

Department of Planning and Environment

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# Domestic Waterfront Licences — Guidelines

February 2023





# Acknowledgement of Country

The Department of Planning and Environment 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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Domestic Waterfront Licences – Guidelines

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Cover photo: A range of domestic waterfront structures including pontoons, a jetty, slipway, berthing area and boatsheds | Bethany Fairley (DPE Crown Lands)

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# Introduction

The NSW Department of Planning and Environment — Crown Lands (the department) has ownership, control and management of most Crown land in NSW below the deed mean high-water mark. A registered land surveyor records the mean high-water mark (MHWM) on the deposited plan or deed for the land. The department manages this public land for the benefit of the people of NSW in keeping with the objects and principles of the *Crown Land Management Act 2016*.

Domestic waterfront facilities (including domestic waterfront structures and associated facilities such as berthing areas) on Crown land can be a large investment and can also enhance the use and enjoyment of waterways in NSW. These guidelines give 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. The department will also use them to guide decisions about any domestic waterfront facilities that may be wholly or partially on Crown land above the MHWM.

These guidelines do not apply to coastal protection works as defined under the *Coastal Management Act 2016*, such as seawalls, revetments, groynes or sand renourishment works that modify the shoreline, unless such works are minor in nature and necessary for construction and operation of the domestic waterfront facility. That is, the works are ancillary to the waterfront facility development.

## More information and help

For more information or help regarding domestic waterfront facilities, call the Waterfront Tenures Team on 1300 886 235 (Option 3, Option 1) or email [waterfront.tenures@crowmland.nsw.gov.au](mailto:waterfront.tenures@crowmland.nsw.gov.au)

Information on domestic waterfront licences, including fact sheets and FAQs, is available at [www.crowmland.nsw.gov.au/resources/guides-and-factsheets#licences](http://www.crowmland.nsw.gov.au/resources/guides-and-factsheets#licences).

# Part A: General advice

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## Guideline objectives

The department has developed these guidelines to ensure that when we make plans and decisions about domestic waterfront facilities using and occupying Crown land, we apply the objects and principles of the *Crown Land Management Act 2016*. The specific objectives are listed below, but for more details on how we apply them to domestic waterfront facilities, refer to Appendix A. To complete the assessment of some licence applications, the department may need to refer them to other government agencies for advice (refer to Appendix B).

The objectives are that:

- a. environmental, social, cultural heritage, economic and traditional landownership outcomes are considered for any domestic waterfront facilities on Crown land
- b. Crown waterfront land and submerged Crown land is managed fairly and remains in public ownership for long-term public benefit
- c. 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
- d. private use of Crown land is balanced with the public's right to access Crown waterfront land in perpetuity
- e. shared domestic waterfront facilities are encouraged where it is appropriate or necessary to minimise and reduce the cumulative effect of structures on Crown land
- f. 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
- g. 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
- h. 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
- i. domestic waterfront facilities do not adversely affect the cultural or environmental values of the location, or any existing items of importance or significance
- j. domestic waterfront facilities do not adversely affect the natural environment, including water quality, marine vegetation, and natural coastal processes such as the flow of water and interactions with sediment and vegetation.



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## Waterway legislation, policies and strategies

The department considers relevant legislation, environmental planning instruments, plans and strategies when assessing applications for domestic waterfront facilities on Crown foreshores or in Crown waterways. This material gives information on environmental planning and approval pathways and may identify areas where domestic waterfront facilities are suitable or unsuitable. This includes local environmental plans and development control plans, coastal management programs and [Domestic Waterfront Structures Landowner's Consent Strategies](#).

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## Domestic Waterfront Structures – Land Owner's Consent Strategies

Crown Lands is part of a multi-agency working group that is developing Domestic Waterfront Structures – Land Owner's Consent Strategies for specific tidal waterways in NSW as part of the [Marine Estate Management Strategy 2018–2028](#). As of February 2023, the strategies that have been developed and published were:

- Brunswick River estuary
- Lower Richmond River estuary
- Evans River estuary.

Refer to the [Domestic Waterfront Structures – Land Owner's Consent Strategies website](#) for an updated list of waterways covered by the strategies. More will be published in 2022–23.

The strategies contain important information that you should consider before commencing an application for a domestic waterfront facility. The strategies:

- use [an online map](#) to identify areas where it is suitable to build domestic waterfront structures with appropriate approvals
- streamline assessment processes.

For information on how these strategies are used to streamline the processing of landowner's consent applications made to the department, refer to Part B: Procedure Step 1. If there is a [Domestic Waterfront Structures – Landowner's Consent Strategy](#) in place for a waterway of interest, it will apply in addition to these guidelines.

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## 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. For domestic waterfront facilities on Crown land, the department's responsibilities are:

- assessing applications for landowner's consent to enable a development application to be lodged for a domestic waterfront facility under Part 4 of the *Environmental Planning and Assessment Act 1979* (or complying development certificates or building information certificates)
- assessing applications as the determining authority under Part 5 of the *Environmental Planning and Assessment Act 1979*
- assessing licence applications to occupy and use Crown land for a domestic waterfront facility
- ongoing administration, management and regulation of the use and occupation of domestic waterfront facilities on Crown land.

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## Waterfront facilities and uses not acceptable on Crown land

The department will **not approve** new applications for, or permit the following types of facilities or uses:

### Facilities and structures

- Private facilities and structures, where the adjoining foreshore land above the mean high-water mark is reserved Crown land, Crown road or other public land
- Facilities and structures, including fencing, hedging and gardens, that interfere with public foreshore access

### Gates, locks and signage

- Gates and locks that restrict entry to waterfront structures, or signage restricting access to waterfront structures, as domestic waterfront licences do not give the holder exclusive possession. That is, the licence holder does not have exclusive use of or privately own the waterfront structure

### Boat lifts and cradles

- Boat lifts or lifting devices, including mooring whips and davits, except where the applicant has a genuine need for a lifting device so a person with disability can safely embark and disembark
- Boat cradles, unless the cradle can be retracted and fully stored above the mean high-water mark or within an approved boatshed

## Boatsheds and storage

- Boatsheds, or any associated structural works on existing facilities that exceed the definition of repairs and maintenance and therefore require development consent (including consent through an approved private certifier), 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
- Boat storage is not permitted below the mean high-water mark unless in an approved boatshed or berthing area
- Storage of items, equipment or materials below the mean high-water mark. These items can obstruct public access to, and along the foreshore, and can also pose a risk to public safety

## Decking

- Decking that is not essential for access to other domestic waterfront facilities.  
Decks that are used for private recreational purposes and not for access purposes only do not comply with the objectives of this guideline in balancing the public's right to access waterfront land

## Floating air docks; dry docks; and modular, storage or floating pontoons

- Floating air docks, dry docks, modular or storage pontoons or other similar structures for the antifouling or storage of vessels because these affect public safety, visual amenity, seagrasses, fish habitat and safe navigation
- Modular or floating pontoons or similar devices for use as a walkway structure for water access because these are a risk to user and public safety, visual amenity, seagrasses and fish habitat.

Single floating pontoons may be permitted at the end of a ramp (and may be further stabilised by pylons), but multiple pontoons arranged together are not permitted, even if any of the modules are attached to pylons, other anchoring devices or other structures

## Structures for storing and supplying fuel and water

- Structures associated with fuel storage, fuels supply, service pedestals, or supply of water as these are not associated with domestic use and therefore not permitted by these licences

## Sewer and drainage infrastructure

- Sewer or drainage infrastructure unless required by council or another approving authority

## Electrical works

- Lighting, lighting fixtures, solar panels, security cameras and other electrical works, unless the licence holder has consent from the department and the items are installed in accordance with Australian Standards



## Pergolas, cabanas and barbecues

- Pergolas, cabanas, barbecues or similar structures

## Berthing

- Permanent berthing at a jetty, except where wholly within an approved berthing area
- Berthing of oversized craft at any time that encroaches outside an approved berthing area

## Ramps, skids or slipways

- Ramps, skids or slipways that do not conform to the natural foreshore levels and significantly obstruct practical public access

## Reclamations, seawalls and retaining walls

- Reclamations, seawalls and retaining walls, unless:
  - they are ancillary to a domestic waterfront facility development and foreshore erosion requires treatment as part of installing the domestic waterfront facility
  - no alternative treatments (such as relocation) are feasible
  - or, where a limit line of reclamation has been identified and adopted to conform with a smooth tidal flow

## Residential and non-boating structures and uses

- Homes and other non-boating structures or uses, including satellite dishes, aerials, awnings or other fixtures. Any boatsheds that have a residential or non-boating related use must be removed or reinstated as a boatshed

## Slipways

- Slipways that provide any type of storage on tidal or adjacent foreshore Crown land

## Solid-fill jetties

- Solid-fill jetties, as they impede the natural flow of water, which can lead to changes in sedimentation that can harm the environment

## Swimming enclosures and pools

- Swimming enclosures and swimming pools, or any associated structural works on existing facilities that exceed the definition of repairs and maintenance and therefore require development consent (including consent through an approved private certifier).

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## Licences

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

Crown land licences do not grant the holder exclusive possession of the Crown land that is being occupied. That is, a licence allows you to use the Crown land or put domestic waterfront facilities on it, but you do not own the Crown land or have exclusive use of the Crown land or waterfront structure.

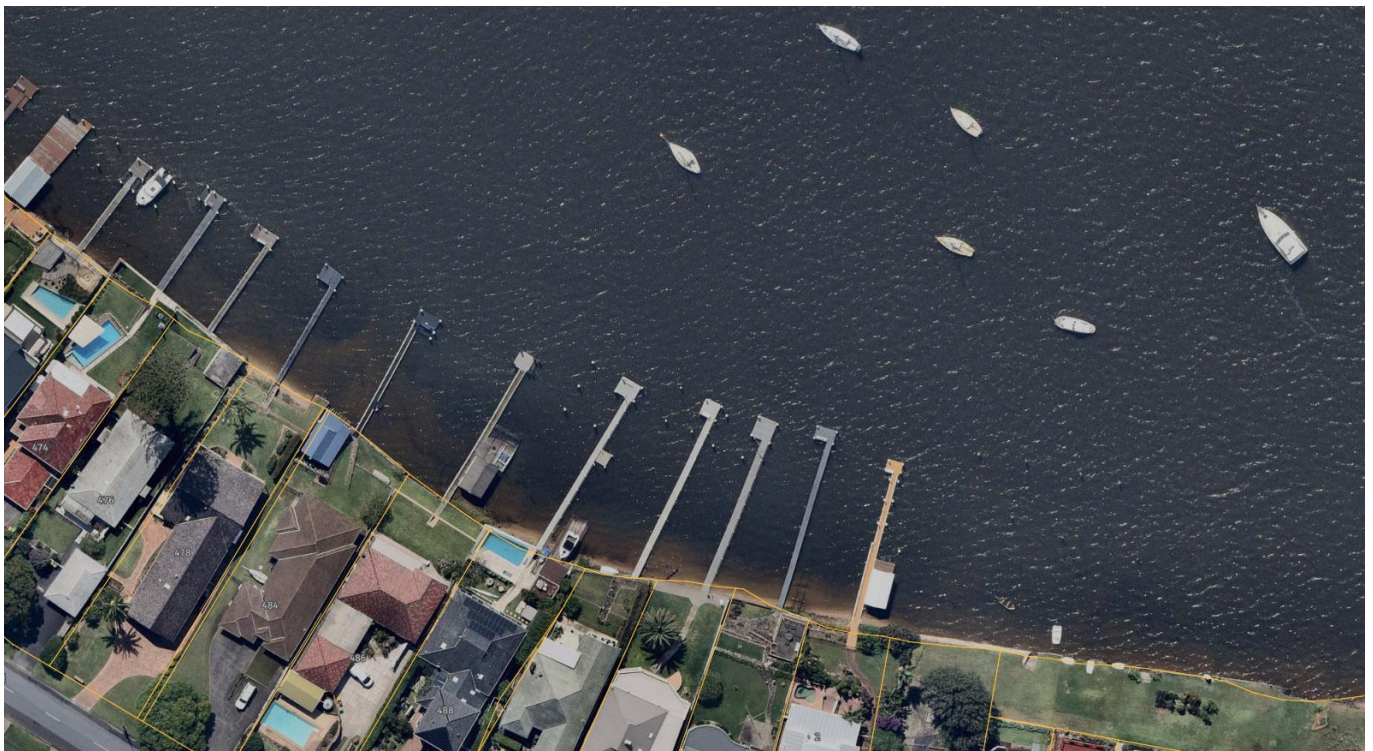
When a licence is granted, the department adds a note to the certificate of title for the land that benefits from the domestic waterfront facility. This lets prospective buyers know there is a licence for the domestic waterfront facility. It also identifies the licence easily in any conveyancing process 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 mean high-water mark. For more information, see the section ‘Waterfront occupations that adjoin another party’s land’ in this guideline.

### The licence period

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, the department may cancel licences at any stage without compensation.



## Renewing or ending your licence

A licence holder must apply to the department for a new licence 6 months before the current one expires to continue using and occupying the Crown land on which the domestic waterfront facility is located.

