



Domestic leases fronting public land

Procedures

NSW | MARITIME




1 INTRODUCTION

- 1.1 These procedures outline how NSW Maritime treats the renewal of domestic waterfront tenancies where the facility fronts a public reserve (for example, a privately-leased boatshed bordering a public park).
- 1.2 Subject to the content of this procedure including the legislation and policies in Section 2:
- If the leasehold used to directly join the lessee's freehold property but is now separated by a road or public park, the lease may be transferred to an incoming purchaser of the freehold land.
 - If the leasehold never directly joined the lessee's freehold property but that property is the nearest freehold land to it, the lease may be transferred to an incoming purchaser of that freehold land.
 - If the leasehold never directly joined the lessee's freehold property and that property is not the nearest to it, it cannot be transferred to an incoming purchaser of the freehold property (or any other person). The lessee may sell their freehold land and personally retain their Maritime lease, but they cannot transfer it. The leasehold reverts to NSW Maritime if it is surrendered or not otherwise renewed.
- 1.3 The provisions of this procedure do not apply to NSW Maritime commercial leases, defined in section 1.2 of the *Commercial Lease Policy* (NSW Maritime 2008) regardless of whether the leases were issued prior or subsequent to the release of the policy.

2 CONTEXT

- 2.1 NSW Maritime acts within the framework of State and Commonwealth legislation and the policies, directives and guidelines of the Government of New South Wales. This procedure should be read in conjunction with this framework.
- 2.2 Relevant legislation NSW Maritime performs under includes (but is not limited to):
- *Ports and Maritime Administration Act 1995;*
 - *Marine Safety Act 1998;*
 - *Privacy and Personal Information Protection Act 1998;*
 - *Management of Waters and Waterside Lands Regulation 1972; and*
 - *Maritime Services Act 1935.*
- 2.3 Relevant policies and procedures NSW Maritime operates within include (but is not limited to):
- the *Review of Domestic Leasing Arrangements* (NSW Maritime 2007)

- Domestic Leasing Procedures (NSW Maritime 2008)
 - guidelines and information on applicable topics issued by the Independent Commission Against Corruption.
- 2.4 If NSW Maritime is obliged by law to act or omit to do something, NSW Maritime may determine to depart from this procedure to the extent necessary to comply with its legal obligations.
- 2.5 This procedure is effective from 1 January 2009 and replaces any previous procedures, guidelines or similar on tenancies fronting public land, to the extent of any inconsistency.

3 CATEGORISATION OF LEASES COVERED BY THESE PROCEDURES

3.1 NSW Maritime domestic waterfront leases fronting public land can be divided into two categories:

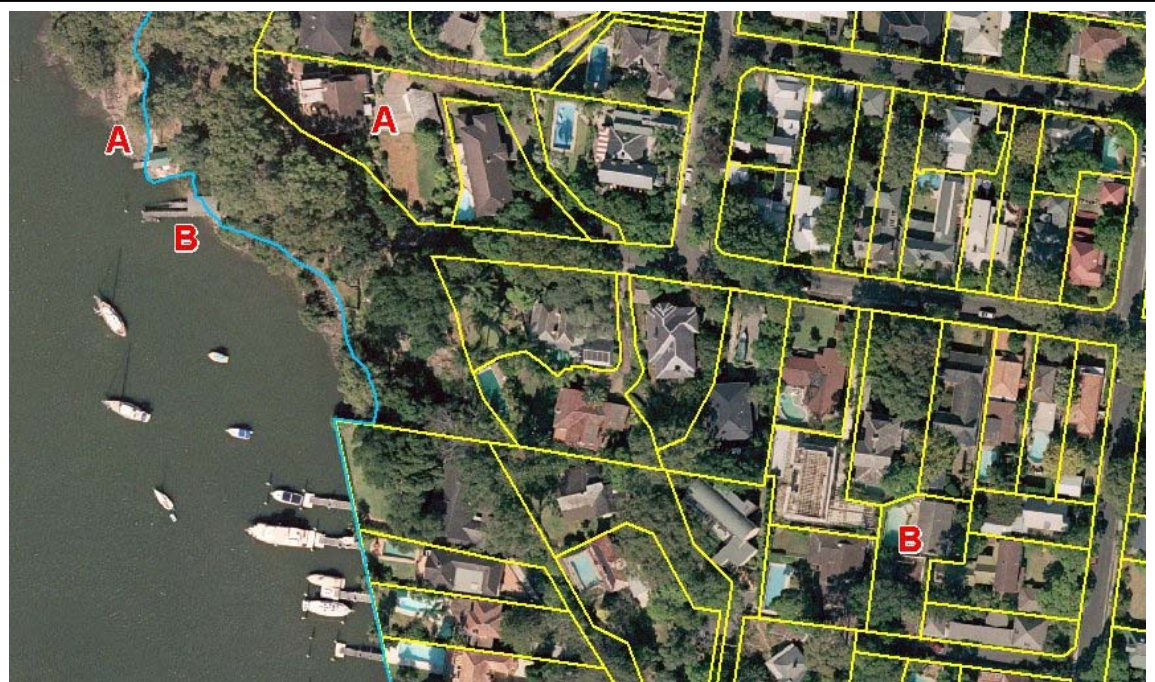
- Category A – Where the lessee’s freehold property adjoins public land adjacent to the leased structure.
- Category B – Where the lessee’s freehold property does not adjoin public land adjacent to the leased structure.

Both categories are illustrated in **Diagram 1** below.

Diagram 1

Category A: adjacent lessee

Category B: non-adjacent lessee



*Map is indicative only

3.2 Which category applies if there is a road and/or several land parcels between the existing lessee’s property and the leased waterfront structure?

Where an existing lessee’s freehold property was historically part of a larger land parcel that extended to the leased waterfront structure, Category A applies.

For all other cases, Category B applies.

3.3 What happens if the waterfront structure is located on land not wholly owned by NSW Maritime?

Where part of the waterfront structure is located on public land not owned by NSW Maritime, the relevant owner of the adjoining public land (eg. a local council) must provide consent in the form of an occupancy instrument (eg. lease, licence or some form of written agreement) covering the part of the structure not located on land owned by NSW Maritime. The duration of this consent can vary but it is required in order for NSW Maritime to agree to issue a lease.

4 PROCEDURES THAT APPLY TO CATEGORY 'A' LEASES

Scenario 1

Category A wishes to obtain a transferable unregistered three or 20 year lease.

Outcome

Category A is entitled to a transferable unregistered three or 20 year lease where a waterfront structure is located on land leased wholly from NSW Maritime. However, where a waterfront structure is located on land not wholly owned by NSW Maritime an occupancy instrument from the owner of the adjoining public land (eg lease, licence or written agreement) covering the part of the structure located on the public land is required.

Scenario 2

Category A wishes to sell the freehold property and have the existing lease transferred to the new owners.

Outcome

The transfer is permissible where the balance of the current lease period is being transferred. Where the new owners request a new lease, a new occupancy instrument from the owner of the adjoining public land is required, if the waterfront structure is located on land not wholly owned by NSW Maritime.

Scenario 3

Category A wishes to sell the freehold property but the new owners do not want the lease / facility.

Outcome

- Under the terms of the lease, NSW Maritime may require the outgoing lessee to remove any structures and make good the site, at the lessee's expense. If NSW Maritime does not require the structure to be removed, it may at its discretion reuse the structure for any permissible community, domestic or commercial activity.

Scenario 4

Category A wishes to transfer the current lease to a family member, friend or other third party.

Outcome

- Where the family member, friend or other third party is listed as an owner on the certificate of title relating to Category A's freehold property or is otherwise the legal occupier of the land, the transfer is permissible.
- Where the above is not satisfied, the transfer will not be permitted.

Scenario 5

There is only one person named on Category A's lease and this person passes away.

Outcome

The existing lease will continue until the lessee's estate is finalised. The balance of the existing lease is transferable to the new owners of the freehold property.

However, if the new owners request a new lease rather than a transfer of the existing lease and the waterfront structure is located on land not wholly owned by NSW Maritime (for example, a boatshed that is partly over the seabed and partly on a council reserve), an occupancy instrument from the owner of the adjoining public land (eg lease, licence or written agreement) covering the part of the structure located on that land is required.

5 PROCEDURES THAT APPLY TO CATEGORY 'B' LEASES

Scenario 6

Category B wishes to obtain a transferable unregistered lease for three or 20 years.

Outcome

Category B is not entitled to a transferable lease.

Category B is however, able to obtain a renewable but non-transferable unregistered three or 20 year lease. However, when a waterfront structure is located on land not wholly owned by NSW Maritime an occupancy instrument from the owner of the adjoining public land (eg lease, licence or written agreement) covering the part of the structure located on the public land is required.

Scenario 7

Category B wishes to sell their freehold non-adjoining property and transfer the lease to the new owners.

Outcome

Category B's lease is not transferable regardless of the sale of any property i.e. the lease must remain with its existing lessee, or the existing lessee can request a termination of the lease (see Section 6).

Scenario 8

Category B wishes to include a family member, friend or other third party on the lease.

Outcome

- Only the person(s) named on the lease at the time this procedure is approved are entitled to be a lessee in this category. No further parties can be added to the lease.
- If there is only one person named on the lease and that person passes away, the lease will be terminated and NSW Maritime will decide the future of any structures (as in Scenario 3).

6 PROCEDURES THAT APPLY TO BOTH CATEGORY 'A' AND CATEGORY 'B' LEASES

Scenario 9

Category A or Category B wishes to terminate a lease.

Outcome

- Ordinarily, NSW Maritime is legally entitled to receive the determined rent for the life of the lease. NSW Maritime will consider all written requests for termination of a lease, including circumstances such as serious illness, financial hardship and/or where the owner of the adjoining public land has revoked occupancy consent.
- If NSW Maritime agrees to terminate a lease, NSW Maritime will decide the future of any structures (as in Scenario 3 above).
- If NSW Maritime decides that the structure is to be removed then the last lessee will be required to meet all obligations of the lease including removal of the structure.

7 REVIEW PROCESS

- 7.1 A lessee who disputes the 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).
- 7.2 Any such request must be made in writing within twenty-eight (28) days of the date of NSW Maritime's initial decision and should show cause as to why NSW Maritime should review its decision.
- 7.3 The outcome of the review will be determined by the General Manager Maritime Property Division.

8 DEFINITIONS

The following terms are used in this document:

- *Calculated rent* means the annual rent which is normally payable to NSW Maritime based on the relevant precinct rate and the area of land subject to the lease.
- *Domestic waterfront lease* means a lease over NSW Maritime's land for private domestic purposes including (but not limited to) boat sheds, boat repair facilities, jetties, marinas and reclaimed land associated with a private residence and used for a private non-commercial purpose.
- *Freehold property* – applies to privately owned real estate property as opposed to leasehold property.
- *Lessee(s)* means an occupier(s) whose names(s) is(are) recorded on a relevant NSW Maritime domestic lease (which may incorporate licensed areas).
- *NSW Maritime* – means the Maritime Authority of New South Wales constituted under the Ports and Maritime Administration Act 1995.
- *Occupancy instrument* – provides the formal consent to occupy the component of public land where a structure straddles both NSW Maritime land and public land. It may be a lease, licence or other form of written agreement from the owner of the adjoining public land. The duration of this consent can vary from the proposed lease term with NSW Maritime.
- *Occupier(s)* means a person(s) who permanently resides on land adjoining NSW Maritime's land (whether as owner; via a rental agreement with the owner; or other means).
- *Public land* – land that is not owned by NSW Maritime or in private ownership. It may be Crown land administered by a Commonwealth or State agency or local council land eg. council reserve.
- *Structure(s)* – means anything built, erected or placed, wholly or in part, on NSW Maritime land. It may include a jetty, pontoon, boatshed, slipway or swimming enclosure.
- *Transferable lease* – a lease that can be assigned to a third party eg. incoming owners following the sale of A's freehold property. The remainder of the current lease term can be transferred or a new lease and term started.

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