

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.

Crown land does not include other forms of Crown or State owned lands such as National Parks, State Forests or State Rail property.

In NSW, Crown land is administered by the Department of Industry (“Department”) under the *Crown Land Management Act 2016* (NSW) (“Act”). The Act came into force on 1 July 2018, replacing the previous pieces of Crown land legislation. See the [Conveyancing and crown lands tenure factsheet](#).

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 by the Department under the *Roads Act 1993* (NSW).

Enclosure Permits

An enclosure permit allows a landowner to enclose the Crown road 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 Crown road to remain available for public access.

Application forms and information about the annual rent payable for an enclosure permit are available on the Department website at:

<https://www.industry.nsw.gov.au/lands/use/enclosure-permits>.

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

There are many Crown roads that are not used or required for public access. In these cases, Crown roads may be sold and closed without compromising the broader public interests. Purchasing a Crown road allows the landowner to acquire freehold title over their enclosure permit and stop paying annual rent.

Applications

Before applying, landowners should seek general agreement from neighbouring landowners whose properties may be affected by the purchase. An application may still be lodged if agreement cannot be reached as the Department will determine whether the Crown road is suitable to be withdrawn from the public road network for the purpose of sale.

Application forms are available on the Department website. The minimum processing time for a successful road purchase application with no complex issues or unforeseeable administrative delays is 10–11 months. See the [Purchasing Crown Roads factsheet](#).

The decision to approve a Crown road purchase is made by the Minister responsible for administering the Act (or their delegate) (“Minister”).

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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 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 over two years.

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 offer may be withdrawn and the land offered to another interested party.

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

SALE OF PROPERTY ENCLOSING A CROWN ROAD

Where there are instalments owing from the sale of a Crown road, sale of the property cannot occur until the purchase price is paid in full.

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). The new owner must notify the Department within 28 days using the Enclosure Permit: Notification of Transfer Form.

A Crown land conveyancing search will disclose relevant information about Crown land holdings, including the existence of any enclosure permits and the balance of the enclosure permit rent. 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 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 to an annual rent. The lease is recorded on the title of the land.

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.

Leaseholders may apply to purchase their lease.

This decision is entirely voluntary. The Department will determine purchase applications based on their appropriateness. Under the Act, some leaseholders have the right to purchase their lease. Leaseholders can contact the Department to find out if they are eligible to purchase their lease.

A leaseholder cannot transfer their lease if there is any debt owing to the Department. Where there is no debt, the lease may be transferred and the new leaseholder becomes responsible for payment of the rent. Generally, the Department's consent is still required to transfer a lease.

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. Licences are normally granted through public tender or by invitation for expressions of interest, unless circumstances exist to warrant direct negotiation.

If an existing licence provides a benefit to freehold or leasehold land, the licence will automatically transfer when the benefitting land is transferred. Otherwise, you will need to submit a Revocation of Existing Tenure and Issue of a New Licence application form so that the existing licence can be terminated and a new licence granted to the incoming licensee.

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Annual rent

Application forms and information about the annual rent payable for leases and licences are available on the Department website.

Conveyancing issues

The vendors and purchasers in a conveyance involving a lease of, or licence over, 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 owing, and any conversion costs and incomplete purchases.

Perpetual Leases

It is not unusual for leases of Crown land to be perpetual (ongoing). If you hold a perpetual lease over Crown land, you may be eligible to purchase the leased land to obtain freehold title. This is known as conversion. Some perpetual leases have an existing purchase right, known as a statutory 'right to convert', and other leases only have a 'right to apply'.

Leases that have a statutory right to convert will have these rights preserved for two years as part of the transitional arrangements with the new Act. After this time, these rights will change to a right to apply. Leaseholders can contact the Department to find out what purchase rights apply to their lease.

Concessional pricing arrangements will continue during the two year transitional arrangements. After this time, the purchase price will be calculated using either market or land value at the date of application.

The application form for purchasing a Crown land lease and further information is available on the Department website at: <https://www.industry.nsw.gov.au/lands/use/leases/perpetual>.

