

Department of Planning, Housing and Infrastructure

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Crown Road Purchase – Resolution Toolkit

March 2025



Acknowledgement of Country

The Department of Planning, Housing and Infrastructure acknowledges that it stands on Aboriginal land. We acknowledge the Traditional Custodians of the land, and we show our respect for Elders past, present and emerging through thoughtful and collaborative approaches to our work, seeking to demonstrate our ongoing commitment to providing places in which Aboriginal people are included socially, culturally and economically.

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Contents

Overview	4
When there is a valid objection to a sale	4
Possible outcomes.....	4
Your responsibilities as the applicant	5
Resolution process	6
Process overview.....	6
When to start the resolution process	7
Three-phase resolution process.....	7
What you need to do.....	8
What happens next	9
Resolution pathways.....	10
Key issues that you may need to resolve	10
List of possible pathways or solutions	10
Pathway 1 – Easement for access	11
Pathway 2 – Easement for an existing structure or service.....	13
Pathway 3 – Splitting or division of the road	15
Pathway 4 – One party purchasing the whole road.....	16
Pathway 5 – Keeping part or whole sections of Crown road.....	17
Pathway 6 – Non-sale solutions	18
Relevant legislation.....	19
Examples	20
Example 1 – Encroachment.....	20
Example 2 – Conflicting expressions of interest	20
Annexure 1 – Checklist	21
Annexure 2 – Template negotiation form.....	22

Overview

A toolkit for applicants and other concerned parties to resolve disputes over the sale of a Crown road

The NSW Department of Planning, Housing and Infrastructure assesses applications to buy Crown roads on behalf of the Minister administering the *Crown Land Management Act 2016* (the Minister). As part of this process, the Department will contact the relevant stakeholders to find out if they have any reasonable objections to the sale. A reasonable objection is usually one that concerns the access needs of surrounding properties or the public road network.

When there is a reasonable objection to a sale

The applicant (the person who wants to buy the Crown road) is encouraged to negotiate with the objector if there is a reasonable objection to the sale. The Department will allow reasonable time for the parties to agree on a resolution. If they cannot agree within a reasonable time, the Department will decide the outcome. We will consider information provided through the preliminary investigation, stakeholder consultation, and the resolution process. We explain this 3-stage process further below.

The Department carefully reviews all relevant information before making a final decision.

Possible outcomes

When the 28-day submission period ends and the Department has consulted the affected stakeholders, a delegate for the Minister will assess and determine (decide) the application. As a result:

- the road will be sold in either whole or part, or
- the road will be sold, as long as one or more easements or conditions is registered, or
- the road will **not** be sold as it is needed for public access or government purposes, or because the sale is not in the public interest, or
- a combination of the above.

Your responsibilities as the applicant

To resolve the varied interests in Crown roads, it is important that both the applicant and other interested parties approach the process with reasonable expectations. You should be willing to communicate, compromise and work towards a mutually agreed resolution.

A successful resolution process relies on:

- **Respect** – All parties should treat each other with respect and avoid using aggressive or confrontational language when negotiating an outcome.
- **Honesty** – It is important to be truthful and honest about the sale of the road, any concerns or grievances that have led to the dispute, and to provide any necessary documentation or evidence to support claims.
- **Flexibility** – Parties should be willing to adjust their expectations and consider new ideas and proposals that may be presented through the resolution process.
- **Timeliness** – Each party should be prepared to actively take part in the resolution process. This includes responding to correspondence and providing any necessary information or documentation as soon as possible.

If you do not meet your responsibilities during the resolution process, the Department can determine your application using available information, or decide if and how it will proceed about ownership of the Crown road.

Resolution process

Process overview (after submission period)

