

Domestic Leasing Procedures

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1. Purpose of these procedures

1.1 To provide guidance to NSW Maritime staff and the wider community regarding the determination of various aspects of NSW Maritime's domestic leasing arrangements.

2. Application of these procedures

- 2.1 These procedures apply to domestic leases (including boat sheds, jetties, private marinas and reclaimed land) associated with a private residence and used for a private non-commercial purpose. These procedures do not apply to leases covered by the *Commercial Lease Policy* (NSW Maritime, 2008).
- 2.2 Subject to this section, these procedures will be generally applied by NSW Maritime unless the General Manager, Property, Planning and Infrastructure determines in writing that circumstances exist which justify a departure from the procedures in the public interest.
- 2.3 These procedures are subject to the policy document entitled *NSW Maritime - Domestic Leasing Arrangements* (NSW Maritime, 2007). Where an inconsistency arises between these procedures and the above policy document, the policy document prevails to the extent of that inconsistency.
- 2.4 In addition, if NSW Maritime is obliged by law to act or omit to do something, NSW Maritime may determine to depart from these procedures to the extent necessary to comply with its obligations at law.
- 2.5 These procedures are effective from 1/12/10 and replace any previous procedures with respect to the matters outlined in this document.

3. Scope of these procedures

- 3.1 Principally these procedures clarify the area covered by the Lease and the area over which NSW Maritime will charge rent. Normally the lease and rental areas are the same however there are specific exceptions which are explained in this document.
- 3.2 The procedures also clarify a number of miscellaneous aspects of domestic leasing which are not covered by any other similar documents.

4. Policy context

4.1 These procedures should be read in conjunction with:

- *NSW Maritime Domestic Leasing Arrangements* (NSW Maritime, 2007);
- *Information for Concession Card Holders and Applicants for Hardship Relief* (NSW Maritime, 2006);
- *Procedure for Removal of Private Waterfront Structures* (NSW Maritime, 2007);
- The recommendations of the *Review into Rentals for Waterfront tenancies on Crown Land in NSW* (Independent Pricing and Regulatory Tribunal, 2004);
- Relevant laws of the Commonwealth and the State of NSW; and
- Relevant policies, guidelines and directions of the NSW Government.

5. Review processes

5.1 An adjoining landowner or lessee who is aggrieved by decision(s) made by NSW Maritime in accordance with these procedures which directly affects their Lease or land may request NSW Maritime to review that decision(s).

5.2 Any such request must be made in writing within 28 days of the date of NSW Maritime's initial decision and should show cause as to why NSW Maritime should review its decision.

5.3 The outcome of the review will be determined by the General Manager, Property, Planning and Infrastructure or by the Chief Executive of NSW Maritime whose decision is final.

6. Procedures

*NB: The following diagrams which illustrate these procedures are hypothetical, not to scale and used to demonstrate general concepts only.
Individual lease plans may be more complex depending on the situation.*

6.1 Vessel Length

6.1.1 Description of issue

- What implications do vessel length measurements have for mooring pens, berthing areas and rent calculations?

6.1.2 Procedure

- In current development consents NSW Maritime normally specifies a maximum vessel length overall (LOA).
- The leased land and rent are normally based on the maximum LOA as specified in the development consent.
- Some older development consents may not specify maximum vessel length as LOA (eg they may relate to hull length or vessel length not specified at all). NSW Maritime will determine the appropriate lease area based on the terms of the original consent.
- If an older development consent specifies a maximum vessel length but does not clarify whether it refers to hull length or LOA, NSW Maritime will assume it to be hull length.
- If lessees with older development consents require clarification they should contact the relevant Property Officer who will consult with Property Planning Branch.

6.1.3 Basis for procedure

- The lease and rent apply to the area within which the approved vessel wholly fits.

6.2 Berthing Areas A

6.2.1 Description of issue(s)

- How does NSW Maritime delineate the boundary of an approved berthing area denoted by 4 or more piles and/or mooring blocks?

6.2.2 Procedure (Diagram 1 below illustrates this procedure)

- The berthing area includes the area formed by connecting the centre of each mooring pile/block, as surveyed by NSW Maritime or a registered surveyor. The berthing area is added to the leased land for rental purposes.
- If a larger vessel is approved for the mooring piles/blocks in their existing location, the berthing area is to be extended as if the piles/blocks had been physically relocated to accommodate the larger vessel.

6.2.3 Basis for procedure

- Any lines tethering the vessel to the piles/blocks alienate waters from full public use.
- The centre of the piles/blocks provides the most accurate point from which to conduct a survey.

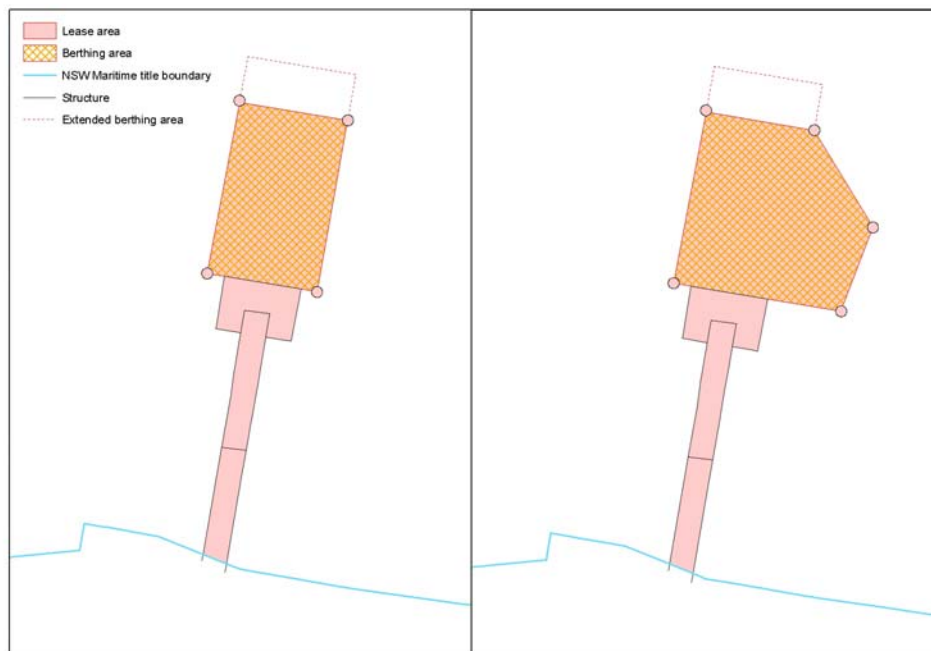


Diagram 1: Berthing area boundary - 4 or more piles

6.3 Berthing Areas B

6.3.1 Description of issue(s)

- How does NSW Maritime delineate the boundary of an existing, approved berthing area denoted by less than 4 piles and/or mooring blocks (see also section 6.5)?

6.3.2 Procedure (Diagram 2 below illustrates this procedure)

- As above, however the berthing area is a rectangle formed by extrapolating from the centre of the existing piles/blocks.
- If NSW Maritime approves a larger vessel for the mooring piles/blocks in their existing location, the berthing area is to be extended as if the piles/blocks had been physically relocated to accommodate the larger vessel.

6.3.3 Basis for procedure

- Any lines tethering the vessel to the piles/blocks alienate waters from full public use.
- The centre of the piles/blocks provides the most accurate point from which to conduct a survey.

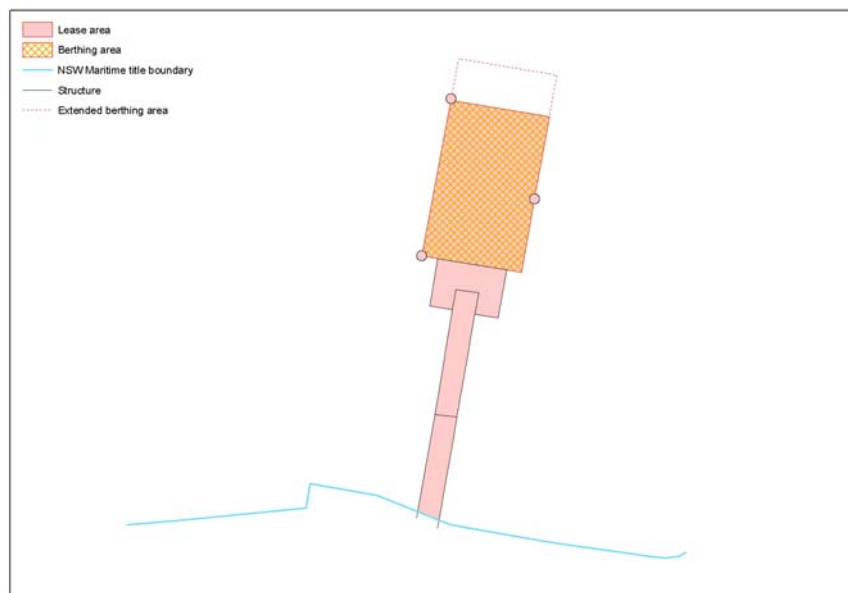


Diagram 2: Berthing area boundary – less than 4 piles

6.4 Berthing Areas C

6.4.1 Description of issue

- How does NSW Maritime determine the leased land where an existing berthing area crosses the line of an adjacent structure?

6.4.2 Procedure (Diagram 3 below illustrates this procedure)

- As per 6.2.2 above except the “cross over” area is discounted.

6.4.3 Basis for procedure

- This avoids “double dipping” in relation to rental.

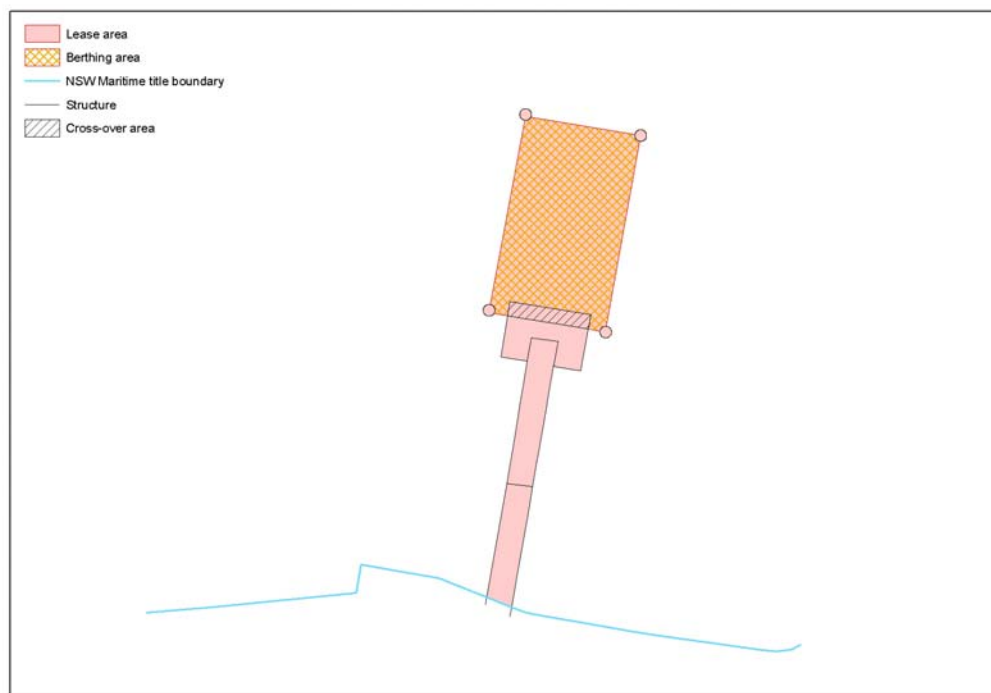


Diagram 3: The cross over area which is discounted in rental calculations

6.5 Berthing Areas D

6.5.1 Description of issue

- How does NSW Maritime determine the berthing area where a berthing facility is not delineated by mooring piles/blocks or where there are 2 piles only which are alongside the edge of the pontoon or similar structure?

6.5.2 Procedure (Diagram 4 below illustrates this procedure)

- Lessees are requested to advise NSW Maritime of the dimensions of their vessel to allow the berthing area to be determined.
- Where a lessee declines to provide specific vessel dimensions, NSW Maritime may impute a vessel length of up to the maximum vessel length outlined in the *Sydney Harbour Foreshores and Waterways Area Development Control Plan 2005* or an estimated vessel length based on observation of vessels berthed at the facility. Any such imputed area is for rental purposes only and does not represent planning or lease approval for that vessel length.
- Where a vessel length has either been determined or imputed the berthing area will be calculated on the basis of the vessel beam in metres plus 0.5m allowance on each side and the vessel length overall in metres.

6.5.2 Basis for procedure

- Berthing areas occupy NSW Maritime's wet land and alienate waters from full public use.

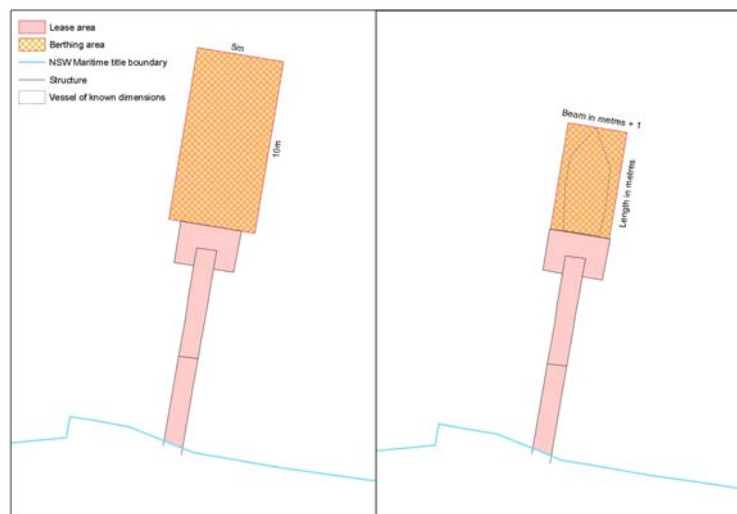


Diagram 4: Berthing area boundary – no piles or 2 only situated at pontoon edge

6.6 “Slivers” of Water Space Between Structures

6.6.1 Description of issue

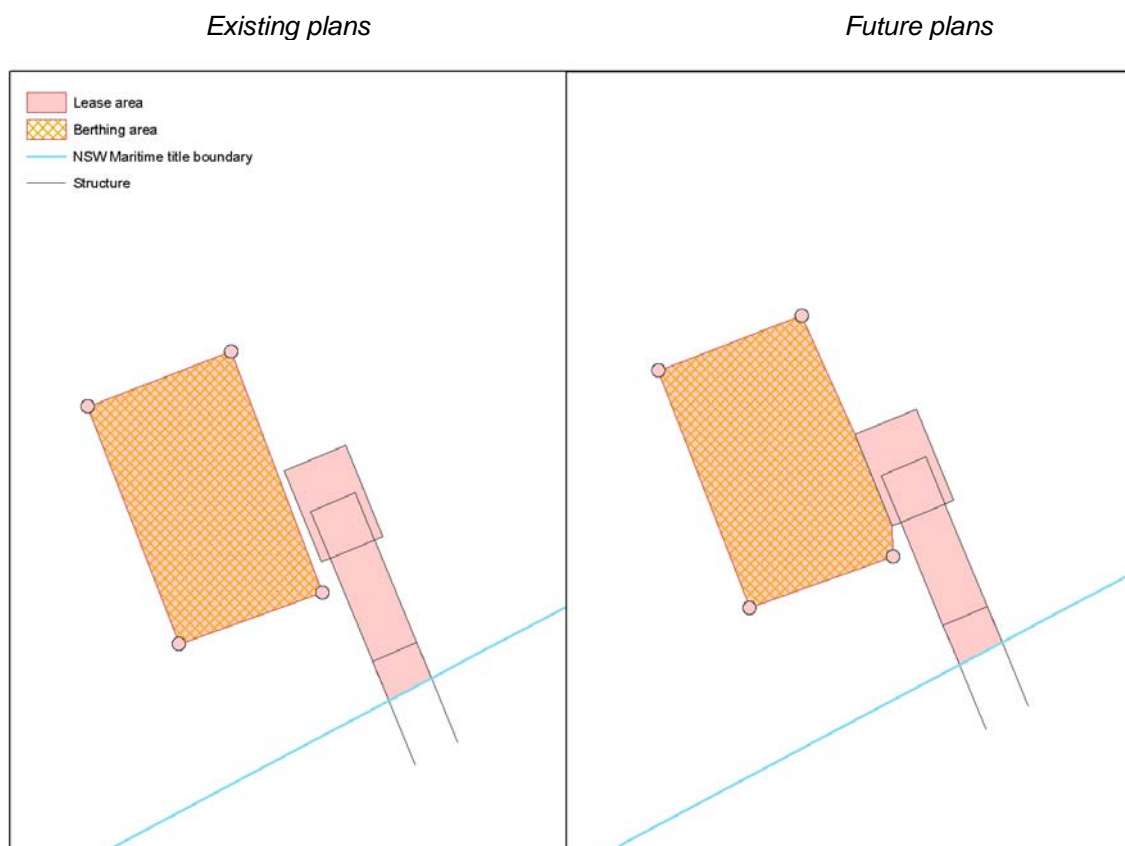
- Are “slivers” of water space between a pontoon and the mooring pen included in the leased land?

6.6.2 Procedure (Diagram 5 below illustrates this procedure)

- Slivers will be removed from future lease and subdivision plans and therefore included in the leased land.

6.6.3 Basis for procedure

- The area of water space between a pontoon and the mooring piles is alienated from full public use.



**Diagram 5: Slivers of water space –
as previously shown on plans and as shown on new lease plans**

6.7 Stay Chains

6.7.1 Description of issue

- What is the leased land for structures tied to the shore by stay chains?

6.7.2 Procedure (Diagram 6 below illustrates this procedure)

- Chains are the subject of a licence clause within the Lease.
- Neither the chains nor the voids between them are included in the leased land.
- Rent and licence fees will not be applied to the area occupied by the chains or the voids.

6.7.3 Basis for procedure

- Stay chains occupy an insignificant area of land and are appropriately covered by a licence agreement.

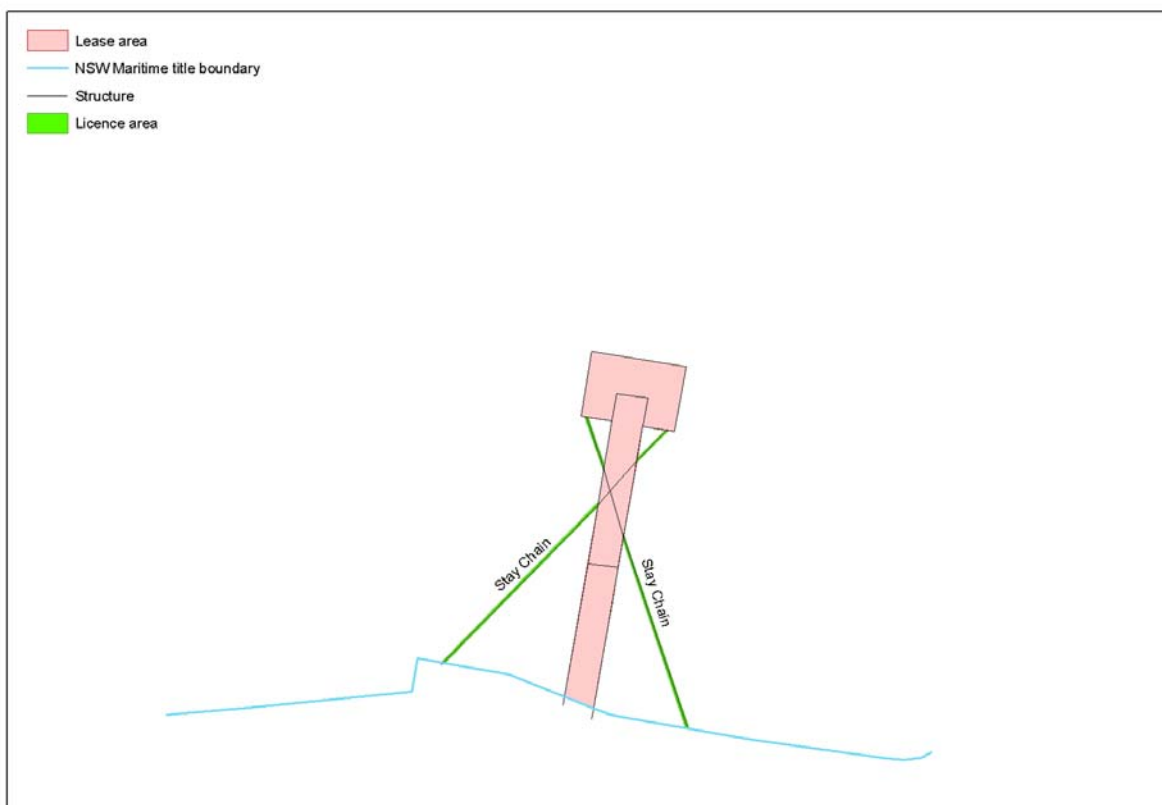


Diagram 6: Stay chains – leased land and area subject to licence clause within lease

6.8 Underwater Gabion Retaining Walls

6.8.1 Description of issue

- What is the leased land for underwater gabion retaining walls?

6.8.2 Procedure (Diagram 7 below illustrates this procedure)

- The area occupied by the gabion retaining walls is incorporated within the leased land.

6.8.3 Basis for procedure

- Gabion retaining walls are structures indefinitely affixed to NSW Maritime land, and subject to the same provisions as other affixed objects.

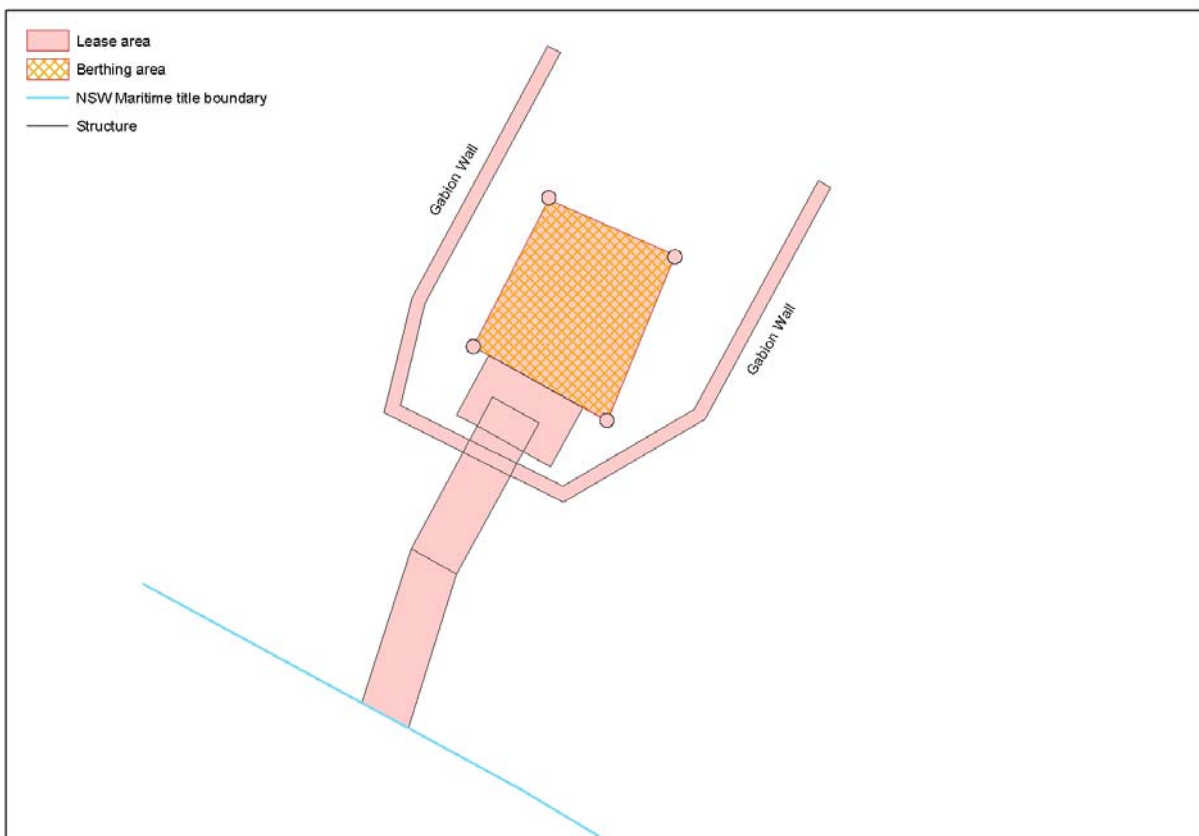


Diagram 7: Gabion retaining walls – indicates leased land

6.9 Davits and Whips

6.9.1 Description of issue

- What is the leased land for davits and whips?

6.9.2 Procedure (Diagram 8 overleaf illustrates this procedure)

- Davit structures approved to protrude over NSW Maritime's wet land without a vessel permanently attached are part of the leased land.
- Davit and whip structures approved to protrude over NSW Maritime's wet land with a vessel permanently attached are part of the leased land and rent is also payable on the vessel footprint determined by the size of the approved vessel.
- Davit structures which retract over another structure, such as a jetty, or are located on private land but which swing out over NSW Maritime's wet land, do not affect the leased land.
- Where applicable the rent payable on the vessel is based on the approved vessel size. Lessees are required to advise NSW Maritime of their vessel dimensions. Where vessel dimensions are not provided, NSW Maritime may impute dimensions based on a nominal vessel size of 2.5m x 1.5m.

6.9.3 Basis for procedure

- Davits occupy NSW Maritime's wet land and any vessels attached to davits and whips alienate waters from full public use.

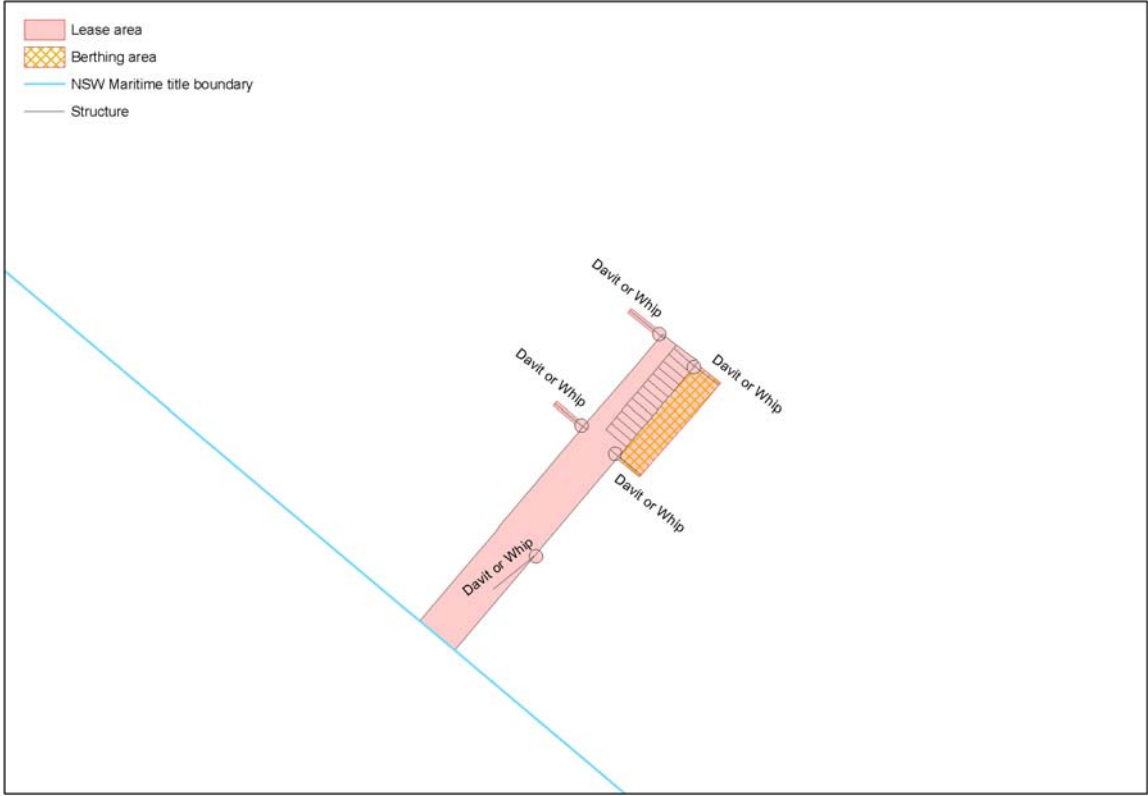


Diagram 8: Davits and whips – indicates leased land

6.10 Shared Structures

6.10.1 Description of issue

- How does NSW Maritime deal with shared structures?

6.10.2 Procedure (Diagrams 9a and 9b overleaf illustrates this procedure)

6.10.2.1 *Shared structures other than mooring piles*

- In the case of these existing shared facilities both sharing parties are to enter into a joint Lease with NSW Maritime as well as a separate Shared Occupancy Agreement between themselves. The Shared Occupancy Agreement sets out the respective rights and obligations of the sharing parties in relation to the shared structures and/or areas.
- In the case of structures identified in a development consent for future shared use the procedure depends on the extent and nature of the sharing arrangements, however the following is a possible scenario:
 - if the entire leased land is required to be shared in the future, the Lease may be terminated when the sharing condition is invoked and NSW Maritime will issue a new joint Lease to the parties. The sharing parties must also enter a separate Shared Occupancy Agreement between themselves which sets out their respective rights and obligations in relation to the shared structures and/or areas.

