

Domestic waterfront licence

Standard terms and conditions

{DOC18/065471}, {V0.5}, {July 2018}

Published by NSW Department of Industry

Domestic Waterfront Licence: Standard Terms and Conditions

First published July 2018.

More information

NSW Department of Industry—Lands & Water

industry.nsw.gov.au

DOC18/065471

© State of New South Wales through Department of Industry 2018. You may copy, distribute, display, download and otherwise freely deal with this publication for any purpose, provided that you attribute the Department of Industry as the owner. However, you must obtain permission if you wish to charge others for access to the publication (other than at cost); include the publication in advertising or a product for sale; modify the publication; or republish the publication on a website. You may freely link to the publication on a departmental website.

Disclaimer: The information contained in this publication is based on knowledge and understanding at the time of writing (April 2018) and may not be accurate, current or complete. The State of New South Wales (including the NSW Department of Industry), the author and the publisher take no responsibility, and will accept no liability, for the accuracy, currency, reliability or correctness of any information included in the document (including material provided by third parties). Readers should make their own inquiries and rely on their own advice when making decisions related to material contained in this publication.

Contents

Introduction.....	1
Terms and conditions.....	1
1. Grant of a Licence.....	1
2. Term of a Licence	1
3. Transfer of Licence	2
4. Sublicensing	2
5. Notification of sale.....	2
6. Licence a holding for the purposes of the <i>Crown Land Management Act 2016 (Act)</i>	2
7. Licence granted subject to Aboriginal Land Claim.....	2
8. Termination upon grant of Aboriginal Land Agreement	2
9. Notices, approvals and consents	3
10. Minister’s powers and functions.....	3
11. Approvals and consents by the Minister	3
12. No compensation	3
13. Ownership, care and maintenance	3
14. Ownership of improvements.....	4
15. Care and maintenance.....	4
16. No holding out.....	4
17. No right to purchase.....	4
18. Waterways and vessels.....	4
19. Display of holding number and signs	5
20. Removal and destruction of improvements	5
21. Rent and payments.....	5
22. Rates, taxes and other charges.....	6
23. Goods and services tax (GST)	6
24. Costs of the Minister	6
25. Failure to pay monies or undertake works	6
26. Indemnity and insurance	6
27. Public risk insurance	7
28. Domestic insurance policy requirements.....	7
29. Compliance with statutes	7
30. Non-compliance with conditions	7
31. Additional terms and conditions.....	8
32. Definitions and interpretation.....	8
32. Interpretation.....	9

Introduction

The NSW Department of Industry—Lands & Water (the department) has ownership, control and management of Crown land below the mean high water mark and manages this land for the benefit of the people of New South Wales. Any occupation or use of Crown land requires a licence from the department.

Development of domestic waterfront facilities can be a large investment requiring ongoing commitment and responsibility. Such a facility can also greatly enhance the community use and enjoyment of waterways. The department supports the ongoing use of domestic waterfront facilities for responsible recreational and water-related purposes; however this occupation of Crown land below the mean high water mark should not be viewed as an inherent right of any foreshore land owner.

The following terms and conditions, in combination with the site specific licence document, combine to become a domestic waterfront facility licence.

Please read the following standard terms and conditions in conjunction with the schedules in your licence document carefully and ensure that you understand your rights and responsibilities as a licence holder.

Definitions are available at the end of the licence. Please note this introduction does not form part of this licence's terms and conditions.

Terms and conditions

1. Grant of a Licence

- a) You may use and occupy the Premises but only for the Permitted Use as specified in Item 5 of Schedule 1. You must not use or occupy the Premises or allow the Premises to be used or occupied for any other purpose.
- b) This Licence does not confer on You any right of exclusive possession of the Premises.
- c) You must not reside or permit any person to reside on the Premises unless otherwise specified in Item 6 of Schedule 1.
- d) You must not use or permit any person to use the Premises for the purposes of conducting any form of business, calling or trade.
- e) You must not:
 - i. carry on or permit any person to carry on any noxious, noisome or offensive activity in the Premises
 - ii. do or permit any person to do any act, matter or thing which results in nuisance, damage or disturbance to the Minister or owners or occupiers of adjoining or neighbouring lands or buildings.
- f) You must allow the public at all times to have access over that part of the Land that is situated below the mean high water mark and any structure constructed on the Land shall be constructed so as not to unreasonably obstruct access by the public over such lands.

2. Term of a Licence

- a) This Licence begins on the Commencing Date and continues in force until the earlier of:
 - i. the Terminating Date
 - ii. the date the Licence is ended in accordance with this clause.
- b) The Minister has absolute discretion to end this Licence at any time by Notice to You.
- c) You may at any time by Notice served on the Minister, request that this Licence be revoked. If the Minister is satisfied that You have complied with the terms and conditions of this Licence and the provisions of the *Crown Land Management Act 2016* (the Act), the Minister may end this Licence by Notice to You.

3. Transfer of Licence

You may only transfer this Licence:

- a) in accordance with s. 5.24 of the *Crown Land Management Act 2016*
- b) on terms and conditions approved by the Minister
- c) to the owner or holder of the Benefited Land.

In this Licence, 'Benefited Land' means the land described in Item 4 of Schedule 1 which benefits from this Licence.

4. Sublicensing

- a) You may apply to the Minister to sublicence.
- b) You may only grant a sublicence with the specific written consent of the Minister and subject to the terms and conditions the Minister thinks fit.
- c) A sublicence so granted is not transferable.

5. Notification of sale

You must:

- a) give any proposed purchaser a copy of this Licence as part of the contract for sale of the Benefited Land
- b) inform any proposed purchaser that any use of the subject Premises is unlawful without a licence from the Minister
- c) notify the Minister immediately upon exchange of any contract for the sale of the Benefited Land.

6. Licence a holding for the purposes of the *Crown Land Management Act 2016 (Act)*

This Licence is a 'holding' for the purposes of the Act and You are a 'holder' under the Act. The provisions of the Act relating to holdings and holders apply to this Licence and to You.

7. Licence granted subject to Aboriginal Land Claim

- a) You are granted this Licence subject to a possible Aboriginal Land Claim over this Land as provided for in s. 36 of the *Aboriginal Land Rights Act 1983*.
- b) Notwithstanding any other provision of this Licence, this Licence shall terminate if the Minister determines that the Land is claimable Crown land or a court determines that the land is claimable Crown land.
- c) Except as may be expressly provided for in this Licence You acknowledge and agree that You will not be entitled to any compensation, costs or damages in respect of the termination of this Licence if the Minister determines that the Land is claimable Crown land or a court determines that the Land is claimable Crown land.

8. Termination upon grant of Aboriginal Land Agreement

- a) Despite anything else in this Licence, You agree to and approve of the transfer or termination of this Licence without any further notice if an Aboriginal Land Agreement (ALA) within the meaning of s. 36AA(1) of the *Aboriginal Land Rights Act 1983*, affecting the land or part thereof, provides for the transfer or termination of this Licence.
- b) Except as may be expressly provided for in this Licence, You acknowledge and agree that You will not be entitled to any compensation, costs or damages in respect of the transfer or termination of this Licence by operation of this clause.

- c) You agree that the date of transfer or termination under this clause is the date provided for in the ALA, or if it is not so provided, the date the ALA is entered into.
- d) This clause constitutes an approval by the You of the transfer or termination for the purposes of s. 36AA(11) of the *Aboriginal Land Rights Act 1983*.
- e) The Minister may give notice to You of the transfer or termination of this Licence under this clause but is not required to do so to effect the transfer or termination.

9. Notices, approvals and consents

- a) Any Notice may be served:
 - i. by leaving it at the address for the party specified in column 2 of Items 1 and 2 of Schedule 1 and addressing it to any specified person or position, or
 - ii. by addressing it to any person or position specified and posting it to the address for the party so specified, in which case service will be taken to be effected when it would in the ordinary course have been delivered, or
 - iii. by facsimile sent to the facsimile number of a party specified in column 2 of Items 1 or 2 of Schedule 1 and addressing it as specified, in which case service will be taken to be effective at the time particularised in a confirmation of message notice obtained by the party serving from the machine used to initiate service.
- b) A party may by Notice vary its address particulars as specified in Items 1, 2 and 3 of Schedule 1.