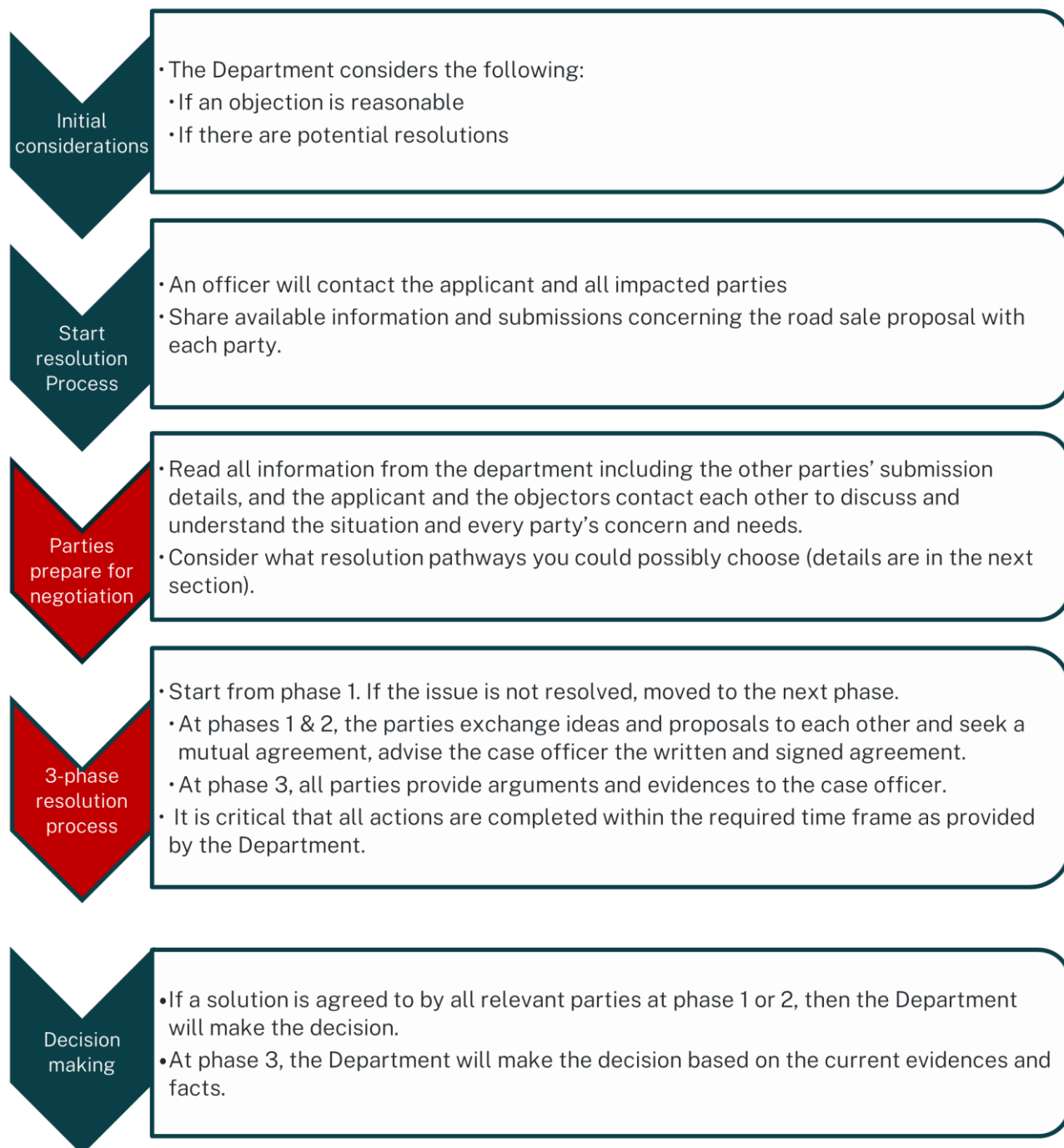


Figure 1. Overview of the resolution process

When to start the resolution process

The Department routinely assesses submissions from affected landowners who object to proposed road sales. Our initial considerations are whether the objection is reasonable and if there are potential resolutions. Where possible, the Department encourages and prefers applicants and potentially affected parties to reach a mutual agreement to resolve the issue.

To start the resolution process, an officer will contact the applicant and all affected parties. The officer will share available information and submissions about the proposed road sale with each party for consideration and negotiation.

The Department is bound by all applicable privacy laws for this process and will only share information when it can do so lawfully.

The applicant must lead the negotiations for phase 1 (see below).

Three-phase resolution process

The Department suggests a 3-phase process for resolving issues. We have listed the 3 phases and their processes below. The resolution process always starts from Phase 1. If the issue cannot be resolved, the process will enter Phase 2, then Phase 3.

Time frames

The time frames for the 3 phases are:

- Phase 1 (negotiation): 42 days
- Phase 2 (conciliation): 21 days
- Phase 3 (decision): 21 days

The Department may give an extension if it is supported by genuine reasons. This is on a case-by-case basis. Genuine reasons may include:

- All parties have agreed to a resolution in principle but need more time to finalise some details of the agreement.
- All parties are willing to negotiate. However, because of unexpected circumstances such as a natural disaster or medical emergency, they cannot take part in the negotiations.

Phase 1 – Negotiation

At this phase, the Department will ask the applicant and other relevant parties to contact each other directly to discuss and seek resolution between themselves. We encourage face-to-face meetings wherever they are suitable, or direct communication by phone or email.