Other Continued Tenure Leases

The Act has introduced a consistent approach to Crown land tenures by ensuring all lessees with purchase rights go through the same purchase process.

The purchase price is determined by the type of lease being purchased. It will either be the:

- Same as it would have been under the relevant repealed Act, where saving and transitional arrangements apply;
- Unimproved land value in accordance with the Valuation of Land Act 1916; or
- Unimproved market value as determined by the Department.

The payment options are as follows:

- Payment of the full purchase price within 28 days of accepting the purchase offer; or
- Payment by instalments through an incomplete purchase.

Incomplete purchases

An incomplete purchase is a tenure describing a former lease from the Crown that is in the process of being purchased. This is noted on the certificate of title until the purchase price is paid in full.

If your incomplete purchase was granted before the commencement of the Act, you will continue to pay instalments, interest and any other amounts payable in the same way and the same amounts over the agreed timeframe.

If your incomplete purchase was granted after the commencement of the Act, you have the option of paying the purchase price in annual instalments (including interest) over a period of up to 20 years, subject to an annual minimum instalment of \$2,500. Extra payments may be made at any time and there are no penalties for paying out the incomplete purchase early. Purchasers may also consider pursuing external finance arrangements.

Where an incomplete purchase is transferred with monies still owing, the Act requires the balance to be paid in full within three months of the registration of the transfer. Affected parties may request an exemption which, if granted, allows the new owner to continue with the existing payment structure.

CROWN RESERVES

Crown reserves are land set aside on behalf of the community for a wide range of public purposes, including open space, community halls and recreation and sport.

With the introduction of the *Crown Lands Management Act 2016* (NSW) on 1 July 2018, the existing three tier structure of reserves, reserve trusts and Reserve Trust Managers has been replaced by an incorporated non-council manager, who is responsible for each Crown Land Reserve.

The Minister can now vest transferable crown land in a local council subject to any native title rights and interests and reservations. Councils will now manage dedicated or reserved crown lands as if it were public land under the *Local Government Act 1993* (NSW), subject to some Ministerial oversight.

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When acting for a lessee, you should take particular note of any native title provisions to ensure that the lessee is not foregoing any rights it may have for compensation. Councils are now responsible for making certain native title compensation payments for Crown land for which it is a Crown land manager or any former Crown land that is vested in it through the land negotiation program (discussed below). This applies to compensation payable under s 24JAA (public housing), s 24KA (facilities for services to the public), s 24MD (acts that pass the freehold test) or s 24NA (acts affecting offshore places) of the *Native Title Act 1993* (Cth). The State remains liable for all other compensation payments under the *Native Title Act 1993* (Cth).

Covenants

The Minister may, on behalf of the Crown, impose public positive covenants, or any restrictions on use, on Crown land.

The Minister may also include conditions in a contract of sale of Crown land.

Minister's consent

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

New waiver provisions allow eligible leaseholders to apply for a waiver of the requirement to apply for the Minister's consent to deal with the land. After obtaining the waiver, the landholder can find a purchaser, exchange contracts and hold settlement quickly.

Landholders not eligible for a waiver will need to go through the process of obtaining the Minister's consent to the lease transfer prior to the settlement of a contract of sale.

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 service 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 *Native Title Act* lists NSW land that cannot be the subject of a native title claim because it is covered by certain types of leases. The Schedule includes Crown land leases under former Crown land legislation.

Under the *Crown Land Management Act*, the Minister has the discretion to issue native title certificates. Certificates, if issued, will state that, following investigations made by the Department, there is adequate evidence to show that native title rights and interests in relation to the land have been extinguished or do not exist. The issuing of a certificate does not preclude applications under the *Native Title Act 1993* and a certificate is revoked if the land becomes subject to an approved determination of native title.

The National Native Title Tribunal ("NNTT") 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* is available on the [NNTT 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, required for an essential purpose or for residential land, or impacted by a registered application or determination of native title. The Department investigates and assesses Aboriginal land claims. Information on the process for lodging a claim is available on the Department website at: <https://www.industry.nsw.gov.au/lands/what-we-do/our-work/aboriginal-land-claims>.

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