The department may need to assess the facility to determine:

- the life expectancy of any structures
- if there have been any additions made
- if the facility is in good condition
- that the structure continues to comply with the *Crown Land Management Act 2016* and these guidelines.

The department may ask for more information from the applicant to inform this assessment, including an identification survey, engineer's report and photographs.

A licence holder can ask the department to end a licence at any time. The department will only terminate the licence when the:

- domestic waterfront facility has been appropriately decommissioned
- site has been rehabilitated to the department's satisfaction.

Approval to remove the domestic waterfront facility may also require development consent from council and other government authorities, such as NSW Department of Primary Industries — Fisheries. Any development consent may also depend on landowner's consent from the department.

## Licence terms and conditions

The licence sets out the terms and conditions for the use and occupation of Crown land for 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.



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## Reserve-front waterfront occupations

The department will not authorise the construction of any new domestic waterfront facilities or the replacement or upgrading of existing facilities that adjoin Crown foreshore land. This is because these facilities may impede the public's use and enjoyment of Crown land. This principle applies to adjoining foreshore land that is reserved Crown land, a Crown road or other public land.

There are some pre-existing, reserve-front domestic waterfront facilities that were authorised before the department developed these guidelines. The existence of these facilities does not mean the department will accept new applications. An important requirement for holding a domestic waterfront facility licence is getting public liability insurance. Not only are these pre-existing facilities inconsistent with these guidelines, but licensees for reserve-front occupations will find it difficult to get public liability insurance because the facilities occupy public land.

When licences for pre-existing reserve-front occupations expire, the department will review the condition of the facilities. If they are derelict or in an unsafe condition, the department will instruct the holder to remove the structures and decommission the facility at their own cost. The department can direct removal before the licence expires if there is evidence that the structures pose a risk to public safety. Additionally, where works have been done to extend the life of a reserve-front occupation without authorisation, the department may direct the licence holder to remove the works at their own cost.

Note: Exemptions apply to some parts of this section for water-access-only occupations.



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## 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 will not require 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 mean high-water mark. 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 (the new owner).

### Division of Waterway

The Division of Waterway is a line determined at the discretion of the department. It ensures the areas of waterway – relative to the frontages of foreshore land parcels – are shared fairly. The department determines this line for administrative reasons only; it does not give any rights to any adjoining landowners.

The Division of Waterway helps determine if a proposed development will unacceptably affect waterway access and/or amenity to neighbouring facilities or properties. Generally, the department seeks to ensure that all structures and uses are contained wholly within the Division of Waterway of a property fronting a waterway. However, in rare circumstances where an existing facility does extend beyond the Division of Waterway, it is not treated as 'adjoining' the neighbouring property and we do not require the licensee to share use of the facility.

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## Sharing domestic waterfront facilities

Where 2 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 rent notices.

Where a domestic waterfront facility is shared between 2 or more properties, a party wishing to develop a site must obtain the agreement of all sharing parties by lodging a joint landowner's consent application with the department.

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

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## Storage devices on foreshore Crown land and waterways

Modular pontoons, floating air and dry docks, davits and other similar devices are not permitted on foreshore Crown land or waterways, including within an approved licence area. These devices can affect the amenity and appearance of the waterway. They can also pose risks to public safety, navigation, and vital fish habitat, such as seagrass beds and mangroves, by shading and smothering marine plants.

Where these types of devices are identified on foreshore Crown land or waterways, the department will direct their removal.

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## Berthing

An approved berthing area is an area of water allocated on a domestic waterfront licence for the on-water storage of boats adjacent or attached to a fixed or floating facility such as a jetty, allowing walk-on access to the boat. Any craft that is berthed in an approved berthing area must be contained wholly inside that area.

Vessels and other watercraft may be temporarily berthed at a domestic waterfront facility where there is no approved berthing area, on condition that they:

- be berthed for a total time not exceeding 6 hours in any 24-hour period
- do not encroach the Division of Waterway
- be berthed in a manner that causes no risk to public safety, or safe navigation
- do not impede, obstruct, restrict, or discourage public access to the foreshore or to any adjoining structure.

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## Water-access-only occupations

The department gives special provisions (legal conditions) and consideration to water-access-only occupations (see Definitions), including rent exemptions for essential structures that allow access to a Crown waterway (Table 1). Other exceptions include sharing provisions, non-adjointing occupancies and boatsheds on Crown land to safely store vessels. This recognises the nature of water-access-only properties.

While there are no rental charges for essential structures to service water-access-only occupations, non-essential structures may still attract a rent and there is an annual administration fee for all domestic waterfront licences to cover departmental costs.

Water-access-only occupations can apply for a review of the essential occupation area by completing the [Licence Domestic Waterfront Water Access Only Occupation Area Review Application](#).

The department encourages applications for water-access-only occupations to include provision for a permanent berthing area to allow berthing of vessels at jetties and pontoons for longer than the 6-hour limit normally applied.



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## Rent

The annual tariff on domestic waterfront occupancies is comprised of 2 parts:

- an administration fee, to which an annual 2.5% increase applies
- a rental charge, to which the GST (goods and services tax) applies.

The rental charge covers the use and occupation of public land below the MHWL and is calculated using the 4 elements in the formula below:

Annual rent charge = precinct statutory land value (\$/m<sup>2</sup>) × occupancy area (m<sup>2</sup>) × discount factor (50%) × rate of return (updated annually by IPART – Independent Pricing and Regulatory Tribunal).

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

Table 1 details the structures that are essential for water-access-only occupations 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 for water-access-only occupations and those that are discretionary and subject to rent

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

\*Only applicable where there is no other essential structure

For more information on rental calculations for domestic waterfront occupancies, see the [Domestic Waterfront Rent Calculation Fact Sheet](#).

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## 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 more information on eligibility, go to [Financial Assistance - Rebates and waivers](#).

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## Financial hardship

Hardship relief is available to licence holders experiencing short-term financial difficulties. The department helps licence holders through payment plans, extensions to pay and, in certain cases, waiving interest on late payments. Concessions or rebates apply only to the rental component.

The department considers every hardship relief application on a case-by-case basis. Applications must be supported by documentary evidence of financial hardship. We use and hold any personal information applicants give in keeping with the information protection principles of the *Privacy and Personal Information Protection Act 1998*.

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## Compliance

All domestic waterfront facilities on Crown public land require a licence agreement. The department monitors and inspects domestic waterfront facilities and audits waterways to ensure that structures are authorised and that licence holders are complying with the terms and conditions of their licence.

It is the responsibility of a licence holder to comply with the terms and conditions of their licence, as well as other state and local government requirements. If a licence holder does not comply, the department may:

- serve a notice or direction on the person to stop using the structure
- serve a notice or direction on the person to fix the non-compliance
- fix or remove the unauthorised structures and/or materials and recover costs from the person
- cancel the existing licence
- begin legal action
- issue penalty infringement notices.

