



New South Wales Government

# Surveyor General's Directions

No. 6

## Water as a Boundary Procedures





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## Surveyor General's Directions

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### Preamble

This Surveyor General's Direction replaces the previous Direction issued in January 1999. It includes new procedures to obtain approval to determinations of water boundaries, including tidal or Mean High Water Mark (MHW) and non-tidal boundaries. There have been many changes to MHW procedures due to recent government departmental restructuring and amendments of the Coastal Protection Act 1979, which established the "Modified Doctrine of Accretion".

In summary, changes included within this Direction are:

- New procedures to address the Modified Doctrine of Accretion as defined in the Coastal Protection Act 1979 (Section 55N);
- New departmental procedures; and
- New surveying requirements under the Surveying Act 2002.

A consequence of the Modified Doctrine of Accretion is that a MHW application may now be required to meet specific criteria prior to approval. In particular, where a definition that increases the area of land to the landward side of the water boundary **because of accretion**, the applicant will now have to demonstrate that the area, the subject of the accretion claim will:

- a) have a perceived trend of accretion that is likely to be indefinitely sustained by natural means; and
- b) as a consequence of making the claim, not likely restrict or deny public access to a beach, headland or waterway.

The approval procedure for boundaries of Crown Land ( *i.e.* *Crown Land as defined under the Crown Lands Act 1989*) has been revised to accord with the amendments to Part 7 of the Surveying Regulation and the formation of the Department of Lands. See section 7.

Where new determinations of MHW adjoin land managed by the NSW Maritime (Waterways Authority) (such as Sydney Harbour), then approval from NSW Maritime is required. See section 8.

### 1. Introduction

This Surveyor General's Direction outlines the procedures for;

1. Determining mean high water mark as a boundary, or
2. Determining the bank or banks of non-tidal streams, or
3. Determining the location of the landward boundary of roads or reservations of stipulated width adjacent MHW or non-tidal streams which have not previously been surveyed, or
4. Situations where there is doubt or confusion as to the location of natural feature boundaries.



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Except under special conditions, as prescribed by law, a boundary cannot extend below mean high water mark. Where the bank or MHW has eroded suddenly and the processes causing the change did not satisfy the doctrine (i.e. natural, gradual and imperceptible erosion), then the former position of the natural feature boundary will not change. In these cases the natural feature boundary may extend into the water. Some methods of determination of mean high water mark are contained in part 6, section 22 of the Manual of the New South Wales Integrated Survey Grid (1976). Current tidal plane statistical data should be obtained from the Department of Commerce's Manly Hydraulics Laboratory.

### 2. Definitions

**"Mean High Water Mark"** – see Cl 55(2)& (3) SURVEYING REGULATION 2001.

The definition of features associated with lakes and rivers are defined in section 172(1) of the Crown Lands Act 1989 or Part 7 of the Surveying Regulation 2001. The following terms are defined:

**"bank"** means the limit of the bed of a lake or river.

**"bed"** means the whole of the soil of a lake or river including that portion -

- (a) which is alternately covered and left bare with an increase or diminution in the supply of water; and
- (b) which is adequate to contain the lake or river at its average or mean stage without reference to extraordinary freshets in time of flood or to extreme drought;

**"lake"** includes a permanent or temporary lagoon or similar collection of water not contained in an artificial work;

**"river"** includes any stream of water, whether perennial or intermittent, flowing in a natural channel, and any affluent, confluent, branch or other stream into or from which the river flows.

**"natural feature"** when forming a boundary of land, appropriate details describing the natural feature must be shown on the survey plan, eg. "Bank is Boundary" or "MWHM is boundary". Clauses 20 and 59 of the Surveying Regulation 2001 require the position of all natural features to be accurately located. Each change of course or direction of the natural feature must be defined by bearings and distances and shown on the survey plan. It is usual practice to show these short lines in a table that refers to the nature feature traverse. Clause 9 of the Surveying Regulation 2001 also requires that the

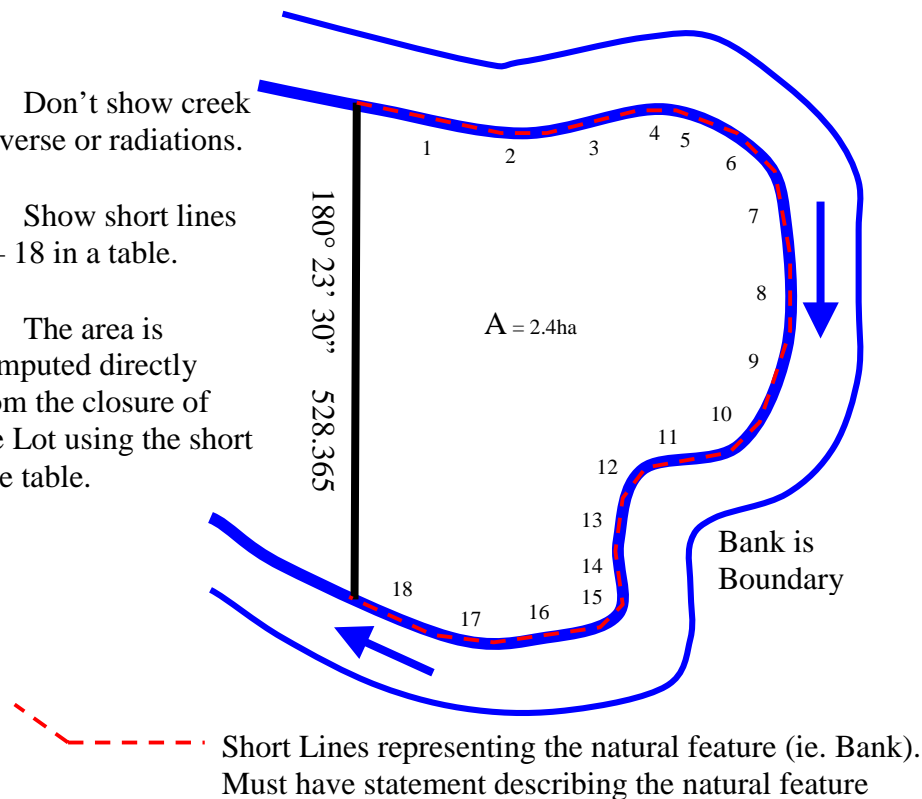


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description of any substantial structure and/or fence within 1 metre of the boundary to be shown on the survey plan (*See diagram*)

- Don't show creek traverse or radiations.
- Show short lines 1 – 18 in a table.
- The area is computed directly from the closure of the Lot using the short line table.



Similar surveying requirements apply to Non-tidal and MHWB boundaries.

### 3. Administration of Mean High Water Mark Boundaries

Titles to the beds of all tidal waters, unless specifically vested in another authority or the subject of a Crown Grant, are under common law deemed to be vested in the Crown (*See Hallman 13.39*). The Minister administering the Crown Lands Act 1989 (or his delegate) is responsible for the management of these lands and is the approval authority for Mean High Water Mark re-determination.

NSW Maritime is responsible for administering all land below Mean High Water Mark in Sydney Harbour, Botany Bay, Port Hunter and Port Kembla Harbour.

This direction will deal with the responsibility of the NSW Maritime separately. Each organisation has different procedures for approving Mean High Water Mark definitions.



### 4. Non Tidal Waters

#### 4.1 Lakes and Lagoons

Where a survey plan includes a boundary along a non-tidal lake or lagoon, the surveyor will be required to adopt the original position of the bank at the time of alienation. The following summary of section 172 of the Crown Lands Act 1989 applies to non-tidal lakes and lagoons.

Section 172(2) states that the boundary of any land which is alienated by the Crown and which is described as being bounded by the margin or bank of a non tidal lake shall be taken to be the bank of the lake at the time of the Crown survey for the purpose of alienation.

Section 172(3) states that if the title of alienated land is described as being bounded by a non-tidal lake, then that title does not and never has extended to include any part of the bed of the lake. No person who is the owner of adjoining land so alienated is entitled to any rights of access over, or to the use of any part of the bed.

Section 172(4) states "The doctrine of accretion does **not** apply to and never **has** applied to a non tidal lake".

To assist surveyors prepare applications for redefinition, the following water bodies have been judged to be non-tidal:

- Narrabeen Lagoon (Attorney General (NSW) v Wheeler (1944) 45 SR (NSW) 321)
- Dee Why ( Williams v Booth (1910) 10 CLR 341)
- Glenrock Lagoon ( Attorney General (NSW) v Merewether (1905) 5 SR (NSW) 157)
- Lake Illawarra ( Attorney General v Swan (1921) 21 SR (NSW) 408)

Therefore, the doctrine of accretion and erosion does not apply to land adjoining those water bodies. There may be other non-tidal water bodies within New South Wales that by virtue of their character may be deemed non-tidal.

In any case where the original position of the bank cannot be reproduced with certainty, the approval of the Minister administering the Crown Lands Act 1989 or his delegate to a proposed definition of the bank is required. The procedure to obtain this consent is similar to that for a determination of mean high water mark.

In any case where the bank of a non-tidal lake or lagoon is to be used as a natural feature boundary to define a new land grant or title, then the bank shall be the limit of the bed as described in the Crown Lands Act 1989. No new boundary of a lot shall be an ill-defined natural feature (eg cliffs, lakes, and



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swamps). In those situations, the boundary must be defined and marked by a series of straight lines **that do not** represent or approximate the ill-defined natural feature. The ill-defined natural feature will **not** be the boundary.

### 4.2 Rivers and Streams

Rivers and streams are subject to the doctrine of accretion and erosion. Where a survey includes a boundary along a non-tidal river or stream, the surveyor will adopt the presently existing bank or centre line, **ONLY**

- i) if it agrees with the original position, or
- ii) if it can be proven that the change from the original position to the present position has been caused by natural, gradual and imperceptible means. In most Australian riverine situations this occurrence will be rare and must be substantiated with evidence and facts to support the case, or
- iii) if it can be proven that the previous definition of the bank was incorrect. In most cases this will be very difficult to prove.

If the position of the bank has changed suddenly, or by artificial means (ie. flood, reclamation etc), then the definition of the bank before the sudden change or changes occurred must be adopted.

The existing position of the bank in addition to the original position of the bank must also be shown on the survey plan with appropriate details noted as to what constitutes the boundary.

The Surveying Regulation states:

*56(6) The middle line of a stream need not be marked unless the purpose for which the survey is made so requires. and*

*56(6A) If the middle line of a stream is the boundary of land and has not previously been defined by survey, or if the middle line of a stream is otherwise required to be determined, then both banks of the stream must be surveyed and shown on the survey plan together with the determination of the middle line.*

Therefore, if a title extends to the centre of the stream, then the surveyor must determine the position of both banks as the means of defining the centre line of the bed. All three features are to be noted on the survey plan with the appropriate details as to what constitutes the boundary.



### 5. Landward Boundaries of Roads or Reservations of stipulated width adjacent water bodies.

The surveyor must obtain the approval of the Minister administering the Crown Lands Act 1989 when the survey abuts the landward boundary of any road or reservation fronting a river, stream or tidal waters and that landward boundary has not previously been defined by survey, (see Part 7 “Water as a Boundary” of the Surveying Regulation).

The Surveying Regulation requires the traverse lines of the survey to be positioned so that each change of course or direction of the boundary can be determined. It also requires the natural feature to be described by bearings and distances with appropriate details describing the natural feature be shown on the survey plan.

#### 5.1 Landward Boundaries of reservation fronting tidal waters

Clause 57(1) of the Surveying Regulation states “*If the landward boundary of an existing reservation of stipulated width fronting tidal waters has not been defined by survey, on redefinition or subdivision of the adjoining land by a survey, the boundary must be defined by right lines approximately parallel to the position of the mean high-water mark as originally defined.*”

The landward boundary of the reserve **fronting tidal waters** must be marked in accordance with Clauses 34 and 42 and Schedules 2 and 3.

The position of the existing MHWL must be shown by a series of short lines positioned so that each change of course or direction of the present natural feature can be determined. Appropriate details describing the natural feature must be shown on the survey plan.

If a surveyor determines the landward boundary of a reservation or road that has not been previously approved, then Clause 57(3) of the Surveying Regulation requires the approval of the Minister administering the Crown Lands Act 1989 to the landward boundary. See Section 5.3 for details.

#### 5.2 Landward Boundaries of reservation or Crown road of stipulated width fronting non-tidal waters

Clause 57(2) of the Surveying Regulation states; ‘*If the landward boundary between a parcel of land and an existing reservation or Crown road of stipulated width along a **non-tidal** stream or lake or other natural feature has not been defined by survey, on redefinition or subdivision of the adjoining land by a survey:*



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*(a) the boundary must be defined by right lines approximately parallel to the position of that feature as originally defined, and*

*(b) the location of the natural feature as it existed at the time of the survey must be determined and shown on the survey plan, and*

*(c) the boundary need not be marked in accordance with clauses 34 and 42, but reference marks must be placed at the terminals of the boundary and at intervals of not more than 1,000 metres along the boundary.*

Therefore, the normal marking of each corner or angle of the landward boundary is **not** required.

The position of the existing bank must be shown by a series of short lines positioned so that each change of course or direction of the present natural feature can be determined. Appropriate details describing the natural feature must be shown on the survey plan.

In addition, the position of the legal or original bank must be shown by a series of lines positioned so that each change of course or direction of the boundary can be determined. Appropriate details describing the boundary must be shown on the survey plan.

If a surveyor determines the landward boundary of a reservation or road that has not been previously approved, then Clause 57(3) of the Surveying Regulation requires the approval of the Minister administering the Crown Lands Act 1989 to the landward boundary.

Note: Where the landward boundary of a road is involved applicants should be aware that procedures under Section 18 – 21 of the Roads Act 1993 may apply.

### **5.3 Approval to Landward Boundary of Reservation or Crown Road Fronting a Natural Feature.**

To obtain the consent of the Minister administering the Crown Lands Act 1989, the application should be forwarded in the first instance to the Department of Lands, at the address shown in Appendix B.

The consent from District Offices of the Department of Lands is not required when no crown land is involved

Approval to the new definition of the landward boundary of the reservation or crown road fronting a natural feature should be sought prior to lodgement of the survey plan at the Department of Lands, **Land & Property Information (LPI)**, Queens Square, Sydney. It is recommended that surveyors carrying out



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the new definition liaise with officers of the Department of Lands (see Appendices **B** and **C**) prior to lodgement of the plan, particularly where there is a marked variation or any other unusual circumstances. A consultation fee as outlined in Appendix B may apply

When making the submission, the surveyor must lodge an application for a Landward Boundary approval at the Department of Lands (Crown Lands Service, Newcastle) and include the following items:-

- (a) Three copies of a survey plan signed and dated by a registered surveyor; clearly defining both the position of the former or current Mean High Water Mark or stream bank title boundary and the proposed new position of the natural feature; and
- (b) In accordance with the Surveying Regulation, a comprehensive report on the definition of the Mean High Water Mark or bank. The report must:
  - Provide the basis and method of determining the location of the Mean High Water Mark or bank and the location of the landward boundary. The Mean High Water Mark should be referenced to Australian Height Datum (AHD) and accord with relevant tidal plane statistical data (where available) which can be obtained from the Department of Commerce's Manly Hydraulics Laboratory (see Appendix E for contact details). If AHD is used as the basis of the definition or to support any part of the justification for the definition, then the datum must be based upon and verified by a closed level traverse between Permanent Marks that have accurate heights (ie Accuracy Class "LD" or "B" or better), and;
  - Provide photographs of the area, particularly when there are improvements near the foreshore or landward boundary of the reserve or road.
  - Provide a report on any improvements adjoining the landward boundary of the reserve or road.
  - Provide a full copy of all survey plans used to define the MHWM or bank and all adjoining survey plans. (These plans will be returned to the applicant upon request after the completion of the Department's investigation).
- (c) Provide a completed checklist; and
- (d) A fee for the investigation of the definition (see Appendix B).

A Department of Lands file will be created for each application.



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Surveyors of the Department of Lands in each region will analyse the method and basis of the determination, conduct a site investigation where appropriate and may consider responses from any other authority.

The applicant will be advised in writing whether their application has been approved or the basis upon which the application was refused. If approved one (1) endorsed copy of the plan will be returned to the applicant. The surveyor must retain the endorsed copy.

Subsequent amendments to the plan will require two further copies of the plan to be submitted for approval.

Before registration of the final survey plan at the **Land & Property Information (LPI)**, Queens Square, Sydney, the following statement will be inserted in the "Signature and Seals Only" panel of the plan form.

*"The Minister for Lands in accordance with part 7 of the Surveying Regulation 2001 approves the determination of the landward boundary of ..... as shown hereon.  
Department of Lands file ..... on ...../...../....."*

The inclusion of this statement will inform subsequent users of the plan that the position of the landward boundary of the reserve or reservation had the approval of the Crown Lands Office of the Lands Department.

