Cth) is available on the National Native Title Tribunal website.

ABORIGINAL LAND CLAIMS

Under the *Aboriginal Land Rights Act 1983* (NSW), vacant Crown land can be granted as freehold to Aboriginal people if it is not lawfully used or occupied or required for an essential purpose or for residential land. The Department of Primary Industries investigates and assesses claims made under the Act.

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