

A MARINE ESTATE MANAGEMENT STRATEGY INITIATIVE

Domestic Waterfront Structures Land Owner's Consent Strategy

Batemans Marine Park Estuaries – South



Published by NSW Department of Primary Industries

www.dpi.nsw.gov.au

Title: Domestic Waterfront Structures Land
Owner's Consent Strategy – Batemans
Marine Park Estuaries - South

First published December 2023

www.marine.nsw.gov.au

ISBN: 978-1-76058-749-9

PUB23/38

More information

Marine Estate Management Authority

www.marine.nsw.gov.au

Acknowledgments

This project was funded by the NSW Government under the Marine Estate Management Strategy. The ten-year strategy was developed by the NSW Marine Estate Management Authority to coordinate the management of the marine estate.

www.marine.nsw.gov.au/nsw-marine-estate

Yuin Country

In the development of this strategy, the contributing agencies and local governments acknowledge the First People of the Yuin Nation as the custodians of this Country, which encompasses the Batemans Marine Park including – Coila Lake, Tuross River, Wagonga Inlet, Corunna Lake, Tilba Tilba Lake, Wallaga Lake and their tributaries. We pay respect to the Elders and honour those who have passed on and those present today. The Yuin Nation have cared for Sea Country for tens of thousands of years and continue to have close connections to the Land and Sea.

This strategy was prepared by DPI-Fisheries staff:

- Emily Messer, Jillian Reynolds and Alex Wray-Barnes.

Officers from the following agencies contributed to the development of the strategy:

- Department of Planning and Environment (Crown Lands, Planning, Water and, Environment and Heritage Group): Danny Bucher, Claire Valis, Kara Robinson, Cherie Parmenter, Aimee Beardsmore, Charity Nichols and Kate Masters.
- Transport for NSW: Nathaniel Jacobs.
- DPI-Fisheries: Mick Bettanin, Carla Ganassin, Norm Lenehan and Shamaram Eichmann.
- Bega Valley Shire Council: Rachel Duczynski.
- Eurobodalla Shire Council: Angie Radford and Cameron Whiting.

Cover image: Wagonga Inlet, part of Batemans Marine Park. Source: *DPI Fisheries – Mick Bettanin*

Images courtesy of: *Mick Bettanin, Emily Messer and Eurobodalla Shire Council; iStock.com/ naravikk, Searsie*

© State of New South Wales through Department of Primary Industries, December 2023. You may copy, distribute, display, download and otherwise freely deal with this publication for any purpose, provided that you attribute the Marine Estate Management Authority as the owner.

Disclaimer: The information contained in this publication is based on knowledge and understanding at the time of writing. 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 author or the user's independent adviser.

Executive summary



The Domestic Waterfront Structures Land Owner's Consent Strategy (DWS) provides a new streamlined approach to assessing and granting Land Owner's Consent (LOC) for domestic waterfront structures in Coila Lake, Tuross River, Wagonga Inlet, Corunna Lake, Tilba Tilba Lake, Wallaga Lake and their tributaries.

LOC is needed before a development application for domestic waterfront structures – jetties, pontoons and boat ramps – can be lodged with local government. Until now, NSW Government agencies have assessed LOC requests on a case-by-case basis that has often required referral letters from multiple NSW Government agencies. This approach resulted in double handling, costly inefficiencies and ineffective outcomes.

This strategy streamlines the LOC assessment process by clearly and strategically mapping the waterfront of BMP estuaries to show locations that are suitable or not suitable for LOC, and why. It uses a 'traffic light' system to categorise the suitability of a location for obtaining LOC for a domestic waterfront structure.

The categories are shown on an [online map](#) of the BMP estuaries:

- **GREEN** shows where an application for LOC can be submitted to DPE-Crown Lands without referral letters from other NSW Government agencies. The development must still comply with the most recent version of DPE-Crown Lands *Domestic waterfront licences - guidelines* (DWF Guidelines).
- **ORANGE** shows locations that LOC will be assessed by all relevant agencies on the basis of information submitted by the proponent to ensure the structure has been located and designed in site-specific ways to minimise threats and risks to the social, cultural, economic and environmental values of the site and adjacent environments.
- **RED** shows locations that would not obtain LOC because the structures would be inconsistent with existing legislation, policies and guidelines due to the certainty of unacceptable threats and risks to social, cultural, economic or environmental value of the marine estate.

This new traffic-light approach integrates NSW legislation and long-standing public policies. It provides more certainty to all users of the marine estate as it provides robust and transparent consideration of all potential social, cultural, economic and environmental impacts of new domestic waterfront structures before their development. It also facilitates more efficient planning and regulation as the locations of new domestic waterfront structures may be anticipated. The steps involved after obtaining LOC, such as those for lodging a development application with local government, are detailed in an appendix to this document.

The DWS was funded by the NSW Government under Initiative 2 of the *Marine Estate Management Strategy 2018–2028* (MEMS): 'delivering healthy coastal habitats with sustainable use and development'. Outputs of other MEMS actions and initiatives that are concurrently underway also inform this strategy.

As the actions progress, the data that informed this strategy will be updated and support minor revisions. This strategy for the estuaries of BMP will be the second DWS in a NSW Marine Park, so it will continue to set

the foundations for the development of more strategies in other NSW estuaries also within Marine Parks. This coordinated and strategic approach will minimise negative impacts of waterfront development on coastal habitats, reduce conflict between waterway use activities and inform consistent waterfront decision-making processes in NSW.

The DWS aims to address the threats of waterfront development to environmental assets of the marine estate identified in the statewide Threat and Risk Assessment (TARA). These threats included: lack of compliance, loss of public access to the waterfront, and overly complex yet inadequate and inefficient regulatory regimes.

The DWS was developed by Department of Primary Industries Fisheries in collaboration with four areas of the Department of Planning and Environment (DPE- Crown Lands, DPE-Planning, DPE-Environment and Heritage Group and DPE-Water), Transport for NSW, Bega Valley Shire Council and Eurobodalla Shire Council. Promoting the integration of public authority roles in managing the marine estate is one of the key objectives in the *Marine Estate Management Act 2014* (MEM Act).



Contents

Executive summary	i
1 What this strategy does	1
1.1 The marine estate	2
1.2 Links to other marine estate projects	3
1.3 Streamlining the Land Owner’s Consent process.....	3
1.4 Types of structures considered by this strategy	5
Types of domestic waterfront structures not considered by this strategy	6
Renewal of existing structures	6
Unauthorised structures.....	7
1.5 Extent of this strategy in Batemans Marine Park estuaries	7
2 The decision model	8
2.1 Land tenure	11
2.2 Marine parks and aquatic reserves	12
2.3 State Environmental Planning Policy (Resilience and Hazards) 2021.....	13
2.4 Key Fish Habitat.....	13
2.5 Oyster aquaculture and commercial fishing areas.....	14
2.6 Navigation hazards and safety assessments	15
3 Design requirements of new domestic waterfront structures	16
4 References	17
Appendix A. Approval Pathway Following Land Owner’s Consent	18
A.1 State agency permits	20
Permits issued by DPI-Fisheries	20
Permits issued by DPE-Water	20
A.2 Local government authorities	21
Local Environmental Plans.....	21
Development Control Plans	21
Bega Valley Shire and Eurobodalla Shire Councils	22
A.3 Crown Lands Licence	22
Appendix B. Glossary of Abbreviations	23

1 What this strategy does



The Domestic Waterfront Structures Land Owner's Consent Strategy (DWS) provides a new streamlined approach for NSW Government agencies to assess and grant Land Owner's Consent (LOC) for domestic waterfront structures in Batemans Marine Park (BMP) including Coila Lake, Tuross River, Wagonga Inlet, Corunna Lake, Tilba Tilba Lake, Wallaga Lake (herein referred to as BMP estuaries). LOC is needed before a development application can be lodged with local government under clause 23(1)(b) of the Environmental Planning and Assessment Regulation 2021. The steps after LOC is obtained are described in Appendix A.

A key part of the DWS is an [online map](#) that shows people which areas of the waterfront are suitable, or are not suitable for LOC and why.

[Click here to view the online map of the Batemans Marine Park estuaries](#)

This new, multi-agency approach supports existing government compliance processes and policies. It aims to better regulate existing structures and reduce the number of unauthorised domestic waterfront structures.

It has several benefits for users of the Marine Estate:

- It synthesises the legislative and policy requirements for LOC applications for applicants and agencies assessing applications on a case-by-case basis.
- It helps NSW Government agencies consider all potential social, cultural, economic and environmental impacts of a new domestic waterfront structure before approving LOC.
- It helps NSW Government agencies better regulate new domestic waterfront structures, consistent with local government Coastal Management Programs.
- It gives people certainty by showing them where new domestic waterfront structures could be built and where they are not consistent with existing NSW Government legislation and policies.
- It helps the community understand where there are areas that are unsuitable for domestic waterfront structures due to the certainty of unacceptable impacts.

The DWS streamlines LOC applications by reducing the need for case-by-case assessment by NSW Government agencies

1.1 The marine estate

The marine estate is one of the most significant natural resources in NSW. It includes tidal rivers, estuaries and wetlands, beaches, dunes, headlands and rock platforms, submerged lands, offshore islands, and the waters of the NSW coast to three nautical miles offshore.

Use of the marine estate is intensifying. More than six million people live within 50 kilometres of the NSW coastline, and the population is increasing by 1–2% a year. These residents and the many visitors to the marine estate generate billions of dollars each year for NSW and the Australian community.