The time frame to reach an outcome by negotiation is 42 days.

If all parties can reach an agreement through negotiation, they should give a written and signed agreement to the Department within the required time frame.

If the negotiation is not successful, the Department will advise all relevant parties that it has started Phase 2.

Phase 2 – Conciliation

At this phase, an officer helps the parties to develop and consider options to reach an agreement.

The officer will give information on the issues and options (where possible and reasonable) for resolution. The officer will not make a judgement or decision about the dispute.

The common communication methods are by phone, email, or online meetings.

The time frame for conciliation is 21 days.

If all parties can reach an agreement during the conciliation phase, they should give a written and signed agreement to the Department within the required time frame.

Phase 3 – Decision

At the decision phase, the parties have 7 days to submit their final arguments and evidence to the Department. The parties should provide a statutory declaration that any information and evidence they give is true and accurate. There is much greater need to produce evidence, compared to the other phases.

This phase ends with the Department making an evidence-based decision, which is final.

The expected time frame for decision is 21 days.

What you need to do

1. Read all information from the Department, including the other parties' submission details.
2. The applicant and relevant parties contact each other to discuss and understand the situation and every party's interests.
3. Consider what resolution pathways you could possibly choose (details are in the next section).
4. Follow the 3-phase resolution process and:
 - a. at phase 1 (direct negotiation) or 2 (conciliation) – exchange information, ideas and proposals. Seek an agreement. Submit the written and signed agreement to the case officer within the required time frame
 - or
 - b. at phase 3 (decision) – give a position, supporting evidence and statutory declaration to the case officer within the required time frame.

A face-to-face conversation is likely to be the best approach for starting the resolution process. However, we have attached a **sample negotiation form** at the end of the toolkit for situations where this is not possible. We suggest that you use this form to support negotiations and to document your cooperation with other parties.

What happens next

If all relevant parties agree to a resolution, then the Department will take the next steps in deciding the matter.

If all relevant parties cannot agree and the process moves to Phase 3, then the Department will make the decision based on the existing evidence and facts.

The Department will consider the negotiation has failed if:

- no mutual agreement or resolution of the issue can be made, or
- the relevant parties have not given the Department written advice of their negotiation outcome within the required time frame, or
- one or more parties do not engage in the negotiation, or
- one or more parties become uncooperative or aggressive.

In these situations, the Department will make a final decision based on all available evidence and facts at the time.

If an application to buy a Crown road is not successful and an agreement is reached outside the application process, you can lodge a new application and application fee with the Department at that time.

Resolution pathways

Key issues that you may need to resolve

- You need the road proposed for sale for primary access to your property.
- You need the road and are currently using it for secondary access to your property (for example, in wet weather, or because of environmental barriers).
- You have an existing easement that would be affected by the proposed sale of the road.
- You have evidence the road is enclosed or fenced into your property.
- You own an asset(s) that extends (encroaches) onto the road (for example, a building or dam).
- You are authorised to use the road by enclosure permit or licence.

List of possible pathways or solutions

- Easement for access.
- Easement for use of an existing structure or service.
- Splitting or subdivision of road.
- One party purchasing whole of the road.
- Part or sections of road remaining open.
- Non-sale resolutions (for example, road transfer, licensing).
- Legalisation of track in use (private arrangement).

Depending on the complexity of the issue, you may consider one or more options to resolve part or the whole of the issue(s). This may result in a single resolution (for example, an easement) or a combined resolution (for example, splitting of road with an easement).

Pathway 1 – Easement for access

When to consider this option

The Department will consider supporting the sale of a Crown road that is needed for access where:

- alternative legal access is available (for example, by a registered easement)
- affected parties agree.

Accessing a property through another private one without an easement is not considered legal access.

Easements for access give someone the right to access and use land while the legal title or ownership of the land remains with its owner. An easement does not grant ownership of the land. An easement could be registered over the road to be sold to benefit the other property to which the road gives access.

Once a road is sold with an easement in place, any disputes between the parties are private matters and the Department cannot help any further.

How the Department can help

We can

- The Department can help prepare and lodge a standard or relatively simple easement over the road to be sold during the sale or plan registration stage. For example, we could help prepare an easement under the provisions (legal conditions) of the *Conveyancing Act 1919* without added terms and conditions.
- Written consent from the benefiting party is needed to create the easement.