### 6. Modified Doctrine of Erosion And Accretion

On 7 February 2003, amendments to the Coastal Protection Act 1979 came into effect modifying the doctrine of erosion and accretion. Section 55N of this Act modifies the doctrine of erosion and accretion with respect to land:

- i). which is within the coastal zone, or which adjoins the tidal waters of Sydney Harbour or Botany Bay, or their tributaries, and
- ii). a boundary ( "the water boundary" ) of which is defined or otherwise determined by reference to a mean high water mark.

Maps outlining the Coastal Zone are available for inspection during normal office hours at the principal office of the relevant local government authority or at each of the relevant regional offices of the Department of Infrastructure, Planning and Natural Resources.

**Section 55N does not apply to the amendment of titles that were previously based upon poor, erroneous or inaccurate surveys. See Appendix 'A' for a complete background to this opinion.**

Under Section 55N of the Coastal Protection Act 1979, the doctrine of accretion has been modified to include additional provisions whereby an



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accretion claim **cannot** be granted if:

- (a) a perceived trend by way of accretion is not likely to be indefinitely sustained by natural means, or
- (b) as a consequence of making such a grant, public access to a beach, headland or waterway will, or is likely to be, restricted or denied.

These legislative changes have been brought about to provide a more sustainable assessment methodology aimed at preventing the undue loss or inadvertent further alienation of public foreshore lands. In addition to the existing requirement that accretion is caused by natural, gradual and imperceptible means, the modified doctrine of accretion requires that a more rigorous understanding of the physical shoreline processes will form the basis of the determination.

**Firstly**, in order for an applicant to demonstrate that “*a perceived trend by way of accretion is likely to be indefinitely sustained by natural means*”, it will be necessary to obtain the professional opinion of practitioners with a demonstrated level of professional experience in the interpretation and quantification of hydrodynamic processes and shoreline movements. In particular, professional assessments would need to be based upon a detailed understanding and assessment of observations (where available) regarding relevant coastal or estuarine hydrodynamics, shoreline positions and sediment transport processes. More specifically, professional assessments would need to cover the following:

- History of the subject accretion and determination of quantifiable trends.

It is essential that accurate, quantifiable measures of accretion are readily substantiated by data analysis. In this respect, photogrammetric analysis of vertical aerial photography is likely to provide the most accurate data upon which to conclude trends in the movement of the shoreline and associated features including the MHWL.

- Physical processes impacting upon and governing the stretch of foreshore in question.

An understanding of the physical processes is essential to demonstrate that any perceived trend of accretion is likely to be indefinitely sustained by natural means.

- Implication of climate change (in particular, postulated rise in Mean Sea Level).

The weight of scientific evidence available predicts accelerated Sea Level Rise (SLR) over the course of this century. The extent of SLR is not



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definitive and predictions rely on a range of global atmospheric models driven by various greenhouse gas emission scenarios.

The Inter-governmental Panel on Climate Change (IPCC), which was jointly established by the World Meteorological Organisation and the United Nations Environment Program in 1988, remains the most authoritative source on global climate change predictions. The 2001 publication by the IPCC indicated a broad range of possible predictions of SLR over the period from 1990 to 2100 ranging from a low of 9 centimetres to a high of 88 centimetres. The average of all these possible scenarios indicates a rise in MSL of approximately 50 centimetres over this timeframe.

In effect, the result of an increase in MSL is that the active nearshore profile (and by consequence, ambulatory boundaries such as those defined by reference to the MHWM), will readjust to a higher and more landward position over time.

In order to consider the impact of SLR, it will be necessary to assess what impact a rise in MSL of 50 centimetres would have on the position of the MHWM. This assessment will provide a fundamental guide to establishing whether or not, any trend of accretion that is evident will likely be “indefinitely sustainable by natural means” over the longer term, in a position seaward of the existing ambulatory boundary.

**Secondly**, in order to meet the provisions of the modified doctrine of accretion, an applicant must also demonstrate that to grant such a claim would not result in “*public access to a beach, headland or waterway either being, or likely to be, restricted or denied*”. In this respect it would be necessary for the applicant to provide details of the site in question and document the extent of associated customary public access. The professional assessment indicated in the afore-mentioned, will also have to consider the impact of climate change at the site in respect of denying or restricting public access.

The Local Council will be referenced by the relevant approval authority to provide information regarding public access issues.

### 6.1 “Land not satisfying Section 55N of the Coastal Protection Act 1979”.

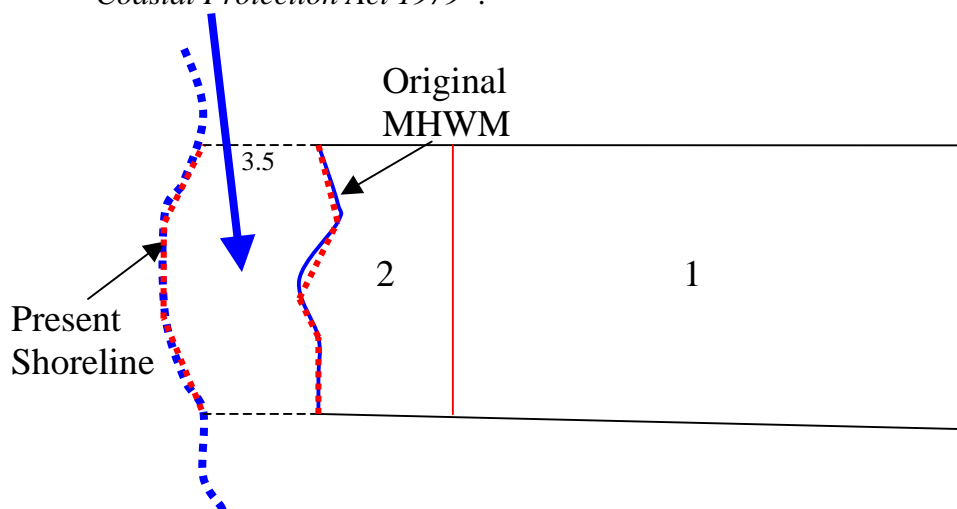
If there has been accretion to the foreshore and that accretion can not satisfy the conditions of the Modified Doctrine of Accretion, then the original MHWM must be adopted. New Deposited Plans should show the current title limit (i.e. the original Mean High Water Mark - described by a series of short lines). The present **SHORELINE** should also be shown on the Deposited Plan (also, described by a series of short lines). The present **shoreline** is the intersection line of the MHW tidal plane with the adjoining land along the foreshore.



The present **shoreline** must **not** be described as a variation of MHW. Legally MHW is the term to describe the title limit. That being the natural feature, which is the mean of all the high tides including the spring and neap high tides taken over a sufficiently long period.

The accreted land must be clearly described in the survey plan with the following notation;

*“Land not satisfying Section 55N of the Coastal Protection Act 1979”.*



### 7. The Crown Lands Office - Department of Lands

#### **Consent Requirements for New Water Boundary Definitions (Including Non-Tidal and Mean High Water Mark Definitions).**

This section applies only where the bed of the water body is Crown Land as defined under the Crown Lands Act 1989. If another authority owns the bed, then approval from that authority must be obtained. The submission for their approval will be similar to the requirements of this section.

There are two categories for obtaining the consent from the **Crown Lands Office – Department of Lands** to new natural feature boundaries. One for non-tidal river & stream bank boundaries and the other for Mean High Water Mark boundaries. To obtain the consent of the Minister administering the Crown Lands Act 1989, the application should be forwarded in the first instance to the Department of Lands, at the address shown in Appendix B.

The consent from District Offices of the Department of Lands is not required when no crown land is involved.

#### **7.1 Consent to Non-Tidal River & Stream Boundaries**



### 7.1.1 Consent to Unchanged Bank Boundaries

The surveyor may dispense with the need for a specific approval of the **Crown Lands Office – Department of Lands** in cases where the plan, when lodged at the **Land & Property Information (LPI)**, bears a certification. That certification must state that the position of bank on the ground, as depicted on the plan, is substantially the same as that shown on a **previous plan that had an approval to the bank definition**.

The certification should be in the following terms:

*"The location of the existing bank boundary as shown hereon is substantially the same as that shown on plan ..."*

A surveyors' report must accompany the survey plan. That report must describe the basis and method of determining the location of the bank, photographs and a detailed plot of the bank shown in the previous plan and the present bank. The report must support the certification shown on the survey plan. **Land & Property Information (LPI)** on the basis of the certification may accept the definition of the bank. However, if normal investigations of the plan find the certification to be inconsistent with the facts, a requisition will be raised.

In the event that consent was not obtained to the previous plan, an approval for the determination of the bank must be obtained. See Section 7.1.2. for the approval process.

### 7.1.2 Consent to Changed Bank Boundaries or Bank Boundaries that do Not Have a Current Consent

Where a survey reveals a substantial variation in the position of the bank to that determined by an earlier survey or the position of the bank does not have a current consent, the approval of the Minister administering the Crown Lands Act 1989 is required. Usually that is achieved by the surveyor submitting a comprehensive report with the survey plan at lodgement to the Surveyor General at the Department of Lands, Queens Square, Sydney.

If the natural feature has not changed and the variation is due to a poor, erroneous or inaccurate survey of the original bank, then the facts must be disclosed in the comprehensive report. The report must accompany the survey plan and include the following:

- Describe the basis and method of determining the location of the bank, and
- Photographs and evidence relevant to the location of the bank, and
- A detailed plot of the bank shown in the previous plan and the present bank, and
- Provide the location and details of any improvements adjoining the bank, and
- A Completed checklist;



In complex or difficult bank redefinition situations, the application will be forwarded to the Crown Lands Division of the Lands Department for field inspection and assessment of the facts.

### 7.2 Mean High Water Mark Boundaries

#### 7.2.1 Consent to Unchanged Boundary

The need for a specific approval of the **Crown Lands Office** may be dispensed with in cases where the plan, when lodged at **Land & Property Information (LPI)** bears a certification by the surveyor. That certification must state that the position of Mean High Water Mark on the ground, as depicted on the plan, is substantially the same as that shown on a **previous plan that had an approval to the MHWM definition.**

LPI NSW will field audit a sample of survey plans that claim MHWM to be substantially the same as a previous definition.

The certification should be in the following terms:

*"The location of the existing Mean High Water Mark boundary as shown hereon is substantially the same as that shown on plan ..."*

The definition of Mean High Water Mark may be accepted by **Land & Property Information (LPI)** on the basis of the certification. However, if normal investigations of the plan find the certification to be inconsistent with the facts, a requisition will be raised.

In the event that consent was not obtained to the previous plan, an approval for the determination of Mean High Water Mark must be sought from the Minister administering the Crown Lands Act 1989.

An administration fee plus GST will be charged to the surveyor.

When approved, one (1) endorsed copy of the plan will be returned to the surveyor as a record of the Crown Lands' consent. That endorsed plan must be submitted with the final survey plan to **Land & Property Information (LPI)**.

Before lodging the plan at the **Land & Property Information (LPI)** - Department of Lands, the following statement should be inserted in the "Signature and Seals Only" panel of the plan form:

*"The Minister for Lands, in accordance with Part 7 of the Surveying Regulation 2001 approves the determination of the MHWM, as shown hereon."*



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*Dept of Lands file \_\_\_\_\_ on \_\_\_/\_\_\_/\_\_\_.”*

The inclusion of this statement will inform subsequent users of the plan that the position of the MHWL had the approval of the Crown Lands Office of the Lands Department.