10. Minister's powers and functions

- a) Any Authorised person may:
 - i. exercise any power, authority, duty or function of the Minister in relation to or arising out of this Licence whether that power, authority, duty or function is exercised under this Licence or otherwise. If statutory authorisation is necessary for the exercise, that authorisation must be obtained by the person prior to the exercise
 - ii. be appointed generally without reference to this Licence and either before or after the commencement of this Licence.
- b) Nothing in this Licence fetters, restricts or affects the Minister's discretion as to the use of the Minister's statutory powers.
- c) The Minister may form any opinion for the purposes of this Licence on such grounds and material as the Minister thinks fit and after such consultation that the Minister considers to be necessary.
- d) The Minister may vary the terms and conditions of this Licence at any time. You will be notified in writing of any variations to the terms and conditions of this Licence.

11. Approvals and consents by the Minister

- a) Any reference to approvals or consents of the Minister in this Licence must be given in writing to be effective and may be subject to conditions. An approval or consent from the Minister will be a separate document to this Licence.
- b) Unless this Licence provides otherwise, the Minister may give or withhold consent or approval to any act, matter or thing in the Minister's discretion. The Minister may give consent subject to such conditions as the Minister may determine. Any such condition will become a condition of this Licence.

12. No compensation

You are not entitled to any compensation, costs or damages on forfeiture, surrender or termination of this Licence under any condition or term of this Licence or otherwise.

13. Ownership, care and maintenance

You are solely responsible and liable for doing or effecting any act, matter or thing which this Licence requires of You unless this Licence provides otherwise.

14. Ownership of improvements

- a) You are deemed to be the owner of all Improvements on the Land at the Commencing Date regardless of whether or not You constructed the Improvements.
- b) You must not construct, effect, erect or undertake any Improvements on the Premises without the prior written consent of the Minister.
- c) Any Improvement constructed on the Premises during the Term becomes Your property for the Term.

15. Care and maintenance

- a) You must at all times keep the Premises in good repair and properly maintained.
- b) You must at all times keep the Premises in a clean and tidy condition, clear and free of rubbish and debris.
- c) The Minister may at all reasonable times on giving to You reasonable notice (except in the case of an emergency) enter the Premises and inspect the state and repair of the Premises.
- d) The Minister may give Notice to You requiring You to repair the Premises within a specified time.
- e) You must not make or undertake any alterations to the Premises except with the written approval of the Minister and the required consents and approvals from other relevant public and local authorities.
- f) You must carry out all alterations to the satisfaction of the Minister:
 - i. at Your sole cost and expense
 - ii. in accordance with the conditions (if any) of the Minister's approval to such alteration works.
- g) On the Terminating Date or the earlier revocation or determination of this Licence You must ensure that the Premises are in good repair and condition, reasonable wear and tear excepted, and that the Premises are clear and free from all rubbish.

16. No holding out

You must not:

- a) directly or indirectly hold out or permit to be held out to any member of the public any statement, act, deed, matter or thing indicating that the Premises is being carried on or managed or supervised by the Minister
- b) act or represent itself to be the servant or agent of the Minister.

17. No right to purchase

This Licence does not confer a right to You to purchase the Land or to the grant of a lease or to the grant of a further licence.

18. Waterways and vessels

- a) You must ensure that any vessel secured at the Premises is moored or berthed wholly within the Premises, or otherwise as shown on the plan attached in Schedule 3 of this Licence.
- b) You must not Permanently moor or berth a vessel on the Land or Premises, unless this Licence specifically provides for a Berthing Area in the Permitted Use in Item 5 of Schedule 1 of this Licence.
- c) You must not reside or permit any person to reside on any vessel moored or berthed at your Premises.
- d) You must not carry on or permit any person to carry on any noxious, noisome or offensive activity on any vessel moored or berthed within the Premises.
- e) You must ensure that satisfactory measures are taken to prevent pollution of the waterway adjoining or forming part of the Premises or its foreshores arising out of the use of the Premises.
- f) You must not damage any retaining wall or seawall on your Premises.
- g) You must not store or permit any person to store any vessel, equipment or material on the Land.
- h) You must not dredge, dig up or excavate the Land within the Premises without the prior consent of the Minister.

- i) The Minister is not responsible for any flotsam or jetsam, rubbish or debris transported onto or in the vicinity of the Premises.
- j) In this clause, 'Permanently' means mooring or berthing a vessel at the Premises for any period of time greater than six hours.

19. Display of holding number and signs

- a) You must ensure that the holding number specified in Item 12 of Schedule 1 is displayed in white letters not less than 10 cm high on a black background that is affixed and kept affixed to the end of the Improvement in a prominent position visible from the seaward side for the Term. This sign must be clearly legible throughout the Term.
- b) You must not without prior written consent of the Minister, erect, paint, affix or exhibit on the exterior of the Premises or on the interior of the Premises so as to be visible from the outside of the Premises any signs, advertisements, lights, embellishments, names, notices or hoardings.

20. Removal and destruction of improvements

- a) You must not remove, demolish, take away or pull down any Improvement unless it is in accordance with a written notice to You from the Minister.
- b) You must comply with any Notice given to You by the Minister to remove or demolish any Improvement.
- c) On removal of any Improvement in accordance with the Minister's written Notice, the Minister ceases to have any rights to the Improvement so removed.
- d) You may apply to the Minister, within one month of the forfeiture, surrender or other determination of this Licence, to remove from the Land any of the Improvements (if any) affected or owned by You or any predecessor to You in accordance with s. 7.16 of the Act.
- e) The Crown is the owner of all Improvements remaining on the Land on the expiry, forfeiture, surrender or other determination of this Licence except those that may be removed with the Minister's written consent.
- f) In the event of the Minister deciding that Improvements have been Totally Destroyed, the Minister may end this Licence by giving one month's Notice to You. The Minister may direct You by Notice to remove the remains of the Improvements and You will from insurance monies available (and if they are insufficient from Your own monies) pay for the cost of removal.
- g) Any Improvements additional to those that are approved as part of this Licence, require prior written approval of the Minister and the appropriate consents and approvals from other relevant public and local authorities.
- h) Any additional Improvements that are constructed without the Minister's written consent, may be required to be removed.
- i) If the Improvements are partially destroyed or damaged You will from the insurance monies available (and if they are insufficient from Your own monies) repair, replace or make good the damaged portion of the Improvements only in the manner and to the extent as directed in writing by the Minister.

For the purposes of this clause, 'Totally Destroyed' means in the opinion of the Minister destroyed or damaged so extensively that it would be impracticable and not commercially viable to make good such damage.

21. Rent and payments

- a) You must pay the Initial Rent on the Commencing Date and then pay the Initial Rent or if the Rent is Redetermined the rent as so Redetermined on each Due Date to the Minister free of all deductions and exchanges and without demand.
- b) The Minister may Redetermine the Rent in accordance with divisions 6.3 of the Act.

22. Rates, taxes and other charges

You must:

- a) pay all rates, taxes (including land tax), assessments, duties, charges and fees charged by any authority, which are charged, levied or imposed in respect of the Premises
- b) produce to the Minister receipts for payments that You are required to make under this clause if requested by the Minister
- c) pay to the Minister or to any other authority all proper charges for gas, electricity, water or other services supplied to or consumed in or on the Premises and must pay all charges in respect of any telephone services connected to the Premises.

23. Goods and services tax (GST)

- a) With the exception of any amount payable under this clause, all amounts stated to be payable under this Licence are exclusive of GST.
- b) If GST is imposed on any Supply in connection with this Licence, the recipient of the Supply must pay to the supplier an amount equal to the GST payable on the Taxable Supply.
- c) The recipient must pay the GST on the relevant Taxable Supply when a supplier issues a tax invoice for that Taxable Supply.
- d) Any valuer or umpire returning a valuation must return a GST exclusive market value for it in any case where the valuation is for the purposes of determining a supply value to which GST is to be added under this Licence.

24. Costs of the Minister

You must pay:

- a) the Minister's reasonable legal costs and all duties, fees, charges and expenses related to:
 - i. the preparation, completion and stamping and registration of this Licence
 - ii. any application for the Minister's consent under this Licence
 - iii. any Breach or Default of this Licence by You
 - iv. any fees of professional consultants properly incurred by the Minister in consequence of, or in connection with, any Breach or Default of You or any application for the Minister's consent
 - v. the exercise or attempted exercise of any right, power, privilege, authority or remedy of the Minister under or because of this Licence
- b) all expenses reasonably incurred by the Minister or the Minister's consultants in the examination of plans, drawings and specifications of any Improvement erected or constructed or to be erected or constructed on the Premises and the inspection of the Premises
- c) all expenses reasonably incurred by the Minister in any entry, inspection, examination, consultation or the like which discloses a Breach by You of any covenant of this Licence.

25. Failure to pay monies or undertake works

- a) You must pay interest on any money due and payable under this Licence to the Minister at the rate prescribed from time to time in accordance with s. 12.12 of the Act and any such interest for the purposes of this Licence will be deemed to be Rent in arrears.
- b) The Minister may remedy any default of Yours, including when You fail to pay any money due to someone other than the Minister, but only if the Minister has given Notice to You requesting You to pay the money or perform any obligation within 14 days and You fail to comply.

26. Indemnity and insurance

- 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 this Licence
 - iii. any failure by You to comply with the terms of this Licence.
- b) The indemnity in clause 26(a) still applies even though You have observed and performed the conditions of this Licence or that any such accident or injury arises from any act or thing, which You may be authorised or compelled to do under this Licence.
- c) Your obligations under this clause continue after this Licence expires or is otherwise ended in respect of any act, deed, matter or thing happening before the expiry or end of this Licence.
- 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.

27. Public risk insurance

- a) You must effect and maintain for the Term a public risk insurance policy (whereby the Minister should be noted on the policy as an interested party for the amount specified in column 2 of Item 10 of Schedule 1 for any one claim 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 26.
- b) You must obtain and maintain any other insurances specified (if any) in Item 11 of Schedule 1.

28. Domestic insurance policy requirements

- a) The following provisions apply to all policies of insurance taken out by You under this Licence.
- i. You must, if directed by the Minister, enter into an insurance policy with an insurer approved by the Minister or 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 must obtain insurance cover for any increased risk and pay all additional premiums (if any) required if You do anything that may increase the rate of premium on the insurances taken out by You.
- b) The Minister in his or her own name or as Your attorney in Your name is entitled to institute all proceedings against any insurer which issues a policy of insurance required by this Licence 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 28 continue in force after the expiry or other end of this Licence.

29. Compliance with statutes

You must comply with the requirements of all statutes, regulations or by-laws and with the requirements of all relevant public and local authorities in so far as they apply in relation to the use and occupation of the Premises and regardless of whether such requirements are served on the Minister.

30. Non-compliance with conditions

- a) If You fail to comply with any term or condition of this Licence, then the Minister may by Notice direct You to:
- i. cease anything that you are doing on the Premises
 - ii. carry out within the time specified in the Notice, or such other time as the Minister may direct in writing, works necessary to rectify or remedy the non-compliance.
- b) You must comply with any Notice issued by the Minister at Your expense.
- c) If You fail to comply with the Notice, the Minister may terminate the Licence by Notice to You.

31. Additional terms and conditions

If indicated in Item 14 of Schedule 1, the Additional Terms and Conditions form part of this Licence. Any provision of the Additional Terms and Conditions that is inconsistent with a provision of these Standard Terms and Conditions prevails to the extent of any inconsistency.

32. Definitions and interpretation

In this Licence the following terms, unless the contrary intention appears, mean:

Act means the *Crown Land Management Act 2016*.

Additional Terms and Conditions means the Minister's Additional Terms and Conditions document or any part of it, as updated from time to time, which is identified in Item 14 of Schedule 1 (if any) and forms part of this Licence.

Authorised Person means any person authorised by the Minister and includes a person who from time to time is a member of any class of persons authorised by the Minister.

Berthing Area means an area of water allocated for the on-water storage of boats adjacent or attached to a fixed or floating facility.

Breach or Default means a failure to comply with any terms and conditions of this Licence.

Commencing Date means the date in Item 7 of the Schedule 1.

Crown means the Crown in the right of the State of New South Wales.

Development has the same meaning as that term is defined in the *Environmental Planning and Assessment Act 1979* (NSW).

Due Date means the Commencing Date and each anniversary date of the Commencing Date.

GST has the same meaning given to that term in *A New Tax System (Goods and Services Tax) Act 1999* (Commonwealth).

Improvements means all buildings, structures, facilities and works situated or to be situated in or on or under the Land.

Initial Rent means the initial annual rent specified in Item 9 of Schedule 1.

Item means a numbered item in column 1 of Schedule 1.

Land means the land specified in Schedule 3 and includes any submerged land and waterways.

Licence means the licence granted by the Minister to You and includes the Licence Execution, Standard Terms and Conditions as set out in Domestic waterfront licence: Your standard terms and conditions, Schedules 1, 2 and 3 and any additional Schedules or documents referred to in Schedule 1.

Licence Execution is the front page of the document entitled 'Licence'.

Minister means the Minister administering the Act and where the context permits includes the Minister's successors, officers, servants, contractors, workmen, employees and agents.

Notice means a notice in writing that is served in accordance with this Licence.

Permitted Use means the use in Item 5 of the Schedule 1.

Premises means the Land and the Improvements and any of Your plant and equipment.

Relevant Authority means, in respect to a particular context or circumstances, any government, administrative, or judicial body, public authority, commission, tribunal or entity having jurisdiction and responsibility in that particular context or circumstance including a consent authority.

Rent means the Initial Rent or the Redetermined Rent.

Redetermined means redetermined in accordance with clause 21(b).

Schedules mean the documents that are attached to and form part of this Licence.

Standard Terms and Conditions are these Standard Terms and Conditions as referred to in Item 13 of Schedule 1, which forms part of this Licence.

Supply has the same meaning given to that term in *A New Tax System (Goods and Services Tax) Act 1999* (Cwlth).

Taxable Supply has the same meaning given to that term in *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Term means the period commencing on the Commencing Date and ending on the Terminating Date as shown in Items 7 and 8 of Schedule 1.

Terminating Date means the date on which this Licence expires as shown in Item 8 of Schedule 1 or the date it is revoked or otherwise ceases to have effect under the provisions of this Licence.

You and Your means the person described as the licensee on the Licence Execution and includes your permitted assigns of this Licence.

32. Interpretation

The following apply in the interpretation of this Licence.

Additional Terms and Conditions Prevail: Additional Terms and Conditions if any prevail to the extent of any inconsistency with the Standard Terms and Conditions of this Licence.

Applicable Law: The laws of New South Wales apply to this Licence.

Clauses and Schedules: A reference to a clause, part or schedule is a reference to a clause, part or Schedule of this Licence.

Contra Proferentum: No rule of construction applies to the disadvantage of a party on the basis that that party prepared this Licence or any part of it.

Genders: Words importing the masculine gender include the feminine or neuter genders and vice versa.

Headings, Notes and Plans: Headings and marginal notes have been inserted for guidance only and do not form part of this Licence. A plan or diagram of the Premises as referred to in Item 15 of Schedule 1 attached to this Licence will only form part if it is referred to in Schedule 3 of this Licence.

Joint and Several Liability: Any covenant or agreement on the part of two or more persons shall bind those persons jointly and severally.

Part of Land or Premises: A reference to Land or Premises includes any part of the Land or Premises.

Persons: A reference to a person includes a corporation and vice versa.

Plurals: Words importing the singular number include the plural number and vice versa.

References to legislation: References to statutes, regulations or instruments includes all statutes, regulations or instruments amending, consolidating or replacing them.

Severability: A provision of this Licence that cannot be enforced in a jurisdiction will not invalidate the remaining provisions of this Licence in any other jurisdiction.