We cannot

- The Department will not give legal advice about an easement. You may wish to seek your own advice on this matter.
- The Department will not help prepare and lodge an easement under the following circumstances:
 - the landowner whose property's access is affected does not agree to the easement
 - a complex easement with special terms and conditions. Such easements may be arranged by the qualified surveyors or solicitors engaged by the applicant and other affected parties at their own costs
 - an easement over freehold land. Such easements are private matters arranged between affected landowners.

What you need to decide and advise the Department of

If all the relevant parties agree to an easement arrangement, all parties must give the Department their written consent to the creation of the easement within the resolution time frame. You will need to decide and advise the Department of the following details:

- easement type

- easement location
- easement width.

If the formed track in use is not within the road location

If the formed track in use for access to an affected property is not within the road but passes through the applicant's (or other) private land, the Department may support the sale of the road if an access easement is registered over the track within a reasonable time.

Registering the easement will formalise it as a form of legal access to the affected property. This will be a private matter to be fully negotiated and organised between the affected parties.

The Department will not be involved in the negotiations and will not bear any of the costs for setting up the easement.

Pathway 2 – Easement for an existing structure or service

When to consider this option

If you meet these 2 criteria below, you may consider this easement option:

1. a structure such as a pipeline, an electricity powerline, an irrigation channel, or other structure is located across or within a road proposed for sale that serves your property
2. there is a registered easement over the structure within the adjoining freehold land that stops, or is cut off by, the road proposed for sale.

To maintain the continuity of the existing easement and the service, an easement with the same terms and conditions may be registered over the road to be sold to benefit the affected property.

Once an easement is in place, any disputes between the parties are private matters and the Department cannot help.

How the Department can help

We can

The Department can help create an easement with the same terms and conditions as an existing easement over an adjacent section of road or land proposed for sale during the road sale process.

Written consent from the benefiting party and the owner of the structure is compulsory for creating the easement.

We cannot

The Department will not help create the easement if:

- the benefiting party and/or the owner of the structure does not consent to it, or
- there is no registered easement over the structure within the adjoining freehold land (even if the owner of the structure has a private agreement with the user of the service/benefiting party), or
- the proposed easement does not match the existing easement.

What you need to decide and advise the Department of

If all the relevant parties agree to an easement arrangement, all parties must give the Department their written consent to the creation of the easement within the resolution time frame. You will need to decide and advise the Department the following details:

- easement type
- easement location
- easement width
- any special terms and conditions.

Pathway 3 – Splitting or division of the road

When to consider this option

The option of splitting or dividing a road into 2 or more portions can be appropriate when more than one party wants freehold title. Each section of the road can be sold to separate parties based on their needs and the design of the road. When a road is split and sold, each portion becomes a separate parcel of land with its own title and boundaries.

This may be an appropriate pathway when the road affects more than one property. A practical resolution may be to split the road based on considerations such as:

- existing fence lines
- current use of the road
- landscape and contour (in some circumstances).

How the Department can help

We can

- If a road is split laterally (from one side to the other), the Department may prepare a compiled plan for title creation of the parcel during the road sale process. The cost would be lower than a survey plan by a registered surveyor the cost of which is borne by the purchaser.

The compiled plan may have limitations that affect your intended use of the land.

We cannot

- If a road is split longitudinally (lengthwise) or by other angles, the Department may not be able to draw and lodge a compiled plan that meets NSW Land Registry Services' requirements. You will need to engage a registered surveyor for the plan at your own expense.

What you need to decide and advise the Department of

If all relevant parties agree to the split of the road, all parties must confirm this in writing to the Department within the resolution time frame. You will need to decide and advise the Department of:

- the parameters of each section, if any of the following are available:
 - the distance from the cutting point to a corner
 - the length and width of each section
 - any other measurements
 - a diagram showing the above information signed and dated by all interested parties
- the reason why you are splitting the road this way.

Pathway 4 – One party purchasing the whole road

When to consider this option

This is a common resolution of conflicting interest in purchasing. The consideration and negotiation should be based on evidence such as:

- the existing fence lines
- the current use of the road
- landscape and contour, in some circumstances.

An example is when a road is fenced into a property or is in between 2 properties, but only used by one property. In these circumstances, it would be preferable to sell to the party already benefiting from the road.

How the Department can help

We can

- Provide aerial imagery, plans or diagrams showing boundaries and fences.

We cannot

- Provide evidence of use of the road that extends beyond aerial imagery.

What you need to decide and advise the Department of

If all relevant parties agree to one party buying the whole road, all parties should confirm this in writing to the Department within the resolution time frame. You will need to decide and advise the Department of the following details:

- who will purchase the road
- the other parties' withdrawal of their interest
- any supporting reason or evidence.

