

Enclosure Permits

June 2016

What is an enclosure permit (EP)?

An EP allows a private property owner to enclose public land, in the form of a Crown road or watercourse, within their property by fencing.

An EP:

- does not provide the holder with any title to the Crown road or watercourse;
- requires that the land must remain available for access if required; and
- authorises grazing, which is the only permissible use of an enclosure permit

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

What is a Crown road?

Crown roads are administered by NSW Department of Primary Industries – Lands (the Department) under the provisions of the *Crown Lands Act 1989* and the *Roads Act 1993*.

Many Crown roads were established in the 1800s, when the common form of travel was by horseback or foot. Consequently, many of these roads have never been constructed. Nevertheless, they still legally comprise Crown land and are not part of the private properties they adjoin and pass through.

What does an EP allow the landholder to do?

An EP allows property owners to enclose public land, in the form of a Crown road or watercourse, within their property, and use it for grazing, rather than bearing the sometimes significant costs of fencing it out.

Who is responsible for issuing EPs?

The Department is responsible for issuing EPs and has a legal responsibility to ensure the use of public land, including Crown roads, is authorised under the *Crown Lands Act 1989*. Penalties exist

for the unauthorised enclosure, occupation or other use of public land.

What is the rental on my EP?

From time to time the Minister administering the *Crown Lands Act 1989* sets annual rentals for EPs.

The current approved concessional rents for EP holders applies as follows:

- rent is waived for applicants who applied to close a Crown road prior to 10 June 2006 until the application and the purchase is finalised.
- EPs that are part of a conservation agreement, rent continues to be reduced to \$50.00 pa.

Enclosure Permit (EP) rental concessions have been extended. From 1 July 2016 \$140 per annum plus CPI will be payable. Did you know that if you have multiple EP's you may be able to apply to have them amalgamated into a single EP? For more information regarding amalgamating your EP's go to the website or call us on 1300 886 235.

How can an EP be cancelled?

Once granted, an enclosure permit normally remains in existence until the road:

- has ceased to be enclosed. Generally this happens when the Crown road is "fenced out" from the adjoining property. Once the road is no longer enclosed within the property a statutory declaration can be lodged with supporting photographs. When the Department determines that the road is not enclosed, the EP will be terminated. Please be aware that inspections may be undertaken to confirm that the road is not enclosed within your land.
- is legally closed and then purchased by the adjoining landowner. Under the *Roads Act 1993*, Crown roads not required for public access may be closed and purchased by adjoining property holders.
- is transferred to another authority, e.g., the council. In some instances local councils will apply to have control of a Crown road passed to them where that road is required for public use. Once control is passed to the council, any EP held over the road is cancelled.

Rent continues to apply until the account is terminated by Crown Lands and the holder is notified.

How can I close and purchase a Crown road held under an EP?

The Department has substantially reduced the costs and processes involved in closing and purchasing Crown roads within EPs to encourage holders to acquire freehold titles over their EPs.

To obtain an application or find out more about closing and purchasing Crown roads, go to the Roads section at www.crownland.nsw.gov.au or call 1300 886 235 (Option 2).

I am buying a rural property, how do I know if it has an EP attached to it?

The Department strongly recommend anyone intending to purchase a rural property ensures their solicitor undertakes a Third Party Search, prior to settlement to determine:

- the existence of any attaching permits
- any amounts due on rental for attaching permit/s. The payment of any unpaid rent or debt is subject to private settlement between the vendor and the transferee at the time properties change hands.
- the due dates for any rental amounts owing.

What special conditions apply to an EP?

- gates must be erected and remain unlocked where the road is required for public use.
- structures (other than necessary fencing, gates or substitutes) should not be erected on the Crown road or waterway.
- Crown roads also often have important remnant vegetation and operate as significant wildlife corridors. Any vegetation on Crown land must not be interfered with or removed without the permission of Crown Lands.
- the only permissible use of the public land held under an EP is grazing.

What are my options to alter my EP?

You can apply for an alteration of an existing EP if you would like to:

- amalgamate existing EPs into a single EP.
- add to your existing EP by including additional land or a previously unauthorised enclosure.
- vary your existing EP by reducing the area of land held under permit.

You will need to complete the application form: Enclosure Permit: Alteration Application Information on the criteria for each type of alteration is listed in the following topics.

Can I amalgamate my EPs?

Yes, you can apply to amalgamate your EPs if the lands with which the permits are:

- held in the same interests (i.e.,: same name on title); and
- within the same local government area; and
- in close proximity; and
- are operated as the one property.

Can I add an area to my EP?

Yes. You can apply for an addition to an EP where:

- additional Crown roads are enclosed within your freehold land; or
- a Crown road has been enclosed but is not authorised by an EP.

Can I vary my EP?

Yes. An EP may be varied by reducing the original area as a result of any of the following events:

- the land within the EP is retained by Government/council; or
- the land within the EP is comprised in a holding which is forfeited or is no longer in force; or
- the Crown road enclosed under permit is closed or dedicated as a public road; or
- the Crown road subject to the EP is no longer enclosed in adjoining freehold land.

What happens to my EP when land is subdivided?

When a parcel of land held under EP is subdivided and transferred, an EP is granted to the new holder.

The effective date is the date the land is transferred into different ownership, usually via a sale and at the time of settlement.

The new owner must notify the Department in writing within 28 days of the date of the sale using the *Enclosure Permit: Notification of Transfer* application

Where the land is subdivided prior to transfer, or only part of the land transferred, all affected enclosure permits are subdivided, often resulting in many new permits following the subdivision of land.

If an existing EP holder retains part of the land that is subject to a subdivision, then the EP is varied by reducing the residual area, effective from the date of transfer.

Submitting forms

Incomplete application forms cannot be processed and will be returned to the applicant. It is important

that all consents are provided before lodging an application with the relevant fee.

More information

Should you have any further queries or require additional information please contact us on:

Enclosure Permits
NSW Department of Primary Industries – Lands
PO Box 2215
DANGAR NSW 2309

T: 1300 886 235 or 4925 4185

E: enclosure.permits@crowmland.nsw.gov.au

W: www.crowmland.nsw.gov.au

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