



# Procedure

## for the Removal of Private Waterfront Structures

**NSW | MARITIME**  




## 1. PURPOSE

- 1.1 This procedure outlines circumstances in which NSW Maritime will require the removal of private waterfront structures from land vested in NSW Maritime, and the process to be followed in implementing the removal.

## 2. IMPACT ON PREVIOUS PROCEDURES

- 2.1 This procedure replaces all previous procedures, policies, directions and guidelines that existed in relation to the removal of private waterfront structures from NSW Maritime land.

## 3. AIM

- 3.1 The aim of this procedure is to ensure that NSW Maritime will only require removal of a private waterfront structure if one or more of the circumstances in Section 5 apply.
- 3.2 It is also the aim of this document to ensure that NSW Maritime Officers follow the procedures set out in this document when requiring the removal of a private waterfront structure in accordance with this Policy.

## 4. APPLICATION

- 4.1 The procedures set out in this document are for use by NSW Maritime Officers when carrying out assessments, making recommendations or making decisions in relation to an application under the *Environmental Planning and Assessment Act 1979*; and in the administration of its residential waterfront leases.
- 4.2 Departures from this Procedure will require the written approval of the Chief Executive.

## 5. CIRCUMSTANCES WHERE REMOVAL OF A STRUCTURE MAY BE REQUIRED

5.1 NSW Maritime may require the removal of a private waterfront structure, or part of a private waterfront structure, if:-

- a) the structure or part of the structure, is unauthorised;
- b) the structure or part of the structure is dilapidated, totally or partially collapsed, derelict or in such disrepair as to pose a danger to any person or property; NSW Maritime has made reasonable efforts to notify the adjoining land owner/Lessee, and the land owner/Lessee has failed to rectify the issue;
- c) there has been repeated non-compliance with fundamental conditions of the associated Lease, provided that NSW Maritime has made reasonable efforts to notify the adjoining land owner/Lessee and the land owner/Lessee has failed to rectify the issue; or
- d) the owner of the adjoining property declines to enter into a lease of NSW Maritime land upon which the structure(s) are built; or
- e) removal of the structure is required because it impedes or prevents the implementation of a long-term strategic objective of the NSW Government for the bay, locality or region and the term of the associated Lease (or any holding over period) has expired or is due to expire.

5.2 A removal under any of the above clauses requires the written authorisation of the Chief Executive.

- 5.3 Subject to Section 4.2 above, NSW Maritime will not otherwise require the removal of a private waterfront structure from its land.
- 5.4 Specifically, NSW Maritime will not require removal of private waterfront structures solely on the basis that they were legally approved but are now prohibited by a planning instrument, they are inconsistent with the Sharing Sydney Harbour Access Plan or landowner's consent policies, or for reasons solely associated with the sale of the adjoining freehold (but subject to 5.1(d) above).

## **6. PROCEDURE FOR REMOVAL OF UNAUTHORISED STRUCTURES**

- 6.1 When NSW Maritime requires the removal of an unauthorised private waterfront structure or part of a structure ("unauthorised structure"), written notification will be forwarded to the owner of the adjoining Land/Lessee or person who erected the unauthorised structure:
- (a) setting out the relevant clause(s) of any Lease for the area that have been breached, and the clause(s) giving NSW Maritime the right to terminate the Lease and require removal of the unauthorised structure;
  - (b) advising the lessee of their obligation to obtain relevant planning approvals prior to commencement of the removal;
  - (c) setting a time period within which the removal must occur; and
  - (d) if applicable, making it a condition of granting development consent and/or construction approval to the erection of any new structure that the unauthorised structure is removed.

- 6.2 Where a person fails to comply with the notification referred to in Section 6.1, NSW Maritime will issue a “Notice to Remove” under Section 13T(3) of the *Maritime Services Act 1935* requiring removal within a specified time; and where there is a Lease, notifying the Lessee of the termination of the Lease for a breach of a covenant.
- 6.3 Where NSW Maritime has determined not to require the removal of an unauthorised structure or part of a structure, the owner / Lessee will be required to seek permission to lodge a Development Application for its continued use and if approved, a Development Application to that effect. The Application may only seek approval for continued use of the structure and not retrospective approval for its construction.

## **7. PROCEDURE FOR REMOVAL OF DILAPIDATED OR DANGEROUS STRUCTURES**

7.1 When NSW Maritime requires the removal of a structure or part of a structure, that is dilapidated, totally or partially collapsed, derelict or in such disrepair as to pose a danger to any person or property, written notification will be sent to the adjoining landowner/lessee:-

- (a) setting out the relevant clause(s) of any Lease for the area that have been breached, and the clause(s) giving NSW Maritime the right to terminate the Lease and require removal of the dilapidated structure;
- (b) advising the lessee of their obligation to obtain relevant planning approvals prior to commencement of the removal;
- (c) setting a time period within which the removal must occur; and
- (d) if applicable, making it a condition of granting development consent and/or construction approval to the erection of any new structure that the dilapidated structure is removed.

## **8. PROCEDURE FOR REMOVAL FOR NON-COMPLIANCE WITH LEASE TERMS**

8.1 When NSW Maritime has determined to require the removal of structure(s) due to repeated non-compliance with the terms and conditions of a Lease, written notification will be sent to the adjoining landowner/lessee:-

- (a) setting out the relevant clause(s) of the Lease that have been breached, and the clause(s) giving NSW Maritime the right to terminate the Lease and require removal of the structure;
- (b) advising the lessee of their obligation to obtain relevant planning approvals prior to commencement of the removal;
- (c) setting a time period within which the removal must occur; and
- (d) advising of the termination of the lease for a breach of covenant(s) once the structures have been removed.

## **9. REMOVAL WHERE ADJOINING LANDOWNER DECLINES TO ENTER INTO A LEASE**

9.1 If the adjoining freehold land is sold and the incoming purchaser declines to enter into a lease for the land upon which the structures are built, or an existing lessee declines to renew their lease, written notification will be sent to the lessee:

- (a) advising that the incoming purchaser has declined to enter into a lease for the land upon which the structure(s) are built;
- (b) setting out the relevant clause(s) of the Lease giving NSW Maritime the right to terminate the Lease and require removal of the structure;

- (c) advising the lessee of their obligation to obtain relevant planning approvals prior to commencement of the removal;
- (d) setting a time period within which the removal must occur; and
- (e) advising of the termination of the lease once the structures have been removed.

#### **10. REMOVAL TO MEET LONG-TERM STRATEGIC OBJECTIVE**

10.1 Where the NSW Government has determined that certain structures must be removed to assist in achieving a long-term strategic objective (for example, development of a major marine precinct), in circumstances where the term of the associated Lease has expired or is due to expire, it must notify the Lessee in writing of the requirement to remove the structure in accordance with the Lease.

#### **11. PROCEDURES FOR THE REMOVAL OF STRUCTURES BY NSW MARITIME**

11.1 If NSW Maritime has written to the owner of adjoining land ("owner") or a Lessee under Clause 6, 7, 8, 9 or 10 of this Procedure requiring the removal of a structure or part of a structure and the owner/Lessee has failed to comply with all or part of those requirements, NSW Maritime may itself remove the structure (or part), and may also require the owner / Lessee to reimburse NSW Maritime for the costs incurred in connection with the removal.

In carrying out a removal under this section, NSW Maritime will:-

- (a) notify the owner / Lessee in writing of its intention to carry out the removal;
- (b) obtain three (3) quotations from appropriate contractors to carry out the removal of the structure;

- (c) notify the owner/Lessee of the quotations received and of the contractor chosen to carry out the removal;
- (d) obtain any approvals required by legislation prior to the commencement of removal works; and
- (e) authorise the contractor to carry out the removal.

## 12. EXISTING USE RIGHTS

- 12.1 Where NSW Maritime requires the removal of a private waterfront structure in accordance with this Procedure with the intention of abandoning the “existing use” rights attaching to the building, work, and/or land, a File Note must be placed on the relevant property file indicating that the “existing use” rights in relation to the building, work and/or land are abandoned for the purposes of Section 107(2)(e) of the ***Environmental Planning & Assessment Act 1979***.
- 12.2 The File Note referred to in Clause 12.1 must be signed and dated by the Chief Executive and the date of the File Note is taken to be the date upon which any “existing use” rights attaching to the building, work and/or land are abandoned.
- 12.3 Where the decision to abandon existing use rights has been validly made in accordance with clauses 12.1 & 12.2, NSW Maritime will notify the adjoining land owner and immediate neighbours of that landowner (where those neighbours also occupy waterfront properties).
- 12.4 Where a File Note referred to in Clauses 12.1 & 12.2 does not exist, it is to be taken that it is NSW Maritime’s intention to retain any “existing use” rights attaching to the building, work, or land, to the extent permitted by law.



### 13. APPEAL RIGHTS

13.1 A landowner/Lessee who is aggrieved by a decision made by NSW Maritime in accordance with this Procedure that affects their Lease, may write to NSW Maritime showing cause as to why a structure or part of a structure should not be removed.

13.2 Appeals under this section will be determined by the Chief Executive

### 14. FORMAL REVIEW

14.1 This Procedure will be reviewed in 2012.


### 16. GLOSSARY

15.1 In this Procedure:-

**“adjoining land owner”** means the owner of any private residential land which adjoins NSW Maritime’s land (eg the owner of a waterfront property)

**“existing use”** has the meaning given it in Section 106 of the *Environmental Planning and Assessment Act 1979*

**“unauthorised structure”** means a structure that has been erected, altered or added to without having obtained the relevant legislative approvals



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