

Domestic Leasing

Procedures

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 residential 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, 2007).
- 2.2 Subject to this section, these procedures will be generally applied by NSW Maritime unless the General Manager, Maritime Property Division 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 4/1/08 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. Definitions

5.1 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.
- *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.
- *Lease area* 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.
- *Licence 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.
- *Riparian rights* means certain common law rights held by adjoining landowners for access to a waterway where there is a public right of navigation on that waterway.
- *Seawall* has the same meaning as in the Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005.

- *Void* means an area of NSW Maritime's land which, while not occupied by structures, is included in the lease area 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.

6. Review processes

- 6.1 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).
- 6.2 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.
- 6.3 The outcome of the review will be determined by the General Manager, Maritime Property Division or by the Chief Executive of NSW Maritime.

7. 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.*

7.1 Berthing Areas A

7.1.1 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?

7.1.2 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 lease area 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.

7.1.3 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.

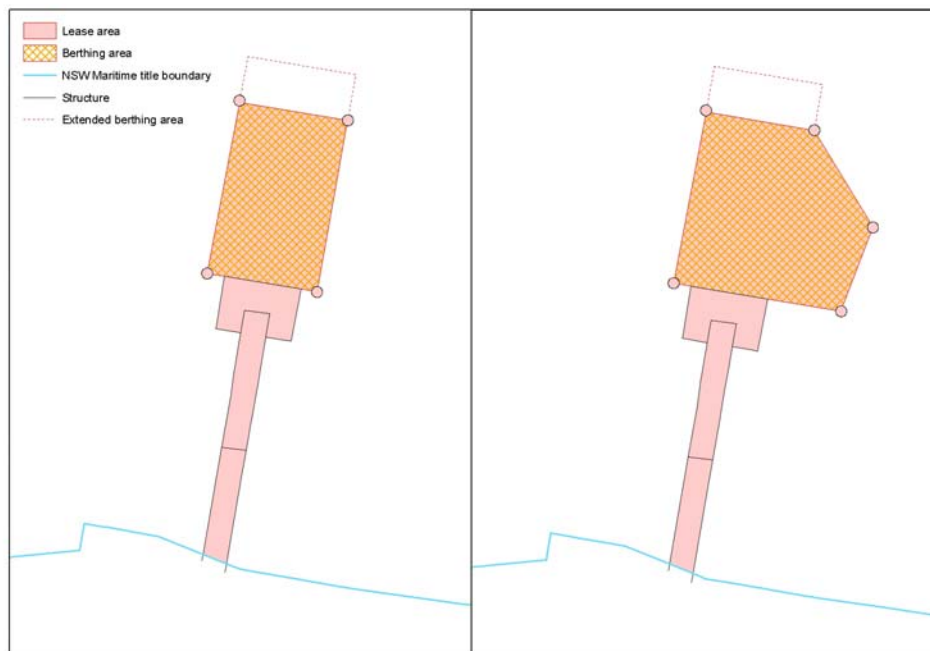


Diagram 1: Berthing area boundary - 4 or more piles

7.2 Berthing Areas B

7.2.1 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 7.4)?

7.2.2 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.

7.2.3 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 to most accurate point from which to conduct a survey.

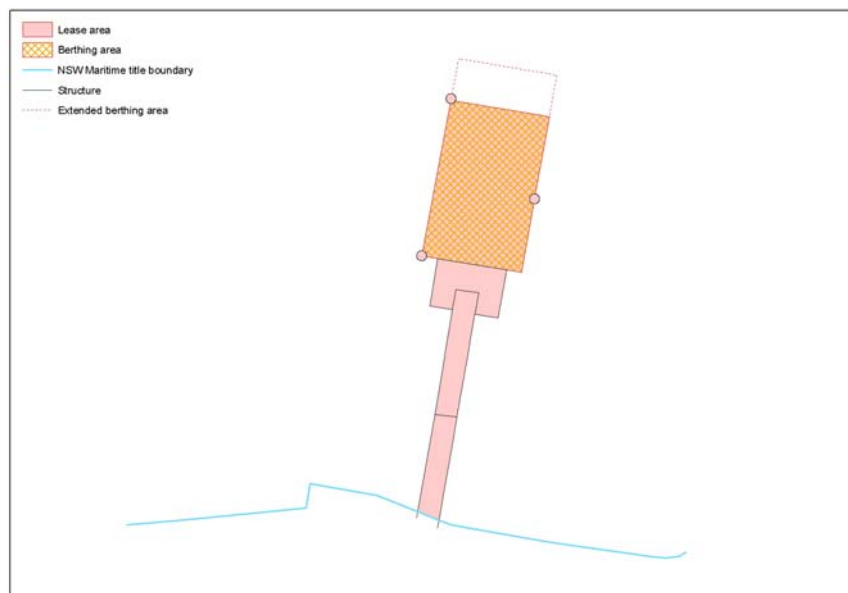


Diagram 2: Berthing area boundary – less than 4 piles

7.3 Berthing Areas C

7.3.1 Description of issue

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

7.3.2 Procedure (Diagram 3 below illustrates this procedure)

- As per 8.1.2 above except the “cross over” area is discounted.

7.3.3 Basis for procedure

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

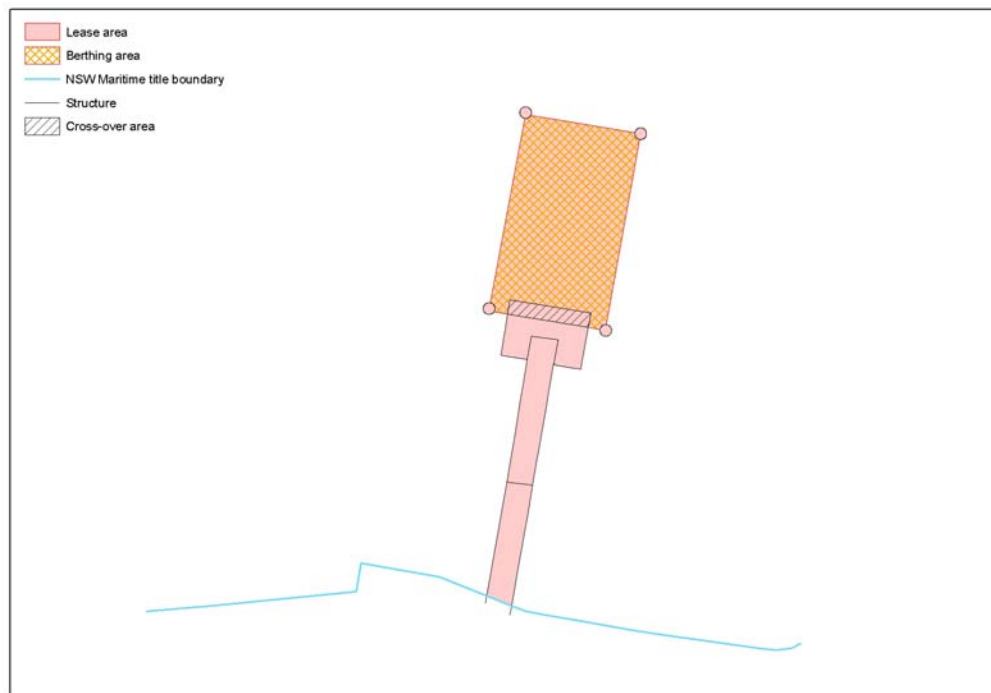


Diagram 3: The cross over area which is discounted in rental calculations

7.4 Berthing Areas D

7.4.1 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?

7.4.2 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 in metres.

7.4.2 Basis for procedure

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

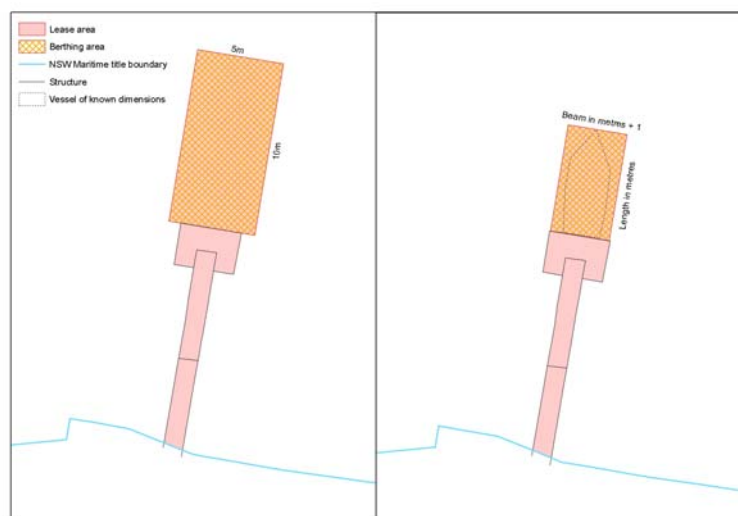


Diagram 4: Berthing area boundary – no piles or 2 only situated at pontoon edge

7.5 “Slivers” of Water Space Between Structures

7.5.1 Description of issue

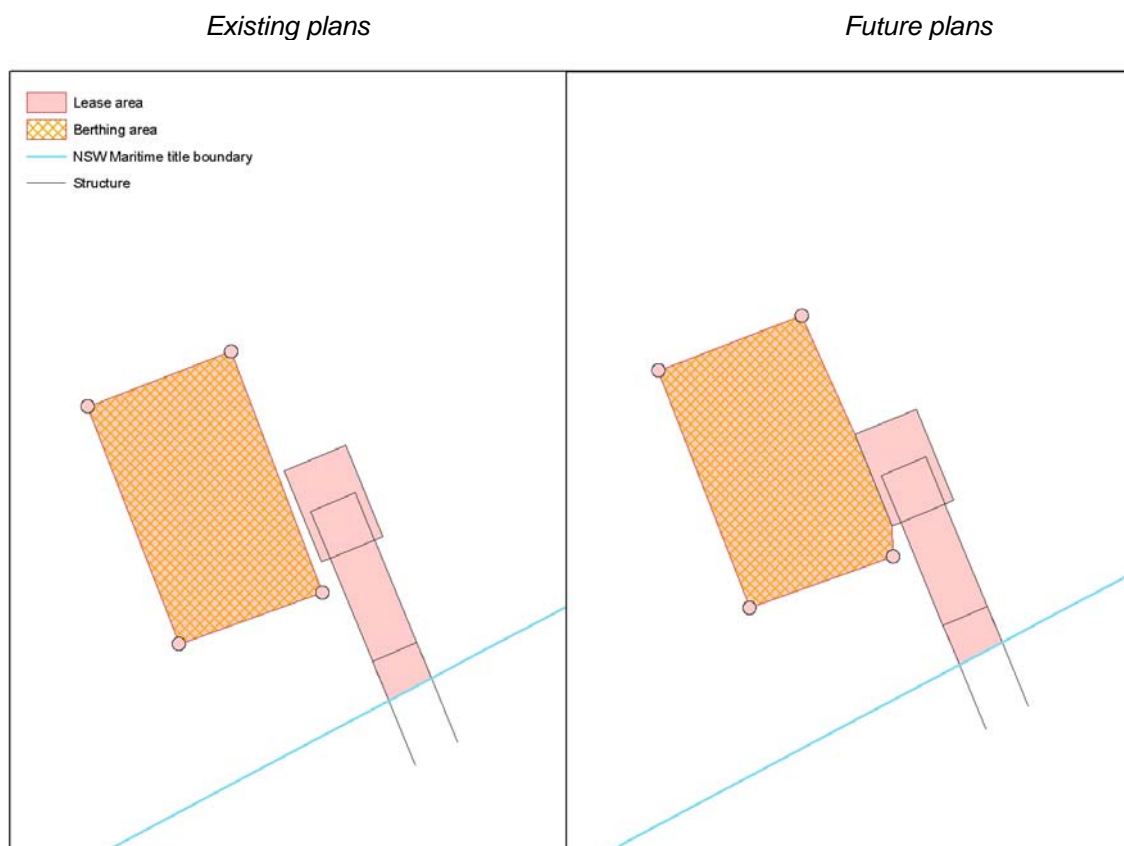
- Are “slivers” of water space between a pontoon and the mooring pen included in the lease area?

7.5.2 Procedure (Diagram 5 below illustrates this procedure)

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

7.5.3 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**

7.6 Stay Chains

7.6.1 Description of issue

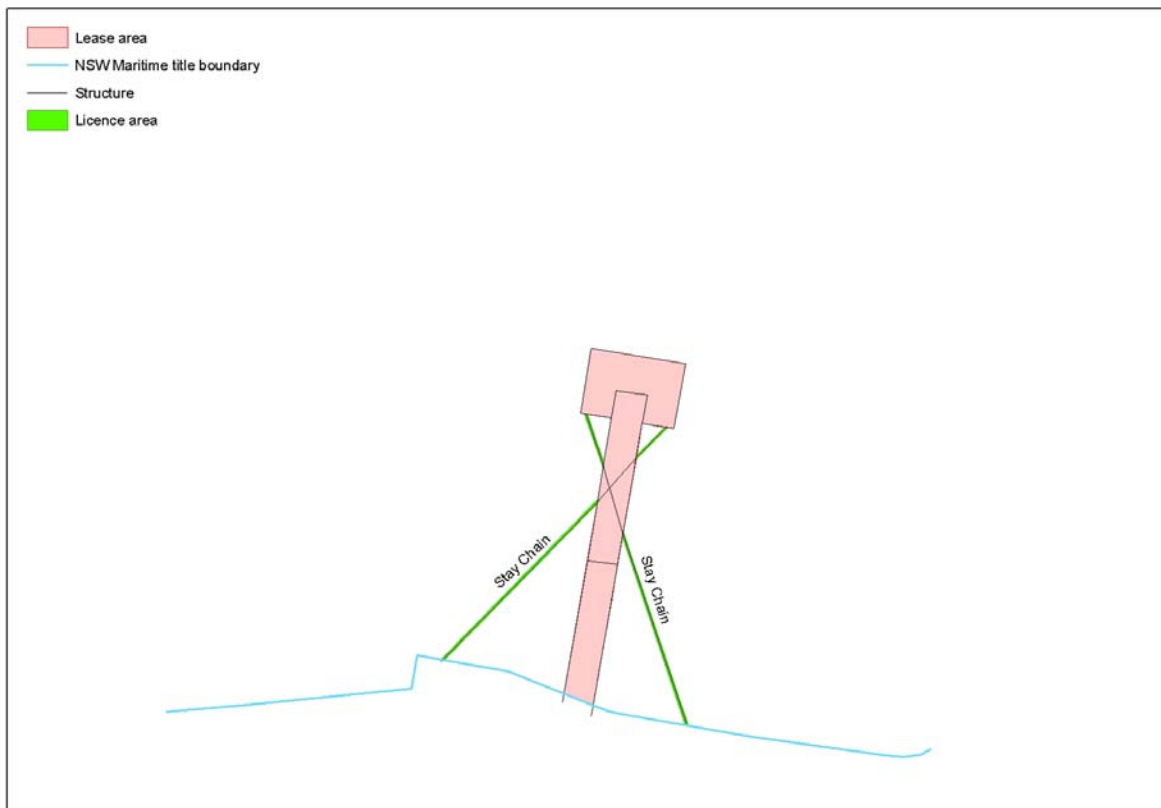
- What is the lease area for structures tied to the shore by stay chains?

7.6.2 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 lease area.
- Rent does not apply to the area occupied by the chains or the voids.

7.6.3 Basis for procedure

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



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

7.7 Underwater Gabion Retaining Walls

7.7.1 Description of issue

- What is the lease area for underwater gabion retaining walls?

