

Compliance brochure mail out to landholders with a Crown Lands Domestic Waterfront Licence

Information for Councils

A brochure will be included with the Crown Lands IPART rent re-determination notices, sent to all domestic waterfront (DWF) licence holders (approximately 7300), in mid May 2020.

The brochure is expected to generate a broader level of knowledge and understanding of what compliant and approved waterfront structures are throughout the licensed foreshore community (see *attachment A*).

Why have we sent this brochure?

- Aiming to inspire voluntary compliance and conformance with the Crown Lands DWF Guidelines (*attachment B*)
- To assist in managing the projected large number of unauthorised occupations, and legacy issues concerning non-conforming and/or illegal structures, by providing relevant information

How might this mailout affect Council?

Councils may be a point of contact for licence holders enquiring about planning requirements for existing structures built on Crown land that have not been previously authorised by either Crown Lands or Council.

The procedure required to authorise previously unapproved structures is outlined on page 7 of the attached Crown Lands DWF Guidelines for Councils information and as also outlined in the following simple flowchart.



Background

The department manages the private use of submerged public land for the benefit of the NSW community. This includes approximately 7300 licences in 14 tidal waterways along the Eastern seaboard. The *Crown Land Management Act 2016* (the Act) requires all users and occupiers of

Crown public land to hold a licence agreement. The licence agreement reflects the way this public waterfront land is being used by, and for, the benefit of private parties.

Crown Lands has set criteria and requirements when considering an application to develop, occupy and/or use domestic waterfront facilities on Crown land. The DWF guidelines relate to all existing and proposed domestic waterfront facilities and are also used to guide the department's decisions in relation to domestic waterfront facilities that may be located below the MHWM.

What are unauthorised structures?

Any structure that has been erected without the consent of the department (Crown Lands), Council, Fisheries and Maritime. Examples include jetties, landing platforms, berthing piles, slipways, boatsheds, pontoons and the like.

What does the landholder need to do to authorise any non-compliant structures or use?

1. They will need to seek approval from the department as landowner to lodge the relevant planning application with their local Council. This is achieved through the Landowners Consent application process ([landowners-consent-for-domestic-waterfront-structures-application.pdf](#)).
2. Where Council grants planning consent, a Licence application is required to be submitted to enable formal authorisation under the Act prior to any new construction taking place. More information can be found at; <https://www.industry.nsw.gov.au/lands/use/licences/domestic-waterfront>

What waterways will be included?

Crown tidal waterways along the eastern seaboard from the Queensland to Victorian borders:

Far North Coast, Mid North Coast, Hunter, Lake Macquarie, South Coast, Far South Coast, Tuggerah Lakes, Brisbane Waters, Hawkesbury, Pittwater, Georges River East, Georges River West, Port Hacking East and Port Hacking West/South.

Enquiry

Please direct any enquiries **not related** to planning requirements for existing structures built on Crown land to the department:

Phone: 1300 886 235 (Australia wide)

cl.enquiries@crowmland.nsw.gov.au

www.industry.nsw.gov.au/lands

Attachments

Attachment A - Brochure

Attachment - Crown Lands Domestic Waterfront Licences — Guidelines

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Crown Lands Domestic Waterfront Licence holders brochure mail-out



Information for Councils

Attachment A

NSW GOVERNMENT

Domestic Waterfront Licence Holders

Crown Lands manages more than 7,300 domestic waterfront licences in 14 tidal waterways along the eastern seaboard.

You must hold a domestic waterfront licence for the use and occupation of Crown land below the mean high water mark for recreational infrastructure such as jetties, pontoons and boat ramps.

We work closely with other agencies to ensure planning requirements and environmental sustainability measures are considered when granting licences.

Our purpose is to ensure that all domestic waterfront licences across NSW are managed strategically, so that our precious waterways can be enjoyed by all, now and into the future.

Crown land below the mean high water mark is managed for the benefit of the people of NSW.

Did you know?

- » You need consent to build new structures or alter structures on Crown land below the mean high water mark, and you must have a licence in place before construction begins.
- » You are not permitted to berth a vessel for more than six hours, unless authorised by your licence.
- » As licence holder, it is your responsibility to ensure that you comply with the terms and conditions of your licence agreement, including any requirement to remove or seek authorisation for unapproved structures.
- » You must provide public access to waterfront and submerged Crown land.
- » Air and dry docks, along with modular and storage pontoons are unacceptable structures.

Quick Quiz

Am I complying?

- Do my structures match what is authorised by my licence?
- Have I (or the previous licence holder) undertaken works to existing structures without first getting consent from the department and local council?

To find out more, please visit:

industry.nsw.gov.au/domestic-waterfront
or call **1300 886 235**



CROWN LAND MANAGAGEMENT

Domestic waterfront licences— guidelines

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More information

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Contents

Introduction	1
Overview	1
Assistance	1
Part A: General advice	2
Guideline objectives	2
Waterway strategies	2
The responsibilities of the department	2
Waterfront structures not acceptable on Crown land	3
Licences	3
Reserve-front waterfront occupations	4
Waterfront occupations that adjoin another party's land	4
Sharing domestic waterfront facilities	5
Rent	5
Pensioner rebates	5
Financial hardship	6
Compliance	6
Part B: Constructing a new domestic waterfront facility	7
Procedure	7
Step 1—Applying for landowner's consent for the lodgement of a development application.....	7
Step 2—Assessment of application for landowner's consent	7
Step 3—Lodgement of development application with council.....	8
Step 4—Applying for a Crown land licence	8
Step 5—Finalisation	9
Part C: Transferring a domestic waterfront facility licence	10
Procedure	10
Step 1—Notifying the department of transfer	10
Step 2—Receipt of notification and issuing of documentation	10
Part D: Sub-licensing berthing areas.....	11
Definitions	12
Related documents	13
Superseded documents	13
Annexures.....	14
Annexure A	15
Annexure B	17

Introduction

In New South Wales (NSW), the NSW Department of Planning, Industry & Environment – Crown Lands (the department) has ownership, control and management of Crown land below the mean high water mark (MHWM) and manages this land for the benefit of the people of NSW.

Domestic waterfront facilities on Crown land can be a large investment and can also enhance the use and enjoyment of waterways in NSW. These guidelines provide general information on how the department manages domestic waterfront facilities on Crown land.

Overview

These guidelines establish the department's criteria and requirements when considering an application to develop, occupy and/or use domestic waterfront facilities on Crown land. The guidelines relate to all existing and proposed domestic waterfront facilities and will also be used to guide decisions in relation to any domestic waterfront facilities that may be located wholly or partially on Crown land above the MHWM.

These guidelines do not apply to coastal protection works covered by the *Coastal Management Act 2016*.

Assistance

For further information or assistance in relation to domestic waterfront facilities, contact the Waterfront Tenures Team on 1300 886 235 (Option 3, Option 1) or waterfront.tenures@crowland.nsw.gov.au.

Part A: General advice

Guideline objectives

The objectives of these guidelines are to ensure that:

- a) Crown waterfront land and submerged Crown land remains in public ownership for long-term public benefit
- b) public access to waterfront and submerged Crown land is maximised and domestic waterfront facilities do not obstruct, restrict or discourage the safe and practical access along and adjacent to this land
- c) domestic waterfront facilities do not adversely impact on the natural environment, including the flow of water, water quality, marine vegetation and other natural coastal processes
- d) shared domestic waterfront facilities are encouraged where it is appropriate or necessary to minimise and reduce the cumulative impact of structures on Crown land
- e) domestic waterfront facilities on Crown land are for water-dependant or water-related recreational purposes that require location in or in close proximity to the waterway
- f) the location and design of a domestic waterfront facility harmonises with the appearance and scale of the landscape and maintains the visual quality of the surrounding foreshore and waterway environment
- g) domestic waterfront facilities do not adversely impact on the cultural, environmental and any existing items of importance or significance
- h) domestic waterfront facilities do not present a navigational hazard or impede access or use of any existing domestic waterfront facilities or deter future domestic waterfront facilities.

The department assesses any proposals in relation to domestic waterfront facilities against these objectives.

Waterway strategies

The department uses waterway strategy documents to guide the development of domestic waterfront facilities in particular waterways. These strategies can identify areas where domestic waterfront facilities are not appropriate, where shared facility usage is required, or how unauthorised structures are managed.

Where a waterway strategy exists, it will apply in addition to these guidelines. The department, in conjunction with other statutory authorities, can adopt or develop new waterway strategies from time to time.

The responsibilities of the department

The department is responsible for administering the *Crown Land Management Act 2016*, the objects under this act and the principles of Crown land management. In relation to domestic waterfront facilities, the department is responsible for:

- assessing applications for landowner's consent to enable lodgement of a development application with a council under Part 4 of the *Environmental Planning and Assessment Act 1979* for the development of domestic waterfront facilities on Crown land
- assessing applications as the determining authority under Part 5 of the *Environmental Planning and Assessment Act 1979* for the activity of domestic waterfront facilities on Crown land that do not require a development application
- assessing licence applications to occupy and use domestic waterfront facilities on Crown land
- ongoing administration, management and regulation of the use and occupation of domestic waterfront facilities on Crown land.

Waterfront structures not acceptable on Crown land

The department will not approve new applications for the following types of structures:

- any structure that interferes with public foreshore access, including fencing, hedging and gardening
- boat lifts or lifting devices, including davits, except where the applicant has a genuine need for a lifting device for the safe disembarking and embarking of a disabled person
- boat cradles, unless the cradle can be retracted and fully stored above the mean high water mark or within an approved boatshed
- boatsheds, except in locations where the only access to private land is by water and the only practical location for the boatshed is on Crown land, subject to practical public access along the foreshore not being restricted
- boat storage is not permitted below the MHWL unless in an approved boatshed or berthing area
- decking that is not essential for access to other domestic waterfront facilities
- floating air, dry docks, modular/storage pontoons or other similar structures for the antifouling or storage of vessels
- structures associated with fuel storage, fuels supply, service pedestals, supply of water, sewer or drainage
- gates and locks that restrict entry to the jetty
- lighting, lighting fixtures, solar panels, security cameras and other electrical works, unless advice has been sought from the department
- pergolas, cabanas, barbeques or similar structures
- permanent berthing at a jetty, except where berthing is wholly within an approved berthing area
- ramps, skids or slipways that do not conform to the natural foreshore levels and significantly obstruct practical public access
- reclamations, seawalls and retaining walls, unless foreshore erosion requires arresting and where no alternative strategy (such as relocation) is possible, or where a limit line of reclamation has been identified and adopted to conform with a smooth tidal flow
- residences and other non-boating structures or usages, including satellite dishes, aerials, awnings or other fixtures. Any boatsheds that have a residential or non-boating related use will be required to be removed or reinstated as a boatshed.
- slipways that provide any type of storage on tidal or adjacent foreshore Crown land
- solid-fill jetties, unless required as groynes for the protection of the foreshore
- structures where the adjoining foreshore land is reserved Crown land, Crown road or other public land
- swimming enclosures and swimming pools.

Licences

The department issues licences for new and existing domestic waterfront facilities to authorise the use or occupation of Crown land, subject to a set of terms and conditions. You must hold a licence prior to constructing any new structures on Crown land (and valid development consent if applicable).

When a licence is granted, the department creates a notation on the certificate of title for the land that benefits from the domestic waterfront facility. This alerts prospective buyers to the existence of a licence for the domestic waterfront facilities and allows easy identification of the licence in any conveyancing process relating to the benefitting property.

Generally, domestic waterfront licences are granted to the owners whose land directly adjoins waterfront facilities on the Crown land below the MHWL. Where a domestic waterfront facility extends outside the water division prolongation, it is not treated as an adjoining structure. For more

information see the section ‘Waterfront occupations that adjoin another party’s land’ in this guideline.

Licences are granted for a term of 20 years, or alternatively for the remaining life of a domestic waterfront facility if the lifespan is fewer than 20 years. All new licences have a specified termination date; however licences may be revoked by the department at any stage without compensation.

A licence holder must apply to the department for a new licence six months prior to the expiry of a current licence in order to continue using and occupying of the domestic waterfront facility.

The department may need to assess the facility in order to determine the life expectancy, whether there have been any additions made, whether the facilities are in good condition and that the structure continues to comply with the *Crown Lands Management Act 2016* and these guidelines. The department may request further information from the applicant to inform this assessment, including an identification survey, engineers report and photographs.

A licence holder can request the department terminate a licence at any time. The department will only terminate the licence once the domestic waterfront facilities have been appropriately removed from Crown land and the site is rehabilitated to the department’s satisfaction. Approval to remove the domestic waterfront facilities may also require development consent from council and other government authorities, such as NSW Department of Primary Industries—Fisheries. Any development consent may also be subject to landowner’s consent from the department.

The licence sets out the terms and conditions for the use and occupation of the domestic waterfront facility. The licence holder is responsible for complying with these terms and conditions, including maintaining the domestic waterfront facility in a state of good repair. The licence holder must also comply with any other local, state or federal government requirements that apply.

Reserve-front waterfront occupations

The department will not authorise the construction of any new domestic waterfront facilities that adjoin reserved foreshore land because of the impediment they represent to the public’s use and enjoyment of the land. This includes adjoining foreshore land that is reserved Crown land, a Crown road or other public land.

There are a number of existing reserve-front domestic waterfront facilities that have been authorised in the past. Because reserve front waterfront occupations adjoin public land, it may be difficult for licensees to obtain public liability insurance, which is a requirement of a domestic waterfront licence agreement.

When these licences expire, the department will review the condition of the structures and if derelict or in a poor or unsafe condition, instruct the holder to remove the structures at their own cost. The department can order removal prior to the expiration of the licence if evidence is available that the structures pose a risk to the public.

Note that this section does not apply to domestic waterfront facilities that serve to arrest and prevent the erosion of land or provide access to water-access-only occupations.

Waterfront occupations that adjoin another party’s land

If domestic waterfront facilities (proposed and existing) adjoin freehold land that is not owned by the applicant, the department is unlikely to grant a licence. While sharing arrangements are encouraged in certain situations, such as water access only occupations, the department not force owners to share structures that directly adjoin their freehold property.

Sharing is at the discretion of the owner whose property directly adjoins the structures below the MHW. Any existing waterfront tenures of this nature will not transfer when the land changes ownership unless a legal and binding deed of agreement is maintained with the incoming party.

Existing domestic waterfront facilities that extend outside the water division prolongation and do not directly adjoin the freehold land are not classified as adjoining.

Sharing domestic waterfront facilities

Where two or more parties are sharing a domestic waterfront facility that adjoins both properties, a separate licence agreement will be issued to each party. These arrangements allow each party to share rental costs based on the area of occupation that adjoins their property and receive separate notices for the payment of rent.

If a domestic waterfront facility is shared between two or more properties, a party wishing to amend the domestic waterfront facility must obtain the agreement of all sharing parties before any amendment to the facilities is approved by the department.

Where a strata body, or the like, applies for a licence, the licence is issued in the name of the interest group. However, the body must nominate a principle contact for the purpose of administering the licence. Sharing arrangements then become a matter for the parties involved.

Rent

All domestic waterfront occupancies have a two-part tariff comprising an annual administration fee (subject to an annual 2.5% increase) and an annual rental charge. The administration fee applies to all tenures, and annual charges are subject to GST. The rental charge covers the use and occupation of public land below the MHWL and is calculated using the four elements in the formula below:

$$\text{Annual rent charge} = \text{precinct statutory land value (\$m}^2\text{)} \times \text{occupancy area (m}^2\text{)} \times \text{discount factor (50\%)} \times \text{rate of return (updated annually by IPART).}$$

Properties that are only accessible by water only are exempt from the annual rental charged for the area of occupation that is for the sole purpose of accessing the adjoining waterfront property.

Table 1 details the structures that are essential and exempt from rent and those that are discretionary. The annual administration fee will still apply to these licences.

Table 1. Structures exempt from rent and those that are discretionary

Essential structures	Discretionary structures
<ul style="list-style-type: none"> • Jetty (including solid fill and stone) • Jetty ramp • Pontoon • Berthing area • Wharf • Platform • Slipway* • Landing • Boat ramp* 	<p>All other structures not listed as an essential structure, including boat lifts, boat sheds, reclamations, swimming pools and enclosures, residences</p>

* Only applicable where there is no other essential structure

For further information on rental calculations for domestic waterfront occupancies, see the *Domestic Waterfront Rent Calculation Fact Sheet* available from the NSW Department of Industry website industry.nsw.gov.au/lands/use/licences/domestic-waterfront

Pensioner rebates

Eligible pensioners with a domestic waterfront facility adjoining their sole place of residence are eligible for a 50% rebate on the rental component only. For further information on eligibility, go to [Financial Concessions - rebates](#).

Financial hardship

Hardship relief is available to licence holders experiencing short-term financial difficulties. It provides assistance through payment plans, extensions to pay and in certain cases, and waiving of interest on late payments.

Every hardship relief application is considered on a case-by-case basis and must be supported by documentary evidence of financial hardship. Any personal information provided to the department is used and held in accordance with the information protection principles of the *Privacy and Personal Protection Act 1998*.

In all cases where concessions or rebates are applied, it is only applied to the rental component.

Compliance

The department monitors and inspects domestic waterfront facilities to ensure that licence holders are complying with the terms and conditions of their licence.

The most common compliance breach is for unauthorised structures where a domestic waterfront facility has been erected or altered without the consent of the department, Council, Fisheries or Maritime.

When unauthorised structures are detected, these are referred to the department's Compliance Unit for risk assessment. The department may issue a new licence for the total area of occupation where considered appropriate, or require the licence holder to alter their existing licence if the area of occupation has been reduced. The department will note details of the unauthorised structure/s in the licence agreement and the licence holder must seek the consent of all relevant authorities to legalise their occupation. If the unauthorised structures are not permissible under these guidelines or consent cannot be obtained from the relevant authorities, then the structures must be removed at the licence holders' cost or the department may serve an order to have the unauthorised structures removed.

Unauthorised structures may not be covered by public liability insurance and the adjoining landowner and/or person responsible for the structure/s may be held liable for injury in the absence of a suitable insurance policy.

It is the responsibility of a licence holder to comply with the terms and conditions of the licence, as well as other state and local government requirements. Failure to comply can result in the department taking any of the following actions:

- serve a notice on the person to cease using the structure
- serve a notice on the person to remedy or rectify the non-compliance
- remedy, rectify or remove the non-compliance and recover costs from the person
- terminate the existing licence
- commence legal action
- issue penalty infringement notices.

All occupations on Crown public land require a licence agreement. Untenured occupations are subject to compliance and enforcement action. The Minister has powers under s5.26 - *licences for unauthorised use or occupation of Crown land* to grant a licence to the registered owner of the benefiting land without their consent.

Part B: Constructing a new domestic waterfront facility

Construction of a new domestic waterfront facility requires consent from the department (as the landholder) before lodgement of a development application with council, and then a licence from the department once the development application has been approved. This section of the guidelines details the process for applying for the required consents to construct a domestic waterfront facility.

Procedure

Step 1—Applying for landowner’s consent for the lodgement of a development application

1.1 Preparation of plans and environmental assessment

- The applicant must compile relevant site plans and any statement of environmental effects or environmental impact statements for the proposed domestic waterfront facilities to satisfy the requirements of the relevant council’s development application process. Private contractors or consultants can be engaged by applicants to undertake this work on their behalf.

1.2 Consent from NSW Department of Primary Industries—Fisheries and NSW Roads & Maritime Services

- The applicant must contact and apply for written consent from the NSW Department of Primary Industries—Fisheries and NSW Roads & Maritime Services for the proposed domestic waterfront facilities prior to lodging an application for landowner’s consent with the department

1.3 Submission of application

- The applicant must submit a completed *Landowner’s consent for domestic waterfront structures application form* (available from www.industry.nsw.gov.au/lands/what-we-do/fees-and-forms/forms) along with supporting documents and the associated fee to the department. The application form must include the following:
 - two copies of a site plan or survey showing the location of the proposed domestic waterfront facility, including dimensions and area (square metres) for all existing and proposed occupation below deed MHWM
 - the completed development application, Construction Certificate for new builds or Building Information Certificate for existing (authorised or unauthorised) structures
 - a detailed description of the proposal that is sufficient to understand the full extent and likely impacts of the proposal together with any statement of environmental effects or environmental impact statements
 - photographs of the site at high and low tides from off-shore facing the property and from on-shore facing the waterway
 - a copy of the written consent from NSW Department of Primary Industries—Fisheries and NSW Roads & Maritime Services supporting the proposal.