## Unauthorised structures

The Compliance Unit assesses any unauthorised structures the department finds. If the structure is found to be consistent with these guidelines and departmental policy, then the minister can grant a licence to the registered owner of the benefitting land without their consent, authorising use of the facility. This is possible under section 5.26 of the *Crown Land Management Act 2016* – ‘Licences for unauthorised use or occupation of Crown land’. Such a licence is an interim measure. The owner must pay rent for the area and take prescribed steps to legalise their occupation, by getting the appropriate approvals and consents from the department, local council, Department of Primary Industries – Fisheries and Transport for NSW – Maritime.

If consent or approvals cannot be obtained or if the unauthorised structure is not permissible under these guidelines, the structure must be removed. If the owner of the benefitted land does not remove the structure as directed, the department may serve an order or a direction under section 9.9 of the Act to have the unauthorised structures removed at the owner’s expense.

An unauthorised structure may not be covered by public liability insurance and the adjoining landowner and/or person responsible for the structure may be held liable for injury when there is no suitable insurance policy.



# Part B: Constructing or maintaining a domestic waterfront facility

To construct a new domestic waterfront facility, you must have landowner's consent from the department (as the landholder) before you lodge a development application with council. You must then get a licence from the department once the development application has been approved.

This section details the process for applying for the required authorisations to:

- construct a domestic waterfront facility, or
- seek approval for existing, unauthorised structures (that is, apply for a building information certificate).

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## Approval or removal of existing, unauthorised structures

If you are applying for approval for an existing, unauthorised structure that seems to comply with the objectives of this guideline, you will require landowner's consent before you lodge an application for a building information certificate.

Council, as the approving authority, may either:

- approve the existing structure, or
- advise you that you must remove the unauthorised structure at your own expense.

Council may also require a development application as well as a building information certificate.

In most cases, where the department identifies unauthorised structures, a special condition is included in an interim licence agreement. This gives you, as the licence holder, 6 months to:

- lodge an application with the department for landowner's consent
- seek development consent and/or a building information certificate.

If you cannot get consent or approvals, you must remove the structure at your own expense.

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## Repairs and maintenance

Domestic waterfront licence holders are required to repair and maintain existing domestic waterfront structures in a good, safe and working condition.

The following information can help licence holders better understand what ‘repairs and maintenance’ means and to decide if the necessary works for a structure fall within the scope of repairs and maintenance:

‘Minor repair and maintenance’ works are those types of works that fall within the scope of exempt development and replace part of a building or structure with material of a similar type and size which do not enlarge the footprint of the existing building or structure or change the height of the existing building or structure. Works may include:

repairs or replacement of timber boards or decking, or other non-load bearing elements  
painting and other surface treatments to protect structures from corrosion or weathering.

Where works outside of the above definition must be carried out to effectively address the condition of the structure, you may need to get landowner’s consent. See the next section on ‘Complying development’ for more information.

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## Complying development

Where an adjoining landowner seeks to do works on an existing, approved domestic waterfront facility that do not fall within the scope of repairs and maintenance, you may need a complying development certificate.

Where the works fall within the scope of complying development and are consistent with the objectives of these guidelines, you must get landowner’s consent from the department before you lodge a complying development certificate application with council or through an accredited private certifier. Follow the ‘Procedure’ section.

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## Procedure

The majority of new domestic waterfront facilities will require development consent from the local council.

Some new structures and works on existing structures outside the definition of minor repairs may be treated as a complying development and can be approved by an accredited private certifier.

Where your application is for an existing, unauthorised structure, the following procedure also applies, except that you must apply for a building information certificate instead of, or in addition to, a development application.

Throughout the following procedure (and the flowchart in Appendix B), any references to ‘council’ may also apply to authorised private certifiers where they can be used. Whether you get planning

approval at step 3 through council or an authorised private certifier, you must still get landowner's consent to lodge an application (Steps 1 and 2), as well as a Crown licence to install and use the facility (Steps 4 and 5).

The following procedure only applies where a facility for private, non-commercial use is proposed, and it will be built over Crown land or Crown waterway. It does not apply to facilities on non-Crown waterways. For example, local councils own the waterways in many, but not all, canal estates. Landowner's consent and a Crown licence are not required for facilities over non-Crown waterways and these development applications are made directly to council.

## Step 1 – Apply for landowner's consent for domestic waterfront structures to lodge a planning application with council

### 1.1 Prepare plans and environmental assessment

- You (the applicant) must compile relevant site plans and any statement of environmental effects or environmental impact statements, if required, for the proposed or existing domestic waterfront facility.

These documents must satisfy the requirements of the relevant council's planning application process. You can engage private contractors or consultants to do this work.

### 1.2 Get advice from NSW Department of Primary Industries – Fisheries and Transport for NSW – Maritime

- For all development that involves:
  - dredging (including sinking pylons for jetties for example)
  - reclamation
  - potential damage to marine vegetation (as defined by the *Fisheries Management Act 1994*)the department must refer all licence applications to the Department of Primary Industries – Fisheries.
- Similarly, if the proposed facility may obstruct navigation, then the department will refer the application to Transport for NSW – Maritime.
- The department therefore requires evidence in the form of letters of advice from these agencies (generally at landowner's consent stage) as to the likelihood of objections or conditions they would require on the licence (or their pre-assessment in a domestic waterfront structures land owner's consent strategy).

This is required at this early stage of the application process to reduce the potential for refusals later on.

- Where a domestic waterfront structures land owner's consent strategy has **not** been developed for the waterway, you must contact the NSW Department of Primary Industries – Fisheries, and Transport for NSW – Maritime, and apply for a letter of advice.
- You must get this letter of advice before lodging the application for landowner's consent with the department. It must be included in the documentation accompanying the application.



The advice may include special conditions that will need to be met for approval. If the advice raises objections to the development, then the department will not grant landowner's consent.

- In waterways where a domestic waterfront structures land owner's consent strategy has been developed (refer to the section 'Domestic Waterfront Structures – Land Owner's Consent Strategies' and Marine Estate Management Strategy - Domestic Waterfront Structures), the following process applies:
  - If the waterfront has been coded 'orange', the process is the same as if there were no strategy in place (see previous point). You must contact the NSW Department of Primary Industries – Fisheries, and Transport for NSW – Maritime, and get letters of written advice.
  - If the waterfront has been coded 'green', then the application can proceed directly to step 1.3, as this is considered the required advice from NSW Department of Primary Industries – Fisheries and Transport for NSW – Maritime.

Note that the green colour does not guarantee that the department will grant landowner's consent for the proposed facility, as the department must still consider the application against the criteria listed in Appendix A of these guidelines.

- If the waterfront is coded 'red', then the relevant agencies have decided that a domestic waterfront facility is **not** consistent with legislation, regulations or policy. On this basis, the application should not proceed.

### 1.3 Submit your application

- You must submit a completed Landowner's Consent for domestic waterfront structures application form to the department. You must also include supporting documents and the associated fee.
- Your application must include the following:
  - 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 the deed mean high-water mark
  - any other documents that require departmental signature and that the local council requires to be attached to the planning application
  - a detailed description of the proposal that is enough to understand the full extent and likely effects 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 letters of advice, if applicable (refer Step 1.2), from NSW Department of Primary Industries – Fisheries, and Transport for NSW – Maritime, **or** confirmation that the waterfront adjoining the benefitting property is marked as green on the domestic waterfront structures landowner's consent strategy for the estuary.

The department will return any applications it receives that do not contain all required documentation. The department will not assess these applications until it receives the outstanding documentation.

## Step 2 – Department assesses application for landowner’s consent

### 2.1 The department assesses your 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 Appendix 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*.

### 2.2 The department advises you of the outcome

- If the department approves the landowner’s consent application, we will give you a letter of landowner’s consent and sign the required plans (or attach the plans to an electronic copy of the letter, whereby the letter serves as a stamp).

The letter of consent usually includes a condition that the relevant planning application must be lodged in the form that has been approved by the department within 12 months of the date that we granted landowner’s consent. If the 12-month period expires before the relevant planning application is submitted with council, then landowner’s consent will need to be renewed. Once the department has granted landowner’s consent and planning approval has been provided, you must apply for a new licence agreement.

Landowner’s consent does not authorise you to occupy Crown land or to begin construction of a domestic waterfront facility or works to an existing domestic waterfront facility.

Occupation and construction of a domestic waterfront facility can only begin once you have:

- development consent, or a complying development certificate, from the consent authority (council or a private certifier)
- if applicable, a construction certificate from the consent authority (council or private certifier)
- a domestic waterfront licence granted by the department.

If there are any changes made to the development application or complying development certificate application after the department grants landowner’s consent, during the development application assessment process or otherwise, the department will need to reassess the matter before you lodge the modified application with council.

## Step 3 – Lodge your planning application with council

### 3.1 Lodge your planning application with council

- Lodge the planning application and any required supporting documentation with council for determination through the NSW Government’s [Planning Portal](#).

For more help, refer to the NSW Government’s [Guide to the Development Application Process](#). This explains the process involved to help you prepare and lodge applications that are ready for assessment. The guide also gives explanations of each step towards a determination.

### 3.2 Council determines the application

- Council determines the development application (or other relevant planning application) and advises you of the outcome.
- If council refuses a development application, you will need to discuss the matter with council to understand if there are changes you can make to get approval.
- If council requires any changes to the development application after it has been submitted, then the department will need to reassess landowner’s consent before council considers it further.
- The domestic waterfront facility proposal cannot progress until the council approves the development application.
- If council approves the development application, you must get a Crown licence before construction can begin.
- If council refuses to issue a building information certificate for an existing, unauthorised structure, then it is likely that council will require you to remove the domestic waterfront facility at your own expense.

## Step 4 – Apply for a Crown land licence

### 4.1 Apply for a Crown land licence

- You must submit a completed [Licence: new domestic waterfront licence application form](#) 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 The department assesses the 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* (Cth) and other relevant legislation or policy.

The department may also need to notify relevant stakeholders of the proposed licence, potentially adding time to the processing of the application.

- If the department approves the application, we will issue you with an offer of licence.

- All applicants must sign the licence offer and return it to the department (if agreed).
- The department will then arrange for the licence to be executed (legally formalised) and we will return a signed copy to you.

## Step 5 – Finalisation

### 5.1 Council gives final approvals

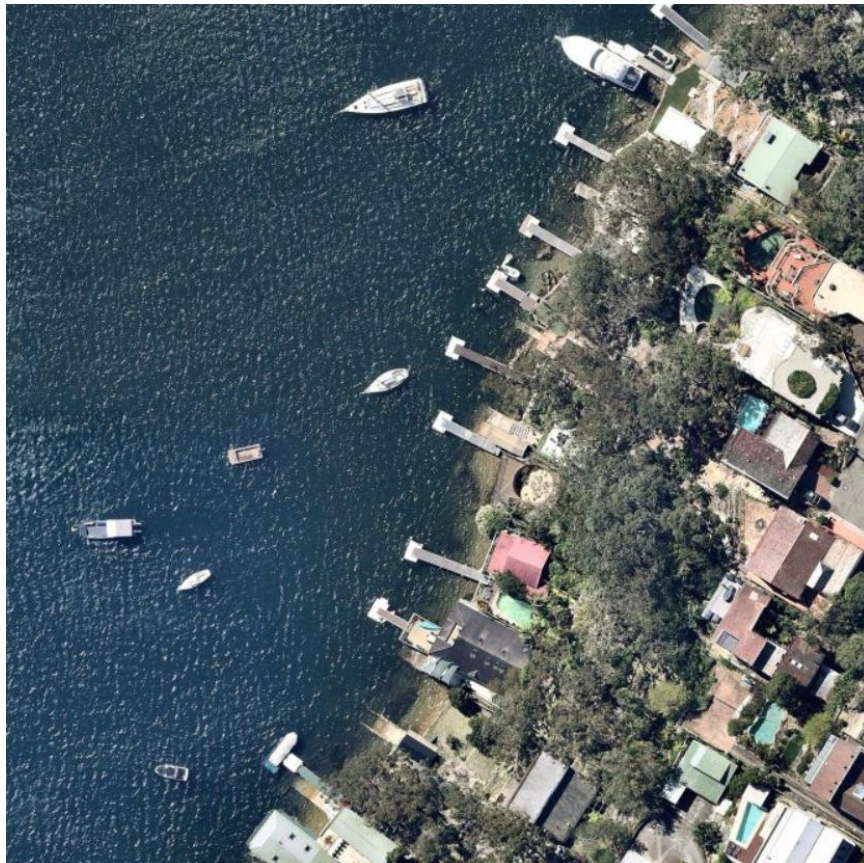
- Once the department has given you an executed licence, you must ensure you have all the required approvals in place under the *Environmental Planning and Assessment Act 1979*. This can include getting a construction certificate from council or private certifier.

### 5.2 Construction begins

- After you get all the required approvals, you can begin construction of the proposed domestic waterfront facilities.
- You must follow any conditions outlined in the development consent, other statutory approvals and the licence when constructing the facilities.