7.7.2 Procedure (Diagram 7 below illustrates this procedure)

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

7.7.3 Basis for procedure

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

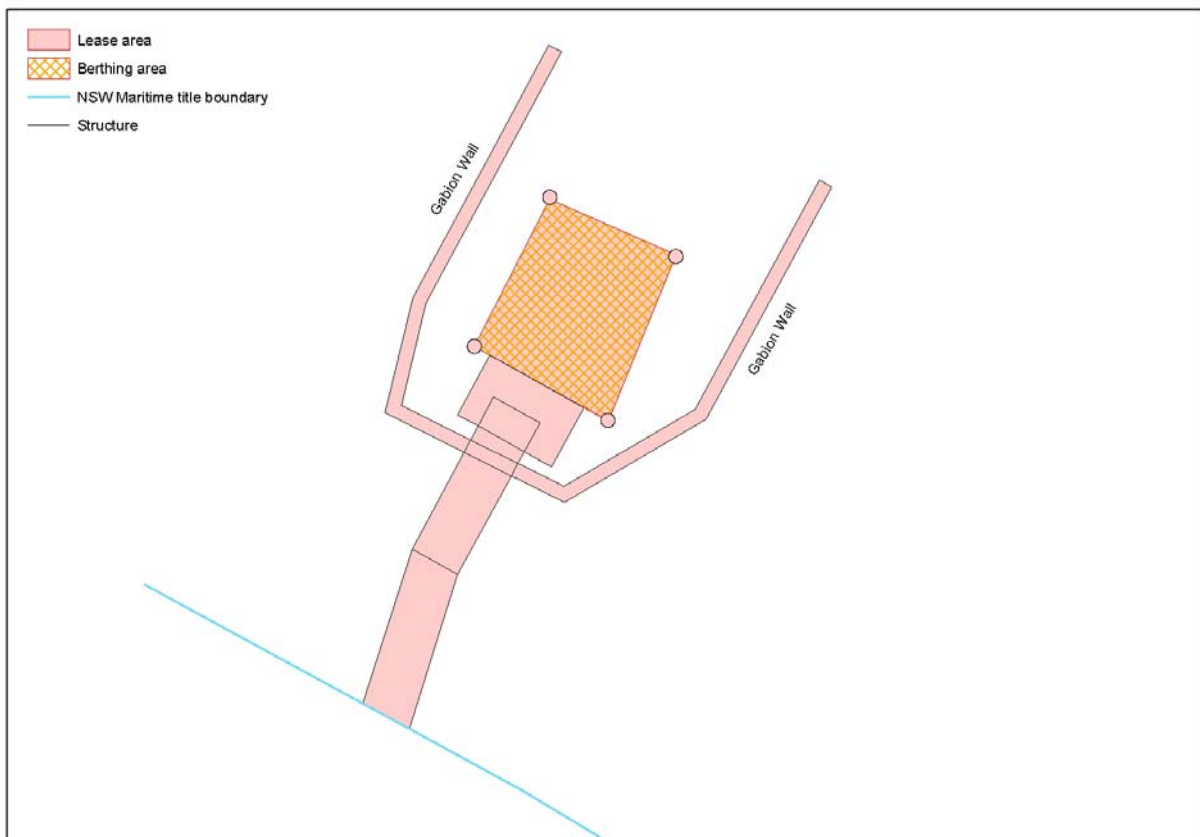


Diagram 7: Gabion retaining walls – indicates lease area

7.8 Davits and “Whips”

7.8.1 Description of issue

- What is the lease area for davits and whips?

7.8.2 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 lease area.
- Davit and whip structures approved to protrude over NSW Maritime’s wet land with a vessel permanently attached are part of the lease area 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 lease area.
- 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 2.5 x 1.5m.

7.8.3 Basis for procedure

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

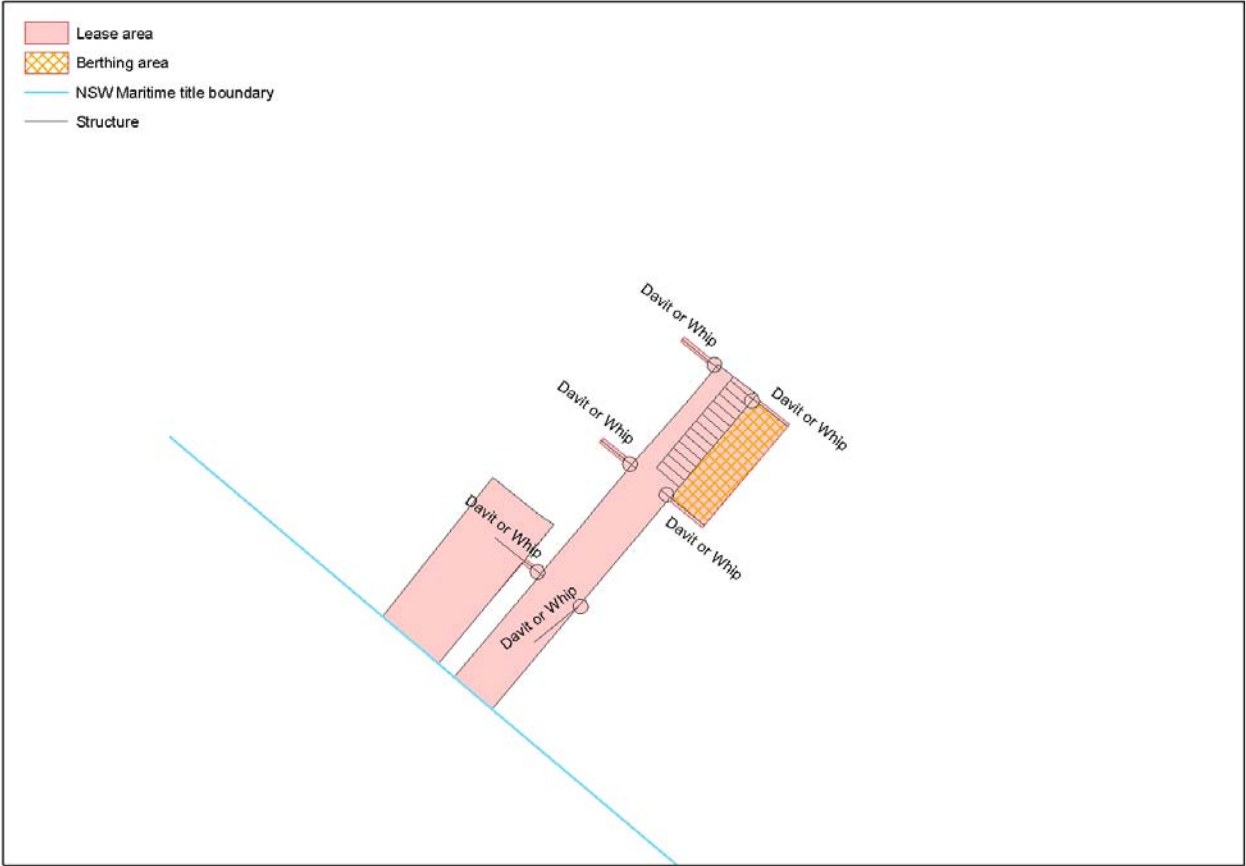


Diagram 8: Davits and whips – indicates lease area

7.9 Shared Structures

7.9.1 Description of issue

- How does NSW Maritime deal with shared structures?

7.9.2 Procedure (Diagram 9 overleaf illustrates this procedure)

- In the case of 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 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 likely scenarios include the following:
 - shared mooring piles will be the subject of a licence within a separate Lease issued to each of the sharing parties who must also enter into a separate shared occupancy agreement between themselves in relation to the shared structures and/or areas;
 - if the entire lease area is required to be shared, the Lease may be terminated at the appropriate time upon which NSW Maritime will issue a new joint Lease, incorporating appropriate sharing provisions if required. The sharing parties must also enter a separate shared occupancy agreement between themselves in relation to the shared structures and/or areas.

7.9.3 Basis for procedure

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

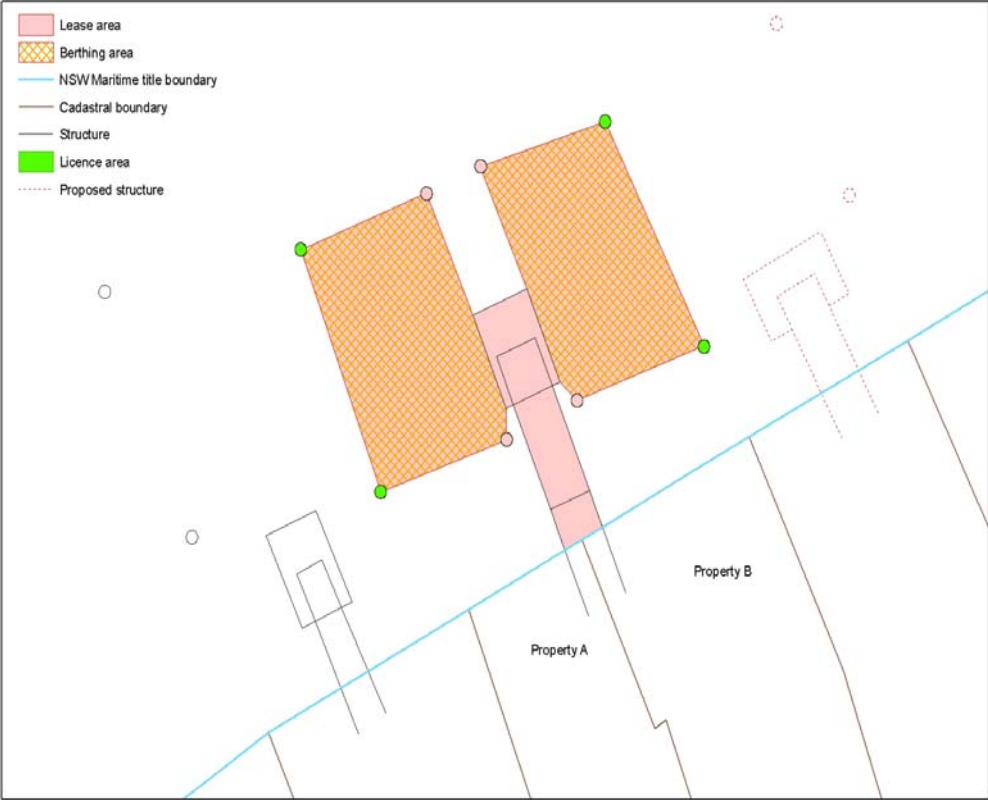


Diagram 9: Shared structures – lease area and area subject to licence clause within lease

7.10 Casual Berthing

7.10.1 Description of issue

- What is the lease area in relation to casual berthing?

7.10.2 Procedure

- A casual berthing area as defined by the development consent is not part of the lease area.
- 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.

7.10.3 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.

7.11 Seawalls

7.11.1 Description of issue

- What is the lease area for seawalls?

7.11.2 Procedure

- The lease area extends to the toe of the seawall.

7.11.3 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.

7.12 Simplifying Subdivision Boundaries

7.12.1 Description of issue

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

7.12.2 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.

7.12.3 Basis for procedure

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

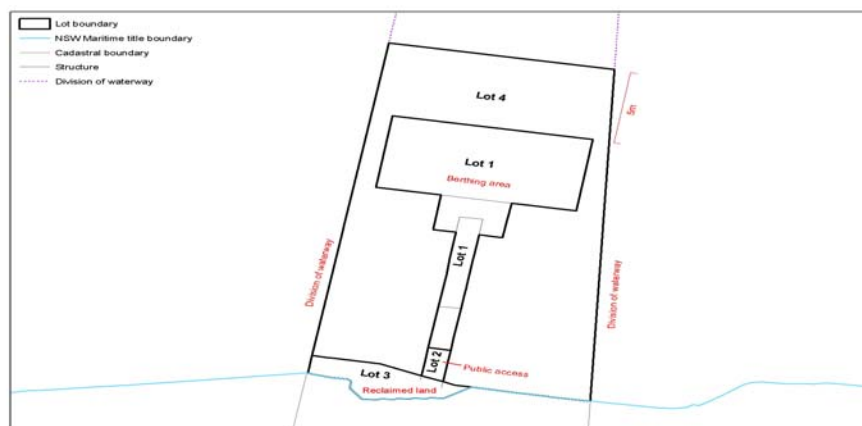


Diagram 10: Subdivision boundaries – indicates allotments within a subdivision plan

7.13 Minor Occupations of NSW Maritime's Land

7.13.1 Description of issue

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

7.13.2 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 lease area.
- 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 a legal undertaking (which incorporates the insurance, indemnity and maintenance obligations of the adjoining landowner) with NSW Maritime. In such cases a lease is not issued and rent is not payable.
- NSW Maritime, through General Manager, Maritime Property Division (or delegate), will determine whether structures/occupations are sufficiently minor to warrant being dealt with through a legal undertaking, as described above.

7.13.3 Basis for procedure

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

7.14 Divisions of Waterway (DoWs)

7.14.1 Description of issue

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

7.14.2 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, Maritime Property Division.
- Requests will generally be dealt with within 60 days.

7.14.3 Basis for procedure

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

7.15 Provision for Public Access

7.15.1 Description of issue

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

7.15.2 Procedure (Diagram 11 below illustrates this procedure)

- In the case of a 3 year lease, and 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.
- In the case of a 20 year lease, and 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.

7.15.3 Basis for procedure

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

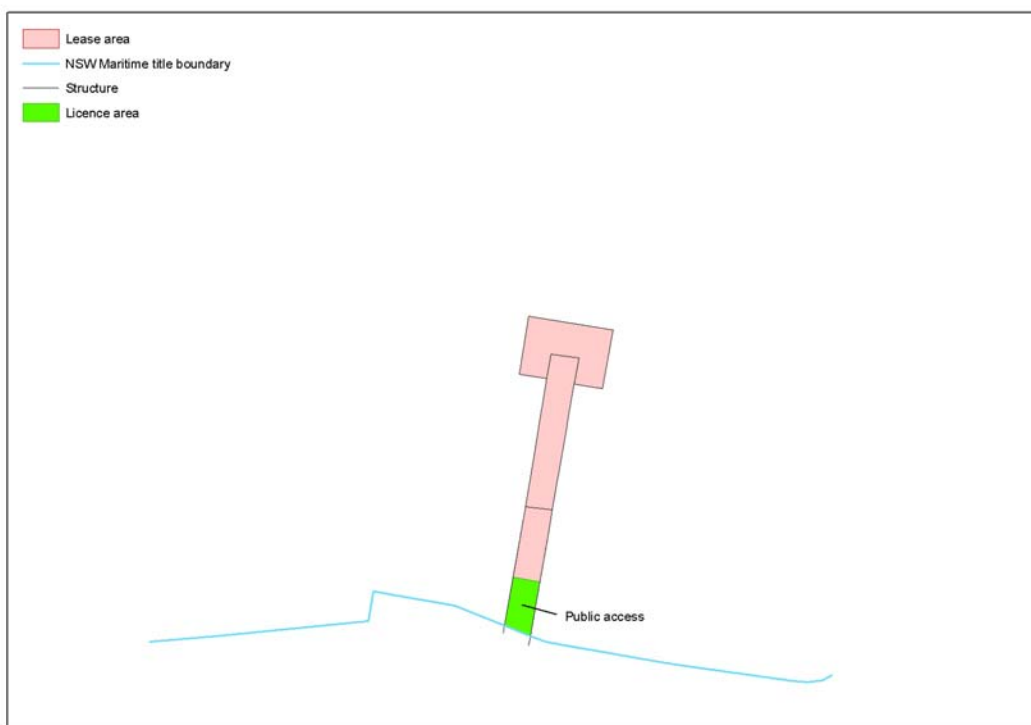


Diagram 11: Public access across structures – indicates area subject to licence clause within lease

7.16 Riparian Rights

7.16.1 Description of issue

- How does NSW Maritime preserve the riparian rights of adjoining landowners where those rights have been affected by the location of a lessee's structures and/or reclamation?

7.16.2 Procedure (Diagram 12 below illustrates this procedure)

- In the case of a 3 year 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 lease the riparian rights of the affected adjoining owner will be protected by an easement for access provided by the lessee. The area reserved for access will be indicated by a specific symbol on lease and subdivision plans.

7.16.3 Basis for procedure

- This ensures that existing riparian rights are retained and simplifies the administrative process for NSW Maritime and lessees.

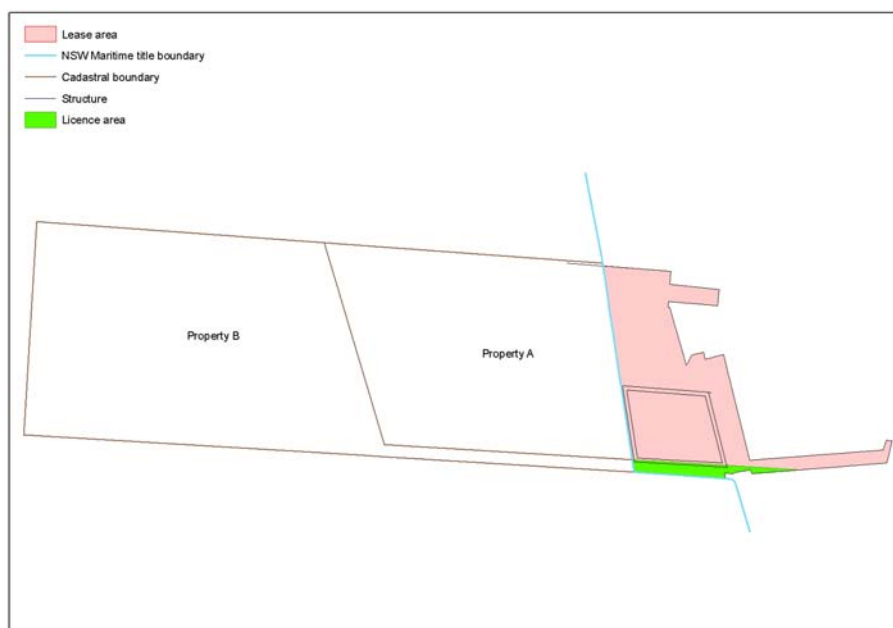


Diagram 12: Riparian rights – area reserved for access to waterway through easement for access or licence clause within lease

7.17 Commencement of Rental

7.17.1 Description of issue

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

7.17.2 Procedure

- Prior to commencing any works on NSW Maritime's land, the lessee must first enter into a formal "Agreement to Enter a Lease" with NSW Maritime.
- The Agreement to Enter a Lease will permit the lessee to undertake the approved construction works on NSW Maritime's land.
- Rent will accrue from the date on which the Agreement to Enter a Lease is signed by the lessee.
- Upon completion of the construction works the final Lease document will be executed. Rent (including arrears accrued during the construction phase) will be payable from that date or 6 months from the date on which the Agreement to Enter a Lease was signed, whichever comes first.

7.17.3 Basis for procedure

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

7.18 Minor Discrepancies in Rental Calculation

7.18.1 Description of issue


- How does NSW Maritime resolve minor discrepancies and inconsistencies which arise in rental calculations?

7.18.2 Procedure

- Where circumstances exist that justify a rent variation in the public interest, the General Manager, Maritime Property Division has the discretion to approve a non-cumulative variation of up to 5% of annual rental. The reasons for any such variation must be documented and submitted to the Chief Executive for approval prior to the variation being granted.
- Where appropriate the advice of an external probity advisor may be sought prior to granting a rental variation under this section.
- Variations granted under this section are in addition to any hardship relief granted in accordance with the provisions of *Information for Concession Card Holders and Applicants for Hardship Relief* (NSW Maritime, 2006).

7.18.3 Basis for procedure

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



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