Step 2—Assessment of application for landowner’s consent

2.1 Assessment of application

- The department will assess the application for consistency with the objects and principles of the *Crown Land Management Act 2016* and these guidelines, including the criteria set out in Annexure A. These obligations are different to the assessment process for any subsequent application, consent or other approval required under the *Environmental Planning and Assessment Act 1979*.
- Where council deems that a development application is not required for a domestic waterfront facility under their local environmental plan, the department becomes the

determining authority under Part 5 of the *Environmental Planning & Assessment Act 1979*. The applicant may be required to prepare a review of environmental factors and the impacts of the proposal will be reviewed under Part 5 of *Environmental Planning & Assessment Act 1979* in addition to the *Crown Land Management Act 2016* and these guidelines.

2.2 The department advises applicant of outcome

- If the landowner's consent application is approved, the department will issue the applicant with landowner's consent and sign the required plans. The letter of consent usually includes a condition that the development application be lodged in the form that has been approved by the department within 12 months of the date landowner's consent was granted. Should the 12-month period lapse before the development application is submitted with council, then landowner's consent will need to be renewed. Once landowner's consent has been granted and the DA approved, the applicant applies for a new licence agreement.

Landowner's consent does not authorise a person to occupy Crown land and commence construction of a domestic waterfront facility. Occupation and construction of a domestic waterfront facility can only commence once a development consent has been issued and a domestic waterfront licence has been granted.

If there are any changes made to the development application after landowner's consent is granted, the department will need to reassess the matter prior to the applicant lodging the modified development application with council.

Step 3—Lodgement of development application with council

3.1 Applicant lodges development application with council

- The applicant lodges the development application and required supporting documentation with council for determination.

3.2 Council determine the application

- Council determines the application and advises the applicant of the outcome. If the development application is refused, then the applicant will need to discuss with council if the development application can be amended to enable approval. The domestic waterfront facility proposal will be unable to progress until the council approves a development application.
- If Council refuses a Building Information Certificate, then it is likely that Council will require the domestic waterfront facility to be removed.

If council requires any changes to the development application after submission, then the department needs to reassess the matter prior to further consideration by council.

Step 4—Applying for a Crown land licence

4.1 Applicant applies for a Crown land licence

- The applicant must submit a completed *Licence: new domestic waterfront licence application form* (available from industry.nsw.gov.au/lands/what-we-do/fees-and-forms/forms) to the department. The application must be accompanied by:
 - a copy of the approved development application or Building Information Certificate and stamped plans
 - the fee listed on the licence application.

4.2 Assessment of licence application

- The department will assess the licence application for consistency with the objects, principles and requirements of the *Crown Land Management Act 2016*, these guidelines, the *Native Title Act 1993* and other relevant legislation or policy. The department may also

need to issue notifications of the proposed licence to relevant stakeholders, potentially adding additional time to the processing of the application.

- If the application is approved, the department will issue the applicant with an offer of licence. The licence offer must be signed by all applicants and returned to the department (if agreed). The department then arrange for the licence to be executed and a signed copy returned to the applicant.

Step 5—Finalisation

5.1 Final approvals from council

- Once the department has issued the applicant with an executed licence, the applicant must ensure they have all the required approvals in place under the *Environmental Planning and Assessment Act 1979*. This can include getting a construction certificate from council.

5.2 Commencement of construction

- After the applicant obtains all required approvals, they can begin construction of the proposed domestic waterfront facilities. The applicant must adhere to any conditions outlined in the development application, other statutory approval and the licence when constructing the facilities.

5.3 Finalisation

- When construction is completed, the applicant may need to seek further approvals from their local council. This includes, but is not limited to, an occupation certificate.
- As a condition of the licence granted by the department, the applicant must also supply a 'works as executed' survey within six months of completing construction. If the facilities are different from that originally approved, the applicant may have to apply for an alteration to their licence and obtain further development consent or a Building Information Certificate from their local council.

This process is shown as a flowchart in Annexure B.

Part C: Transferring a domestic waterfront facility licence

Licences for domestic waterfront facilities that are associated with, and provide a direct benefit to, private land will automatically transfer to the purchaser when the ownership of the private land changes hands. This transfer occurs automatically at the time of settlement in accordance with the *Crown Land Management Act 2016*. It is the responsibility of the purchaser to notify the department and pay the required transfer fee within 28 days of settlement.

A licence **will not** automatically transfer if the ownership of the benefitting land is changed by a transmission and not a transfer. A transmission can occur where the ownership of land is transmitted to an executor, beneficiary, mortgagee or other third party.

When a licence automatically transfers, the purchaser is liable for any amount owing on the licence, payment of the ongoing rent and compliance with the terms and conditions of the licence.

Licences will automatically transfer only if settlement occurred after 1 July 2018. Settlements before 30 June 2018 are subject to other transfer provisions and the purchaser must lodge an application with the department for the transfer to take effect.

Where a property is associated with a domestic waterfront licence, we recommend the conveyancing agent or solicitor acting for the purchaser undertakes a third-party conveyancing search with the department. This confirms whether a licence automatically transfers and details any amounts owing on the account at the time of settlement so that the appropriate adjustments are made at settlement.

This section details the process the purchaser must follow in notifying the department of the transfer of the licence.

Procedure

Step 1—Notifying the department of transfer

- The purchaser must notify the department within 28 days of settlement by completing the *Licence: automatic transfer notification of a domestic waterfront tenure —form* (available from [industry.nsw.gov.au/lands/what-we-do/fees-and-forms/forms](https://www.industry.nsw.gov.au/lands/what-we-do/fees-and-forms/forms)), paying the required fee listed on the form and providing photographs of the domestic waterfront facilities. The photographs are used to determine the condition of the structures and confirm that no unauthorised works have been undertaken.

Step 2—Receipt of notification and issuing of documentation

- Once the department receives notification, it will update its records and review the domestic waterfront facilities to ensure they have not been expanded or modified from that originally approved. Where there are unauthorised domestic waterfront facilities, the department will take compliance action that could require the structures to be removed or for the purchaser to seek development and/or building consent for the structures and a new Crown land licence. The department will then issue the purchaser with a copy of the terms and conditions for the licence.

For further information on automated transfers, refer to the *Automatic licence transfer—guidelines* available at: https://www.industry.nsw.gov.au/__data/assets/pdf_file/0006/164553/Automatic-licence-transfer-guidelines.pdf

Part D: Sub-licensing berthing areas

With approval from the department, licence holders who have an approved berthing area within their licence can sub-license their berthing areas to a third party. This incentive generates an income for the licence holder and rationalises waterfront structures and moorings, thus freeing up space in the state's waterways.

The scheme is entirely voluntary and licence holders must ensure they have the appropriate insurances in place.

The department will review the application and the associated documentation and if satisfied, advise the licence holder in writing that an authority to sub-license will be added to the terms and conditions of the licence.

The minimum term for a sub-licence agreement is 12 months. The maximum term is five years or the balance remaining on the domestic waterfront facility licence (if fewer than five years). In addition to the annual domestic waterfront licence rent, there is an annual charge for the authority to sub-licence a berthing.

The berthing area can only be used for a domestic purpose and private recreation. In accordance with the domestic waterfront facility licence, the licence holder and the third party are not authorised to carry out commercial activities on Crown land.

Get more information in the *Sublicensing of approved berthing areas—Frequently asked questions* document available from industry.nsw.gov.au/lands/use/licences/domestic-waterfront

Definitions

Refer to the *Licensing of Crown Land* policy (policy number IND-O-252 available from industry.nsw.gov.au/policies) for definitions of key words used within these guidelines. Key words used in these guidelines not referenced in the policy are defined in Table 2.

Table 2. Terms and definitions

Word	Meaning
adjoining landowner	Owner of the private residential land that directly adjoins Crown land, for example the owner of a waterfront property
benefiting land	The property described in the Description of Land on the licence agreement
berthing area	Area of water allocated for the on-water storage of boats adjacent or attached to a fixed or floating facility, allowing for walk-on access to the boat
boat lift	A device used for lifting or steering a vessel out of the water
boatshed	A building or other structure used for the storage and routine maintenance of a boat of boats and which is associated with a private residence
Crown waterfront land	Is Crown land (as defined under the <i>Crown Lands Management Act 2016</i>) that is located above the MHWL and adjoins submerged Crown land
davit	Mechanical device for lifting or lowering of a vessel from or in to the water
department	The NSW Department of Planning, Industry & Environment – Crown Lands
domestic	use associated with a private dwelling/residence and a non-commercial purpose
domestic swimming enclosure	A net or other structure placed in a waterway for the purpose of providing a protected swimming area, but does not include a public water recreational facility
domestic waterfront facility	Include jetties, boatsheds, berthing areas, boat ramps, slipways, pontoons, reclaimed land, seawalls for private usage
foreshore land	Land that is directly adjacent to a waterway
holder	The person referred to as the holder of a domestic waterfront licence
IPART	Independent Pricing and Regulatory Tribunal
landowner's consent	With respect to the <i>Environmental Planning and Assessment Act 1979</i> , consent by the landowner for the lodging of a development application under section 4.12 or for the lodging of a building certificate under section 6.26
MHWL	Mean high water mark. The plane of the mean high water level of all ordinary local high tides that intersect the foreshore. Generally MHWL is determined by a registered land surveyor
Minister	The ministering administering the <i>Crown Land Management Act 2016</i> and his/her delegates

Word	Meaning
occupancy	The area for which a domestic waterfront licence is issued and rent is charged
permanent berthing	Berthing of a vessel at a domestic waterfront facility for a total period greater than six hours
pontoon	A floating structure used for access to the water that is support by a jetty and ramp
practical public access	Right of members of the community/public to gain access along the intertidal zone and adjoining Crown foreshore land, where the existing landform permits access
reclamation	An area of submerged Crown land which has been filled or drained for the purposes of reclaiming the land
reserve front	Where a Crown reserve, council reserve or road reserve directly adjoins a waterway and separates a person's private land from the waterway
seawall	A structure along the land/water interface to protect the land from the sea or to stop accelerated erosion of the shoreline, but does not include a breakwater
slipway	Any structure, usually in the form of two support parallel rails, on which a wheeled cradle is run to draw a vessel by means of a powered or manual winch, a block and tackle or the like
structure	A structure that makes up part or all of a domestic waterfront facility and is to be taken as interchangeable with domestic waterfront facilities
submerged Crown land	Crown land as defined under the <i>Crown Lands Management Act 2016</i> that lies below the mean high water mark for tidal lands, including the intertidal zone and the bed of the ocean, rivers, lakes and creeks
unauthorised	Existing waterfront structures installed without consent from the department or without approval from Council, Fisheries or Maritime.
waterway	Means any river, stream, lake, creek, lagoon, swamp, wetlands, or tidal waters located in an IPART waterway

Related documents

- *Crown Land Management Act 2016*
- NSW Department of Industry—Licensing Crown Land Policy
- NSW Department of Industry—Automated Licence Transfer Guidelines.

Superseded documents

- NSW Department of Industry—Domestic Waterfront Facility Policy 2014
- NSW Department of Industry—Sublicensing of Approved Berthing Areas: Information for Domestic Waterfront Licence Holders.

Annexures

Table 3. Guide to annexures

Letter	Title	Details
A	Objective criteria	Details the criteria used to determine whether a proposal meets the objectives of these guidelines.
B	New domestic waterfront facility flow chart	A flowchart of the process in obtaining approval for the construction of a new domestic waterfront facility.

Annexure A

The table below provides the criteria used to assess if a proposal for a domestic waterfront facility is likely to achieve the objectives set out earlier in these guidelines.

Table 4. Objectives and outcomes

Objective	Outcome
<p>Public ownership and public access (Objectives a and b)</p> <p>i. Where private land directly adjoins submerged Crown land</p>	<ul style="list-style-type: none"> Where there is no direct public access to submerged Crown land, domestic waterfront facilities may be acceptable. Where public access to submerged Crown land is possible, then structures are designed, and have incorporated into their construction, adequate provision to maintain or enhance public foreshore access and makes best use of waters space fronting the property.
<p>ii. Where submerged Crown land adjoins a reserve front and is not immediately private land nearby</p>	<ul style="list-style-type: none"> New domestic waterfront facilities are not acceptable. Existing domestic waterfront facilities may remain where public access needs are reasonably provided for within the wider area and there are no obstructions. <p><i>Note: There is no guarantee prior sharing arrangements will continue where ownership of the adjoining benefitted land changes.</i></p>
<p>iii. Where submerged Crown land adjoins a reserve front and there is nearby private land</p>	<ul style="list-style-type: none"> New domestic waterfront facilities are not acceptable. Existing domestic waterfront facilities may remain until expiration licence or as otherwise determined by the minister. Existing domestic waterfront facilities may be considered for transfer at the discretion of the minister <p><i>Note: There is no guarantee prior sharing arrangements will continue where ownership of the adjoining or benefitted land changes.</i></p>
<p>Impact on natural environment (Objective c)</p>	<p>Impacts of the domestic waterfront facility on the natural environment and systems within the area are to be minimal. The department will consider the following matters (but not limited to these):</p> <ul style="list-style-type: none"> water flow and quality marine and riparian vegetation marine organisms shoreline stability natural coastal processes retention of natural features, including the configuration of the bed of the waterway, natural rock formations and undeveloped areas.
<p>Function and use (Objectives d & e)</p>	<ul style="list-style-type: none"> Domestic waterfront facilities are only to be used for water-dependant or water-related recreational purposes requiring location in or in close proximity to the waterway. Domestic waterfront facilities are only to be used for domestic purposes. Two or more persons may propose the shared use of a domestic waterfront facility that straddles both property boundaries and each party will be issued a separate licence. The department encourages shared occupation in a locality where it is appropriate to reduce the overall number of waterfront structures, in particular to reduce cumulative impacts in a locality.