Pathway 5 – Keeping part or whole sections of Crown road

When to consider this option

Consider this option when there are competing interests or conflicting opinions about the proposed sale. One or more parties may withdraw part of their interest to resolve the conflict, or the road can stay in place and continue to be part of the public road network.

How the Department can help

We can

- The Department can help facilitate outcomes, as described in this toolkit.

We cannot

- The Department cannot make determinations without enough evidence.

What you need to decide and advise the Department of

If all relevant parties fail to agree on a resolution or agree to keep part or whole of the road as a Crown road, all parties must confirm this in writing to the Department within the required time frame. You will need to decide and advise the Department of the following:

- the details of the section of road to be kept
- withdrawal of interest or objection about the road.

Pathway 6 – Non-sale solutions

When to consider this option

The following options may not be available; you need to consult with the relevant authority, with support from the Department.

Road transfer

Crown Lands may transfer a Crown road to a local council or another road authority. This can resolve issues about road construction and maintenance.

Visit the Crown Lands webpage (www.crownland.nsw.gov.au) for more information.

Licensing

Crown Lands may offer a licence to someone who wants to use a Crown road for a specific purpose, rather than permanently selling the road. A licence provides a flexible solution that allows the Department to keep ownership and control of the road while meeting the needs of the party seeking access.

Visit the Crown Lands webpage (www.crownland.nsw.gov.au) for more information.

Relevant legislation

Roads Act 1993 (section 152A-152J)

This act outlines the regulation and management of public roads in NSW, including Crown roads. It establishes the requirements for the classification and ownership of roads, the procedures for changing road classifications, and the conditions for the closure or sale of Crown roads.

Conveyancing Act 1919 (section 45 and 88B)

This act governs the legal process of transferring property ownership in NSW. It outlines the requirements for contracts of sale, the role of solicitors and conveyancers, and the rights and responsibilities of buyers and sellers during the conveyancing process. It also provides for standardised easement conditions.

Crown Land Management Act 2016

The overall purpose of this Act is to ensure the sustainable management and use of Crown land for the benefit of the people of New South Wales, including the protection of public access to and use of Crown roads.

Examples

Example 1 – Encroachment

We will consider objections on the basis that unauthorised assets (for example, dams, sheds, and cattle yards) are encroaching on the road corridor, along with access requirements. If someone lodges an application to buy a Crown road as a way of resolving the encroachment of their assets, the Department may refuse the sale if it identifies the road as necessary for legal access to freehold or government-owned land. The Department also reserves the right to take compliance action for any unauthorised assets on a Crown road.

If the owner's preference is to buy the road rather than remove the asset, the applicant will need to establish a practical and legal alternative form of access for the affected properties. All affected parties should attempt to reach agreement before the Department decides.

While we consider all objections, we may not uphold those that do not relate to the access requirements of surrounding properties or the public road network. In these circumstances, the Department will acknowledge the objection, offering the objector a short time frame to give more information if necessary and to confirm they understand the proposal.

Example 2 – Conflicting expressions of interest

When determining road purchase applications, the factors that the Department may consider include, but are not limited to:

- **fence location**—identifies which property the road is fenced into or if it is fenced at all
A decision based on fence locations is in line with existing occupation or use of the enclosed lands
- **current enclosure permit status**—if the road is currently held under an enclosure permit
The Department will not base decisions about competing interests to purchase on one party holding an enclosure permit in higher-value urban or semi-urban areas. We will consider the financial status of any relevant enclosure permit account
- **access requirements**—determines if the road is needed for legal access to property held by either party or to any other property.

Annexure 1 – Applicant Checklist upon receipt of this Toolkit

Applicant name:

Account number:

- ☐ I am aware of my responsibilities during the resolution process and the consequences for not adhering to these requirements.
- ☐ I have carefully considered each resolution pathway to resolve the conflict.
- ☐ I acknowledge that I understand the Department will conduct a thorough investigation to reach a resolution and that the Department's decision is final.
- ☐ I will ensure all reasonable steps are taken to resolve this matter.

Signed

Date

Annexure 2 – Template negotiation form

Dear [Recipient],

I am writing to start a negotiation process about the purchase of a Crown road. As we have conflicting interests in this matter, I propose one or more of the following pathways:

- ☐ Easement over the road ☐ Partition (splitting) of the road
- ☐ Easement over freehold land ☐ Partial withdrawal of interest
- ☐ Other:

Reasons for my proposed solution:

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Details I am willing to negotiate include:

--

Details I am not willing to negotiate:

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Supporting diagram (if applicable):

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Yours sincerely,

Preferred phone number:

Preferred contact email: