

Acknowledgement of Country

Transport for NSW acknowledges the traditional custodians of the land on which we work and live.

We pay our respects to Elders past and present and celebrate the diversity of Aboriginal people and their ongoing cultures and connections to the lands and waters of NSW.

Many of the transport routes we use today – from rail lines, to roads, to water crossings – follow the traditional Songlines, trade routes and ceremonial paths in Country that our nation's First Peoples followed for tens of thousands of years.

Transport for NSW is committed to honouring Aboriginal peoples' cultural and spiritual connections to the lands, waters and seas and their rich contribution to society.

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Overview

This fact sheet provides a guide for applicants seeking landowner's consent from Transport for NSW (TfNSW) to lodge a planning application under the *Environmental Planning and Assessment Act 1979* for development on waterways and waterside lands vested in Transport for NSW. This includes applications for Permission to Lodge relating to Development Applications, other development requiring consent under Part 4 of the *Environmental Planning and Assessment Act 1979*, and applications for Complying Development Certificates.

1 Introduction

The beds of Sydney Harbour, Botany Bay, Newcastle Harbour, and Port Kembla Harbour are vested in Transport for NSW as publicly owned land. Transport for NSW also owns parcels of reclaimed land, dry land, and intertidal land in selected locations.

The *Environmental Planning and Assessment Act 1979 (the EP&A Act)* prescribes that the consent of the landowner 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 4.55 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.

This Fact Sheet sets out Transport for NSW's requirements for persons and entities applying for landowner's consent to lodge or seek determination of such applications relating to land administered by the Commercial, Performance & Strategy Division of Transport for NSW. Landowner's consent is also known as Permission to Lodge.

A departure from this policy will only take place if the Executive Director Property Group, deems circumstances exist to warrant such a departure in the public interest.

1.1. What is the difference between Permission to Lodge and Development Application?

Transport for NSW has separate roles as both a landowner and as a consent authority for some development on Sydney Harbour.

In granting Permission to Lodge, Transport for NSW is only exercising its role as a landowner and is simply agreeing to the lodgement of a proposal relating to its land. It is important to note that in granting Permission to Lodge, Transport for NSW is not exercising its role as a consent authority, is not endorsing the proposal nor issuing development consent.

Transport for NSW assesses an application for Permission to Lodge on a number of key matters (see 2 Considerations below).

It should also be noted a full environmental assessment under the EP&A Act is not carried out by Transport for NSW 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, Housing and Infrastructure or Transport for NSW) once the planning application is lodged.

If you are granted Permission to Lodge, please be aware Transport for NSW may still make a submission on your application to the consent authority. Your planning application may still be refused, even where Transport for NSW is the consent authority.

1.2. Permission to Lodge is not permission to undertake development work.

Granting of Permission to Lodge does not, in itself, authorise a person to enter Transport for NSW land and act on any planning permission subsequently granted.

Access to, and occupation of, Transport for NSW land must be in accordance with a lease, agreement to lease, licence or other agreement between Transport for NSW and the applicant or other relevant party. Construction cannot start until a formal tenure agreement is in place.

2 Considerations

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

Transport for NSW will apply the following considerations in evaluating applications for Permission to Lodge:

2.1 Tenure

Land owned by Transport for NSW often provides broad environmental, social, and economic benefits to the community. Where this land is used to accommodate private development, the NSW Government, on behalf of the community, is entitled to charge rent for this use.

As such, Permission to Lodge will only be granted when the proposed development is on land that is the subject of an appropriate tenure arrangement with Transport for NSW. Examples of tenure arrangements include a lease or a licence.

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

For some proposals, such as domestic waterfront facilities, Transport for NSW has discretion to grant Permission to Lodge before a tenure agreement is 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 Transport for NSW if it is satisfied, at the time the application is made, there are no existing material non-compliances of the 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 other non-compliance with an essential term of the lease.
- Any work or activity which is being carried out on the land without permission from Transport for NSW, 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.

Please note once granted, Permission to Lodge cannot be transferred to another applicant as it is based on a tenure arrangement between Transport for NSW and a specific party.

2.2. Navigation

Developments proposed on Transport for NSW's land must not, in the reasonable opinion of Transport for NSW, 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, Transport for NSW 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.
- Access to the proposed structures can be provided in a safe manner from the adjoining land.

It should be noted that Transport for NSW 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 potential to berth a vessel, the applicant should obtain a hydrographic survey to assist the designer and to include as part of the subsequent application to the consent authority.

