

Permission to Lodge – Fact Sheet

This fact sheet provides a guide for applicants seeking land owner's consent from the Business Services Division of Roads and Maritime Services (Roads and Maritime) to lodge a planning application under the Environmental Planning and Assessment Act 1979 for development on waterways and waterside lands vested in Roads and Maritime. 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 Roads and Maritime as publicly-owned land. Roads and Maritime 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 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 5.5 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 policy sets out Roads and Maritime's requirements for persons and entities applying for Land Owner's consent to lodge or seek determination of such applications relating to land administered by the Business Services

Division of Roads and Maritime. Land Owner's consent is also known as Permission to Lodge.

A departure from this policy will only take place if the General Manager Commercial and Property 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?

Roads and Maritime has separate roles as both a land owner and as a consent authority for some development on Sydney Harbour.

In granting Permission to Lodge, 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 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 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 planning application is lodged.

If you are granted Permission to Lodge, please be aware Roads and Maritime may still make a submission on your application to the consent authority. Your planning application may still be refused, even where Roads and Maritime 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 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 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 to Roads and Maritime. This application will be evaluated with due regard to the responsibilities of Roads and Maritime 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:

2.1. Tenure

Land owned by Roads and Maritime 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 Roads and Maritime. Examples of tenure arrangements include 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, such as domestic waterfront facilities, Roads and Maritime 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 Roads and Maritime 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 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.

Please note 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.

2.2. Navigation

Developments proposed on Roads and Maritime land must not, in the reasonable opinion of Roads and Maritime, 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
- Access to the proposed structures can be provided in a safe manner from the adjoining land.

It should be noted that 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 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 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.

3. The application process

Prospective applicants are encouraged to contact Roads and Maritime 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 Roads and Maritime.

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

3.1. Required information

Applications for Permission to Lodge must contain sufficient information to enable Roads and Maritime 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 Business Services Division of Roads and Maritime will, where feasible, be determined within 60 days of receipt of a completed application by Roads and Maritime.

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, Roads and Maritime 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 Roads and Maritime 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 Roads and

Maritime and obtain written landowners consent before starting any work.

4.2. Minor modifications

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

Applicants seeking land owners consent to the lodgement of Section 4.55(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.

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 Roads and Maritime.

For the purposes of land owners consent for the lodgement of DAs, the lessee with the benefit of the long term lease is able to provide the land owners consent for lodgement of DAs. No land owners consent will be issued by Roads and Maritime for these sites.

4.4. Subdivision for a Roads and Maritime Lease

This policy 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 the Customer and Property Management unit of the Business Services Division of Roads and Maritime.

Applicants seeking land owners consent to the lodgement of DAs 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 unit for advice.

4.5. Subdivision Certificate

This policy does not apply to applications for subdivision certificates. Land owners consent to the lodgement of a subdivision certificate application will be provided by the Customer and Property Management unit of the Business Services Division of Roads and Maritime.

4.6. Construction Certificate

This policy does not apply to requests for Permission to Lodge an application 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 the Property Strategy and Planning Unit, Roads and Maritime on 13 12 36 (option 6) or via e-mail: maritimeplanning@rms.nsw.gov.au.

Transitional provisions:

The policy outlined in this fact sheet applies to all applications for Land Owner's consent determined by the Business Services Division of Roads and Maritime on or after 16 March 2018

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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Reference: