

## Sublicensing of domestic waterfront berthing

*Domestic waterfront licensees can sublicense approved berthing areas to third parties.*

### What is a berthing area?

A berthing area is an area of water allocated for the on-water storage of a boat adjacent to a jetty or pontoon, allowing walk-on access to the boat.

An approved berthing area is marked on the plan attached to a domestic waterfront licence.

### Can a berthing area be sublicensed?

Yes. Licence holders with an approved berthing area can sublicense to a third party, subject to the consent of the NSW Department of Industry—Lands & Water (the department).

### What is the process to sublicense a berthing area?

Licence holders must apply for consent from the department.

To apply for consent, licence holders must submit the following documents, which are available from [www.industry.nsw.gov.au/lands/use/licences/domestic-waterfront](http://www.industry.nsw.gov.au/lands/use/licences/domestic-waterfront):

- a completed sublicensing of domestic waterfront berthing area application
- copy of the terms and conditions for sublicense of an approved berthing area and any additional terms and conditions attached to the sublicense
- a deed poll from the sublicensee indemnifying the department.

The department will give all applicants a written decision and issue an invoice for the sublicensing charge to approved applicants.

The sublicensing charge will be pro-rata for the first year to align with licence holder's rental cycle.

### What is the application charge?

In addition to the annual rent for a domestic waterfront licence, there is an additional sublicensing charge based on the annual rent for a domestic waterfront licence. The applied fee is calculated as follows:

- where rent is equal to or less than \$1,500, the fee is \$750
- where rent is equal to or falls between \$1,501 and \$3,999, the fee is equal to 50% of the annual domestic waterfront licence rent
- where rent is equal to or greater than \$4,000, the fee is \$2,000.

### Are there any rebates or waivers to the annual charge?

No. Rebates and waivers do not apply to the annual fee to sublicense an approved berthing area. They are not considered in determining the fee amount.

Pensioner rebates are not available for the sublicensing fee, but will continue to be applied to the annual rent of the domestic waterfront licence.

For example: Ms Martin wants to sublicense her unused berthing area. Her current gross annual rental is \$5,000 per year plus GST. Ms Martin is eligible to receive a pensioner rebate of \$2,390, reducing her rent to \$2,610 per year plus GST.

Based on the formula for the sublicense fee, Ms Martin's berthing area fee would be \$2,000 per year plus GST. This is because her total annual rent of \$5,000 is above \$4,000 per year plus GST.

### How are approvals notified?

Once the department has assessed an application, it will issue a written approval notification advising the applicant of the outcome. If the letter grants consent to the applicant, sublicensing can commence immediately.

### Is a land account notice issued for the sublicense fee?

Yes. Once the department has granted consent to sublicense a berthing area, it will issue a land account notice.

In the first year, the fee is pro-rata to align with the annual domestic waterfront rent cycle. For subsequent years, the sublicense fee and domestic waterfront rent will be consolidated on one land account notice.

### What is the potential rent income from a sublicense?

Potential rent earned from sublicensing berthing areas will vary depending on the facility, location and market conditions. Individual tenure holders should undertake their own research and assessment before applying for consent from the department.

### How are berthing spaces advertised?

Advertising of an available berthing space will be at the licence holder's discretion. No advertising is permitted on the licence holder's jetty or other waterfront structures.

### Are joint domestic waterfront licences eligible?

The department will consider applications to sublicense berthing areas for joint licences only where consent is obtained from all the licence holders.

### What is casual berthing?

A jetty or other fixed structure may be used for casual berthing, which is the temporary berthing of a vessel for a reasonable period of time for the loading and/or unloading of passengers or goods. Casual berthing must not exceed a period of six hours.

Continuous or permanent berthing is only allowed in an approved berthing area.

### Can berthing areas be added to existing waterfront licences?

Existing domestic waterfront licence holders can request a berthing area be added to their licence, however must first obtain landowner's consent from the department and development approval from the relevant council. If successful, the domestic waterfront licence would be amended to include the approved berthing area.