### 7.2.2 Consent to Changed Boundary

Where a survey reveals a substantial variation in the position of Mean High Water Mark to that determined by an earlier survey, the approval of the Minister administering the Crown Lands Act 1989 is required. The cause of the variation is critical.

Should the cause of the variation be erosion, then there are no further requirements of the applicant apart from those under the Surveying Regulation. The location of the present shoreline and former MHWL must be described on the survey plan by a series of short lines. The present shoreline is the intersection line of the MHW tidal plane with the adjoining land along the foreshore.

However, if the cause of the variation is by **accretion** to the land and within the Coastal Zone or Sydney Harbour or Botany Bay and their tributaries, then the provisions of Section 55N of the Coastal Protection Act 1979 “Modified Doctrine of Accretion” apply. See Section 6 “Modified Doctrine of Erosion and Accretion” of this Direction. If the natural feature has not changed and the variation is due to a poor, erroneous or inaccurate survey of the original MHWL feature, then the approval of the Minister administering the Crown Lands Act 1989 is still required, but without the need to prove the Modified Doctrine.

Approval to the new definition of Mean High Water Mark should be sought **prior** to lodgement of the survey plan at the Department of Lands, Land & Property Information Division, Queens Square, Sydney. It is recommended that surveyors carrying out Mean High Water Mark definitions, liaise with officers of the Department of Lands (see Appendices **B** and **C**) prior to lodgement of the plan, particularly where there is a marked variation or other unusual circumstances. A consultation fee as outlined in Appendix B may apply

When making the submission, the surveyor must lodge an application for MHWL approval at the Department of Lands (Crown Lands Service, Newcastle) and include the following items:-

- (a) Three copies of a survey plan signed and dated by a registered surveyor; clearly defining both the position of the former or current title Mean High Water Mark boundary position and the proposed new position of this boundary feature; and



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- (b) In accordance with the Surveying Regulation, a comprehensive report on the definition of Mean High Water Mark. The report must:
- Provide the basis and method of determining the location of the Mean High Water Mark. (The Mean High Water Mark should be referenced to Australian Height Datum (AHD) and accord with relevant tidal plane statistical data (where available) which can be obtained from the Department of Commerce's Manly Hydraulics Laboratory (see Appendix E for contact details). If AHD is used as the basis of the definition or to support any part of the justification for the definition, then the datum must be based upon and verified by a closed level traverse between Permanent Marks that have accurate heights (ie Accuracy Class "LD" or "B" or better), and;
  - If applicable, satisfy the requirements of the Modified Doctrine of Accretion under the Coastal Protection Act 1979 in accordance with the procedures outlined in Section 6.
  - Provide photographs of the area, particularly when there are improvements near the foreshore.
  - Provide a report on any improvements adjoining the foreshore.
  - Provide a full copy of all survey plans used to define the MHW and all adjoining survey plans. (These plans will be returned to the applicant upon request after the completion of the Department's investigation).
- (c) Provide a completed checklist; and
- (d) A fee for the investigation of the definition (see Appendix B).

A Department of Lands file will be created for each application.

Surveyors of the Department of Lands in each region will analyse the method and basis of the determination, conduct a site investigation where appropriate and may consider responses from any other authority.

The applicant will be advised in writing whether their application has been approved or the basis upon which the application was refused. If approved one (1) endorsed copy of the plan will be returned to the applicant. The surveyor must retain the endorsed copy.

Subsequent amendments to the plan will require two further copies of the plan to be submitted for approval.

Before registration of the final survey plan at the **Land & Property**



## Surveyor General's Directions



**Information (LPI)**, Queens Square, Sydney, the following statement will be inserted in the "Signature and Seals Only" panel of the plan form.

*"The Minister for Lands, in accordance with Part 7 of the Surveying Regulation, approves the determination of the MHWM Boundary of lots ....., as shown hereon.  
Dept of Lands file \_\_\_\_\_ on \_\_\_/\_\_\_/\_\_\_.*

If the variation was caused by accretion to the adjoining land, then the "Modified Doctrine" must be satisfied. In that case relevant documents will be forwarded to the local council and the (DIPNR) to comment on the applicant's submission in regard to the issues of public access and indefinite sustainability (see Section 6).

If the application satisfies all criteria of the Modified Doctrine then the following statement will be inserted in the "Signature and Seals Only" panel of the plan form.

*"The Minister for Lands in accordance with Part 7 of the Surveying Regulation and Section 55N of the Coastal Protection Act 1979 as amended, approves the determination of the MHWM Boundary of lots ....., as shown hereon.  
Dept of Lands file \_\_\_\_\_ on \_\_\_/\_\_\_/\_\_\_.*

The inclusion of these statements will inform subsequent users of the plan that the position of Mean High Water Mark had the approval of the Minister administering the Crown Lands Act 1989 without the need to undertake extensive searching.

### **7.3 Identification Surveys of Waterfront Properties**

When undertaking your search prior to an identification survey of a waterfront property, the latest information from the District Office of the Department of Lands and tidal analysis data from the Manly Hydraulic Laboratory should be included. The office locations for this search are outlined in Appendices B & D.

This information should include the details of structures and occupations contained within leases, licences or permissive occupancies and tidal analysis data from the Manly Hydraulics Laboratory.

The surveyor has a professional obligation to identify and comment on the location of all structures and occupations that relate to the client's property. In this regard, Mean High Water Mark is a title boundary no different to any other. Therefore, differences in the location of Mean High Water Mark or the encroachment of improvements should be identified and reported.



Surveyors should also refer to guide for conducting Identification Surveys prepared by the Institution of Surveyors NSW.

### 8. NSW Maritime (former Waterways Authority)

NSW Maritime includes the former Waterways Authority. Applications within Sydney Harbour, Botany Bay, Newcastle Harbour & Port Kembla must be lodged through NSW Maritime in Sydney. See Appendix D.

NSW Maritime has the responsibility for administering the title to all land below Mean High Water Mark (MHW) in the following geographical areas:

- **Sydney Harbour** including its estuaries to their tidal limit.
- **Botany Bay** to a line east of the Captain Cook bridge extending between Taren Point and Rocky Point.
- **Newcastle Harbour** from the eastern end of the breakwalls to the downstream side of the following bridges:
  - Stockton Bridge (Hunter River, North Channel)
  - Tourle Street Bridge (Hunter River, South Channel)
  - Hannell Street Bridge (Throsby Creek)
- **Port Kembla Harbour**, including the Inner & Outer Harbours and their adjoining foreshores.

NSW Maritime's consent to the definition of MHW in these geographical areas is a pre-requisite to the lodgement of a survey plan at the **Land & Property Information (LPI)** - Department of Lands

Surveyors should include in their search the latest definition of MHW provided by NSW Maritime. It is likely that NSW Maritime's definition of MHW will supercede that shown on the "current plan".

#### 8.1 Consent to Unchanged Boundary

To obtain NSW Maritime's consent to an unchanged boundary the surveyor should submit three (3) copies of the plan together with a covering letter stating that:

*"The location of the existing MHW boundary as shown on the attached plan is substantially the same as that shown in NSW Maritime's Field Book \_\_\_\_\_ or NSW Maritime's Standard Plan Reference No. \_\_\_\_\_."*

An administration fee plus GST will be charged to the surveyor.

When approved one (1) endorsed copy of the plan will be returned to the surveyor as a record of NSW Maritime's consent.



## Surveyor General's Directions



Before lodging the plan at the **Land & Property Information (LPI)**-  
Department of Lands, the following statement should be inserted in the  
“Signature and Seals Only” panel of the plan form:

*“NSW Maritime, in accordance with Part 7 of the Surveying  
Regulation 2001 approves the determination of the MHWB Boundary,  
as shown hereon.  
NSW Maritime file \_\_\_\_\_ on \_\_\_/\_\_\_/\_\_\_.”*

The inclusion of this statement will inform subsequent users of the plan that  
the position of the MHWB had the approval of the NSW Maritime.

### 8.2 Consent to Changed Boundary

Where a survey reveals a substantial variation in the position of Mean High  
Water Mark (MHWB) to that provided by NSW Maritime in a preliminary  
search NSW Maritime’s approval is to be sought to the proposed definition  
**prior** to plan lodgement at Land & Property Information (LPI).

When making the submission for approval the surveyor must forward the  
following items to NSW Maritime for investigation:

- (a) Three copies of the final plan signed and dated by a registered surveyor  
showing the definition of the MHWB boundary as supplied by NSW  
Maritime in a preliminary search and the proposed definition of  
MHWB as determined by the surveyor; and
- (b) In accordance with the Surveying Regulation 2001, a comprehensive  
report on the definition of Mean High Water Mark. The report must:
  - Provide the basis and method of determining the location of the  
Mean High Water Mark. (The Mean High Water Mark should be  
referenced to Australian Height Datum (AHD) and accord with  
relevant tidal plane statistical analysis (where available) which can  
be obtained from the Department of Commerce’s Manly Hydraulics  
Laboratory (see Appendix E for contact details). If AHD is used as  
the basis of the definition or to support any part of the justification  
for the definition, then the datum must be based upon and verified  
by a closed level traverse between Permanent Marks that have  
accurate heights (ie Accuracy Class “LD” or “B” or better), and;
  - If applicable, satisfy the requirements of the Modified Doctrine of  
Accretion under the Coastal Protection Act 1979 in accordance with  
the procedures outlined in Section 6.
  - Photographs of the area, particularly when there are improvements  
near the foreshore.



## Surveyor General's Directions



- A report on any improvements adjoining the foreshore.

(c) A fee plus GST for the investigation of the definition.

A file will be created for each application.

The Survey Manager will analyse the method and basis of the determination, and conduct a site investigation where appropriate.

The applicant will be advised in writing whether their application has been approved or the basis upon which the application was refused. If approved one (1) endorsed copy of the plan will be returned to the applicant.

Subsequent amendments to the plan will require two further copies of the plan to be submitted for approval.

Before lodgement of the final survey plan at **LPI**, the following statement will be inserted in the "Signature and Seals Only" panel of the plan form.

*"NSW Maritime, in accordance with Part 7 of the Surveying Regulation 2001, approves the determination of the MHWM Boundary, as shown hereon.  
NSW Maritime file. \_\_\_\_\_ on \_\_/\_\_/\_\_.*

If the variation was caused by accretion to the adjoining land, then the "Modified Doctrine" must be satisfied. In that case relevant documents will be forwarded to the local council and the Department of Infrastructure Planning and Natural Resources (DIPNR) to comment on the applicant's submission in regard to the issues of public access and indefinite sustainability (Section 6).

If the application satisfies all criteria of the Modified Doctrine then the following statement will be inserted in the "Signature and Seals Only" panel of the plan form.

*"NSW Maritime in accordance with Part 7 of the Surveying Regulation and Section 55N of the Coastal Protection Act 1979 as amended, approves the determination of the MHWM Boundary, as shown hereon.  
NSW Maritime file \_\_\_\_\_ on \_\_/\_\_/\_\_.*

The inclusion of this statement will inform subsequent users of the plan that the position of the MHWM had the approval of NSW Maritime without the need to undertake extensive searching.

