



Duration of Commercial Mooring Licences

1 January 2009

NSW | MARITIME




1. Introduction

- 1.1 In Sydney Harbour, many maritime commercial leases include marina berths and swing moorings, operated by the same business entity. For most practical purposes the moorings and marina berths are simply two parts of the same business.
- 1.2 NSW Maritime commercial leases are generally offered for terms of twenty years or more, while commercial mooring licences are for one year only. While mooring licences are routinely renewed upon expiry, the short licence duration can create difficulties for operators in negotiating with finance providers, or in seeking to sell their business to a new operator.
- 1.3 Following the introduction of NSW Maritime's Commercial Lease Policy, the Authority has determined to offer its commercial lessees the chance to formally extend the term of their commercial mooring licences so they can terminate at the same time as their commercial lease. Commercial lessees will also have a single contact officer within the Authority to assist with commercial mooring and leasing issues.
- 1.4 These changes reduce red tape for the boating industry and improve business certainty for operators and users of commercial marinas on NSW Maritime land.

2. Application

- 2.1 These Procedures apply only in cases where an entity holds a commercial lease over NSW Maritime's land *and* one or more commercial mooring licence(s). An eligible entity may seek to extend the duration of commercial mooring licences at any time.
- 2.2 This Procedure does not apply to private marinas or private moorings.
- 2.3 While the provisions of this Procedure will generally be applied, NSW Maritime reserves the right to terminate a commercial mooring licence and/or relocate the mooring apparatus without compensation to the licensee.
- 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 January 2009 and replace any previous

procedures with respect to the matters outlined, to the extent of any inconsistency.

3. Related legislation and policies

- 3.1 This procedure is subject to the provisions of the legislation of New South Wales and the Commonwealth, and the NSW Maritime Commercial lease Policy.
- 3.2 NSW Maritime has established commercial mooring licence policies based on the *Management of Waters and Waterside Lands Regulation - NSW*. Clauses 39 and 39A of this Regulation provide for occupation (mooring) licences to be issued for a maximum of 1 or 3 years depending on the type and/or length of vessel being moored.
- 3.3 However commercial mooring licences associated with a commercial lease can be issued for a longer term under the special circumstances established by the Exemption Notice at Attachment 1. This Exemption Notice has been issued under the provisions of Section 38(4A) of the *Maritime Services Act 1935* and provides for a commercial mooring licence to expire on the date of expiry of the commercial lease also used for the purpose of conducting the business.
- 3.4 Accordingly a commercial lessee may choose either of the following options:

- 3.4.1 A commercial mooring licence with an expiry date which matches the expiry date of the commercial lease

This option requires the commercial mooring licensee to comply with all the requirements of the abovementioned Exemption Notice and NSW Maritime's existing commercial mooring licence policies as expressed by its commercial mooring licence conditions and all other relevant requirements of the *Management of Waters and Waterside Lands Regulation – NSW*.

OR

- 3.4.2 A commercial mooring licence with a relatively short term which will normally expire prior to the expiry date of the commercial lease

This option requires the commercial mooring licensee to comply with the *Management of Waters and Waterside Lands Regulation – NSW*, including

Clauses 39 and 39A, and NSW Maritime's existing commercial mooring licence policies as expressed by its commercial mooring licence conditions.

4. Termination of a commercial mooring licence prior to its expiry

- 4.1 Irrespective of the provisions of the Exemption Notice referred to in 4.3 above, and in accordance with Clause 45 of the *Management of Waters and Waterside Lands Regulation – NSW*, NSW Maritime can terminate any mooring licence (including a commercial mooring licence) at any time.
- 4.2 Circumstances in which NSW Maritime may terminate a commercial mooring licence in accordance with Clause 45 include (but are not limited to) the following:
- (a) if NSW Maritime considers a mooring to be or have become a navigation hazard; or
 - (b) if the commercial mooring licensee does not comply with any of the conditions of their commercial mooring licence.

5. Procedures

- 5.1 The following procedures apply to the system of co-terminating commercial mooring licences with commercial leases:
- 5.1.1 Overall responsibilities:
- NSW Maritime's Commercial Property Officer is the single point of contact for commercial leasing matters, and commercial mooring matters other than navigation or planning assessments.
 - Officers of NSW Maritime's Recreational and Regional Services Division are the point of contact for responsible for navigation and planning assessments associated with commercial moorings. This includes matters such as the availability and location of commercial mooring licences in a particular area, mooring maintenance issues, and planning assessments under Part 5 of the *Environmental Planning and Assessment Act 1979*).

5.1.2 Applications to vary commercial mooring licence duration:

- Lessees seeking to extend their mooring licence duration should contact the Commercial Property Officer, Maritime Property Division, NSW Maritime to provide details of the relevant moorings and commercial lease and the appropriate annual fee for a commercial mooring licence as prescribed in Clause 35A of the *Management of Waters and Waterside Lands Regulation - NSW*.
- As commercial lease rents are generally paid in arrears while commercial mooring licence fees are paid in advance, it will not usually be possible to combine lease and licence charges in a single invoice without renegotiating the commercial lease.

6. Review process

- 6.1 A commercial lessee who requests a variation of their mooring licence duration but is refused, may seek to have that decision reviewed. Requests for a review must be forwarded to the Chief Executive, NSW Maritime within 28 days of the challenged decision, and must show cause as to why a review should be undertaken. An administration fee may apply.
- 6.3 The Chief Executive will determine whether to conduct a review, and if so, the outcome of that review.

7. Definitions

- 7.1 In this procedure the following definitions apply:
- *Commercial lease* means a lease which, if negotiated or renegotiated on or after 1 January 2009, would be subject to the NSW Maritime Commercial Lease Policy as amended.
 - *Commercial mooring licence* means an occupation licence issued under Part 2, Division 3 of the *Management of Waters and Waterside Lands Regulation - NSW*, or

any replacement legislation, to a company or other entity conducting a maritime business. The business name of any non-Company entity must be registered under the *Business Names Act 2002* with the Department of Fair Trading. The commercial mooring licence has a maximum number of commercial mooring sites which may be operated by the licensee in accordance with the approved purpose of the licence.

- *Co-terminate* means the situation in which a commercial mooring licence extends for the duration of a commercial lease (in accordance with the Exemption Notice at Attachment 1 rather than Clauses 39 and 39A of Division 3 of the *Management of Waters and Waterside Lands Regulation – NSW*).
- *Entity* means a sole trader, partnership or Company trading structure.
- *Existing commercial mooring licensing system* means the system implemented by NSW Maritime prior to the date of adoption of this procedure and which, in accordance with Clauses 39 and 39A of the *Management of Waters and Waterside Lands Regulation – NSW*, limits the duration of a commercial mooring licence to 1 or 3 years, depending on the class of licence.
- *Lessee* includes an existing or prospective lessee.
- *Occupation licence* has the same meaning as commercial mooring licence.

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