### 5.3 Finalisation

- When construction is completed, you may need to get further approvals from your local council or private certifier. This includes, but is not limited to, an occupation certificate.
- As a condition of the licence the department grants, you must also supply a ‘works as executed’ survey within 6 months of completing construction.



# 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 (benefited land) will automatically transfer to the buyer when the ownership of the private land changes hands. This transfer happens automatically at the time of settlement, in line with the *Crown Land Management Act 2016*.

It is the responsibility of the buyer to notify the department and pay the required transfer fee within 28 days of settlement.

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## Other responsibilities of the buyer

When a licence automatically transfers, the buyer is liable for:

- any amount owing on the licence
- payment of the ongoing rent
- compliance with the terms and conditions of the licence.

Licences automatically transfer for settlements that have occurred after 1 July 2018.

Settlements before 30 June 2018 are subject to other transfer provisions and the buyer must lodge an application with the department for the transfer to happen.

Where a property is associated with a domestic waterfront licence, we recommend the conveyancing agent or solicitor acting for the buyer does a third-party conveyancing search with the department. The third-party conveyancing search:

- confirms if a licence automatically transfers
- details any amounts owing on the account at the time of settlement so that the appropriate adjustments are made
- allows the buyer to request a copy of the licence contract from the seller.

With a copy of the licence, the buyer can review its purposes and approved structures. The buyer can confirm if any unauthorised use or structures have been installed for which they will be liable.

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## Ownership changes through transmission

A licence **will not** automatically transfer if the ownership of the benefitted land is changed by a transmission and not a transfer. A transmission can happen where the ownership of land is transmitted to an executor, beneficiary, mortgagee or other third party. For example, when ownership of a property changes by inheritance on the death of the owner, the new owner will need to apply for a transfer of the licence or obtain a new licence.

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## Procedure

This section details the process the buyer must follow to notify the department of the licence transfer.

### Step 1 – Notify the department of transfer

- The buyer must notify the department within 28 days of settlement by:
  - completing the [Licences – automatic transfer notification of a domestic waterfront tenure form](#)
  - paying the required fee listed on the form
  - providing photographs of the domestic waterfront facilities.

The department uses the photographs to determine the condition of the structures and confirm that no unauthorised works have been done.

### Step 2 – Department receives notices and issues documentation

- Once the department receives notice, we will update our records. We will also 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. This could mean that you, as the buyer, must remove the structures or seek development consent and/or a building information certificate for the structures and a new Crown land licence. The department will then issue the buyer with a copy of the terms and conditions for the licence.

For more information on automated transfers, refer to [Automatic licence transfer – Guidelines and Frequently-asked Questions](#)



# 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, 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. If the department is satisfied, we will advise the licence holder in writing that an authority to sub-license will be added to the terms and conditions of the licence.

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## The sub-licence period

The minimum term for a sub-licence agreement is 12 months. The maximum term is 5 years or the balance remaining on the domestic waterfront facility licence (if fewer than 5 years).

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## Annual charge

In addition to the annual domestic waterfront licence rent, there is an annual charge for the authority to sub-license a berthing.

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## Terms of use

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

For more information, refer to '[Sublicensing of approved berthing areas — Frequently asked questions](#)'.

# Definitions

Refer to the [Licensing of Crown land policy](#) for definitions of key words used within these guidelines.

Table 2 defines key words used in these guidelines that the policy does not reference.

Table 2. Terms and definitions

Word or phrase	Meaning
<b>Act</b>	<i>Crown Land Management Act 2016</i>
<b>adjoining landowner</b>	Owner of private residential land that shares a common boundary with neighbouring Crown land. In the case of a waterfront property that boundary would be the deed high water mark unless otherwise defined on the property plan.
<b>benefiting land</b>	The property described in the Description of Land on the licence agreement
<b>berthing area</b>	Area of water set aside for the on-water storage of boats adjacent or attached to a fixed or floating facility, allowing people to walk onto the boat
<b>boat lift</b>	A device for lifting or steering a vessel out of the water
<b>boatshed</b>	A building or other structure for storing boats and carrying out routine maintenance on them, associated with a private residence
<b>Crown waterfront land</b>	Crown land (as defined under the <i>Crown Land Management Act 2016</i> ) that is located above the MHWL and adjoins submerged Crown land
<b>davit</b>	Mechanical device for lifting or lowering of a vessel from or into the water
<b>department</b>	The NSW Department of Planning and Environment – Crown Land
<b>division of waterway</b>	A line the department determines to share fairly the areas of waterway relative to the frontages of foreshore land parcels
<b>domestic</b>	Use associated with a private dwelling or residence excluding properties where registered business or commercial activities are undertaken
<b>domestic swimming enclosure</b>	A net or other structure placed in a waterway to provide a protected swimming area, but this does not include a public water recreational facility
<b>domestic waterfront facility</b>	Includes jetties, boatsheds, berthing areas, boat ramps, slipways and pontoons for private use
<b>Domestic waterfront structure</b>	Another way of saying ‘domestic waterfront facility’. A structure that makes up part, or all, of a domestic waterfront facility
<b>foreshore land</b>	Land that is directly adjacent to a waterway
<b>holder</b>	The person referred to as the holder of a domestic waterfront licence

Word or phrase	Meaning
<b>Landowner's consent</b>	The landowner giving consent for a development application (DA) to be lodged under section 4.12 of the <i>Environmental Planning and Assessment Act 1979</i> , or a complying development certificate (CDC) under section 4.26, or a building information certificate (BIC) under section 6.22
<b>MHWM</b>	Mean high-water mark. The plane of the mean high-water level of all ordinary local high tides that intersect the foreshore. Generally, the deed MHWM is determined by a registered land surveyor and recorded on deposited plans (or the deed for the land)
<b>the minister</b>	The minister administering the <i>Crown Land Management Act 2016</i> and his/her delegates
<b>occupancy</b>	The area for which a domestic waterfront licence is issued, and rent is charged
<b>permanent berthing</b>	Berthing of a vessel at a domestic waterfront facility for a total period greater than 6 hours in any 24-hour period
<b>pontoon</b>	A floating structure used for access to the water that is supported by a jetty or ramp
<b>practical public access</b>	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
<b>reclamation</b>	An area of previously submerged Crown land that has been artificially filled or drained to convert it to dry land
<b>repair</b>	To replace non-load bearing parts of a building or structure with material of a similar type and size that does not enlarge the footprint of the existing building or structure or change the height of the existing building or structure
<b>reserved Crown land</b>	land that has been set aside on behalf of the community for a wide range of public purposes, including environmental and heritage protection, recreation and sport, open space, community halls, special events and government services.
<b>seawall</b>	A rigid structure along the land/water interface to protect the land from the sea or to stop accelerated erosion of the shoreline
<b>slipway</b>	Any structure, usually in the form of 2 support parallel rails, on which a wheeled cradle is run to draw a vessel by a powered or manual winch, a block and tackle or similar
<b>submerged Crown land</b>	Crown land as defined under the <i>Crown Land 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
<b>unauthorised</b>	Existing waterfront structures installed without consent from the department or without approval from the consent authority (usually local council), NSW Department of Primary Industries – Fisheries and/or Transport for NSW – Maritime

