

SUBLICENSING OF APPROVED BERTHING AREAS

Information for domestic waterfront licence holders



The opportunity to sublicense approved berthing areas is now available to domestic waterfront licence holders with an approved berthing area.

I would like to invite you to consider applying to sublicense your approved berthing area. This may provide an income to you to help in the ongoing maintenance and repair of waterfront structures.

The benefits to the boating public are invaluable, through utilising unused berthing areas along our waterways, the community benefits from the reduction in navigational hazards, improved visual amenity and environmental outcomes.

A handwritten signature in black ink, reading "Warwick Watkins". The signature is written in a cursive style with a period at the end.

Warwick Watkins
Chief Executive Officer

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1. Eligibility for offer

What is a berthing area?

A berthing area is an 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. An approved berthing area will be marked on the plan attached to your licence.

Who can sublicense?

Licence holders with an approved berthing area may sublicense their approved berthing area to a third party subject to the consent of the Lands and Property Management Authority (LPMA).

Will I have to sublicense my berthing area if I'm not using it?

No. This initiative is completely voluntary. However there will be great benefits for tenure holders who currently don't use their facility as they may be able to generate an income from sublicensing their berthing area to help maintain their domestic waterfront facility.

My current agreement is a permissive occupancy. Can I apply to sublicense my berthing area?

To be eligible to sublicense your berthing area you will need to hold a licence issued after the commencement of the *Crown Lands Act 1989*. If you wish to retain your permissive occupancy agreement, you will not be eligible to sublicense your berthing area.

A licence can be issued to replace your current permissive occupancy at no cost to you, making you eligible to sublicense your berthing area. The authority to sublicense your berthing area can be added under your new licence agreement with LPMA.

Can I apply to sublicense my berthing area now?

Yes, you may apply to LPMA to vary your domestic waterfront licence to authorise you to sublicense your approved berthing area to a third party.

2. How to apply

How do I apply to sublicense my berthing area?

If you have a licence issued under the *Crown Lands Act 1989*, you will be required to submit to your local LPMA office a signed:

- completed application form
- copy of the standard terms sublicense agreement and any attached additional terms and conditions
- deed poll from the lessee indemnifying the Minister for Lands.

Forms and templates are available online at www.lpma.nsw.gov.au or at your local LPMA office.

Your application will be reviewed by the local LPMA office and you will be advised in writing when an authority to sublicense will be added to vary the terms of your licence. LPMA will not reasonably withhold consent to sublicense. You will also receive an invoice requesting payment for the sublicensing charge, which will be prorated in the first year to align with your annual rent. The charge to sublicense is explained below in '*How much will it cost to apply to sublicense my berthing area?*'

How much will it cost to apply to sublicense my berthing area?

In addition to the annual holding rent, a charge to obtain authorisation to sublicense your berthing area of between a minimum charge of \$750 and a maximum of \$2,000 plus GST a year will apply to holders who accept the offer. The greater of \$750 or 50% of your current rent will apply, up to a maximum charge of \$2,000 plus GST.

If your rent falls between \$399 to \$1,500

You will be required to pay the minimum amount of \$750*

If your rent falls between \$1,500 and \$3,999

You will be required to pay 50% of your current rent

If your rent is equal to or greater than \$4,000

You will be required to pay the maximum amount of \$2,000*

* Figures are adjusted annually in line with CPI

Will rebates or waivers apply to the annual charge to sublicense my berthing area?

No. There are no rebates or waivers to be applied to the annual charge to sublicense your berthing area. Pensioner rebates will not be available for the sublicensing charge, but will continue to be applied to the annual rent component.

Example 1

Ms Martin wants to sublicense her unused berthing space. Her current gross annual rental is \$5,000 per year plus GST. Ms Martin is eligible to receive a water access only discount from LPMA of \$286 from her gross rental, reducing her rent to \$4,715 per year plus GST.

Based on the formula sublicense charge, Ms Martin's berthing area would be \$2,000 per year plus GST. This is because 50% of her gross rent ($50\% \times \$5,000 = \$2,500$) is greater than the maximum charge, which is capped at \$2,000 per year plus GST.

Example 2

Mr Smith is also eligible to sublicense his unused berthing area. His current annual gross rental is \$2,000 per year plus GST. Mr Smith is eligible to receive a pensioner rebate of 50% from LPMA. After rebates, Mr Smith's annual net rent is \$1,000 per year plus GST.

Based on the formula the sublicense charge for Mr Smith will be \$1,000 per year plus GST. This is because 50% of his gross rent ($50\% \times \$2,000 = \$1,000$) is greater than the minimum charge of \$750 per year plus GST and no rebates or waivers apply.

How am I notified when my authority to sublicense is granted?

After your application has been reviewed by LPMA, you will receive a letter advising you that an authority to sublicense has been added to vary the terms of your licence. At this stage you are able to commence your sublicense agreement and allow the occupant to use the berthing area.

Will I receive an account for the sublicense charge?

Yes. When an authority to sublicense is granted, you will receive a LPMA account requesting payment for the authority to sublicense. In the first year, the charge will be calculated to align both your holding rent plus your annual charge to sublicense.

For subsequent years, you will have the convenience of receiving one account from LPMA which includes your domestic waterfront facility and authority to sublicense yearly.

How much should I expect to make from sublicensing my berthing area?

Potential rent earned from sublicensing berthing areas will vary depending on the facility, location and market conditions. Individual tenure holders should undertake their own research and assessment prior to taking up the offer to sublicense.

How will people know that I have a berthing space available for rent?

Advertising of an available berthing space will be at the discretion of the jetty owner. However, no advertisements are permitted to be placed on the jetty.

If I have a joint domestic waterfront licence with my neighbour, can I sublicense?

LPMA will accept applications to sublicense berthing areas for joint licence holders where consent is obtained from all joint licence holders.

I don't have an approved berthing area. Can I tie my boat to my jetty?

A jetty or other fixed structure below mean high water mark may be used for casual berthing which means the temporary berthing of a vessel for a reasonable period of time for the disembarkation of passengers and/or for the loading and or unloading of goods. Casual berthing generally does not exceed a period of six hours.

Continuous and permanent berthing may only occur in an approved berthing area adjoining an authorised domestic waterfront structure.

How do I apply to add a berthing area to my licence?

If you are an existing domestic waterfront licence holder and you want to add a berthing area to your holding, you are required to obtain landowner's consent from

LPMA, development approval from your local council and if successful, amend your domestic waterfront licence to include the approved berthing area. Fees may apply, for further information contact your local LPMA office.

Is a sublicence transferable?

No, a sublicence is not transferable. The third party occupant who enters into a sublicence with you is not able to on sell or transfer the use of the berthing area to another person.

What insurances and public liability do I need to sublicence?

The terms of your licence with LPMA specify the required amount of public liability for your licence. Additional insurances may be obtained at your discretion and should be assessed in response to your personal circumstances and financial situation.

Can the berthing area be used for a commercial purpose?

No, the berthing area can only be used for a domestic purpose and private recreation. Your domestic waterfront licence does not authorise any commercial use of Crown land. If you are considering using your jetty and berthing area for business purposes, please contact your local LPMA office to discuss your available options.

What size can the vessel be for the approved berthing area?

The vessel must not exceed the size of the approved berthing area in your licence with LPMA. It would breach the terms of the licence if a vessel that was 20m long was berthed in an approved area that was only 9m long. Allowing a vessel that is too large for the approved berthing area to berth may result in non-compliance action being taken by LPMA.

3. Sublicence agreement details

For your application to be considered by the Minister there are three conditions that must be included and these have been provided in the template sublicence agreement.

- An indemnity clause
- A clause stating that the sublicence will be cancelled upon revocation of the head licence.
- A clause prohibiting assignment or transfer.

You are not obliged to use the template sublicence agreement which LPMA has developed. If you use your own agreement you are advised that extra processing time may be involved as well as extra charges for which you will be liable and which will need to be paid before LPMA advises you of its decision. When you have provided a copy of the signed sublicence agreement to LPMA, your application will be considered and you will be advised as to whether your application has been approved. The terms of the sublicence agreement will be kept confidential by LPMA.

As well as the indemnity you give to the Minister the sublicence must also give a separate indemnity to the Minister. This must be in the form of a deed poll. A template deed poll which must be used for this purpose is available at the end of this document, online or from your local LPMA office.

What is a deed poll? Why is it required?

A deed is a type of written agreement.

A deed poll is a promise given by the sublicensee to the Minister for Lands that they will indemnify the Minister. It only needs to be signed by the sublicensee. A signed deed poll will need to be provided to LPMA as part of your application to sublicence your berthing area.

What is the minimum term of an authority to sublicence?

LPMA will issue an authority to sublicence for the minimum period of a year.

LPMA encourages clients to engage in sublicence agreements for a minimum term of one year. Any agreement to sublicence cannot exceed five years or the balance of the term of the existing head licence if less than five years.

If the term of the sublicence expires and both parties are

seeking to renew and continue to sublicense the approved berthing area, then application will need to be made to LPMA for approval to either enter into a new sublicensing occupancy agreement or extend the existing sublicense agreement for a specific time period. A copy of the proposed new agreement or proposed extension of the expired sublicense agreement will need to be provided to the Authority when approval is requested.

If the sublicensee changes after the expiration of the sublicense agreement, a new sublicense agreement and deed poll will need to be provided to LPMA.

What are the rights and responsibilities of the jetty owner when sublicensing to the sublicensee?

Primarily the jetty owner is responsible to ensure that they have the authority to sublicense the berthing area from LPMA. The template sublicense agreement outlines the rights and responsibilities of the jetty owner to include, but not be limited to: ensuring that uses by the sublicensee are restricted to domestic berthing and not for any other purpose; making sure that the berthing area is vacant; use of the berthing area is without undue interruption; access over land to the berthing area; and that everything provided for use by the sublicensee is reasonably clean and fit to use.

What are the rights and responsibilities of the sublicensee when entering into an agreement to sublicense the approved berthing area?

The sublicense template agreement also outlines the rights and responsibilities of the sublicensee to include, but not be limited to: paying an appropriate rental for the use of the berthing area to the jetty owner and ensuring that the berthing area be used for domestic berthing and not for a commercial purpose, in addition to any other terms and conditions agreed to between the jetty owner and sublicensee.

How do I end the sublicense agreement?

There are a number of ways the sublicense agreement may end:

- if you fail to pay your annual charge for the authority to sublicense, LPMA will cancel your authority to sublicense
- the Minister may terminate the head licence at will
- at the agreed end date as negotiated in the sublicense agreement

- by appropriate notice as agreed between yourself and the sublicensee
- if you sell your property, the authority to sublicense will not be transferred to the new owner, and the sublicense agreement will end (the new owner is free to choose to take up the offer to sublicense their berthing area).

You will be able to end your authority to sublicense with LPMA on a yearly basis. Please advise LPMA in writing prior to your next annual rental that you no longer wish to have the authority to sublicense your approved berthing area.

4. Glossary

Jetty owner

The head licensee who holds tenure directly with the Land and Property Management Authority for a domestic waterfront facility and who has authorisation to sublicense their approved berthing area.

Sublicensee

The person who enters into an agreement with the jetty owner (head licensee) to occupy the approved berthing area for a defined term.

Berthing area

A berthing area is an area of water allocated for on water storage of boats adjacent or attached to a fixed or floating facility, allowing for walk-on access to the boat. An approved berthing area will be marked on the plan attached to the head domestic waterfront licence.

Head licence

The licence between the jetty owner and the Minister for Lands for the permitted uses listed, generally this will include jetty, berthing area and other approved structures e.g. slipway, reclamation etc.

Sublicensing of berthing area application



Land and Property
Management Authority

This form is to be completed by domestic waterfront tenure holders with an approved berthing area who seek consent to sublicense their berthing area to a third party occupant.

Protecting your personal information is important to LPMA. As a NSW government agency, LPMA is subject to the provisions of the *NSW Privacy and Personal Information Protection Act 1998* (PIIP Act) and related regulations. For more information, please refer to LPMA Privacy Statement on www.lpma.nsw.gov.au.

Applicant(s) details

Jetty owner/s: _____

Residential street address adjoining jetty: _____

Postal address: _____

Licence number: _____

Contact phone number: _____ Email: _____

Checklist

Did you:

- attach your agreement and include the essential terms and conditions and attach any additional terms and conditions to the agreement?
- obtain the signature of the parties to the agreement?
- attach an accurate sketch or diagram of the berthing area?
- attach the deed poll from the lessee to indemnify the Minister and Crown?

Shared facilities

Is the jetty held as a joint licence with adjoining properties? Yes No

If you hold a joint DWF licence, LPMA will accept applications where consent is obtained from all joint licence holders. Please provide the signature of all joint licence holders below.

Agreement details

- I seek to apply for authorisation to sublicense my approved berthing area adjoining my freehold property.
- I have attached an original completed berthing area occupancy agreement, completed deed poll and diagram or accurate sketch of the berthing area.
- I acknowledge if approved, that the terms of my DWF licence will be varied to authorise sublicensing the use of my approved berthing area.

Payment

- I acknowledge an invoice will be sent to me seeking payment for authorisation to sublicense should my application be successful.



Signature

Domestic Waterfront licence holder/s:

Signature: _____

Name (in print): _____ Date: _____

Signature: _____

Name (in print): _____ Date: _____

Please send your completed and signed application form, occupancy agreement and deed poll to your local LPMA office.
If you require assistance, please telephone 1300 052 637 (option 4) or contact your local LPMA office.

**Land & Property Management Authority
Head office**

1 Prince Albert Road
Queens Square
SYDNEY NSW 2000

T 1300 052 637
61 2 9228 6666
F 61 2 9233 4357

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Sublicence berthing area occupancy agreement

This agreement forms a sublicence to licence no. _____ for the purpose of waterfront structure and berthing area issued under the *Crown Lands Act 1989*, (this 'agreement').

1. Definitions

- Jetty owner** The head licensee who holds tenure directly with LPMA for a domestic waterfront facility and who has authorisation to sublicense their approved berthing area.
- Occupant** The sublicensee who enters into an agreement with the jetty owner (head licensee) to occupy the approved berthing area for a defined term.
- Berthing area** A berthing area is an 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. An approved berthing area will be marked on the plan attached to the head domestic waterfront licence.
- Head licence** The licence between the jetty owner and the occupant described in clause 3.

2. Identification

Parties to agreement

This agreement is made between: the jetty owner and the occupant of the berthing area.

Jetty owner (name in block letters): _____

Residential address: _____

Postal address: _____

Contact phone number: _____ Email: _____

Occupant (name in block letters): _____

Address: _____

Postal address: _____

Contact phone number: _____ Email: _____

3. Berthing area

The jetty owner gives the occupant the right to occupy the berthing area identified in licence _____ (insert licence number) at: _____

_____ (insert adjoining residential address of the 'head licence' berthing area)

The size of the berthing area is (fill in the dimensions of the site or its area in square metres)

Length: _____ metres Width: _____ metres

Attach copy of diagram from original head licence if available or accurate sketch of site indicating location of the approved berthing area.

4. Rental

a) The berthing area occupancy fee payable is \$ _____ per annum.

b) The berthing area occupancy fee is payable in weekly fortnightly monthly quarterly annually instalments of: \$ _____ commencing on (insert date) ____/____/____

c) The occupant agrees to pay the occupation fees in advance and on time.

d) The occupation fees may be paid in the following ways: EFT Cheque Money Order Other

The method of paying and amount payable may be changed during the term of this agreement if both the jetty owner and the occupant agree.

5. Term of agreement

This agreement is for a fixed term and may not be less than one year or more than five years. The term of the agreement cannot exceed the balance remaining on the original head licence, if less than 5 years.

Sublicensing agreement duration: _____ Beginning on: ____/____/____ Ending on: ____/____/____

6. Essential conditions

The occupant indemnifies the jetty owner.

- a) The occupant indemnifies and will keep indemnified the jetty owner from and against all actions, suits, claims and demands of whatsoever nature and all damages, costs, charges and expenses in respect of any accident or injury to any person or property which may arise out of:
 - i. the use or occupation of the berthing area
 - ii. the construction, installation, repair, replacement or maintenance of works as may be authorised under this agreement
 - iii. any failure by the occupant to comply with the terms of this agreement.
- b) Extent of indemnity: The indemnity in clause 6 still applies even though the occupant has observed and performed the conditions of this agreement or that any such accident or injury arises from any act or thing, which the occupant may be authorised or compelled to do under this agreement.
- c) The obligations of the occupant under this clause continue after this agreement expires or is otherwise ended in respect of any act, deed, matter or thing happening before the expiry or end of this agreement.
- d) To the extent that any such claims and demands arise from any negligence or wilful act or omission on the part of the jetty owner the indemnities under this clause do not apply.

7. Termination of sublicence agreement

This agreement will terminate upon the transfer or termination of the head licence, by agreement between the parties, or the end date of this agreement.

8. Prohibition on assignment or transfer

The occupant will not during the term of this agreement transfer or create any interest in this agreement or authorise or permit any person to occupy the berthing area.

9. Rights and responsibilities

The occupant agrees:

- a) to use the berthing area for domestic berthing of their vessel
- b) to not use the berthing area for a commercial purpose
- c) to not use the waterfront facility or cause or permit the waterfront facility to be used for any illegal purpose
- d) to not cause or permit a nuisance
- e) to keep the berthing area reasonably clean
- f) to notify the jetty owner as soon as practicable of any damage to the adjoining structure

- g) to not intentionally or negligently cause or permit any damage to the berthing area or any other part of the jetty structure
- h) to not attach any fixture or renovate, alter or add to the berthing area or adjoining structure
- i) to be responsible to the jetty owner for any act or omission by any person the occupant allows on the site, who breaks any of the terms of this agreement
- j) to not access the berthing area via private property unless consent has been given
- k) to make sure that the vessel being moored within the berthing area is insured for damage to third party property and public liability
- l) when this agreement ends, to leave the site as near as possible in the same condition (fair wear and tear excepted) as when this agreement started.

The jetty owner agrees:

- a) to make sure the berthing area is vacant so the occupant can use the berthing area for the term of the agreement;
- b) the occupant will have use of the berthing area without undue interruption by the jetty owner;
- c) to make sure the berthing area and everything provided for use by the occupant are reasonably clean and fit to use; and
- d) to gain appropriate authorisation from the Minister of Lands to sublicense the berthing area.

10. Ending this agreement

The jetty owner and the occupant agree that this agreement can be terminated if the jetty owner or the occupant gives at least one month's notice of termination.

The jetty owner and the occupant agree that a notice of termination must:

- a) be in writing
- b) state the address of the berthing area
- c) be signed by the person giving it
- d) be dated
- e) allow the required period of time
- f) give the date the occupant intends to, or is required to, stop berthing the vessel at the berthing area.

11. Additional terms and conditions

Please attach any additional terms and conditions to be included in the agreement, as agreed between the occupant and the jetty owner.

12. Terms of head licence

The occupant will abide by the terms of the head licence.

Signatures to this agreement

Jetty owner: _____

Name (in print): _____ Date: _____

Occupant: _____

Name (in print): _____ Date: _____

Disclaimer

In providing the berthing occupancy agreement template, LPMA does not provide any legal advice to any person. It is the responsibility of the jetty owner and occupant to ensure that the terms of the sublicence are satisfactory for them and to obtain any legal advice that is needed in relation to this matter.

Checklist

Did you:

- complete the berthing area occupancy agreement and deed poll?
- obtain the signature of the parties to the agreement?
- attach an accurate sketch or diagram of the berthing area?
- provide the appropriate fee to the authority when submitting this agreement?

Office use:

Reviewed by: _____ TRIM reference: _____

Essential conditions met: _____ Payment received: _____

Approved by: _____ Minister's authority to sublicense granted: _____

Deed poll for sublicence of berthing area



Land and Property
Management Authority

This deed poll made on the _____ day of
_____ month _____ year

By _____

Of _____
(in this Deed called 'You and Your')

For the benefit of: _____ the Minister for Lands, being the Minister administering the *Crown Lands Act 1989*
(in this deed called 'the Minister').

Recitals

1. The Minister has granted to _____ of

_____ (in this deed poll called 'the Licensee') a domestic waterfront licence (in this deed poll called 'the Licence').

2. The Licensee has given You a sublicence (in this deed poll called 'the Sublicence') of a berthing right over part of the land subject to the Licence containing a condition requiring you to give this deed poll.

3. The land subject to the Licence (in this deed poll called 'the Land') is described in the schedule to this deed poll and includes any submerged land or waterway.

4. The indemnity given by this deed poll benefits the Minister and the Crown.

Terms of operative part

1. Indemnity

- a) You indemnify and will keep indemnified the Minister and the Crown from and against all actions, suits, claims and demands of whatsoever nature and all damages, costs, charges and expenses in respect of any accident or injury to any person or property which may arise out of:
 - i. the use or occupation of the Premises
 - ii. the construction, installation, repair, replacement or maintenance of works as may be authorised under the Sublicence
 - iii. any failure by You to comply with the terms of the Licence or of the Sublicence.
- b) This indemnity still applies even though You have observed and performed the conditions of the Licence and/or of the Sublicence or that any such accident or injury arises from any act or thing, which You may be authorised or compelled to do under the Licence and/or the Sublicence.
- c) Your obligations under this deed poll continue after the Sublicence expires or is otherwise ended in respect of any act deed matter or thing happening before the expiry or end of the Sublicence.
- d) To the extent that any such claims and demands arise from any negligence or wilful act or omission on the part of the Minister the indemnities under this clause do not apply.

2. Public Risk Insurance

- a) You shall effect and maintain for the Term of the Sublicence a public risk insurance policy in the joint names of You and the Crown in right of the state of New South Wales relating to liability for death or bodily injury or damage to property arising out of Your use and occupation of the Premises and the matters referred to in clause 1 of this deed poll.

3. Domestic insurance policy requirements

- a) The following provisions apply to all policies of insurance taken out by You under this deed poll.
- i. You must if directed by the Minister enter into an insurance policy with an insurer approved by the Minister. Otherwise You must enter into an insurance policy with an insurer carrying on business in Australia.
 - ii. Any public risk policy taken out by You must be for an amount sufficient to cover the risks under the policy.
 - iii. You must provide duplicate or certified copies of all policies if required by the Minister.
 - iv. You will obtain insurance cover for any increased risk and pay all additional premiums (if any) required to be paid if You do anything that may increase the rate of premium on the insurances taken out by You.
- b) The Minister in his own name or as Your attorney in Your name shall be entitled to institute all proceedings against any insurer which issues a policy of insurance required by this deed poll to recover from it any amount for loss damage or injury or other money payable under any indemnity in favour of the Minister. You appoint the Minister as Your attorney for such purposes.
- c) The provisions of clause 1 of this deed poll continue in force after the expiry or other end of the Sublicence.

4. Definitions

The terms in this deed poll mean the following.

- a) **Crown** means Her Majesty Queen Elizabeth II in right of the state of New South Wales, her officers, contractors, employees and agents.
- b) **Minister** means the person described as the Minister in this deed poll and where the context permits includes the Minister's successors, officers, servants, contractors, workmen, employees and agents.
- c) **Premises** means all buildings, structures, facilities, and works situated or to be situated in or on or under the Land any of Your plant and equipment.
- d) **Term** means the term of the Sublicence.
- e) **You** means the occupant who is the sublicensee who enters into an agreement with the jetty owner (the head licensee) to occupy the approved berthing area for a defined term.

Executed as a deed in _____ (insert locality)

Signed, sealed and delivered in the presence of:

Signature of witness _____

Name of witness – please print _____

Address of witness _____

Occupation of witness _____

Name of third party granted the sublicense ('You') _____

**Land & Property Management Authority
Head office**

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Batemans Bay NSW 2536

T: 02 4472 1436

F: 02 4472 1509

Coffs Harbour

36 Marina Drive
PO Box 291J
Coffs Harbour Jetty NSW 2450

T: 02 6691 9610

F: 02 6651 9975

Grafton

Crown Lands
76 Victoria Street
PO Box 272
Grafton NSW 2460

T: 02 6640 3400

F: 02 6642 5375

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Cnr Newcastle Road & Banks Street
PO Box 6
East Maitland NSW 2323

T: 02 4937 9300

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Ground Floor
5 O'Keefe Avenue
PO Box 309
Nowra NSW 2541

T: 02 4428 9100

F: 02 4421 2172

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Level 12
10 Valentine Avenue
PO Box 3935
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