6.10.2.2 *One or more mooring piles are shared*

- Shared mooring piles will be the subject of a licence within a separate Lease issued to each of the sharing parties.
- The total occupation comprises the leased and licensed areas.
- The Lease will incorporate a special condition requiring the sharing parties to be jointly and severally liable for all maintenance costs.

6.10.3 Basis for procedure

- This simplifies the potentially complex subdivision process for both the lessees and NSW Maritime.

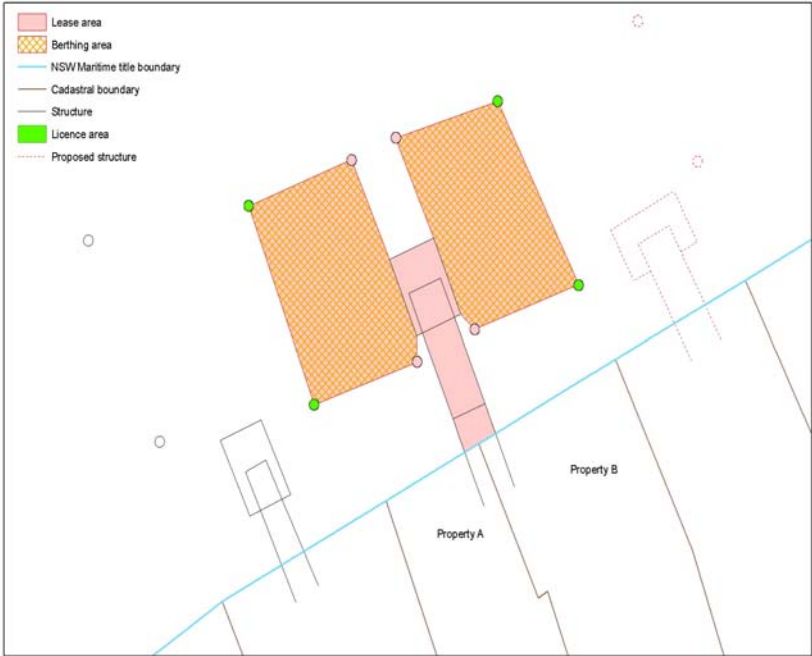


Diagram 9a: Shared structures – leased land and area subject to licence clause within lease

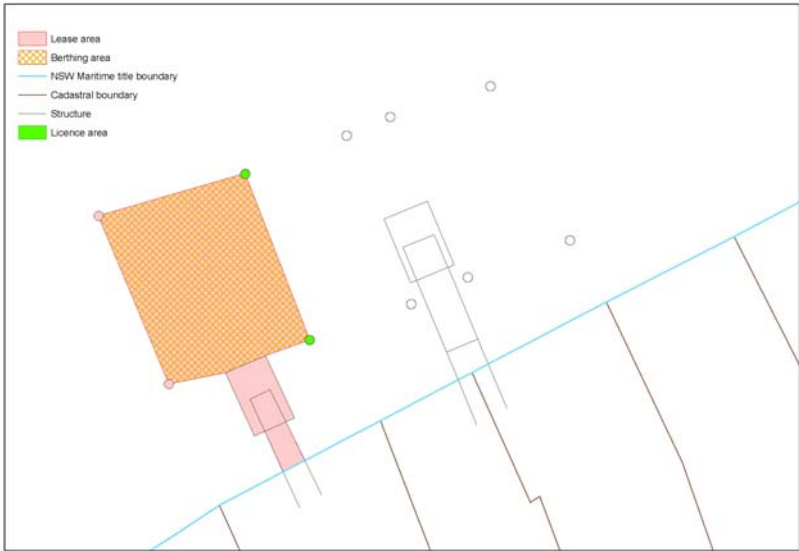


Diagram 9b: Shared mooring piles – Leased land and area subject to licence and special condition clauses within lease

6.11 Casual Berthing

6.11.1 Description of issue

- What is the leased land in relation to casual berthing?

6.11.2 Procedure

- A casual berthing area as defined by the development consent is not part of the leased land.
- The Lease document will specify the maximum vessel length permitted to berth casually at the facility but the casual berthing area will not be indicated on the lease plan.

6.11.3 Basis for procedure

- A vessel does not permanently occupy a casual berthing area as it is approved by NSW Maritime for short term berthing only.

6.12 Seawalls

6.12.1 Description of issue

- What is the leased land for seawalls?

6.12.2 Procedure

- The leased land extends to the toe of the seawall.

6.12.3 Basis for procedure

- The area to the toe of the seawall represents the full extent of the lessee's occupation of NSW Maritime's land.

6.13 Simplifying Subdivision Boundaries

6.13.1 Description of issue

- How does NSW Maritime avoid creating an intricate lease boundary resulting from a structures/occupation with a complex footprint?

6.13.2 Procedure (Diagram 10 below illustrates this procedure)

- Manager, Survey may generalise a lease boundary to simplify an otherwise complex subdivision.
- Any voids created by the generalisation process which represent water are not alienated from full public use and are not part of the rental area.
- In the case of 20 year leases NSW Maritime will create at least 2 separate allotments. One of these is for the area occupied by the structures while the other is over a larger area corresponding to the DoW and a straight line drawn approximately 5m (depending on the circumstances) from the furthest extent of the outermost structure.
- The part of the larger subdivision area which is not occupied by structures/reclamations is not part of the rental area.
- Further separate allotments within the subdivision may be required for reclamations, public access areas and the like.

6.13.3 Basis for procedure

- This simplifies the administrative process for both the lessees and NSW Maritime.

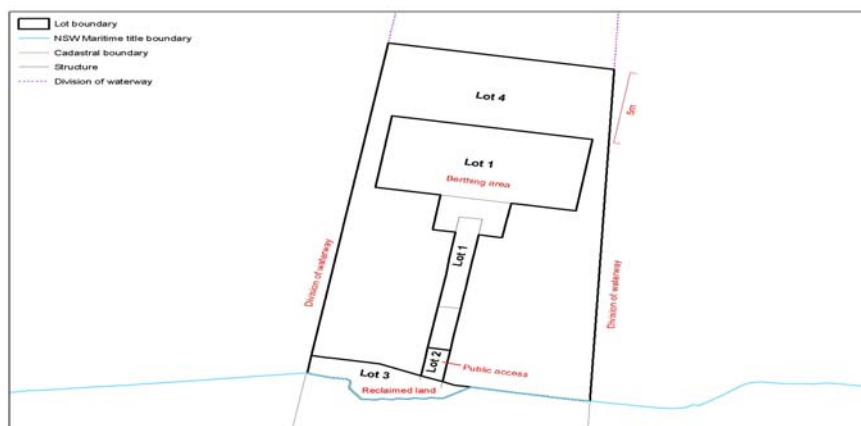


Diagram 10: Subdivision boundaries – indicates allotments within a subdivision plan

6.14 Minor Occupations of NSW Maritime's Land

6.14.1 Description of issue

- What is the lease for stormwater drainage facilities and other minor occupations of NSW Maritime's land?

6.14.2 Procedure

- Where the adjoining landowner has other approved structures/occupations of NSW Maritime's land, stormwater drains and pipes, small anti-scour aprons, small revetment mattresses and other minor occupations are part of the leased land.
- Where the adjoining landowner does not have any other structures/occupations of NSW Maritime's land, stormwater drains and pipes, anti-scour aprons, revetment mattresses and other minor occupations will be the subject of an occupation licence (which incorporates the insurance, indemnity and maintenance obligations of the adjoining landowner) with NSW Maritime. In such cases a lease is not issued and the occupation licence is issued for \$1, but payment will not be demanded by NSW Maritime.
- NSW Maritime (through General Manager, Property, Planning and Infrastructure or delegate) will determine, at its absolute discretion, whether structures/occupations are sufficiently minor to warrant being dealt with through an occupation licence, as described above.

6.14.3 Basis for procedure

- This simplifies the administrative process for both the lessees and NSW Maritime.

6.15 Divisions of Waterway (DoWs)

6.15.1 Description of issue

- Can adjustments to the DoW be made and, if so, who has the discretion to make such adjustments?

6.15.2 Procedure

- A lessee may request a variation to a division of waterway. Any such request must be in writing and addressed to the General Manager, Property, Planning and Infrastructure.
- Requests will normally be dealt with within 60 days.

6.15.3 Basis for procedure

- This simplifies the administrative process for both the lessees and NSW Maritime.

6.16 Provision for Public Access

6.16.1 Description of issue

- On lease and subdivision plans how does NSW Maritime indicate a requirement to provide public access across domestic structures/reclamations?

6.16.2 Procedure (Diagram 11 below illustrates this procedure)

- In the case of a 3 year Lease, where a condition of a development consent requires public access over a domestic structure/reclamation, the area identified for public access will be indicated on the lease plan by a specific symbol which indicates this is a licensed area.
- In the case of a 20 year Lease, where a condition of a development consent requires public access over a domestic structure/reclamation, the area identified for public access will be the subject of a separate allotment indicated on the subdivision plan and will be the subject of a Licence incorporated into the Lease.

6.16.3 Basis for procedure

- This simplifies the administrative process for both the lessees and NSW Maritime.

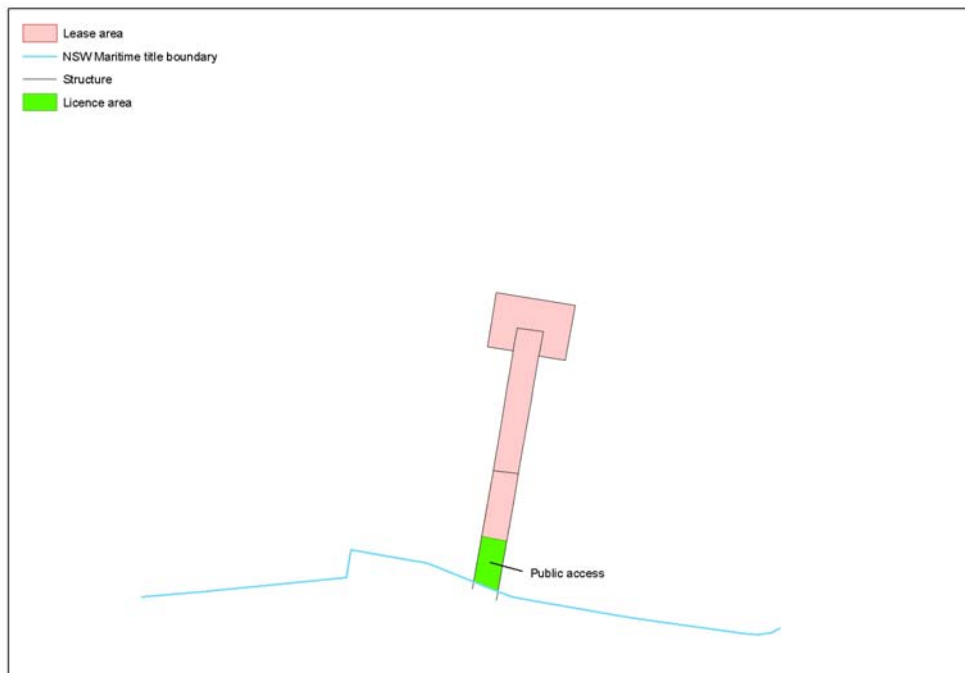


Diagram 11: Public access across structures – indicates area subject to licence clause within lease

6.17 Common Law Access to Waterway

6.17.1 Description of issue

- How does NSW Maritime preserve access for adjoining landowners where that access has been affected by the location of another lessee's structures and/or reclamation?

6.17.2 Procedure (Diagram 12 below illustrates this procedure)

- In the case of a 3 year or 20 year unregistered lease, access for the affected adjoining landowner will normally be provided through a Licence clause within the Lease. However where the affected adjoining landowner currently gains access to the waterway through an easement this situation will continue to apply.
- In the case of a 20 year registered lease the common law access of the affected adjoining owner will be protected by an easement for access provided by the lessee. The easement for access will be indicated by a specific symbol on the subdivision plan.