2.3. Orderly use of the waterway

Developments proposed on Transport for NSW's 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.

3. The application process

Prospective applicants are encouraged to contact Transport for NSW to discuss their proposal before applying for Permission to Lodge. This can be particularly useful in clarifying what supporting information is required and ensuring that the application can be processed by Transport for NSW.

Enquiries:

E: maritimeplanning@transport.nsw.gov.au

Transport for NSW officers are also available to meet to discuss likely future leasing requirements, as relevant to the proposal. Enquiries:

Residential E: dwfleasing@transport.nsw.gov.au

Commercial/Community E: property.management@transport.nsw.gov.au

3.1. Required information

Applications for Permission to Lodge must contain sufficient information to enable Transport for NSW to satisfy itself as to:

- The precise location of the land to which the application relates; and
- 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 E-lodgement application platform. Mandatory documents are identified with an asterisk (*)

Incomplete applications will be rejected with an electronic notification to applicant detailing reason/s for rejection.

3.2. Timing for determination

Applications for Permission to Lodge relating to land administered by the Property Asset Management Division of Transport for NSW will, where feasible, be determined within 60 days of receipt of a completed application by Transport for NSW.

For applications relating to complying development certificate applications made pursuant to the complying development provisions for waterway structures outlined in State Environmental Planning Policy (SEPP Exempt and Complying Development Codes) 2008, Transport for NSW will normally decide whether to grant Permission to Lodge within 30 days of receipt of the completed application

3.3. 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.

Applicants shall notify Transport for NSW as soon as practicable of any modifications to the nature, extent, or location of the development.

3.4. Fees

The fees applicable to an application for Permission to Lodge are specified in the E-lodgement application platform.

4. Other matters

This policy **does not** apply to the following situations:

4.1. Exempt developments

This policy 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 property rights applicable under common law apply to exempt development. Proponents are required to advise Transport for NSW and obtain written landowners consent before starting any work.

4.2. Minor modifications

This policy does not apply to requests for landowner consent to lodge Section 4.55(1) applications for minor modifications to development consent.

Applicants seeking landowner consent to the lodgement of Section 4.55(1) applications should simply make a written request for landowner consent under for common law from Transport for NSW, providing details of the proposed modification to the development consent.

Residential E: dwfleasing@transport.nsw.gov.au

Commercial/Community E: property.management@transport.nsw.gov.au

4.3. 99-Year Leases

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

For the purposes of landowner consent for the lodgement of DAs, the lessee with the benefit of the long term lease is able to provide the landowner consent for lodgement of DAs. No landowner consent will be issued by Transport for NSW for these sites.

4.4. Subdivision for Transport for NSW lease or purchase of reclaimed land

Permission to Lodge does not apply to DAs which solely propose subdivision of waterways and waterside lands owned by Transport for NSW for the purpose of a tenure agreement with Transport for NSW or subdivisions for the purpose of the purchase of reclaimed land.

Landowner consent to lodge DAs for subdivision of Transport for NSW lands of Sydney Harbour and its tributaries will be provided by the Property Asset Management unit of Transport for NSW.

Applicants seeking landowner consent to the lodgement of DAs for the purpose of subdivision of Transport for NSW land within waterways outside of Sydney Harbour and its tributaries should contact the Property Asset Management unit for advice.

Residential E: dwfleasing@transport.nsw.gov.au

Commercial/Community E: property.management@transport.nsw.gov.au

4.5. Subdivision Certificate

Permission to Lodge does not apply to applications for subdivision certificates. Landowner consent to the lodgement of a subdivision certificate application will be provided by the Property Asset Management unit of Transport for NSW.

Residential E: dwfleasing@transport.nsw.gov.au

Commercial/Community E: property.management@transport.nsw.gov.au

4.6. Post Determination Certificates

Permission to Lodge does not apply to requests 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 development consent

5. 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.

6. Further information

For further information please contact Transport for NSW' Maritime Planning & Consent Authority via e-mail: maritimeplanning@transport.nsw.gov.au

Transitional provisions:

The policy outlined in this fact sheet applies to all applications for Landowner's consent determined by the Commercial, Performance & Strategy Division of Transport for NSW on or after 01 July 2024

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. This document should be read in tandem with the requirements of the *Environmental Planning and Assessment Act 1979* and accompanying regulations which take full precedence over this document.

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