The NSW Government's broad vision for the NSW marine estate is:

'a healthy coast and sea, managed for the greatest wellbeing of the community, now and into the future'

The *Marine Estate Management Strategy 2018–2028* (MEMS) aims to deliver this vision through coordinated management of the marine estate and the values it provides.

The MEMS was developed via a five-step decision-making process:

1. Find out how the community derives economic, social and environmental benefits from the marine estate.
2. Identify the threats and risks to those benefits based on expert advice and community views.
3. Assess current management arrangements to see where action is needed to reduce priority threats and to enhance community benefits.
4. Develop management options that will reduce the priority threats and risks and that are cost-effective.
5. Be accountable. Monitor, evaluate and report on the effectiveness of the management options to ensure they are working.

Step 2 involved the development of the marine estate Threat and Risk Assessment (TARA), which used an evidence-based approach, and community and government agency consultation, to identify priority threats to environmental assets and to the social, cultural and economic benefits of the marine estate.

The priority key threats and risks identified in the TARA informed development of the MEMS. Priority threats identified in the TARA being addressed by the DWS include:

- clearing of riparian vegetation
- lack of compliance with regulations
- loss of public access to foreshores and waterways from foreshore development
- inadequate and inefficient regulation
- over-regulation.

These threats are identified in an action under MEMS Initiative 2: 'the development of domestic waterfront land owner's consent strategies'. The objective of Initiative 2 is:

To protect coastal and marine habitats and associated species and enhance the health of the marine estate by improving the design, quality and ongoing management of foreshore development, use and waterway infrastructure.

The DWS addresses the priority environmental, social, cultural and economic threats of waterfront development in the MEMS Initiative 2.

It is envisaged that the DWS would be the primary tool for relevant regulatory authorities when assessing and authorising domestic waterfront structures.

The DWS supports a strategic approach to assessing and planning for the most appropriate location of domestic waterfront structures. The benefits of this approach are that it:

- minimises negative impacts on coastal habitats
- minimises conflict with other waterfront or waterway user activities
- provides timely and comprehensive advice to waterfront landholders.

1.2 Links to other marine estate projects

The development of an estuary-specific DWS is informed by the outputs of other MEMS actions:

- **Marine vegetation management strategies**

This action aims to manage mangrove and saltmarsh systems (intertidal marine vegetation) by developing estuary-specific management responses that reduce the threats and risks to these systems and maximise their resilience. It prioritises areas with the highest potential for intertidal marine vegetation and promotes interventions that will be meaningful and cost effective. The high priority areas, termed intertidal marine vegetation priority areas, have been used to guide the assessment and mapping outcomes of the DWS.

- **Mapping seagrass, mangrove and saltmarsh**

This action involves updating the [Fisheries Spatial Data Portal](#) with the most recently mapped extent of seagrass, mangrove and saltmarsh habitats. This latest mapping is used to guide the assessment and decision-model outcomes of this strategy. The mapped cumulative extent (over several years) will also be used to map change in coverage due to seasonal and other conditions.

- **Bank management strategies**

This action identifies estuarine areas prone to erosion. It recommends site-specific, best-practice erosion treatment options as environmentally sensitive alternatives to hard structures such as vertical rock walls.

- **Updating Coastal Design Guidelines**

This action is reviewing and updating the [Coastal Design Guidelines 2003](#). The updated Guidelines will promote best practice in urban design. It will inform the development of designs and layouts that are more sensitive to the unique natural and urban characteristics of coastal environments in NSW. It will also guide assessment and decision making for reducing negative impacts of existing infrastructure.

- **Aboriginal management of Sea Country**

Aboriginal people have held a special connection to Sea Country for thousands of years. Over this time, they have effectively managed and cared for Sea Country to ensure it remains a sustainable resource to be shared. This action involves Aboriginal community members in activities that directly affect the health of the marine estate. These caring for Sea Country activities include marine debris clean up, native plant revegetation and monitoring and protecting special cultural sites along the NSW coast.

- **Oyster reef restoration**

This action involves building a picture of current shellfish reefs in NSW by mapping remnant and contemporary reefs in priority estuaries across the state. Knowledge of where shellfish reefs exist will inform the broader objectives of this action: to deploy large-scale oyster reef restoration projects to restore the valuable ecosystem services that shellfish reefs provide.

In accordance with step 5 of the decision-making process, this strategy will be reviewed every 10 years to monitor, evaluate and report on the effectiveness of the management action. We expect the DWS and associated maps to be updated as more data become available from these and other MEMS actions.

1.3 Streamlining the Land Owner's Consent process

In NSW, Crown land covers 42% of the state and includes most waterways, rivers, riverbeds and lakes. Crown land is public land – it is administered by the NSW Government on behalf of the community. As most domestic waterfront structures are on land below the mean high water mark, most domestic waterfront development proposals will need to obtain LOC from the NSW Government agency that administers Crown land. That agency is the Department of Planning and Environment – Crown Lands (DPE-Crown Lands).

This strategy has streamlined the LOC process as outlined in steps 1 and 2 in Figure 1.

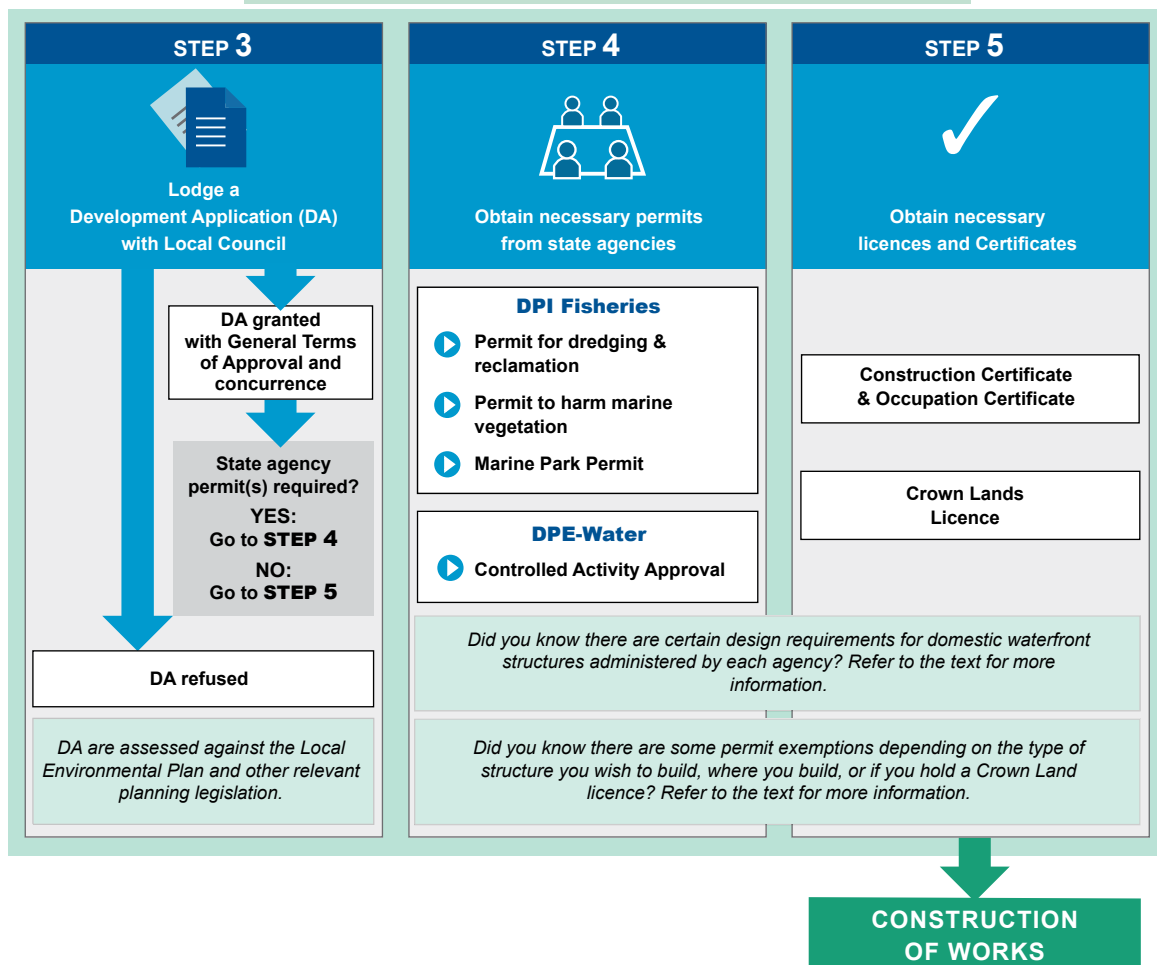
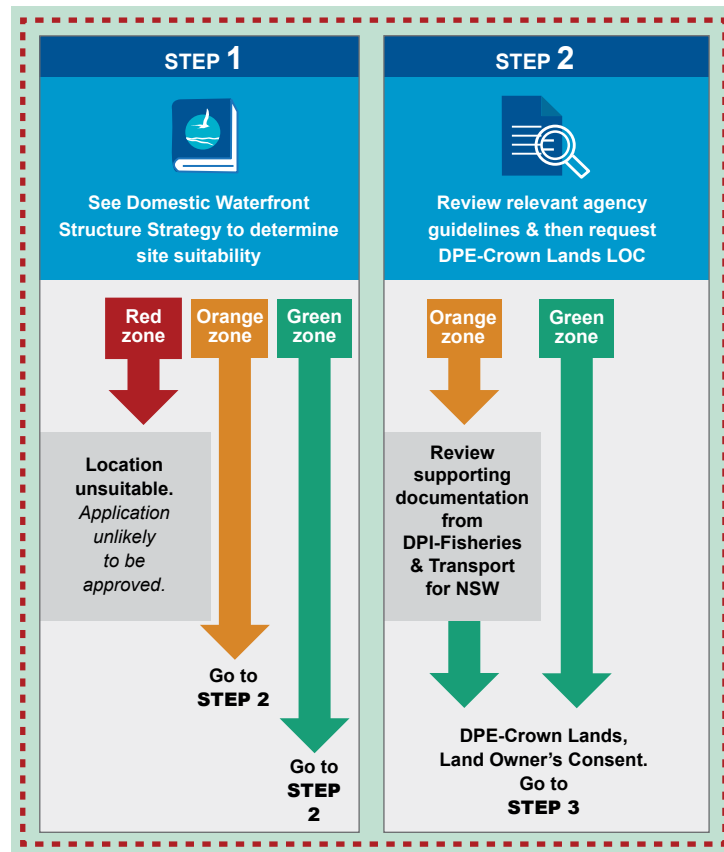


Figure 1. The entire approval pathway for new domestic waterfront structure proposals. The DWS streamlines the LOC process in steps 1 and 2 (shown with a red border). The development application process (steps 3, 4 and 5) begins once LOC from DPE-Crown Lands has been obtained. See Appendix A for an outline of steps 3–5.

Proposals for new domestic waterfront structures in **GREEN** zones will be assessed in accordance with DWF Guidelines, while those in **ORANGE** zones need to comply with DPI-Fisheries and Transport for NSW (TfNSW) design guidelines.

Table 1. The two steps of the new LOC process

STEP	DESCRIPTION
<p>Step 1</p>	<p>Use the DWS Decision Model (section 3) and online map to determine site suitability for LOC. This shows you which zone the proposed development is located in and whether or not the proposed site is suitable:</p> <ul style="list-style-type: none"> • GREEN zone or ORANGE zone – the site is potentially suitable • RED zone – the site is not suitable. <p>If any part of the proposed domestic waterfront structure or associated works is on Crown land below the mean high water mark, LOC from DPE-Crown Lands is required. LOC is required even if part of the structure will be on adjoining privately owned waterfront land.</p> <p>The advice of a conveyancer or registered surveyor could be needed to determine the property boundary and land ownership in the zone. This is an important part of the approval process.</p>
<p>Step 2</p>	<p>Review DWF Guidelines for proposals of new structures located in GREEN zones, and DPI-Fisheries and TfNSW design guidelines for proposals of new structures located in ORANGE zones (section 4).</p> <p>If the proposed site is in a GREEN zone, DPE-Crown Lands will not require supporting information from other agencies. You can apply straight to DPE-Crown Lands (see section 4).</p> <p>If the proposed site is in an ORANGE zone, the LOC application to DPE-Crown Lands will require support for the LOC from two agencies:</p> <ul style="list-style-type: none"> • DPI-Fisheries – apply by email to: ahp.central@dpi.nsw.gov.au • Transport for NSW (TfNSW) – apply by email to: navsouth@transport.nsw.gov.au • Each of these agencies will review the application. If the agency is satisfied that the proposal meets policies and guidelines, it will provide a letter of ‘no objection’ for an application of LOC being issued. The two letters (one from each agency) will need to be attached to the LOC application to DPE-Crown Lands. <p>The LOC application form is available from the DPE-Crown Lands website.</p>

1.4 Types of structures considered by this strategy

The DWS applies to:

- new domestic waterfront structures associated with a private or domestic residence (including residences that are leased for short or longer terms) that are located wholly or partly below the mean high water mark
- existing authorised domestic waterfront structures that require re-licencing.

The specific types of domestic waterfront structures assessed against this strategy are listed in Table 2. The list includes the types of structures that will be considered for assessment in the most recent edition of DPE-Crown Lands *Domestic waterfront licences - Guidelines* (DWF).

Note: the DWF Guidelines describe the listed items as ‘domestic waterfront facilities’. This strategy uses the term ‘domestic waterfront structures’ because only a subset of facilities covered by the DWF guidelines are managed by this strategy.

Table 2 includes design requirements for specific structures, for instance, boat ramps and slip rails need to conform to the natural shape of the riverbank if they are to be considered for LOC. Jetties need to be on piles, and solid fill jetties are unacceptable. See section 4 for more information about design guidelines.



Table 2. The subset of domestic waterfront facilities assessed by this strategy and their definitions

STRUCTURE	DEFINITION
Boat ramp (including skid ramps) that conforms to natural shoreline levels	A structure designed to launch and retrieve recreational vessels from a domestic property. The structure conforms to natural shoreline levels and does not significantly obstruct practical public access.
Sliprail/slipway that conforms to natural shoreline levels	This domestic structure usually consists of two support parallel rails on which a wheeled cradle is run to draw a vessel by means of a powered or manual winch, a block and tackle or the like. The structure conforms to natural shoreline levels and does not significantly obstruct practical public access.
Jetty, wharf or, pier	A horizontal, decked walkway that provides access from the foreshore of a domestic property to the waterway. It is generally constructed on a pier or piled foundation. Such structures may also include infrastructure that is essential for access to other domestic waterfront facilities such as ramps, decking, or steps.
Pontoon	A floating structure used for access to the water that is supported by a jetty, wharf, ramp, catwalk or gangway.
Approved berthing area	An area of water allocated for the on-water storage of vessels adjacent or attached to a fixed or floating structure. It allows for walk-on access to the vessel. Berthing areas must be approved berthing areas in a DPE-Crown Lands domestic waterfront licence.
Mooring pen	An arrangement of freestanding piles or other restraining devices that are designed or used for the purpose of berthing a vessel. As for other berthing areas, mooring pens must be approved within a DPE-Crown Lands domestic waterfront licence.
<p>NOTE: Under the DWF Guidelines, some ancillary works associated with the installation of these structures (such as works that are best-practice approaches to managing eroding foreshores) may be assessed against this strategy on a case-by-case basis. Where they are available, estuary-wide Bank Management Strategy assessments will be used to inform decisions about implementing best management practices in riverbank remediation. In estuaries without a Bank Management Strategy, bank protection and erosion treatment proposals will be assessed against relevant legislation and government policies such as Environmentally Friendly Seawalls (OEH 2009) on a case-by-case basis.</p>	

Types of domestic waterfront structures not considered by this strategy

This strategy does NOT apply to:

- public facilities
- privately owned and managed large commercial structures (such as marina developments)
- domestic waterfront structures located on local government owned and managed land unless otherwise stated
- waterfront structures identified on the list: 'waterfront structures not acceptable on Crown land' on page 3 of the DWF Guidelines.

Renewal of existing structures

The process for renewing existing domestic waterfront licences is outlined in the DWF Guidelines:

- Domestic waterfront licences issued by DPE-Crown Lands for the use and occupation of Crown land below the mean high water mark are granted for up to 20 years.
- Licences may be revoked by DPE-Crown Lands at any stage without compensation.
- Licence holders are responsible for ensuring that they comply with the terms and conditions of the licence agreement, including any requirements to remove or seek authorisation for unauthorised structures.

Some reserve-front domestic waterfront structures that have been authorised in the past are in areas where they impact on social, cultural, economic and environmental values. Under the DWF Guidelines, existing domestic waterfront facilities may remain if:

- there are minimal impacts of the domestic waterfront facility on the natural environment in the area
- public access needs are reasonably provided for within the wider area
- there are no obstructions to accessing public space.

The guidelines also caution that, because reserve waterfront occupations adjoin public land, it may be difficult for licensees to obtain public liability insurance, which is a requirement of a domestic waterfront licence agreement. When these licences expire, DPE-Crown Lands will review the condition of the structures. If the structures are derelict or in a poor or unsafe condition, the licence holder will be instructed to remove the structures at their own cost. DPE-Crown Lands can order removal prior to the expiration of the licence if evidence is available that the structures pose a health or safety risk to the public.

Unauthorised structures

All structures on Crown public land require a licence agreement. Unauthorised structures are referred to the DPE-Crown Lands Compliance Unit for assessment. The most common example is a domestic waterfront structure that has been erected or altered without the consent of the DPE-Crown Lands, local government, DPI-Fisheries or TfNSW. These structures may also become the subject of investigations or compliance action by those departments. The Crown Lands Compliance Strategy 2020–2023 prioritises a review of Crown waterfront tenures and the area they occupy. It recognises the need to ensure private use is balanced with the public's right to waterfront access.

As an initial response to unauthorised structures, DPE-Crown Lands may either:

- issue a new short-term licence for the total area of occupation
- require the licence holder to alter their existing licence if the area of occupation has been reduced.

DPE-Crown Lands will note details of the unauthorised structure(s) in the licence agreement and the licence holder must then seek the consent of all relevant authorities to legalise the occupation. The structures must be removed if either:

- the unauthorised structures are not permissible under this strategy
- consent cannot be obtained from the relevant authorities.

Removal is at the licence holders' cost, noting that DPE-Crown Lands may serve an order to have the unauthorised structures removed.

1.5 Extent of this strategy in Batemans Marine Park estuaries

This strategy applies to land subject to NSW legislation and guidelines in the tidal extent of land of the Southern BMP estuaries (Figure 2). Where the bed of an estuary is owned by NSW National Parks and Wildlife Services (NPWS), they have been excluded from this strategy. Approval to construct a new domestic waterfront structure must be sought from NPWS prior to the submission of a development application. In total, estuaries considered in this strategy have a combined waterway length of approximately 45 kilometres, a waterfront length of 360 kilometres, and an estuary area of approximately 45 square kilometres.

BMP is a special place to the local community and is highly valued for its natural, cultural and ecological attributes.

Key management issues for the estuaries include estuarine habitat impacts to the key management issues, riparian vegetation clearing, water quality, flooding, erosion, limited foreshore access and user conflict. As land use changes throughout the catchment, there is the opportunity to improve land use planning to address estuary health by making strategic decisions about the use of waterfront Crown land and in the Marine Park.

2 The decision model



This strategy adopts a user-friendly ‘traffic light’ system to clearly categorise the suitability of a location for obtaining LOC for a domestic waterfront structure.

Table 3 describes the categories assigned to the waterfront. These categories are clearly illustrated on the estuary-wide scale map of the BMP estuaries (Figure 3), which can also be interrogated at the scale of a single lot using the [online map](#).

Table 3. Decision-model zones for waterfront locations and their descriptions

DESCRIPTION	
RED	Waterfront locations where LOC for a domestic waterfront structure is inconsistent with existing legislation and policies due to the certainty of unacceptable impacts on social, cultural, economic or environmental value. An application for LOC for a new structure in this area would not be supported except in the rare instance that the subject property is water-access-only.
ORANGE	Waterfront locations where more site-specific assessment will be required if a proposal for LOC is submitted. LOC will depend on the assessment of further information. This is a merit based assessment designed to ensure the proposed structure has been located and designed in site-specific ways to minimise, to acceptable levels, threats and risks to social, cultural, economic and environmental values of the site and adjacent environments.
GREEN	Waterfront locations where NSW Government agencies agree, based on the available information for the DWS, that issuing LOC for a domestic waterfront structure is consistent with the NSW Government legislation and policies. In these areas, applications must still conform to DWF Guidelines (section 4). Applications are still subject to a merit-based assessment, however, do not need referral letters from DPI-Fisheries and TfNSW to submit their application for LOC.

Proposals for LOC are assessed by three separate NSW Government agencies: DPE-Crown Lands, DPI-Fisheries and TfNSW.

In this strategy, areas of waterfront within BMP estuaries were assigned to **ORANGE** or **RED** categories based on an assessment of each location against the legislation, policies and guidelines used by these agencies to assess LOC proposals.

The assessment criteria informing the mapping are summarised in Table 4. If one or more assessment criteria are applicable to a location, the attribute table in the [online map](#) indicates the 'Primary reason'. An example is shown in Figure 2.

Public land was the most common criteria for waterfront areas being mapped **RED** in BMP. Areas mapped **ORANGE** were predominantly due to the estuaries being within a marine park.

All legislation is available on the [NSW Legislation website](#). Relevant policies and guidelines are referenced and linked in the sections below.

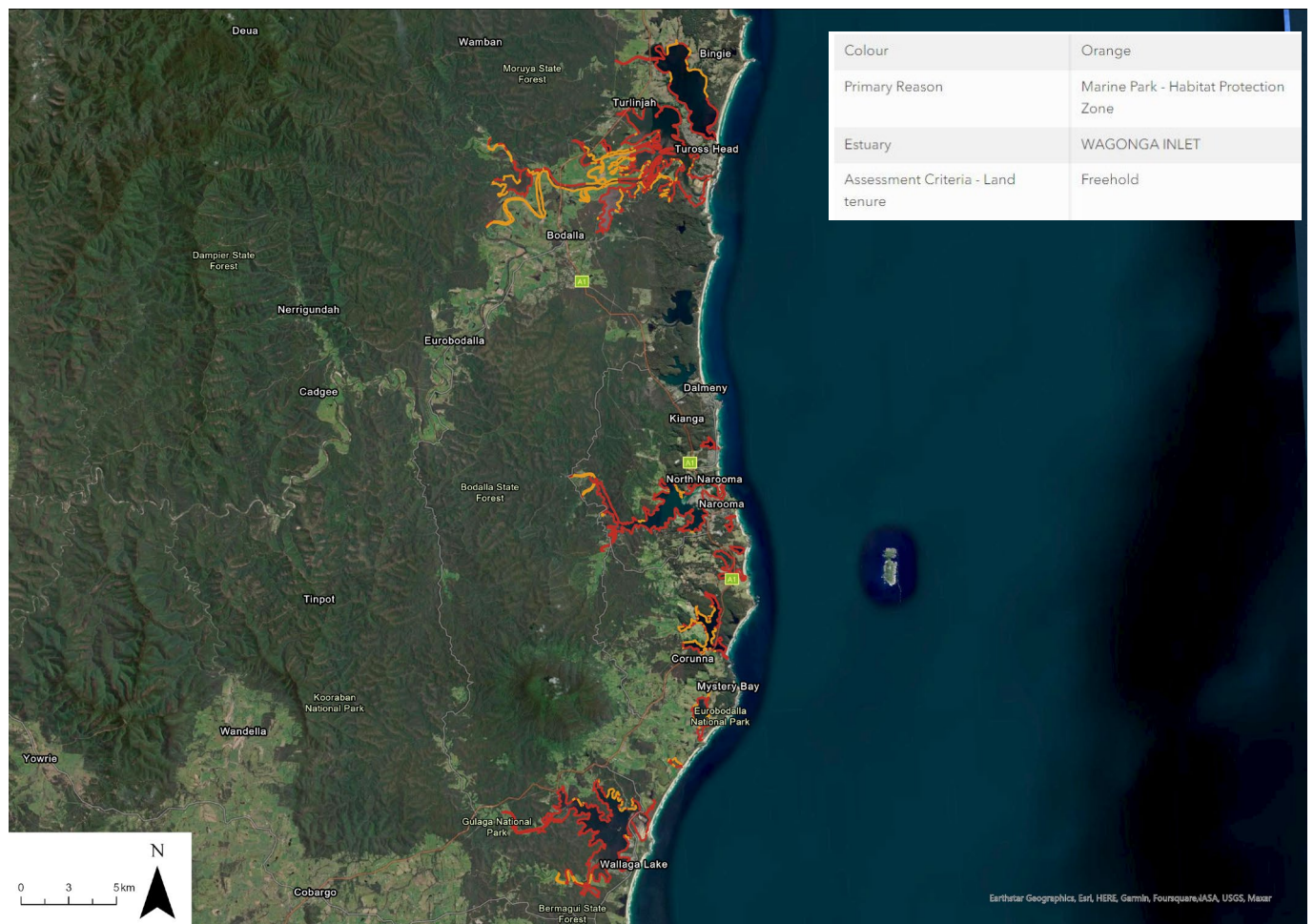


Figure 2. A map of this strategy's subject area of the BMP depicting the 'traffic light system of **RED** and **ORANGE** along the waterfront, including an example of the attribute table providing for interrogation lot-by-lot scale using the [online map](#) also available on the [Fisheries Spatial Data Portal](#).

Table 4. Land Owner’s Consent assessment criteria informing the decision model

LOC ASSESSMENT CRITERIA	SECTION IN THE STRATEGY	MAPPED COLOUR
Waterfront land tenure		
Public land	2.1	RED
Marine parks and aquatic reserves		
Sanctuary zone	2.2	RED
Habitat protection zone	2.2	ORANGE
General use zone	2.2	ORANGE
Special purpose zone	2.2	ORANGE
State Environmental Planning Policy (Resilience and Hazards) 2021		
Coastal wetland or littoral rainforest	2.3	RED
Proximity area of coastal wetland or littoral rainforest	2.3	ORANGE
Key Fish Habitat		
Mapped known continuous or expected seagrass habitat – that is >5 m ² – and occurs within a 5 m buffer of the anticipated footprint of a standard jetty or pontoon structure	2.4	RED
Seagrass habitat <5 m ² in area. Mapped or known mangroves, saltmarsh, oyster reefs. Areas within 100 m of mapped known continuous or expected seagrass habitat that is >5 m ² .	2.4	ORANGE
Oyster aquaculture and commercial fishing areas		
Priority oyster aquaculture areas	2.5	RED
Commercial fishing areas	2.5	ORANGE
Navigation hazards and safety assessments		
TfNSW estuary-wide assessment	2.6	ORANGE



2.1 Land tenure

Land tenure affects two zones: **RED** and **GREEN**.

RED zones include public land such as reserved Crown land, Crown roads or other public land such as a local government road or reserve in waterfront areas (Figure 3a). **RED** zones also include freehold lots that adjoin Crown land, such as a public reserve. This is because domestic waterfront structures in the reserve reduce public access and use of the public reserve.

GREEN zones include locations where:

- the proponent has title to the area above, and abutting the mean high water mark
- the landward part of the structure is located on this freehold property (Figure 3b)
- no other criteria listed in Table 4 apply.



Figure 3a. Example of Crown land public reserve adjacent to the waterfront

Source: Google Earth Pro, NSW Globe by NSW Government Spatial Services



Figure 3b. Example of freehold lots, adjacent to the waterfront, where no other criteria listed in Table 3 apply

Source: Google Earth Pro, NSW Globe by NSW Government Spatial Services

Applications for LOC must include a survey showing the position of the proposed structure in relation to the mean high water mark. It must include documents providing proof of freehold title to the mean high water mark.

Some properties are determined by fixed title boundaries that extend below the mean high water mark. In such cases, LOC from DPE-Crown Lands is not required when the whole of the footprint of the domestic waterfront structure lies within the fixed freehold property boundary.

The following legislation and policy inform the LOC assessment of waterfront land tenure:

- *The Crown Land Management Act 2016* (CLM Act) and the Crown Land Management Regulation 2018. DPE-Crown Lands considers the impact of the proposed domestic waterfront structure on the objects of the CLM Act, particularly the impacts on public safety, use and enjoyment of the waterway and adjacent, public waterfront areas.
- DWF Guidelines indicate DPE-Crown Land's objectives, criteria and requirements for the occupation or use of Crown land for the purpose of a domestic waterfront structure. These guidelines also indicate the types of domestic waterfront structures that DPE-Crown Lands will not accept new applications.
- *Native Title Act 1993* (NT Act). Native title is the name that Australian law gives to the communal, group or individual rights and interests of Aboriginal peoples in relation to certain lands or waters. The Commonwealth sets out how native title rights are to be recognised and protected. DPE-Crown Lands assesses LOC applications for new domestic waterfront structures for consistency with the NT Act.
- *The Aboriginal Land Rights Act 1983* (ALR Act) recognises the rights of Aboriginal people in NSW. DPE-Crown Lands is responsible for investigating Aboriginal land claims against statutory criteria outlined in s 36 of the ALR Act, and assessing LOC applications for new domestic waterfront structures for consistency with the ALR Act. The Aboriginal land claims fact sheet is on the DPE-Crown Lands [website](#).
- *Policy and Guidelines for fish habitat conservation and management 2013* (DPI-Fisheries P&G). DPI-Fisheries assess LOC applications for new domestic waterfront structures for consistency with the DPI-Fisheries P&G. Section 5.1.2 of the DPI-Fisheries P&G states that DPI-Fisheries will generally not support private foreshore works where the proponent does not own the land to the mean high water mark or the development could restrict access to public land.

2.2 Marine parks and aquatic reserves

Marine parks and aquatic reserves are special areas set aside under the *Marine Estate Management Act 2014* (MEM Act) to principally conserve marine biodiversity. DPI-Fisheries manages six marine parks (Cape Byron Marine Park, Solitary Islands Marine Park, Port Stephens-Great Lakes Marine Park, Lord Howe Island Marine Park, Jervis Bay Marine Park and Batemans Marine Park) and 12 aquatic reserves (Cook Island, Bushrangers Bay, and 10 locations within the Sydney Metropolitan Area).

Marine parks and aquatic reserves are categorised into two zones: **RED** and **ORANGE**

- **RED** zones include marine park sanctuary zones
- **ORANGE** zones include habitat protection zones, general use zones, and special purpose zones.

An application for LOC for any structure in an **ORANGE** zone in a marine park will be assessed on a case-by-case basis. Generally, approval will be considered only if the structures conserve and enhance environmental

outcomes by adopting best practice at all stages of design, construction, operation, and maintenance. Structures must not impact negatively on native riparian vegetation, fish habitat, water quality or other social, cultural or economic uses or values of the area. Structures will require a marine park permit before construction. Marine park permits are administered by DPI Fisheries.

The following legislation and policy inform the LOC assessment of waterfront locations in marine parks:

- Section 22 of the MEM Act states that the primary purpose of a marine park is to conserve the biological diversity and maintain ecosystem integrity and ecosystem function of bioregions in the marine estate.
- The Marine Estate Management Regulation 2017 (MEM Regulation) determines that applications for a marine park permit are subject to specific assessment criteria outlined in clause 9 of the MEM Regulation.
- Marine park management rules established in the Marine Estate Management (Management Rules) Regulation 1999 provide additional park-specific provisions that may apply at the site of the proposed works.



2.3 State Environmental Planning Policy (Resilience and Hazards) 2021

State Environmental Planning Policy (Resilience and Hazards) 2021 (RH SEPP) provides management objectives for the coastal zone. It maps the coastal zone as four coastal management areas via [Coastal Management area mapping](#). The RH SEPP also specifies assessment criteria and development controls for those management areas that consent authorities must consider when assessing proposals for LOC.

This strategy includes coastal management areas in its **RED** and **ORANGE** zones.

- **RED** zones include 'Coastal Wetland or Littoral Rainforest' management areas.
- **ORANGE** zones include 'Proximity Areas for Coastal Wetland or Littoral Rainforest'.

If an LOC is issued for a proposal in a Proximity Area, the consent authority (usually the local council) will need to make a further assessment at the development approval stage. The authority must be satisfied that the proposed development will not significantly impact:

- the biophysical, hydrological or ecological integrity of the adjacent coastal wetland or littoral rainforest
- the quantity and quality of surface and groundwater flows to and from the adjacent coastal wetland or littoral rainforest.

The following legislation informs the LOC assessment of waterfront locations in RH SEPP areas:

- *Environmental Planning and Assessment Act 1979* (EP&A Act) states how the rules affecting development are made and how development is assessed against those rules. The EP&A Act sets up the RH SEPP as an environmental planning instrument for the purpose of state or regional environmental planning.
- *Coastal Management Act 2016* (CM Act) defines the coastal zone and specifies objectives for the coastal zone including objectives for the coastal wetlands and littoral rainforest management areas.

2.4 Key Fish Habitat

The DPI-Fisheries P&G identifies Key Fish Habitats (KFH), which are habitats that are crucial to the survival of native fish stocks. KFH type and level of sensitivity is described in section 3.2.1 of the DPI-Fisheries P&G.

This strategy includes KFH types in its **RED** and **ORANGE** zones.

RED zones include:

- Areas with Type 1 KFH seagrass habitat >5 m² that is known continuous or expected, based on historical distributions mapped on [Fisheries Spatial Data Portal](#). Also a 5-metre buffer from these seagrass habitats and between the anticipated footprint of a standard jetty or pontoon structure. Seagrass includes the following species:
 - Posidonia (*Posidonia australis*)
 - eelgrass (*Zostera* spp.)
 - paddleweed (*Halophila* spp.)
 - sea tassel (*Ruppia* spp.).
- Locations of continuous healthy seagrass habitats in accordance with the DPI-Fisheries P&G (Policy 3.2.3.2 – 11) where mapping has not been updated.

ORANGE zones include:

- Within a 100 metre buffer to areas of continuous seagrass habitat identified as red zone (above)
- Other Type 1 KFH, including saltmarsh habitat types (>5 m²) and areas mapped on [Fisheries Spatial Data Portal](#), or as described in the DPI Fisheries P&G
- Type 2 KFH, including mangroves and more fragmented areas of either seagrass or saltmarsh habitat types
- Priority areas mapped in estuary-specific MEMS marine vegetation strategies (see section 2.2)
- Areas with shellfish reefs mapped by the MEMS oyster reef restoration action (see section 2.2) or areas not yet mapped but which include dense aggregations of shellfish (oysters or mussels) in patches greater than 5 m² in size, where shellfish are at least two layers thick.

In **ORANGE** zones, applications for LOC will be referred to DPI-Fisheries for assessment that will consider the potential direct and indirect impacts of the proposed domestic waterfront structure on the KFH during construction, use and maintenance of the structure. The intent is to manage risks to KFH.

Direct impacts could include:

- damage to mangroves or riparian vegetation in gaining waterfront access
- seagrass loss and sedimentation caused by piling
- physical changes or habitat loss due to dredging and reclamation and use of silt curtains during construction
- boat propeller scour and spud damage if driving piles from a barge or jetting and casting piles *in situ*
- seagrass loss and sediment disturbance from boat propeller scour from vessels using the facility
- diversions of sediment or water flow due to the presence of structures
- potential for impact to seagrass caused by the shading of the structure.

Indirect impacts may include:

- changes of flow direction and velocity
- habitat fragmentation and restriction of migration of marine communities, particularly seagrasses including *Posidonia*, *Zostera*, *Halophila* and *Ruppia*
- increased turbidity during construction or in the longer term where pontoons or moored vessels abut substrate at low tide.

Any new waterfront proposals or activities that are deemed to pose risk to KFH must avoid impacts, as the priority, then mitigate any remaining impacts.

For example, it might be necessary to reposition the domestic waterfront structure to an area that would pose no harm, or minimal harm, to marine vegetation. DPI-Fisheries would consider providing a letter of 'no objection' for an application of LOC if it is possible to modify a proposal to avoid direct impacts on KFH.

The following legislation, policy and guidelines inform the LOC assessment of waterfront locations in proximity to KFH:

- *Fisheries Management Act 1994* (FM Act) has a primary objective to conserve fish stocks and KFH.
- The MEM Act has an objective to manage for ecologically sustainable development that promotes a biologically diverse, healthy and productive marine estate that facilitates ecological integrity, social, cultural and economic opportunities.

- The DPI-Fisheries P&G identifies KFH that are crucial to the survival of native fish stocks. The P&G classifies KFH into three types based on sensitivity in terms of both the 'importance' of the habitat to the survival of fish and the habitat's 'robustness' (i.e. the ability of the habitat to withstand disturbance from impacts such as development, including construction and operational impacts). More information about KFH classification is available in section 3.2.1 of the DPI-Fisheries P&G.
- [Fisheries Spatial Data Portal](#).

2.5 Oyster aquaculture and commercial fishing areas

Priority Oyster Aquaculture Areas (POAA) are areas that have been assessed as suitable for aquaculture based on their location, and environmental and socioeconomic suitability criteria.

This strategy includes commercial fishing criteria in its **RED** and **ORANGE** zones:

- **RED** zones include POAA and the adjoining 50-metre buffer
- **ORANGE** zones are areas that may be used by commercial fishers to access waterways and undertake their operations.

Applications for LOC in these **ORANGE** zones will be referred to DPI-Fisheries, which will consider the potential threats and risks of the proposed structures to nearby commercial fishing activities. This includes:

- the works required to construct the structure
- activities involved in the use and maintenance of the structure.

DPI-Fisheries may need to consult commercial fisheries.

The following legislation, policy and guidelines inform the LOC assessment of waterfront locations in proximity to POAA and commercial fishing areas:

- The FM Act has as one of its objectives to conserve, develop and share the fishery resources of NSW for the benefit of present and future generations, including through promoting viable commercial fishing and aquaculture industries.

- DPI-Fisheries P&G (section 5.1.2) indicates that DPI-Fisheries will generally not support or permit domestic waterfront structures that will have a significant impact on commercial fishing activities.
- The [NSW Oyster Industry Sustainable Aquaculture Strategy 2021 \(OISAS\)](#) identifies POAA in estuaries across the state, including a 50-metre buffer around POAA (see 'assessment criteria for POAA in NSW estuaries' Table 5). The OISAS and [DPI Policy Extinguishment of Priority Oyster Aquaculture Area](#) set out the circumstances and process under which a POAA will be extinguished to allow for non-oyster aquaculture-related development.
- DPI-Fisheries [Healthy Estuaries for Healthy Oyster Guidelines 2017](#) (or subsequent updates) provides advice about how to ensure development in close proximity to estuaries is compatible with the requirements of oyster aquaculture.
- *State Environment Planning Policy (Primary Production and Rural Development) 2019*, Division 4 provides for the consideration of effects of proposed development on oyster aquaculture.
- [Fisheries Spatial Data Portal](#).

2.6 Navigation hazards and safety assessments

TfNSW has broad responsibilities for marine safety, regulation of recreational and commercial boating on NSW waterways and certain maritime property and infrastructure functions. Within TfNSW, NSW Maritime is responsible for managing NSW navigable waterways to ensure safe boating and minimise impacts to navigation.

As part of the waterfront assessment for LOC, NSW Maritime assessment included an estuary-wide field assessment and identified one zone: **ORANGE**.

ORANGE zones include any area where proposed domestic waterfront structures may pose a risk or hazard to safe navigation, for example, narrow or shallow waterways.

TfNSW will assess requests for LOC to determine whether the proposed design and site-specific circumstances will result in a domestic waterfront development that does not pose a risk or hazard to safe navigation. If satisfied that the proposal satisfies policies and guidelines, TfNSW will provide a letter of concurrence.

The following legislation and policy inform the navigation hazard and safety assessment of locations for LOC:

- *Marine Safety Act 1998* has at its objects to ensure the safe operation of vessels in waterways, to promote responsible operation of vessels to protect the safety and amenity of other users of those waters and the amenity of occupiers of adjoining land, and to provide an effective framework for the enforcement of marine legislation.
- *Marine Pollution Act 2012* regulates types and causes of marine pollution related to vessel use and operation.
- Regional boating is expected to increase. If this growth were to continue, the likely increased demand for domestic boating facilities will need to be balanced with the suitability of the waterway's physical characteristics and the need to minimise conflicts between different user groups.

3 Design requirements of new domestic waterfront structures



The DWS primarily collects the existing policies and guidelines of relevant NSW Government agencies to determine **GREEN**, **ORANGE** and **RED** zones throughout an estuary to inform where LOC proposals for domestic waterfront structures may be considered.

In locations mapped as **GREEN** no further assessment by DPI-Fisheries or TfNSW is required for domestic waterfront structures during the LOC stage.

In assessing LOC applications for **GREEN** areas, DPE-Crown Lands will assess matters in accordance with [DWF guidelines](#).

Government design guidelines are still considered as part of the development assessment process and are described in policy and guidelines administered by relevant NSW Government agencies. These include:

- Chapter 5 of DPI-Fisheries P&G informs specific measures to protect aquatic habitats, for instance pontoons should have a 0.9-metre depth to the waterway bed at low tide.

- TfNSW assess whether the proposed domestic waterfront structure might affect navigation. TfNSW also requires that structures have minimal impact to the natural amenity and profile of the waterfront. Pre-lodgement advice may be sought from TfNSW to inform design considerations.

It should be noted that proposals will be assessed against these guidelines during the assessment and approval stages and proponents must submit documentation, including plans for the proposed structure, that show how these NSW Government design requirements are being met.

4 References

Bega Valley Shire Council Development Control Plan:
<https://begavalley.nsw.gov.au/services/development-controls>

Bega Valley Shire Council Local Environmental Plan 2013:
<https://legislation.nsw.gov.au/view/html/inforce/current/epi-2002-0364>

Crown Lands Aboriginal land claims fact sheet
<https://www.crownland.nsw.gov.au/protection-and-management/aboriginal-land-rights-and-native-title/aboriginal-land-claims>

Crown Land Management Domestic Waterfront Licences - Guidelines March 2023.
<https://www.crownland.nsw.gov.au/sites/default/files/2022-07/Domestic-waterfront-licences-guidelines.pdf>

Crown Lands landowner's consent for domestic waterfront structures application.
https://www.industry.nsw.gov.au/__data/assets/pdf_file/0007/281581/landowners-consent-for-domestic-waterfront-structures-application.pdf

Crown Lands Compliance Strategy 2020–23
<https://www.industry.nsw.gov.au/lands/what-we-do/management/compliance>

Department of Planning and Environment - Water, Controlled Activities
<https://www.dpie.nsw.gov.au/water/licensing-and-trade/approvals/controlled-activity-approvals>

Department of Planning and Environment - Water, Controlled Activity approval exemptions Fact sheet.
<https://water.dpie.nsw.gov.au/licensing-and-trade/approvals/controlled-activity-approvals/what/guidelines>

Department of Primary Industries, Fisheries. Policy and guidelines for fish habitat conservation and management, 2013.
<https://www.dpi.nsw.gov.au/fishing/habitat/publications/pubs/fish-habitat-conservation>

Department of Primary Industries, Marine Parks Permit Policy
https://www.industry.nsw.gov.au/__data/assets/pdf_file/0008/72719/TIO-165-Marine-parks-permits.pdf

Department of Primary Industries, Healthy estuaries for healthy oysters guidelines, 2017.
https://www.dpi.nsw.gov.au/__data/assets/pdf_file/0009/738972/Healthy-Estuaries-for-Healthy-Oysters-Guidelines.pdf

Department of Primary Industries, NSW Oyster Industry Sustainable Aquaculture Strategy, third edition 2016.
<https://www.dpi.nsw.gov.au/fishing/aquaculture/publications/oysters/industry-strategy>

Department of Primary Industries DPI-Fisheries Estuarine Macrophytes of NSW Estuaries latest mapped extend spatial data, latest update 2020-09-01 on Fisheries Spatial Data Portal:
<https://www.dpi.nsw.gov.au/about-us/science-and-research/spatial-data-portal>

OEH, (Office of Environment and Heritage) Environmentally Friendly Seawalls. A guide to improving the environmental value of seawalls and seawall-lines foreshores in estuaries. 2009.
<https://www.environment.nsw.gov.au/research-and-publications/publications-search/environmentally-friendly-seawalls>

NSW Legislation website
www.legislation.nsw.gov.au

NSW Marine Estate Management Strategy 2018–2028.
<https://www.marine.nsw.gov.au/marine-estate-programs/marine-estate-management-strategy>

NSW Marine Estate Statewide Threat and Risk Assessment, 2017.
https://www.marine.nsw.gov.au/__data/assets/pdf_file/0010/736921/NSW-Marine-Estate-Threat-and-Risk-Assessment-Final-Report.pdf

Eurobodalla Shire Council Development Control Plans
<https://www.esc.nsw.gov.au/property/planning-guides-and-tools/development-control-plans>

Eurobodalla Local Environmental Plan 2012
<https://legislation.nsw.gov.au/view/html/inforce/current/epi-2012-0333>

State Environmental Planning Policy (Resilience and Hazards) 2021 *Coastal Wetlands and Littoral Rainforests Area Map*:
<https://www.planningportal.nsw.gov.au/spatialviewer/#/find-a-property/address>

Appendix A.

Approval Pathway Following Land Owner's Consent

The Domestic Waterfront Structures Land Owner's Consent Strategy informs the assessment of proposed domestic waterfront structures for LOC.

After LOC has been obtained there are three more steps required before construction can begin (Figure A 1).

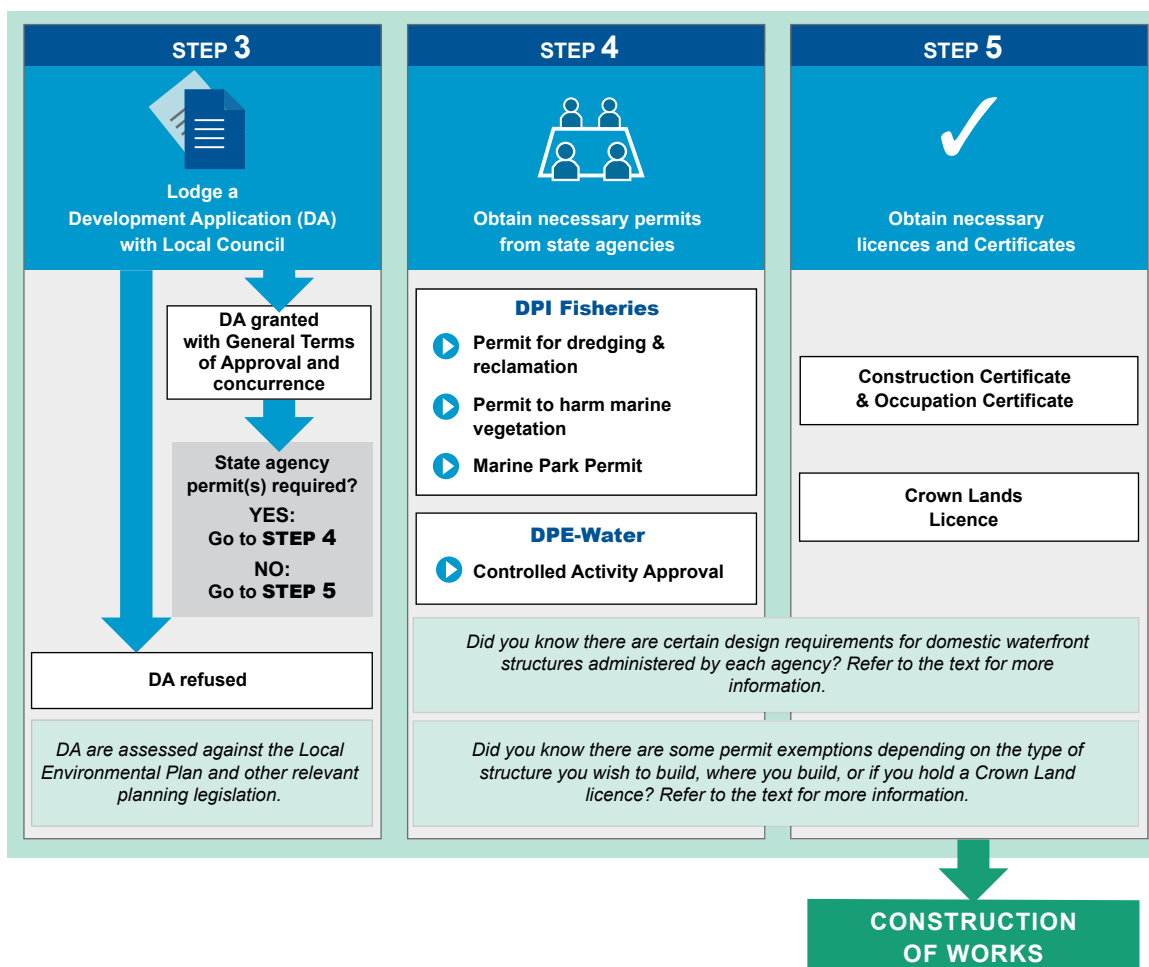


Figure A 1. Steps 3, 4 and 5 of the entire approval pathway for new domestic waterfront structure proposals, following obtaining LOC. Each step must be completed before construction can begin.

See Figure 1 for steps 1 and 2.

STEP 3: Lodge a development application with Council

Once LOC has been obtained, the proponent can proceed to lodge the Development Application with the relevant consent authority: Bega Valley Shire Council or Eurobodalla Shire Council.

Almost all developments that involve work or activities below the mean high water mark also trigger the need to obtain approvals or permits under legislation such as the FM Act and the *Water Management Act 2000*. Provisions in the EP&A Act enable integration of these applications, known as an Integrated Development Application (IDA).

The Council coordinates the IDA process by referring the Development Application to the relevant NSW Government agency for assessment in accordance with the legislation and policy that they administer. If the NSW Government agency has no objection to the Development Application and issues 'General Terms of Approval' (GTA), the Council can then integrate any necessary conditions of the GTA (for instance, specific design requirements) into the development consent. This system provides the proponent with all the necessary conditions to follow to fulfil multiple legislative requirements.

If the GTA conditions include the requirement of permits from DPI-Fisheries or DPE-Water, proceed to **Step 4**.

If the GTA conditions do not require a permit(s), and the proposal is approved when all other GTA conditions of the development application are met, proceed to **Step 5**.

Development Applications for proposed structures in **GREEN** and **ORANGE** zones won't necessarily be granted.

STEP 4: Apply for necessary permits from NSW Government agencies

The development consent lists conditions that outline NSW Government agency permit requirements (see section A.1). If the development consent requires a licence from DPE-Crown Lands (almost all development consent will require this licence, see Step 5) *and* involves 'dredging and reclamation' works, the proponent will not need to apply to DPI-Fisheries for a 'dredging and reclamation' permit. Instead, DPE-Crown Lands will notify DPI-Fisheries of the licence application and will consider any matters concerning the proposed work that are raised before issuing the DPE-Crown Lands licence.

Permits described in the development consent must be obtained prior to commencing on-ground works. Once these have been issued, proceed to **Step 5**.

STEP 5. Obtain necessary licences and certificates

A construction certificate needs to be obtained from the relevant Council or a registered certifier before the construction of the domestic waterfront structure can proceed. It is important that the proposal remains consistent with the construction and design conditions that were included in the GTA conditions, and approved in the Development Application (section A.2).

After the development consent is granted by Council, the relevant licence from DPE-Crown Lands to occupy the waterfront Crown land needs to be obtained before construction can begin (section A.3).

A.1 State agency permits

The proponent may need to obtain one or more of the following permits as part of the IDA process to construct a domestic waterfront structure:

Permits issued by DPI-Fisheries

- Part 7 of the FM Act **Section 201** – permit to carry out dredging or reclamation works (D&R), (i.e. any excavation within, or filling or draining of, water land or the removal of woody debris, snags, rocks or freshwater native aquatic vegetation or the removal of any other material from water land that disturbs, moves or harms these in-stream habitats), or
- Part 7 of the FM Act **Section 205** – permit to harm marine vegetation. ‘Harm’, means to gather, cut, pull up, destroy, poison, dig up, remove, injure, prevent light from reaching or otherwise harm the marine vegetation or any part of it, or
- Part 7 of the FM Act **Section 219** – permit to obstruct the free passage of fish. Any temporary or permanent structures (such as a weir, causeway, dam, coffer dam etc.) that may inhibit, obstruct or block the movement of fish within a waterway either temporarily or permanently.
- The provisions of the Marine Estate Management (Management Rules) Regulation 1999 require the consent of the Ministers in the form of a marine park permit to undertake any works, such as the construction of a domestic waterfront structure, in a marine park.

Some exemptions for a D&R permit are applicable. D&R exemptions that may be relevant to waterfront infrastructure development proposals are as follows:

Exemption for D&R 1

If the development consent requires a licence from DPE-Crown Lands and involves ‘dredging and reclamation’ works, the proponent will not need a D&R permit. Instead, DPE-Crown Lands will notify DPI-Fisheries of the licence application and include any conditions that DPI-Fisheries require in the conditions to the DPE-Crown Lands licence.

Exemption for D&R 2

If a proponent has a proposal that involves dredging or reclamation works and is seeking a permit such as a Controlled Activity Approval (CAA) from the DPE-Water (see below), both DPI-Fisheries and the DPE-Water will assess the proposal at the IDA stage. If appropriate, both agencies may issue general terms of approval. If the consent is granted the proponent will, however, only need to apply for the CAA.

Permits issued by DPE-Water

A CAA, issued by the DPE-Water, may be a requirement of the IDA. The approval covers certain activities in, on, or under waterfront land. The specific activities are described on the [DPE-Water website](#).

Waterfront land includes the bed and bank of any river, lake or estuary and all land within 40 metres of the highest bank of the river, lake or estuary. Part of DPE-Water’s role under the *Water Management Act 2000* is to assess the impact of any proposed controlled activity to ensure that the controlled activity will do no more than minimal harm to waterfront land. DPE-Water design guidelines direct protection of riparian corridors and geomorphic stability of waterfront land.

IDA requiring a CAA require various supporting documents including:

- A Statement of Environmental Effects that addresses the environmental impacts of the work or controlled activity on waterfront land and assesses the condition and stability of the waterfront and whether any bank protection works are required.
- A topographic map or aerial photo(s) showing:
 - where the work or controlled activity is to occur
 - the location of waterfront land including the top of bank
- Photographs of the site and waterfront land:
 - that identify the location of the photographs on a sketch plan to indicate the location of the photo, label the direction of the photo, for example looking east, and ensure that the top of the bank is clearly identified
- Construction plans for any work or controlled activities in, on or under waterfront land. If not available, include a sketch diagram of the proposed work or controlled activity
- A map that clearly shows the boundary of all tenures (properties) relating to the proposed development.

More information about supporting documents is available on the [DPE-Water website](#).

Some exemptions for CAA are applicable, and are described in the [Water Management \(General\) Regulation 2018, Schedule 4](#). CAA exemptions that may be relevant to waterfront infrastructure development proposals are:

Exemption for CAA 1

Clause 18 of Schedule 4 specifies that a person (other than a public authority) is exempt from requiring a CAA if the person is already leased, licensed or permitted to be undertaking the work under the CLM Act.

The clause 18 exemption applies only to the land administered under the CLM Act, that being Crown Land. Therefore, for this exemption to be applicable, the development must be entirely on Crown land. In many situations, domestic waterfront structures will span both Crown land (the waterway and/or some waterfront land) and privately owned land and so will need a CAA.

Exemption for CAA 2

Clause 31 of Schedule 4 specifies that a person (other than a public authority) is exempt from requiring a CAA for pontoons, jetties and moorings under the following conditions.

This exemption applies to any kind of controlled activity carried out in connection with the construction of a pontoon, jetty or mooring pole on waterfront land relating to a lake or estuary. This exemption applies only if the activity does not require any of the following:

- removal of material from the land
- depositing material on the land, other than that necessary for the construction of the pontoon, jetty or mooring
- works that change the profile of the waterfront land adjoining the lake or estuary.

Exemption for CAA 3

Clause 36 of Schedule 4 specifies that exempt development, complying development and controlled activities with development consent on certain waterfront land identified on particular maps on the [DPE-Water website](#) is exempt from requiring a CAA.

This exemption is not applicable to the BMP estuaries.

A.2 Local government authorities

Under the terms of the EP&A Act, local government (usually local Council) is typically the consent authority for development applications involving domestic waterfront structures of the type addressed in this strategy.

In addition to Council approval, the review and approval of a development application, followed by the issuing of appropriate permits by applicable NSW Government agencies is required.

Local Environmental Plans

Development in NSW is assessed in accordance with the EP&A Act. Each local council has prepared a Local Environmental Plan (LEP): it is a legal document that has been approved by the NSW Government under Division 3.4 of the EP&A Act.

The LEP is used to regulate land-use planning decisions. LEPs establish land-use zones that:

- regulate the way land can be used such as for housing, commercial and industrial development, open space, rural development and environmental protection
- detail the locations and types of development that are permissible or prohibited.

LEPs also specify whether development that is permitted requires consent before it can proceed.

The zones are published as land-use zoning maps. LEPs can be viewed online via the relevant council website, or, via the NSW Legislation [website](#).

All LEPs throughout coastal NSW have a standard clause that requires development consent for works on land below the mean high water mark. This is to ensure that there is an appropriate environmental assessment for development carried out on land covered by tidal waters (i.e. within the marine estate).

Development Control Plans

A Development Control Plan (DCP) can be prepared by a local government authority to provide detailed planning and design guidelines to support the planning controls in a LEP. While a LEP establishes the permissibility and approval pathways for development, the DCP provides a greater level of detail in relation to the development itself. Some local government authorities have provisions in their DCPs relating to waterfront and foreshore structures such as jetties and pontoons.

Bega Valley Shire and Eurobodalla Shire Councils

Bega Valley Shire Council and Eurobodalla Shire Council administer the local planning framework including for areas along the waterfront of BMP estuaries as determined by their LEPs which were gazetted in 2013 and 2012, respectively (Figure A2). The zoning of the land, controls, guidelines for proposed developments, development standards and other relevant development matters are established under the LEPs and DCPs.

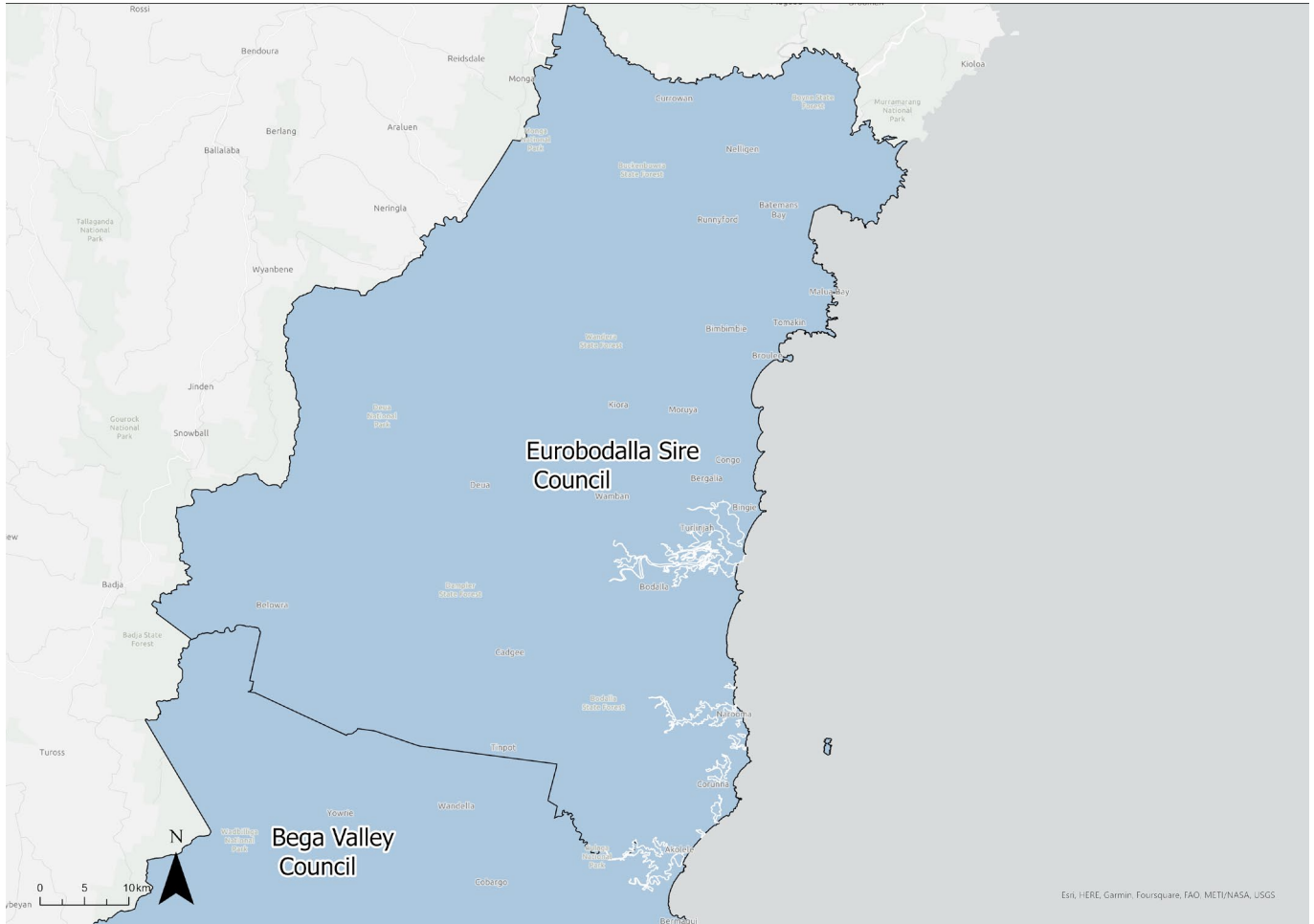


Figure A 2. map of this strategy’s estuary waterfront assessment area depicted as a white line within the local government area.

The respective Bega Valley Shire and Eurobodalla DCPs apply to all land specified in the relevant LEP. They set requirements for developments adjoining BMP estuaries. These documents are available on the [Eurobodalla Shire Council website](#) and the [Bega Valley Shire’s website](#).

Where development consent has been granted and a licence for the occupation of the waterway has been obtained from Crown Lands and either Council, a Construction Certificate is required prior to commencement of any works.

A.3 Crown Lands Licence

When a consenting authority (e.g Council) grants development consent, a licence application is required to be submitted to DPE-Crown Lands to enable formal authorisation under the CLM Act prior to any construction taking place.

More information can be found at <https://www.crownland.nsw.gov.au/licences-leases-and-permits/apply-or-manage-licence/apply-domestic-waterfront-licence>

Appendix B

Glossary of Abbreviations

ABBREVIATION	DEFINITION
ALR Act	<i>Aboriginal Land Rights Act 1983</i>
BMP	Batemans Marine Park
CAA	Controlled Activity Approval
CLM Act	<i>Crown Land Management Act 2016</i>
Crown land	Public land held in trust by the NSW Government on behalf of the community
DCP	Development Control Plan
DPE-Crown Lands	Department of Planning and Environment – Crown Lands
DPE-EHG	Department of Planning and Environment – Environment and Heritage Group
DPE-Planning	Department of Planning and Environment – Planning
DPE-Water	Department of Planning and Environment – Water
DPI-Fisheries	Department of Primary Industries – Fisheries
DPI-Fisheries P&G	Department of Primary Industries, Fisheries. Policy and guidelines for fish habitat conservation and management, 2013 update
DWF Guidelines	DPE-Crown Lands Domestic waterfront licences – guidelines 2021 update
DWS	Domestic Waterfront Structures Land Owner's Consent Strategy
EP&A Act	<i>Environmental Planning and Assessment Act 1979</i>
FM Act	<i>Fisheries Management Act 1994</i>
IDA	Integrated development applications
KFH	Key Fish Habitat
LEP	Local Environmental Plan
LOC	Land Owner's Consent
MEMA	Marine Estate Management Authority
MEM Act	<i>Marine Estate Management Act 2014</i>
MEM Regulation	Marine Estate Management Regulation 1917
MEMS	Marine Estate Management Strategy 2018 – 2028
NPWS	National Parks and Wildlife Service
NSW	New South Wales
NT Act	<i>Native Title Act 1993</i>
OISAS	NSW Oyster Industry Sustainable Aquaculture Strategy 2016 update
POAA	Priority Oyster Aquaculture Area
RH SEPP	State Environmental Planning Policy (Resilience and Hazards) 2021
TARA	The Marine Estate Management Authority's Threat and Risk Assessment
TfNSW	Transport for NSW