6.17.3 Basis for procedure

- This ensures that existing common law access is retained and simplifies the administrative process for NSW Maritime and lessees.

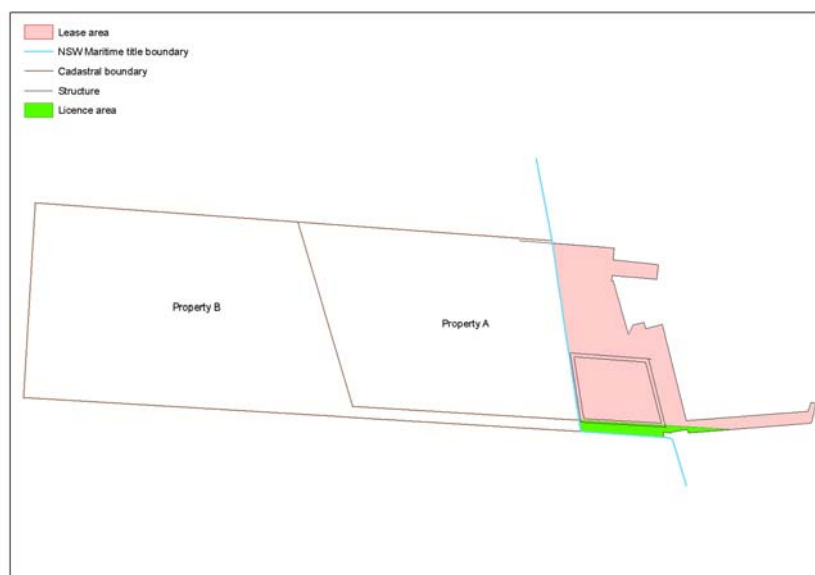


Diagram 12: Common law access – area reserved for access to waterway through easement for access or licence clause within lease

6.18 Commencement of Rental

6.18.1 Description of issue

- How does NSW Maritime determine the date on which the rental period commences?

6.18.2 Procedure

- Prior to commencing any works on NSW Maritime's land, the lessee must obtain a construction approval from NSW Maritime, as landowner, and enter into a formal "Agreement for Lease" with NSW Maritime.
- The Agreement for Lease will guarantee the lessee a Lease of NSW Maritime's land subject to the lessee undertaking the approved construction works on NSW Maritime's land in accordance with the development consent and any requirements of NSW Maritime as landowner.
- During the construction phase the lessee will be required to pay a fee to occupy NSW Maritime's land. The occupation fee will be based on the approved area of occupation and will accrue from the date on which the formal Agreement for Lease is signed by the lessee.
- Upon completion of the construction works, and subject to them being completed to NSW Maritime's satisfaction and provided that the lessee has satisfied any other conditions precedent as set out in the Agreement for Lease, the final Lease document will be issued and executed.
- Rent is payable from the date of commencement of the Lease which is the date from which the occupation fee is no longer payable.

6.18.3 Basis for procedure

- This aims to ensure that structures/reclamations are constructed in a reasonable time period, in accordance with the Agreement for Lease, and simplifies administrative processes for the lessee and NSW Maritime.

7. Definitions

7.1 The following terms are used in this document:

- *Adjoining landowner* means the owner of residential land which directly adjoins NSW Maritime's land.
- *Berthing area* means the area of water which is marked on a plan attached to the Lease to indicate the approved location for a permanently berthed vessel.
- *Casual berthing* means the temporary berthing of a vessel for a reasonable period of time to load or unload goods or for the embarkation or disembarkation of persons or, more generally, for a continuous period not exceeding 6 hours.
- *Common law access* means certain common law rights held by adjoining landowners to access a waterway.
- *Davit* means a mechanical device for lifting/lowering a vessel into/from the water. A similar device known as a "whip" may also be used for this purpose.
- *Division of waterway (DoW)* means a line which has been determined by NSW Maritime and is plotted on plans to equitably apportion the areas of a waterway relative to the frontages of foreshore land parcels. The DoW is entirely administrative in nature and used to avoid disputes and is not intended to confer any rights upon any adjoining landowner.
- *Fairway* means an unobstructed area of waterway which allows vessel movement between moored and berthed vessels and/or structures.
- *Gabion wall* means a series of caged rocks placed on the bed of the waterway to minimise the frequency of maintenance dredging.
- *Leased land* means an area of NSW Maritime's land which is subject to a Lease and upon which rent is payable, and incorporates the area occupied by private structures, reclamations and the like as well as the area for the exclusive use of the lessee.
- *Lessee* means an adjoining landowner who has entered into a Lease with NSW Maritime in relation to the use of, and/or structures on, its land. This term is also used in this document to refer to a prospective lessee.

- *Licensed area* means the area of NSW Maritime's land which is subject to a licence within the lease.
- *Mooring block* means a weighted object used to permanently tether a vessel to a domestic structure. It does not include a mooring for which NSW Maritime has issued a mooring licence in accordance with Part 2, Division 3 of the *Management of Waters and Waterside Lands Regulation – NSW*.
- *Stay chain* means a chain or other similar device used to stabilise a pontoon.
- *Mooring pen* has the same meaning as in the Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005. It does not include a mooring for which NSW Maritime has issued a mooring licence in accordance with Part 2, Division 3 of the *Management of Waters and Waterside Lands Regulation – NSW*.
- *Pile* means a post, used singly or in conjunction with another pile(s), to tether a vessel.
- *Pontoon* means a floating platform used to provide access to the water or a vessel.
- *Reclamation* means NSW Maritime's submerged land which has been filled or drained for the purposes of reclaiming the land and/or for the purposes of supporting a building or structure associated with land adjoining NSW Maritime's land.
- *Seawall* has the same meaning as in the Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005.
- *Vessel length* means length overall (LOA) including the full length of the hull plus outboard motors, bowsprits and all other appendages.
- *Void* means an area of NSW Maritime's land which, while not occupied by structures, is included in the leased land because the area is alienated from public use.
- *Whip* means a device, similar to a davit, which acts as a spring to store a vessel alongside a dock.

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