

# Construction on foreshore Crown land and waterways – What you need to know



Information for Waterfront  
Consultants and Contractors

This document has been designed to inform waterfront consultants and contractors on development that is permissible on foreshore Crown land and waterways as well as licensing requirements under the Act to prevent unauthorised development and occupation of Crown waterfront land.

An informed community and consultant/contractor can then make appropriate and acceptable decisions towards any proposed use of the Crown public foreshore.

The NSW Department of Planning and Environment - Crown Lands (the department) has developed a **three-year Compliance Strategy** which outlines our approach to manage priority issues within the department's land administration operations.

A key focus of the strategy is to provide greater education and awareness to promote self-compliance and reduce the level of non-compliant activities on Crown land.

The Compliance Strategy action **“A review of Crown waterfront tenures and occupations”** aims to:

- ensure Crown waterways across NSW are managed equitably and the infrastructure that exists or is proposed on waterfront public land is well placed
- is meeting Crown land management principles and guidelines
- ensure all waterfront occupations are appropriately licensed.

The department has identified a significant level of unauthorised development being undertaken on foreshore Crown land and waterways, particularly where consent to construct on and occupy Crown land has not been granted by the department agreement

Irrespective of planning consent, the occupation of and construction on foreshore Crown land and waterways prior to the issue of a licence agreement:

- Does not comply with requirements of the [Crown Land Management Act 2016](#) (the Act)
- Places the individuals undertaking the works as well as the adjoining landowner in breach of the Act risking regulatory action and or prosecution
- Renders an inability to obtain public liability insurance for any structures on Crown land, placing the adjoining landowner at risk of claims.

## Domestic Waterfront Licences – Guideline

The Crown Lands **Domestic Waterfront (DWF) Licences – Guideline** (Guideline) establishes the department's criteria and requirements when considering applications to occupy and/or use existing DWF facilities, or develop new facilities on Crown waterways.

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In order to use or occupy any Crown land, the Act requires a licence to be issued by the department authorising private use of public land subject to a set of terms and conditions.

Construction of a new domestic waterfront facility or alteration of an existing domestic waterfront facility requires consent from the department (as the landowner) to enable lodgement of a development application (planning application) with council. Where planning consent has been granted by council, a new Crown licence application must be lodged with the department and approved prior to construction commencing.

## A licence must be held prior to constructing any new structures on Crown land.

The licensing process is the final step in an important cycle. Lodging a licence application allows the department's specialised Domestic Waterfront Team to:

- review and compare the planning and landowner's consents
- ensure the proposal is compliant with the Domestic Waterfront Licences – Guidelines
- apply suitable terms and conditions to the licence such as undertaking the works in accordance with the planning consent.

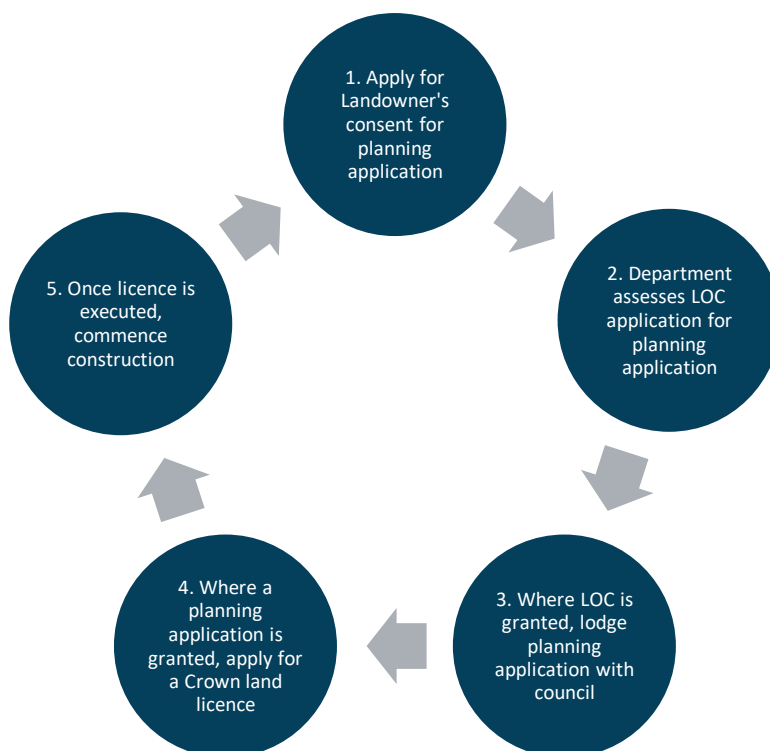
Construction details, area of occupation and terms and conditions of the agreement are confirmed between the parties within the executed licence, which is a formal and binding agreement.

This simplified process flow has been developed to inform and assist waterfront consultants to better understand Crown lands processes.

## Regulation and Compliance

The Act has made available much stronger compliance and enforcement powers to protect Crown land and ensure equity in public use and enjoyment.

Audits and inspections of Crown waterways to monitor



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for unauthorised works are currently being undertaken by the department.

Waterfront consultants and contractors are expected to inform clients and comply with the provisions of the Act and other relevant legislation in relation to development on and use of foreshore Crown land or waterways. Where appropriate, the department will undertake compliance enforcement proceedings for unauthorised occupations and structures that do not comply with the Act.

## Compliance enforcement actions may include:

- Directions to remove structures or materials illegally erected or placed on Crown land
- Stop-activity orders issued 'on the spot' to stop or prevent unlawful activities taking place on waterfront Crown land and waterways;
- Termination or non-renewal of an existing Domestic Waterfront licence
- Issue of Penalty Infringement Notices - \$2,200 each notice for a corporation
- Court orders
- Prosecution or civil proceedings - Maximum penalty \$220,000

It is in both yours and your client's best interests to ensure that any development on foreshore Crown land or waterway is undertaken lawfully and in compliance with the requirements of the Act.

## Considerations for Waterfront Consultants and Contractors

<ul style="list-style-type: none"><li>• Discuss with the client all design elements and extent of waterfront structures <b>proposed</b> to be constructed on foreshore Crown land.</li></ul>
<ul style="list-style-type: none"><li>• Refer to page 3 of the <a href="#">Domestic Waterfront Licences - Guideline</a> to view structures that are not acceptable on foreshore Crown land.</li></ul>
<ul style="list-style-type: none"><li>• Once a proposal has been designed, assess its suitability against criteria shown in Annexure A of the Guideline.</li></ul>
<ul style="list-style-type: none"><li>• Landowner's Consent will not be granted for any existing or proposed structures that are not permissible under the Guideline and a licence agreement to lawfully use and occupy Crown public land will not be issued.</li></ul>
<ul style="list-style-type: none"><li>• Complete the <a href="#">Landowner's Consent for Domestic Waterfront Structures</a> application form and attach all supporting documents requested including pre-requisite consents from NSW Fisheries and Maritime (Transport for NSW).</li></ul>
<ul style="list-style-type: none"><li>• Incomplete Landowner's Consent applications will not be processed by the Department and will be returned to the applicant.</li></ul>
<ul style="list-style-type: none"><li>• Await determination from the department prior to lodging the planning application with council. Any amendments to a proposal that has previously gained</li></ul>

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<p>Landowner's Consent will require the lodgement of another Landowner's Consent application to enable assessment of the amendment.</p>
<ul style="list-style-type: none"><li>• Where planning consent is granted by Council, notify the department by attaching a copy of the approved consent/s with a completed <a href="#">new DWF licence application form</a> and fee.</li></ul>
<ul style="list-style-type: none"><li>• <b>Do not commence construction until a licence has been executed by the owner and Department.</b></li></ul>

The FAQ attached has been developed to simplify relevant information and to further inform Waterfront Consultants and Contractors when considering a proposal to construct on foreshore Crown land.

For further information on the Domestic Waterfront Licences – Guideline, contact the Domestic Waterfront Business Centre on:

P: 1300 886 235 or 02 4925 4110

E: [waterfront.tenures@crowmland.nsw.gov.au](mailto:waterfront.tenures@crowmland.nsw.gov.au)

W: [www.crowmland.nsw.gov.au/licences-leases-and-permits/apply-or-manage-licence/apply-domestic-waterfront-licence](http://www.crowmland.nsw.gov.au/licences-leases-and-permits/apply-or-manage-licence/apply-domestic-waterfront-licence)

For further information on Regulation, Compliance and Enforcement or the Compliance Strategy 2020-2023 contact the Compliance Strategy & Monitoring Team on:

P: 1300 886 235

E: [cl.compliance@crowmland.nsw.gov.au](mailto:cl.compliance@crowmland.nsw.gov.au)

W: [www.crowmland.nsw.gov.au/protection-and-management/compliance](http://www.crowmland.nsw.gov.au/protection-and-management/compliance)

## Frequently Asked Questions

<p><b>What is Crown foreshore land?</b></p>	<p>Crown foreshore land is land that exists below the title boundary of waterfront properties, specifically below the Mean High-Water Mark (MHWM). The MHWM is set out on the associated property's Deposited Plan (DP) and defines the legal boundaries of the land.</p> <p>Any land (which includes the bed of rivers) that exists below the MHWM is known as Crown foreshore land. This land is vested in the Crown under the control of the department on behalf of the Minister administering the <i>Crown Land Management Act 2016</i>.</p>
<p><b>Can new DWF structures be constructed on waterfront Crown land?</b></p>	<p><b>Yes</b>, subject to investigation, planning consent and licencing, new DWF structures can be considered by the department.</p> <p>Annexure A of the <a href="#">DWF licences - guideline</a> sets out the criteria to assess if a proposal is likely to be approved by the department. Where a proposal is likely to be acceptable, Part B of the guideline explains the process for applying for the required consents to construct a DWF facility.</p>
<p><b>A landowner wishes to build new structures on Crown land, but the property does not directly adjoin the waterway (MHWM). Can the Department consider an application?</b></p>	<p><b>No.</b> Consent will not be granted as these structures are not able to be insured by a tenure holder who does not own freehold land adjoining the structure which is a requirement of a domestic waterfront licence agreement. The department has also determined that structures adjoining reserves may impede the general public's use and enjoyment of this land. See pg. 4 of the <a href="#">DWF licences - guideline</a> for further information.</p> <p>The department has taken a strategic approach since 2009 to reduce the number of structures on Crown waterways where freehold land does not directly adjoin the waterway i.e. the proposed structure fronts a Crown Reserve or a Crown public road (public land - not private).</p>
<p><b>A proposal does not meet DWF guideline criteria. Can I proceed with construction and seek retrospective consent later?</b></p>	<p><b>No</b>, where a proposal to authorise existing structures is not consistent with the DWF Licences guideline, Landowner's Consent <b>will not</b> be granted, and a licence will not be issued. This means that any existing structure and occupation remains untenured and therefore unauthorised and will be <b>required to be removed</b>. Any structures that</p>

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	<p>are not voluntarily removed will be subject to compliance action.</p>
<p><b>Is a Crown licence required prior to constructing DWF structures on foreshore Crown land or waterway?</b></p>	<p><b>Yes</b>, in order to use or occupy foreshore Crown land, a licence is required to be issued which authorises non-exclusive private use of public land.</p> <p>The licensing process is the final step in an important cycle. Lodging a licence application allows the Department’s specialised Domestic Waterfront Team to;</p> <ul style="list-style-type: none"> <li>• review and compare the planning and landowner’s consents</li> <li>• ensure the proposal is compliant with the Domestic Waterfront Licences – Guidelines</li> <li>• apply suitable terms and conditions to the licence such as undertaking the works in accordance with the planning consent</li> </ul> <p>Construction details, area of occupation and terms and conditions of the agreement are confirmed between the parties within the executed licence which is a formal and binding agreement.</p> <p>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.</p>
<p><b>What kind of action can the Department take against waterfront consultants and contractors that do the wrong thing?</b></p>	<p>Part 9 of the Act, Protection of Crown land, and in particular Divisions 9.2 and 9.3, establish offences around unauthorised use and activity and provides penalty for persons (including businesses) who undertake these activities or <b>whom causes</b> any contravention of Division 9.2 on Crown land without approval.</p> <p>Therefore, it is not only the person who appears to be the beneficiary of unapproved structures (landowner) but the entity who initiated the works who may be the subject of regulatory enforcement action, including prosecution where required.</p>
<p><b>What structures aren’t acceptable on waterfront Crown land?</b></p>	<p>The following are the most common unacceptable uses and structures located on waterfront Crown land. Any application seeking construction or authorisation of these structures will not be approved by the department, including but not limited to (see Guidelines for full list):</p> <ul style="list-style-type: none"> <li>• Floating air, dry docks, modular/storage pontoons or other similar structures</li> <li>• Boatsheds</li> </ul>

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	<ul style="list-style-type: none"><li>• Structures that adjoin reserved Crown land, Crown road or other public land</li><li>• Any structure that interferes with public access or accessibility to existing approved waterfront structures</li><li>• Pergolas, cabanas, barbeques or other similar structures</li><li>• Swimming enclosures or swimming pools</li><li>• Any non-boating structures or usages such as awnings or other fixtures</li><li>• Reclamation, seawalls or retaining walls <b>unless</b> foreshore erosion requires arresting or where a limit line of reclamation has been identified and adopted to conform with a smooth tidal flow</li><li>• Boat lifts or lifting devices, including davits</li><li>• Decking that is not essential for access to other domestic waterfront structures</li><li>• Residences or non-boating related use of boatsheds</li></ul> <p>Page 3 of the <a href="#">DWF licences - guideline</a> provides a comprehensive list of unacceptable structures and uses</p>
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See the following for more information

[Domestic waterfront licences website](#)

[Domestic Waterfront Licences – Guidelines](#)

[Compliance website](#)

[Compliance Strategy 2020-2023](#)

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