

Grant and release of easements on Crown land

This fact sheet provides an outline of the provisions related to easements under the Crown Land Management Act 2016.

Easements under the **Crown Land Management Act 2016**

The *Crown Land Management Act 2016* (the Act) permits the Minister to grant and release easements over Crown land for a range of purposes.

The Act allows the Minister to grant easements over Crown land on any terms and conditions that the Minister thinks appropriate, including terms and conditions relating to compensation payable to the Crown. The Minister must also be satisfied that it is in the public interest to grant the easement.

Any Land Managers, tenants, and any tenure holders who have a right, to occupy, use and administer the land must be consulted before the easement can be granted. All the parties mentioned above may also have the right to receive compensation.

Provision of all documentation and services, required for the establishment of the easement, is the responsibility of the applicant, at the applicant's cost.

Easement

Easements generally provide the right to access or to use land while the legal title or ownership of the land remains with the owner of the land. A grant of easement does not grant ownership of the land.

For Crown land, this means that third parties can use the land for a variety of activities, and the land continues to be owned by the State of New South Wales.

Easements are generally used to secure rights of access and rights for use of the land for utilities and infrastructure such as electricity lines, water supply pipes, sewer pipes, bridges, drainage, walking paths. Easements typically include terms of use which define the way an external party may use the land and who is responsible for repair, maintenance, and public liability.

Easements for private purposes

When the easement proposed does not offer broad community benefit (private purpose), the Act requires the Minister to be satisfied that the easement will be in the public interest. The onus is on the applicant to demonstrate this, including the social, environmental, cultural, or economic benefits for the public flowing from the easement establishment.

Where an easement for private purposes is requested, the Department of Planning, Industry, Environment – Crown Land (the department) will consider the impact on public use of land, public access, future use of the land, value of the land and indigenous interests. Easements for private purposes that are not in the public interest, for example easements for access that benefit a private property and easements to allow the provision of essential services to private developments, will not be considered.

Easements for Council Crown Land Managers

The Act allows Council Crown Land Managers to grant easements over land under their control. The easement must benefit the land that the Land Managers manage and align with the reserve purpose.

However, if the department's approval is required by Land Registry Services for registration of the easement, the Crown Land Manager must lodge an easement application with the department.

Easements over leased Crown land

The Act permits the Minister to create easements over Crown land under lease. Generally, the lessee must give consent for any easement to be granted over their leased land. In some circumstances, the Act allows easements to be granted over leased Crown land without the consent of the lessee, including where the only practical access route to an adjacent site is over the leased land, to enable necessary services and utilities to be provided to adjacent sites, or for travelling stock routes.

Easements for authorities/organisations with acquisition powers

Organisations with powers of acquisition under their enabling Acts, including local government authorities, should consider in the first instance the creation of easements by compulsory acquisition in accordance with the *Land Acquisition (Just Terms Compensation) Act 1991*. Refer to the compulsory acquisition of Crown land guidelines for details.

Assessing easement applications

The granting of the easement must be consistent with the Objects and Principles of the Act. The Minister must ensure that:

- the proposed easement is in the public interest, and able to generate social, economic, cultural and environmental benefits for community of NSW.
- the effect of granting the easement does not impact the on the ongoing use of the land and any adjoining Crown lands.
- the proposal must meet the relevant provisions of the *Native Title Act 1993*.
- the proposal must meet the relevant provisions of the Aboriginal Land Rights Act 1983, if the land is subject to an undetermined Aboriginal Land Claim.
- all other interest holders must be consulted.

Aboriginal Land Claims

Under the *Aboriginal Land Rights Act 1983*, Land Councils may make claims over NSW Crown land. The lodgement of an Aboriginal land claim by a Land Council creates an inchoate (unformed) interest in the land.

The applicant must evidence in their application, that the proposed easements do not impact the area of any undetermined Aboriginal Land Claims (ALC) via written confirmation from Crown Land Aboriginal Claim Investigation Unit. Where an undetermined ALC is found, the applicant must provide, written confirmation from the claimant Land Council of the withdrawal of the claim, or consent from the claimant Land Council.

The department will not process any applications that do not contain the required evidence in relation to ALCs.

Native Title Interest

Native title is presumed to exist over all Crown land until evidence of extinguishment is found or a determination is made by the Federal Court in response to a Native Title Claim under the *Commonwealth Native Title Act 1993*.

The applicants must evidence the extinguishment of native title interest over the land in their application. If the extinguishment is not found, the department will not be able to process the application.

Other interest holders in Crown land

When the land subject to the easement proposal, is also subject to other interests, including, tenure holders, Crown Land Managers and Local Land Services (for travelling stock route), evidence of consultation with the interest holders regarding the proposal, is to be provided with the application.

Concurrence from the interest holders, including Crown Land Managers and Local Land Services is required towards the proposal.

To identify all interest holders over the land subject to the easement proposal, the applicant may purchase detailed status information through an information broker, or via the department's Status Branch.

<https://www.industry.nsw.gov.au/lands/what-we-do/crown-land-searches>

All interest holders must be identified and consulted at the time of application.

Compensation

The creation of easements generally, has an adverse impact on the value of the subject land. Therefore, any party seeking an interest over Crown land, will be required to pay compensation to the State for that interest. Any interest holders, (if applicable), may also have right to be compensated if their interest is adversely affected.

The amount of compensation must be agreed between the applicant and the department. This is generally determined through the applicant submitting a valuation from an API approved independent registered valuer (obtained at the applicant's expense), for consideration by the department.

Applying for a grant or release of an easement

A Grant and Release of Easement application form is available on the department's website, www.crownland.nsw.gov.au. Details for payment of the application fee and instructions for lodgement are outlined on the form.

More information

- Email: cl.acquisitions@crowland.nsw.gov.au
- Web: www.crownland.nsw.gov.au
- Phone: 1300 886 235

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