Word or phrase	Meaning
<b>water-access-only occupations</b>	Properties that can only be accessed from the water, such as on islands without bridges to the mainland or other foreshore locations with no practical vehicular access
<b>waterway</b>	Means any river, stream, lake, creek, lagoon, swamp, wetlands, or tidal waters

## Related documents

- [Crown Land Management Act 2016](#)
- [NSW Department of Planning and Environment – Crown Lands – Licensing of Crown Land Policy](#)
- [NSW Department of Planning and Environment – Automatic Licence Transfer Guidelines.](#)
- [Domestic Waterfront Strategies – Land Owner’s Consent Strategies](#)

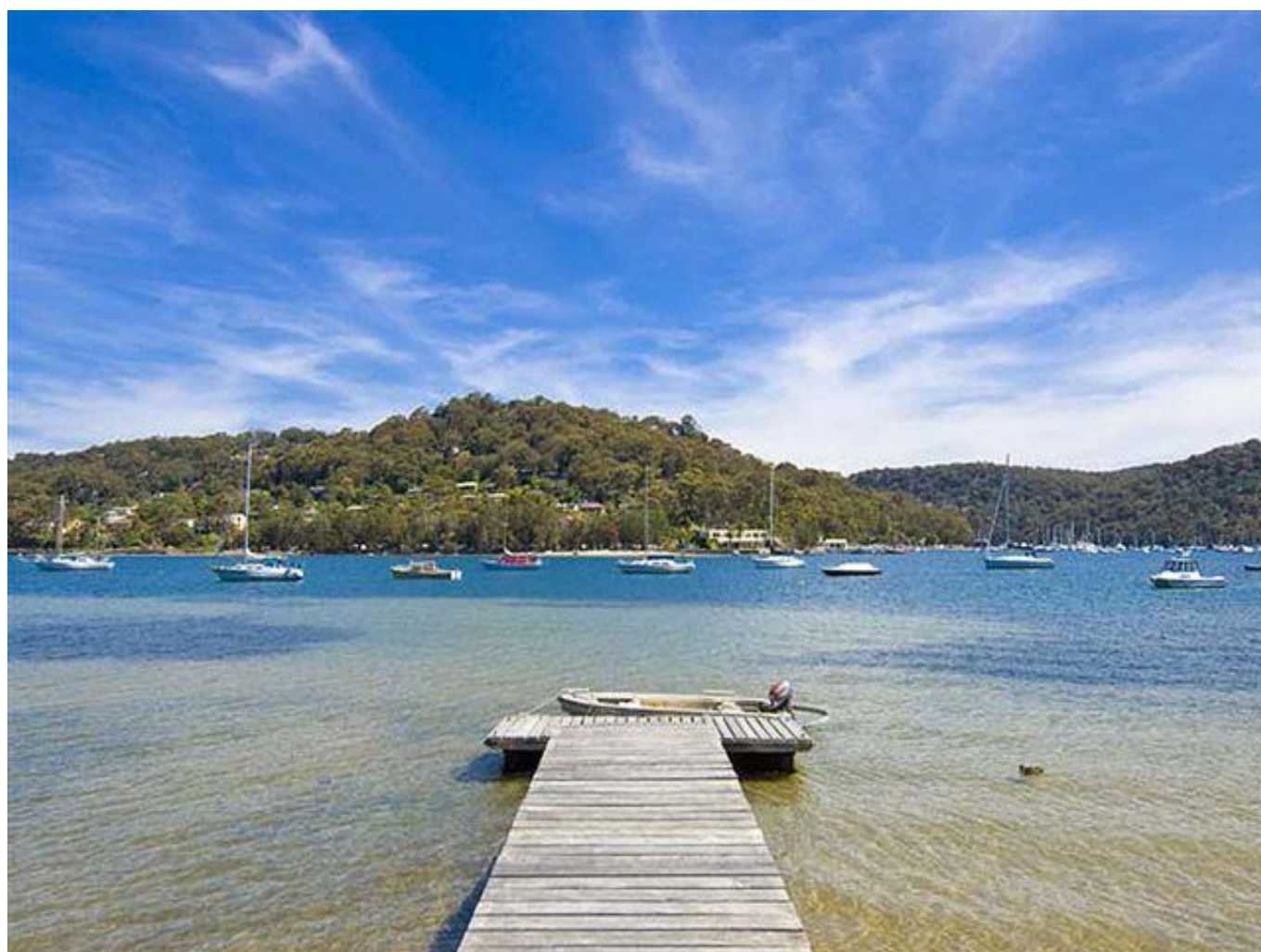
## Superseded documents

- NSW Department of Industry – Domestic Waterfront Facility Policy 2014
- NSW Department of Planning, Industry & Environment – Domestic Waterfront Licences – Guidelines 2018
- NSW Department of Planning and Environment Domestic Waterfront Licences – Guidelines 2022
- NSW Department of Industry – Sublicensing of Approved Berthing Areas: Information for Domestic Waterfront Licence Holders

# Appendices

Table 3. Guide to appendices

Letter	Title	Details
A	Objective criteria	Details the criteria used to decide if a proposal meets the objectives of these guidelines
B	New domestic waterfront facility flow chart	A flowchart of the process to get approval for the construction of a new domestic waterfront facility





## Appendix A

Table 4 below gives the criteria used to assess if a proposal for a domestic waterfront facility is likely to achieve the objectives set out in these guidelines.

Table 4. Objectives and outcomes

Objective	Outcome
<p><b>Public ownership and public access (Objectives a, b, c and d)</b></p> <p><b>Where private land directly adjoins submerged Crown land</b></p>	<ul style="list-style-type: none"> <li>• Where there is no direct public access to submerged Crown land, domestic waterfront facilities may be acceptable.</li> <li>• 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 water space fronting the property.</li> </ul>
<p><b>Where submerged Crown land adjoins a reserve front and there is not immediately private land nearby</b></p>	<ul style="list-style-type: none"> <li>• New domestic waterfront facilities are not acceptable.</li> <li>• Existing domestic waterfront facilities may remain where public access needs are reasonably provided for within the wider area and there are no obstructions.</li> </ul> <p>Note: There is no guarantee prior sharing arrangements will continue where ownership of the adjoining benefitted land changes.</p>
<p><b>Where submerged Crown land adjoins a reserve front and there is nearby private land</b></p>	<ul style="list-style-type: none"> <li>• New domestic waterfront facilities are not acceptable.</li> <li>• Existing domestic waterfront facilities may remain until expiration of licence or as otherwise determined by the minister.</li> <li>• Existing domestic waterfront facilities may be considered for transfer at the discretion of the minister</li> </ul> <p>Note: There is no guarantee prior sharing arrangements will continue where ownership of the adjoining or benefitted land changes.</p>
<p><b>Function and use (Objectives e and f)</b></p>	<ul style="list-style-type: none"> <li>• 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.</li> <li>• Domestic waterfront facilities are only to be used for domestic purposes.</li> <li>• 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.</li> </ul>

Objective	Outcome
<b>Waterway navigation (Objective g)</b>	<ul style="list-style-type: none"> <li>• Domestic waterfront facilities (including berthing areas) do not obstruct navigation and comply with requirements of Transport for NSW – Roads &amp; Waterways.</li> <li>• Domestic waterfront facilities do not extend outside of the Division of Waterway 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 Division of Waterway do not automatically create any additional interest in the domestic waterfront facilities.</li> </ul>
<b>Appearance and aesthetics (Objective h)</b>	<ul style="list-style-type: none"> <li>• 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 suitability and preferred uses in relation to the proposed domestic waterfront facility.</li> <li>• 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.</li> <li>• 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.</li> <li>• Domestic waterfront facilities conform 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.</li> </ul>
<b>Impact on cultural environment and cultural heritage (Objective i)</b>	<p>New domestic waterfront facilities are not to disturb or impact on artefacts and relics in the area. Separate approvals under relevant legislation may be required if any artefacts or relics are to be impacted. 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"> <li>• the National Estate</li> <li>• the State Heritage Register</li> <li>• heritage and conservation registers of NSW agencies</li> <li>• a planning instrument (state environmental planning policy or local environmental plan).</li> </ul>

Objective	Outcome
<p><b>Impact on natural environment (Objective j)</b></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 is not limited to these matters):</p> <ul style="list-style-type: none"> <li>• water flow and quality</li> <li>• marine and riparian vegetation</li> <li>• marine organisms</li> <li>• shoreline stability</li> <li>• natural coastal processes</li> <li>• retention of natural features, including the configuration of the bed of the waterway, natural rock formations and undeveloped areas.</li> </ul>

# Appendix B

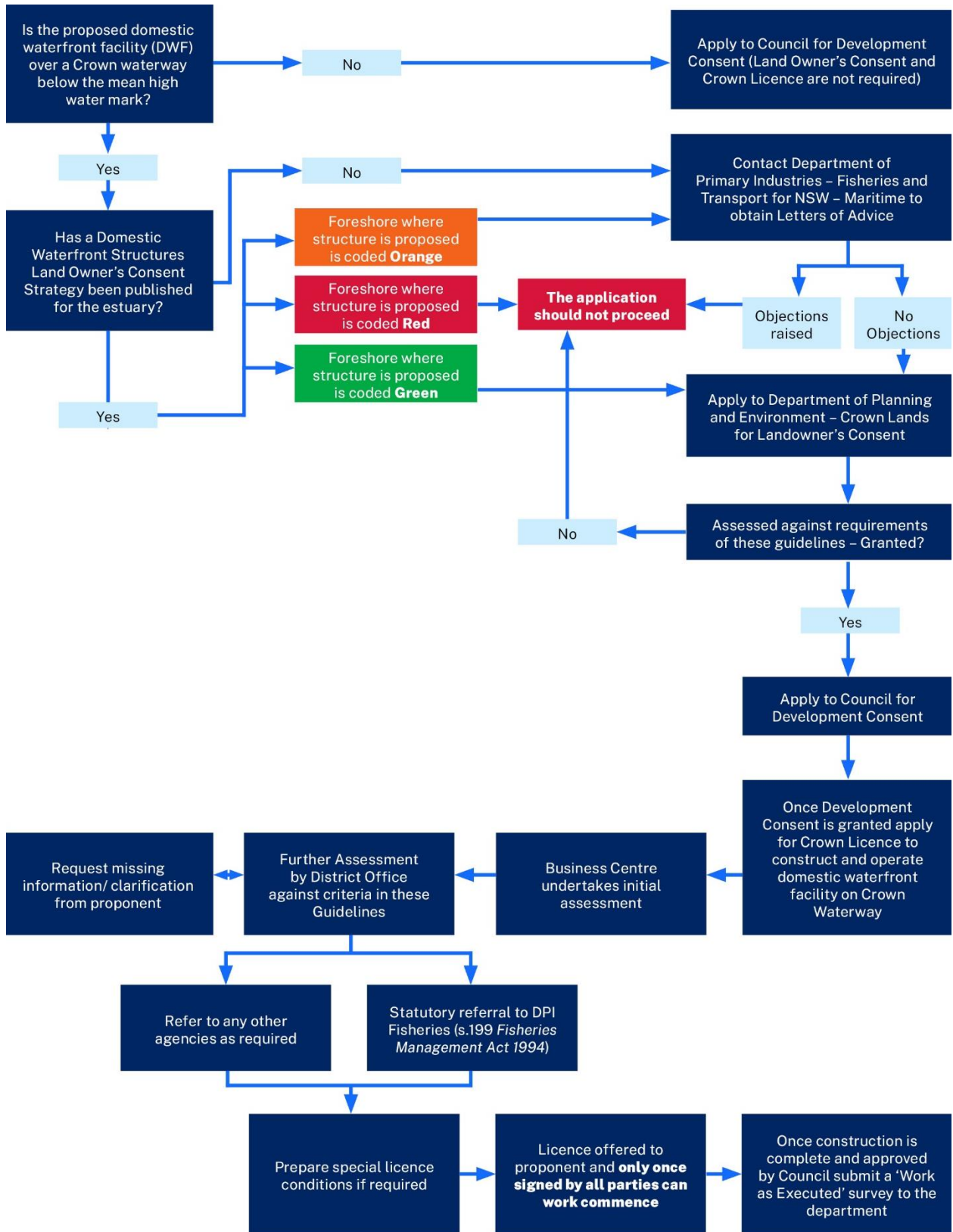


Figure 1. Workflow for construction of a new domestic waterfront facility that is approved by development consent from council. For complying development certification, an accredited private certifier can be substituted into the flow chart for a council. Where the application to council is for a building information certificate, the building information certificate replaces the development consent in the flowchart