Objective	Outcome
<p>Appearance and aesthetics (Objective f)</p>	<ul style="list-style-type: none"> • The location and design of the domestic waterfront facility is considered by the local council when assessing any development application (DA). The department will also consider the capabilities of the land, its suitable and preferred uses in relation to the proposed domestic waterfront facility. • Domestic waterfront facilities should not reduce the current or future public enjoyment of the Crown land because of inappropriate scale or form. These structures should be of a scale and form that is not disproportionate with or intrusive on the surrounding development and the natural and cultural environment. • Lengths of proposed structures do not protrude further into the waterway than existing structures in the immediate vicinity. The need to reach usable water is not adequate justification for extended structures. • Domestic waterfront facilities confirm with the orientation of existing structures in the vicinity. Where proposed structures interfere with navigation or access to adjoining domestic waterfront facilities, an alternative orientation may be considered.
<p>Impact on cultural environment and cultural heritage (Objective g)</p>	<p>New domestic waterfront facilities are not to disturb or impact on artefacts and relics in the area. Separate approval from the NSW Office of Environment & Heritage may be required if any artefacts or relics are to be impacted.</p> <p>Existing structures that are listed as part of the cultural heritage of the area are recognised by the department. ‘Listed’ means a listing under (but not limited to):</p> <ul style="list-style-type: none"> • the National Estate • the State Heritage Register • heritage and conservation registers of NSW agencies • a planning instrument (State Environmental Planning Policy or Local Environmental Plan)
<p>Waterway navigation (Objective h)</p>	<ul style="list-style-type: none"> • Domestic waterfront facilities (including berthing areas) do not obstruct navigation and comply with requirements of Roads & Maritime Services. • Domestic waterfront facilities do not extend outside of the water division prolongation of the benefitting property and do not impede access or use of any existing domestic waterfront facilities or deter future domestic waterfront facility development. Existing domestic waterfront facilities that extend outside of the water division prolongation do not automatically create any additional interest in the domestic waterfront facilities.

Annexure B

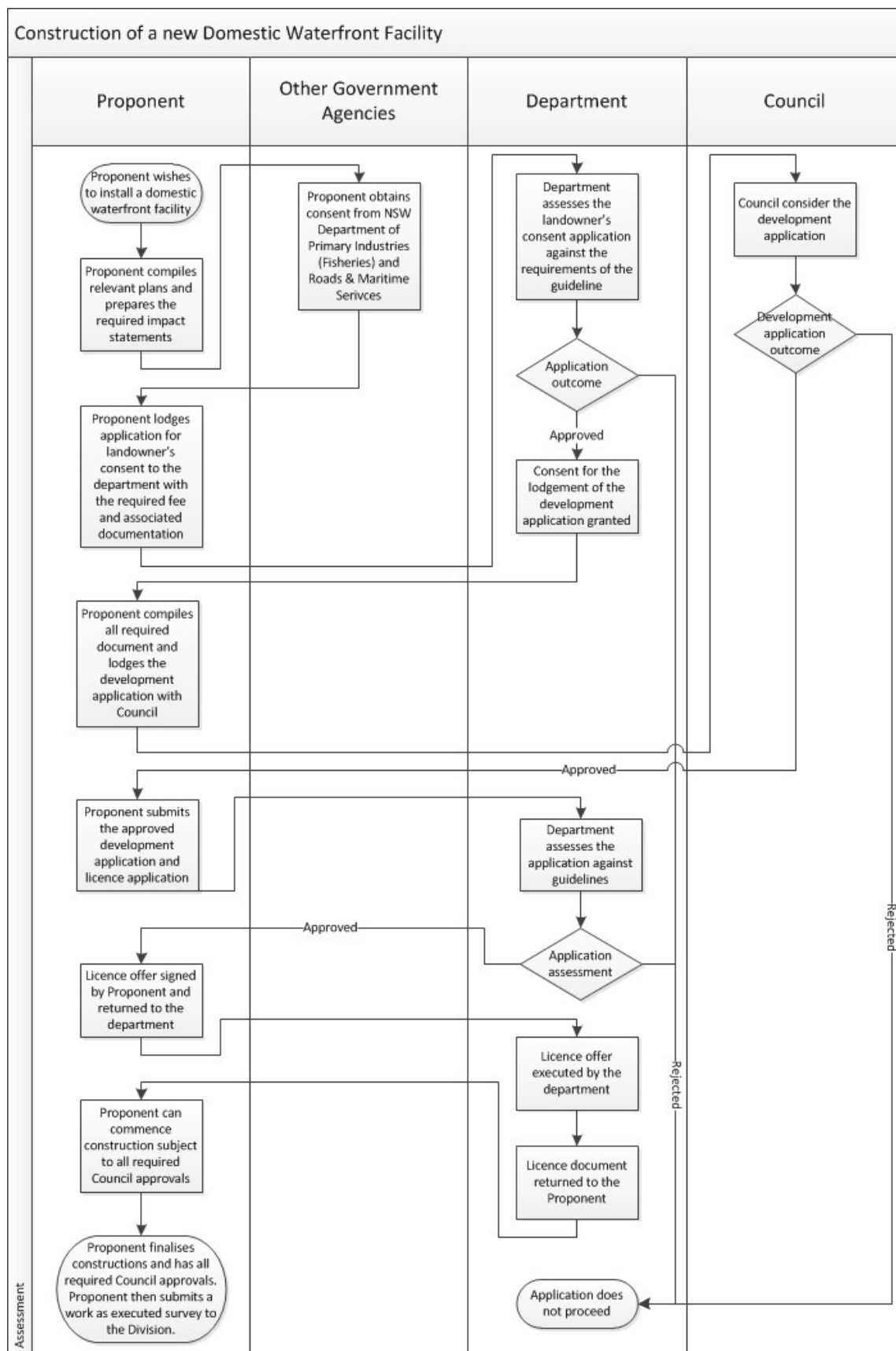


Figure 1. Workflow for construction of a new domestic waterfront facility