

## Working together to address unauthorised development on foreshore Crown land and waterways

### Overview

- *Use a condition for all granted development consents where works are located on foreshore Crown land and waterways.*
- *Refer applicant back to the department to enable licencing considerations before construction takes place.*
- *Provide consistent messaging to the NSW public to support a reduction in unauthorised development and occupation of foreshore Crown land and waterways.*

### Background

There has been a significant level of unauthorised development on foreshore Crown land and waterways, particularly where consent to construct on and occupy the land has not been granted by the Department of Planning Industry and Environment – Crown Lands (department) under a licence agreement.

There is also a considerable amount of modular and storage pontoons located on Crown waterways that are in contravention of the department's [domestic waterfront licences guidelines](#)<sup>1</sup>

The department's three-year compliance strategy for Crown land outlines our approach to manage priority issues within our land administration operations.

The strategy calls for 'a review of Crown waterfront tenures and occupations' and aims to ensure that Crown foreshore land and waterways across NSW are managed equitably and existing or proposed infrastructure meets Crown land management principles and guidelines.

### Crown tidal waterways to which this information relates

The information in this fact sheet relates to Crown tidal waterways along the eastern seaboard from the Queensland to the Victorian borders. This includes the Far North Coast, Mid North Coast, Hunter, Lake Macquarie, Tuggerah Lakes, Brisbane Waters, Hawkesbury, Pittwater, Georges River, Port Hacking, South Coast and Far South Coast.

<sup>1</sup> The guidelines can be downloaded from [industry.nsw.gov.au/lands/use/licences/domestic-waterfront](http://industry.nsw.gov.au/lands/use/licences/domestic-waterfront)

## Key issues

### Unauthorised development and occupation

Construction of a new or alteration of an existing domestic waterfront structure located on a Crown waterway needs consent from the department (as the landowner) before an applicant can lodge a development application with council. When council grants development consent, a new licence to legally occupy foreshore Crown land and waterway must be issued by the department before any construction begins.

Council may impose conditions on development consent under s. 4.17 of the NSW *Environmental Planning and Assessment Act 1979 (EPA&A)*. Development consent granted for waterfront facilities generally do not appear to include the requirement to obtain a licence from the department prior to the issue of a construction certificate.

In many cases, the benefitting landowner is unaware of this requirement until the department takes administrative or compliance actions.

- Most domestic waterfront facilities in NSW are located on Crown waterways, not on Roads and Maritime Services-administered or private waterways.
- The requirement to obtain a licence agreement from the department is therefore more common than not.
- The licensing process is the final step in an important land management cycle.

Construction on and occupation of foreshore Crown land or waterway prior to the issue of a licence agreement:

- is unauthorised development
- does not comply with requirements of the [Crown Land Management Act 2016](#)<sup>2</sup> (the Act)
- places the individuals undertaking the works as well as the adjoining landowner in breach of the Act, risking regulatory action and/or prosecution
- does not enable public liability insurance to be held over structures on Crown land/waterway, placing the adjoining landowner at risk of claims.

Ensuring all waterfront occupations are appropriately approved and licensed before construction begins is central to enabling compliance with the objects of the *Crown Land Management Act* and principles of Crown land management.

### Modular and storage pontoons:

Crown Lands [Domestic Waterfront Licences – Guideline](#)<sup>3</sup> establishes the department's criteria and requirements regarding public use of Crown foreshore land and waterways.

As specified in the guideline, modular pontoons, storage pontoons and other similar structures are not permitted, and the department will not grant consent to occupy Crown waterways for this purpose. This is because of the negative impacts that these structures can have on public safety, visual amenity, seagrasses, fish habitat and navigation.

We are aware that these structures may not require development consent from council and that the public may be under the impression that they can be installed freely without consideration by any other agencies. However, a licence is needed from the department for approved purposes over

<sup>2</sup> The Act can be viewed at <https://legislation.nsw.gov.au/view/html/inforce/current/act-2016-058>

<sup>3</sup> The guidelines can be downloaded from [industry.nsw.gov.au/lands/use/licences/domestic-waterfront](https://industry.nsw.gov.au/lands/use/licences/domestic-waterfront)

Crown land and waterways. These structures are not permitted and therefore will not be authorised.

## How we can work together

### Application of a condition to granted development consents

It is requested that council apply a condition (sample below) requiring applicants to obtain a licence from the department prior to construction. This has several benefits. It:

- informs applicants of the requirement to obtain a licence agreement under s. 2.18 of the *Crown Land Management Act*
- holds the applicants accountable when they do not comply with planning consent conditions
- may help decrease unauthorised development on and occupation of Crown waterways
- reduces risk and liability to council and the department
- ensures equity of access to waterways within the community
- provides a consistent and effective approach across all coastal councils
- expands and strengthens agency links.

Construction certificates can be issued by council or a private accredited certifier. The application of a condition on a development consent also:

- informs private certifiers or benefitting landowners that they must obtain a licence from the department before construction commences
- compels/obliges private certifiers to comply with requirements of the consent and the *EP&A Act*

Several councils already apply a relevant standard condition. To deter future instances of unauthorised occupation of foreshore Crown land and waterways, we request all coastal councils apply one of the conditions detailed in the following sections to all granted development consents where works are located on foreshore Crown land or waterway.

### Deferred commencement condition (our preferred approach)

Application of a deferred commencement condition, as prescribed under s. 4.16(3) of the *EP&A Act 1979*, requires the applicant to satisfy the condition prior to activation of the development consent.

Where a consent authority imposes conditions under the *EP&A Act*, the criteria in Table 1 should be determined.

**Table 1. Criteria to be determined under the EP&A Act**

Criteria	Explanation
Must have a planning purpose	It is a statutory requirement of the Act to obtain a licence prior to development on or occupation of foreshore Crown land or waterway.
Must relate to the development	Crown licences provide lawful authority to undertake development on and legally occupy foreshore Crown land and waterway.
Must not otherwise be unreasonable	The condition to obtain a licence agreement from the department to enable lawful development on and occupation of foreshore Crown land and/or waterway is a requirement of the Act.

### Deferred commencement condition example

An **executed** licence agreement under the *Crown Land Management Act 2016* from the relevant NSW government agency governing the use and occupation of Crown land must be obtained prior to the operation of this development consent. This is to ensure that lawful authority under the *Crown Land Management Act 2016* to use and occupy Crown land or waterway is obtained before construction commences.

The **executed** licence agreement must be submitted to council within **XX years** from the date of determination of this development consent.

### Standard condition (an alternative approach)

Application of the following standard condition requires the applicant to obtain a licence agreement from the department prior to the issue of a construction certificate. The wording is broad in nature to support any departmental or legislative changes that may occur in the future:

Where councils choose to adopt this approach, the department requests that the following wording is applied to all granted development consents to ensure standardised conditional information.

### Standard condition wording

An executed licence agreement from the relevant NSW government agency governing the use and occupation of Crown land is required to be obtained prior to the issue of a construction certificate. This is to ensure that lawful authority under the *Crown Land Management Act 2016* to use and occupy Crown land or waterway is obtained before construction commences.

## Consistent messaging about modular and storage pontoons

As the local consent authority, councils are predominantly the first point of contact for their local community on planning matters. We seek councils' co-operation in relaying important information to the public about permitted structures and occupation of foreshore land and waterways owned and managed by the department.

Clear and consistent messaging will lead to:

- consistent agency responses
- increased awareness of acceptable occupations and structures on submerged and foreshore Crown waterways
- the community making appropriate decisions about the proposed use of Crown waterways.

The Frequently Asked Questions section at the end of this fact sheet has been developed to help councils respond to public enquiries relating to the occupation of foreshore Crown land and waterway.

## Related information

The department has developed the following documents to support priorities within the Crown Lands Compliance Strategy 2020-2023:

- A [brochure](#) circulated to all domestic waterfront licence holders to raise awareness of appropriate use of foreshore Crown land and waterway, the development consent process and to encourage voluntary compliance.

- A communique was sent to waterfront consultants and contractors currently engaged with Crown Lands. This is to inform of permitted use of foreshore Crown land, expected compliance with the Act and other relevant legislation, and compliance and enforcement powers available to the department for cases of non-compliance.

The department's focus on Crown waterfront tenures and occupations is complemented by and occurring in parallel with a project under the Marine Estate Management Strategy 2018-2028 to develop estuary-wide, domestic waterfront structure strategies for the NSW coast. These 'whole of government' strategies aim to clearly identify those parts of an estuary that are suitable for domestic waterfront structures and streamline the approvals process for constructing these structures.

## Enquiries

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

P: 1300 886 235 or 02 4925 4110

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

W: [industry.nsw.gov.au/lands/use/licences/domestic-waterfront](http://industry.nsw.gov.au/lands/use/licences/domestic-waterfront)

For further information on regulation, compliance and enforcement or the Compliance Strategy 2020-2023, contact the Compliance Strategy & Monitoring Team on:

P: 1300 886 235

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

W: [industry.nsw.gov.au/lands/what-we-do/management/compliance](http://industry.nsw.gov.au/lands/what-we-do/management/compliance)

## Further information

[Domestic waterfront licences website](#)

[Marine Estate Management Strategy 2018-2028 Domestic Waterfront Structure Strategies](#)

## Frequently asked questions

### Can I install a storage/modular pontoon (or other similar structure) fronting my waterfront property?

No. The Department of Planning, Industry and Environment – Crown Lands owns and manages foreshore Crown land and waterways on behalf of the NSW Government. The Crown Lands [Domestic Waterfront Licences – Guideline](#) specifies modular pontoons, storage pontoons and other similar structures as unacceptable structures on Crown land due to the impacts that these structures may have on public safety, visual amenity, seagrass, fish habitat and navigation.

### What will happen if I install a storage/modular pontoon anyway?

The Department of Planning, Industry and Environment's - Crown Lands branch will initiate compliance and enforcement action to have the storage/modular pontoon removed. The department is currently reviewing Crown waterways for prohibited structures. If the department identifies prohibited structures, it will request their removal.

If compliance with this request is not undertaken voluntarily, the department may trigger enforcement action such as issuing a direction to remove the structure, which can also involve penalty notices.

### Why is Crown Lands acting now?

The Crown Lands branch of the Department of Planning, Industry and Environment has initiated a three-year compliance strategy to address unauthorised activities on Crown land. Part of that strategy is to investigate and act on identified unauthorised use and occupations on foreshore Crown land and waterways.

### Why is council telling me about this?

Council is usually the first point of contact for the local community on planning and building matters. We are working with the Department of Planning, Industry and Environment to increase awareness of acceptable use and occupation of foreshore Crown land and waterways to help the community make appropriate choices.

### Where can I get more information or read about what I can and cannot do?

The Crown Land [Domestic waterfront licences - Guidelines](#) provides information on permitted uses and occupation of Crown foreshore land and waterways as well as other important information for the public.

### I would like to speak with someone from Crown Lands, who do I contact?

The Crown Lands branch of the Department of Planning, Industry and Environment has a dedicated Domestic Waterfront Business Centre.

You can contact the team by:

P: 1300 886 235 or 02 4925 4110

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

W: [industry.nsw.gov.au/lands/use/licences/domestic-waterfront](http://industry.nsw.gov.au/lands/use/licences/domestic-waterfront)

# Crown land compliance strategy

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## Request for action from coastal councils



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