For further information on this process, please refer to the *Domestic waterfront licences—guidelines* at [www.industry.nsw.gov.au/lands/use/licences/domestic-waterfront](http://www.industry.nsw.gov.au/lands/use/licences/domestic-waterfront).

### Is a sublicense transferable?

No, a sublicense is not transferable. The third-party occupant who enters into a sublicense is not able to on-sell or transfer the use of the berthing area to another person.

### What insurance and public liability is required to sublicense?

The terms of the domestic waterfront licence specify the required amount of public liability insurance. Additional insurances may be obtained at the discretion of the licence holder.

### Can the berthing area be used for a commercial purpose?

No, the berthing area can only be used for a domestic purpose and private recreation. Domestic waterfront licences do not authorise any commercial use.

### What size vessel can use the berthing area?

The vessel must not exceed the size of the approved berthing area in the domestic waterfront licence. For example, it would breach the terms and conditions of the licence if a vessel that was 20 m long was berthed in an area that was only approved for 9 m long.

Allowing a vessel that is too large for the approved berthing area will result in compliance action being undertaken by the department.

### What should be included in the sublicense agreement terms?

The following three conditions must be included in the terms of the sublicense agreement:

- an indemnity clause
- a clause stating that the sublicense will be cancelled upon revocation of the head licence
- a clause prohibiting assignment or transfer of the sublicense.

Failure to include these conditions in the sublicense agreement may result in the department withholding consent.

To assist licence holders, a standard sublicense agreement template has been provided containing these conditions. Whilst use of the template is not mandatory, sublicensing agreements that do not use the template may involve additional processing times.

In addition to the sublicense agreement, a deed poll indemnifying the department of the sublicense must also be submitted. Use of the template deed poll is mandatory.

### What is a deed poll and why is it required?

A deed is a type of written agreement. A deed poll is a promise given by the sublicensee to the department that indemnifies the department and only needs to be signed by the sublicensee.

### What are the minimum and maximum terms for a sublicense?

Sublicenses can be granted for a minimum term of one year and a maximum term of five years. The term of a sublicense cannot be greater than the remaining term of the domestic waterfront licence.

If the term of the sublicense expires and both parties are seeking to renew and continue to sublicense the approved berthing area, then a new application will need to be submitted with all required documentation.

### What are the rights and responsibilities of the licence holder?

Primarily, the domestic waterfront licence holder must ensure consent has been granted from the department to sublicense a berthing area. The sublicense agreement also outlines the rights and responsibilities of the domestic waterfront licence holder.

### Where can I find the rights and responsibilities of the sublicensee?

The rights and responsibilities of the sublicensee are outlined in the sublicense agreement.

### When does a sublicense agreement end?

A sublicense agreement may end with any of the following:

- failure to pay the annual sublicense fee to the department
- termination of the domestic waterfront licence by the department
- expiry of the sublicense on the agreed end date
- agreed termination with the appropriate notice agreed between the licence holder and the sublicensee
- on sale of the licence holder's property, the authority to sublicense will not be transferred to the new owner.

### More information

- Post: Waterfront Tenures Team  
NSW Department of Industry—Lands & Water  
PO Box 2155  
Dangar NSW 2309
- Email: [waterfront.tenures@crowland.nsw.gov.au](mailto:waterfront.tenures@crowland.nsw.gov.au)
- Web: [www.industry.nsw.gov.au/lands](http://www.industry.nsw.gov.au/lands)
- Phone: 1300 886 235

---

© State of New South Wales through the NSW Department of Industry 2018. You may copy, distribute and otherwise freely deal with this publication for any purpose, provided that you attribute the NSW Department of Industry as the owner. The content of this publication does not constitute legal advice. You should seek legal or other professional advice before acting or relying on any of the content. The information contained in this publication is based on knowledge and understanding at the time of writing (June 2018). However, because of advances in knowledge, users are reminded of the need to ensure that information upon which they rely is up to date and to check currency of the information with the appropriate officer of the Department of Industry or the user's independent adviser.