

Information Guide - Maritime Property

Gaining Roads and Maritime Permission to Lodge a Development Application

This guide;

- confirms the procedures for applicants seeking land owner's consent from Roads and Maritime to lodge a Development Application under the Environmental Planning and Assessment Act 1979 for development on Roads and Maritime waterways and waterside land
- applies to all persons and entities applying for Land Owner's consent (known as Permission To Lodge) to lodge or seek determination of such applications on Roads and Maritime Property
- will generally be applied by Roads and Maritime unless the delegated personnel determines that circumstances exist which justify a departure from the procedure, including to the extent necessary to comply with its obligations at law.

Roads and Maritime property staff will assist current and prospective Lessees with their enquiries and provide general information in accordance with the Roads and Maritime Customer Charter.

Note: To avoid unnecessary duplication Lessees and Licensees will be referred to in this guide generically as Lessees and references to Roads and Maritime relate to its relationship as the property owner and Lessor.

Background

The Environmental Planning and Assessment Act 1979 (the EP&A Act) prescribes that the consent of the land owner is required in order to lodge a planning application, including:

- Development Applications (DAs)
- applications to modify an existing development consent (also known as a Section 96 Application)
- other development requiring consent under Part 4 of the EP&A Act such as State Significant Development and State Significant Infrastructure
- applications for a Complying Development Certificate.

Roads and Maritime has separate roles as both a land owner and as a consent authority for some developments on Sydney Harbour, Botany Bay, Newcastle Harbour and Port Kembla Harbour.

Permission to Lodge

In granting Permission to Lodge (a Development Application), Roads and Maritime is only exercising its role as a land owner, and is simply agreeing to the lodgement of a proposal relating to Roads and Maritime land. It is important to note that in granting Permission to Lodge Roads and Maritime is not exercising its role as a consent authority, is not endorsing the proposal nor issuing development consent.

Roads and Maritime assesses an application for Permission to Lodge against a number of key considerations as detailed in *Considerations* below.

It should also be noted a full environmental assessment under the EP&A Act is not carried out by Roads and Maritime when reviewing an application for Permission to Lodge. Environmental assessment will be carried out by the consent authority (typically the local council, Department of Planning and Environment or Roads and Maritime) once the Development Application is lodged.

Where an applicant is granted Permission to Lodge, Roads and Maritime may still make a submission to the consent authority in relation to the planning application. An applicant's Development Application may still be refused, even where Roads and Maritime is the consent authority.

The granting of "*Permission to Lodge*", does not, in itself, authorise a person to enter Roads and Maritime land and act on any planning permission subsequently granted. Access to, and occupation of, Roads and Maritime land must be in accordance with a lease, agreement to lease, licence or other agreement between Roads and Maritime and the applicant or other relevant party. Construction on any Roads and Maritime land cannot commence until a formal tenure agreement has been fully executed.

Considerations

In order to obtain Permission to Lodge, a formal application must be made to Roads and Maritime. This application will be evaluated with due regard to the responsibilities as a property manager on behalf of the NSW Government, and as the state's navigation authority.

Roads and Maritime will apply the following considerations in evaluating applications for Permission to Lodge:

Tenure

Permission to Lodge will only be granted when the proposed development is on land that is the subject of an appropriate tenure arrangement with Roads and maritime, such as a lease or a licence.

The applicant seeking Permission to Lodge must be the owner of the property abutting the proposed development site.

For some proposals, Roads and Maritime has discretion to grant Permission to Lodge before tenure agreement being finalised, provided the proponent has confirmed in writing they will enter into an appropriate tenure agreement before construction starts.

In the case where development is proposed on land which is the subject of a pre-existing lease or licence to the proponent of that development (or a related entity), Permission to Lodge will only be considered by Roads and Maritime if it is satisfied, at the time the application is made, there are no existing material non-compliances with the Roads and Maritime lease or licence. Examples of non-compliance include:

- any failure to pay rent due and payable under the terms of the lease or licence
- any failure to pay any other monies that are due to Roads and Maritime (e.g. debt recovery fees, application fees, survey fees etc).
- any other non-compliance with an essential term of the lease.
- any work or activity which is being or has been carried out on the land without permission from Roads and Maritime, where such permission is required under the lease or licence.
- any use of the land by the lessee or licensee which is not a permitted use under the lease or licence.
- any event of default under the lease or licence.

If the proposed development is not consistent with the terms of the existing lease or licence, a new tenure agreement will be required (e.g. an increase or decrease in the leased or licenced area).

Once granted, Permission to Lodge cannot be transferred to another applicant as it is based on a tenure arrangement between Roads and Maritime and a specific party.

Navigation

Developments proposed on Roads and Maritime land must not present;

- a danger or obstruction to the safe navigation of vessels, particularly in navigation channels, fairways and mooring areas;
- a significant risk of a marine accident.

In particular, for proposals on submerged land, Roads and Maritime will consider the extent to which;

- the proposed development constitutes a potential hazard to navigation in terms of obstruction, visibility or lighting;
- the wind, wave and current regime and water depth suitability may impact on the safety of any moored vessel and any person using the proposed development; and
- access to the proposed structures can be provided in a safe manner from the adjoining land.

Roads and Maritime will not carry out a detailed assessment of the depth of the waterway when granting Permission to Lodge. This requires a hydrographic survey carried out by a registered Surveyor.

If a development proposal includes dredging and potential to berth a vessel, the applicant should obtain a hydrographic survey, from an accredited hydrographic surveyor, to assist the designer and to include as part of the subsequent application to the consent authority.

Orderly use of the waterway

Proposed developments on Roads and Maritime submerged land must have a functional relationship to the use of the adjacent dry or reclaimed land. The only exception is where a community, public recreational, or other public use is proposed.

In cases where the adjoining dry land is in public ownership and is accessible to the general public, Permission to Lodge may not be granted for private waterway development unless;

- the applicant proposes an overall community, public recreational or other public use (for example, a club which is open to public membership, such as a sailing club, sea scouts or rowing club)
- the development proposal seeks modifications to existing approved developments.

Application Process

Prospective applicants should contact Roads and Maritime to discuss their proposal before applying for Permission To Lodge as this can be particularly useful in clarifying what supporting information is required and ensuring that the application can be processed by Roads and Maritime.

Roads and Maritime officers are also available to meet to discuss likely future leasing requirements, as relevant to the proposal.

Required information

Applications for Permission to Lodge must contain sufficient information to enable Roads and Maritime to satisfy itself as to;

- a) the precise location of the land to which the application relates; and
- b) the nature and extent of the development for which consent is sought.

The information which must be included with any application for Permission to Lodge is set out in the [Permission To Lodge Application Form](#).

An application will only be accepted by Roads and Maritime if it includes all of the required information. Applications which do not contain all of the necessary information may be returned to the applicant.

Roads and Maritime may request additional information from a proponent in order to clarify an issue that would otherwise result in the application being refused.

Timing for determination

Applications for Permission to Lodge relating to land administered by the Commercial and Property Branch of Roads and Maritime will, where feasible, be determined within 60 days of receipt of a completed application by Roads and Maritime.

Roads and Maritime will normally decide whether to grant Permission to Lodge within 30 days of receipt of completed applications relating to complying development certificates made pursuant to the complying development provisions for waterway structures outlined in [State Environmental Planning Policy \(SEPP Exempt and Complying Development Codes\) 2008](#).

Scope of Permission to Lodge

Permission to Lodge is granted only to a development of the nature, extent and location specified in the Permission to Lodge application

Applicants will be required to notify Roads and Maritime as soon as practicable of any modifications to the nature, extent or location of the development and submit a new Permission to Lodge application.

Fees

The fees applicable to an application for Permission to Lodge are specified in the application form.

Other Matters

This Information Guide does not apply to the following situations:

Exempt Development

This guide does not apply to exempt development pursuant to the exempt development provisions for waterway structures outlined in [SEPP Exempt and Complying Development Codes 2008](#).

Landowner's owners' property rights applicable under common law apply to exempt development. Proponents are required to obtain written landowners consent from Roads and Maritime before starting any work.

Minor Modifications

This guide does not apply to requests for land owners consent to lodge Section 96(1) applications for minor modifications to development consent. Applicants seeking land owners consent to the lodgement of Section 96(1) applications should simply make a written request for landowners consent under for common law from Roads and Maritime, providing details of the proposed modification to the development consent.

Long-Term Leases

Several large developments around Sydney Harbour, such as Walsh Bay and King Street Wharf, are the subject of a 99 year lease from Roads and Maritime.

Although these sites are exempt from the Roads and Maritime Permission to Lodge policy, land owners consent is still required from Roads and Maritime Property Management team.

Subdivision for a Roads and Maritime lease

This guide does not apply to DAs which solely propose subdivision of waterways and waterside lands owned by Roads and Maritime for the purpose of a tenure agreement with Roads and Maritime or subdivisions for the purpose of the purchase of reclaimed land.

Land owners consent to lodge DAs for subdivision of Roads and Maritime lands of Sydney Harbour and its tributaries will be provided by Roads and Maritime Property Management team.

Applicants seeking land owners consent to the lodgement of Development Applications for the purpose of subdivision of Roads and Maritime land within waterways outside of Sydney Harbour and its tributaries should contact the Customer and Property Management Team for advice.

Subdivision certification

This guide does not apply to applications for subdivision certificates. Land Owner's Consent to the lodgement of a subdivision certificate application will be provided by the Customer and Property Management branch of the Corporate Division of Roads and Maritime.

Construction certification

This guide does not apply to requests for Land Owner's Consent for a Construction Certificate, Occupation Certificate or to appoint a Principal Certifying Authority (PCA). The EP&A Act states these applications can be made by the person having the benefit of a Development Consent.

Other Approvals

Applicants should be aware other statutory approvals may also be required, depending on the nature of the development in question. Proponents should satisfy themselves as to the need for any other statutory approvals for the development.

Other relevant Information Guides

The following guides provide further information relating to Gaining Permission to Lodge a Development Application;

- [Information Guide — Maritime Property — Establishing Domestic Waterfront Leases & Licences](#)
- [Information Guide — Maritime Property — Establishing Commercial Marina Leases](#)
- [Information Guide — Maritime Property — Establishing Industrial Leases](#)
- [Information Guide — Maritime Property — Establishing a Registered Club lease](#)
- [Information Guide — Maritime Property — Establishing Retail Leases](#)
- [Information Guide — Maritime Property — Establishing Community Leases](#)
- [Information Guide — Maritime Property — Establishing Infrastructure Leases](#)
- [Information Guide — Maritime Property — Managing Domestic Waterfront Leases & Licences](#)
- [Information Guide — Maritime Property— Managing Commercial Marina Leases](#)
- [Information Guide — Maritime Property— Managing Industrial Leases](#)
- [Information Guide — Maritime Property — Managing a Registered Club lease](#)
- [Information Guide — Maritime Property — Managing Retail Leases](#)
- [Information Guide — Maritime Property — Managing Community Leases](#)
- [Information Guide — Maritime Property— Managing Infrastructure Leases](#)
- [Information Guide — Maritime Property — End of Lease Activities](#)
- [Information Guide — Maritime Property — Removal of Structures](#)

Important Note: This document does not constitute legal advice and provides guidance only. Users are advised to seek professional advice and refer to the relevant legislation as necessary, before taking action in relation to any matters covered by this document.

© State of NSW through Roads and Maritime

www.rms.nsw.gov.au

Disclaimer: While every reasonable effort has been made to ensure that this document is correct at the time of publication, the State of New South Wales, its agencies and employees, disclaim any and all liability to any person in respect of anything, or the consequences of anything, done or omitted to be done in reliance upon the whole or any part of this document.