### 8.3 Identification Surveys of Waterfront Properties



## Surveyor General's Directions

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When undertaking your search for an identification survey of a waterfront property, information from NSW Maritime and the Manly Hydraulics Laboratory should be included. The office locations for this search are outlined in Appendices D & E.

This information should include details of the relevant foreshore structures and occupations held under lease from NSW Maritime and tidal analysis data from the Manly Hydraulics Laboratory.

The surveyor has a professional obligation to identify and comment on title dimensions, the location of all structures and occupations that relate to the client's property. In this regard, Mean High Water Mark is a title boundary no different to any other. Therefore, differences in the location of Mean High Water Mark or the encroachment of improvements should be identified and reported.

In order to provide this professional service, it is imperative that the search include details of foreshore occupations from NSW Maritime and tidal analysis data from the Manly Hydraulics Laboratory.

The use of NSW Maritime records, plans and field notes may be extremely useful in providing a solution to what may otherwise be a difficult fixation in respect to certain side boundaries. It is therefore recommended that you include NSW Maritime and Manly Hydraulics Laboratory on your standard search list for waterfront properties.



Appendix A –Legal Opinion on the Application of the  
Coastal Protection Amendment Act 2002

COASTAL PROTECTION AMENDMENT ACT 2002

1. When the Bill for this Act was introduced into Parliament its stated objects were:

- “(a) to amend the *Coastal Protection Act 1979*:
- (i) to redefine the land that comprises the coastal zone, and
  - (ii) to require local government councils within the coastal zone to prepare coastal management plans if directed to do so by the Minister, and
  - (iii) to modify the doctrine of erosion and accretion, and
- (b) to amend the *Crown Lands Act 1989* with respect to easements for public access over foreshore land within the coastal zone.”

In the Legislative Council object (b) was deleted from the Bill and object (a)(i) was modified.

However, the provisions giving effect to objects (a)(ii) and (iii) remained in the Bill unaltered.

The doctrine referred to in object (a)(iii) is a product of the common law. It provides that where a littoral or riparian boundary changes gradually and imperceptibly due to normal physical forces, the boundary of the abutting land changes with it. The possibility of a loss or gain of land is an incident of the ownership of such land.

2. The provision of the *Coastal Protection Act* which modified the doctrine of erosion and accretion is section 55N. This appears in the Act as follows:

**“Part 4B**

**55N Modification of doctrine of erosion and accretion**

- (1) This section applies to land:
- (a) which is within the coastal zone, or which adjoins the tidal waters of Sydney Harbour or Botany Bay, or their tributaries, and
  - (b) a boundary (**the water boundary**) of which is defined or otherwise determined by reference to a mean high water mark.
- (2) A court has no jurisdiction to make a declaration concerning a water boundary that would increase the area of land to the landward side of the water boundary if:
- (a) a perceived trend by way of accretion is not likely to be indefinitely sustained by natural means, or



## Surveyor General's Directions



(b) as a consequence of making such a declaration, public access to a beach, headland or waterway will, or is likely to be, restricted or denied.

(3) The Registrar-General has no power under Part 14A of the *Real Property Act 1900* to make a determination concerning a water boundary that would increase the area of land to the landward side of the water boundary.

(4) The Minister administering the *Crown Lands Act 1989* (or a person authorised by that Minister) has no power under Part 7 of the *Surveying Regulation 2001* (or any regulation made by way of replacement, or in substitution, for that Regulation) to approve a determination concerning a water boundary that would increase the area of land to the landward side of the water boundary if:

(a) a perceived trend by way of accretion is not likely to be indefinitely sustained by natural means, or

(b) as a consequence of making such a determination, public access to a beach, headland or waterway will, or is likely to be, restricted or denied.”

Subsections (2) and (4) of section 55N modify the doctrine of erosion and accretion by removing the power of any court or the Minister administering the *Crown Land Act 1989* to make a declaration, or approve a determination, concerning a water boundary that would increase the area of land to the landward side of the water boundary if:

(a) a perceived trend by way of accretion is not likely to be indefinitely sustained by natural means, or

(b) as a consequence of making such a declaration, public access to a beach, headland or waterway will, or is likely to, be restricted or denied.”

Obviously, what brings (a) and (b) into consideration is the existence of accretion (i.e. an increase in the area of land to the landward side of a water boundary).

In support of this conclusion it is legitimate to look to the Minister’s Second Reading Speech in Parliament: section 34(2) (e) of the *Interpretation Act 1987*.

The purpose of (a) and (b) was explained in the Minister’s Speech on the *Coastal Protection Amendment Bill 2002* (Hansard of 20 March 2002). The Minister said of the proposed section 55N: “No longer will property owners be able to have a boundary title adjusted simply by showing that any accretion has been slow and imperceptible. Now a property owner must show that the process is irreversible and that customary public access to the foreshore will not be lost.”

Elsewhere in his speech the Minister explained how the doctrine of accretion can adversely affect public access to foreshore areas. He said: “Under this doctrine landowners can apply to have their property title redefined through an



## Surveyor General's Directions

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administrative process or through the courts. Processes of shoreline accretion and erosion along the New South Wales coast almost inevitably create situations where the accretion takes place gradually and imperceptibly, but erosion occurs rapidly as a result of dramatic storm events. As a result, property owners have time to claim title to the newly accreted land under the doctrine of accretion but do not lose this land under the doctrine of erosion as the loss is usually sudden and dramatic and is readily observed and documented. In New South Wales the doctrine of accretion and erosion has become a one-way activity with owners readily increasing their landholding and never surrendering it. The net effect is that application of the doctrine favours the private landowner at the expense of the public domain. If the issue remains unaddressed we will see a continued loss of public access along the foreshores of our estuaries, in particular as property owners continue the cycle of protecting their properties from erosion and laying claim to any accretion beyond those protected boundaries.”

A further aspect of the amending legislation is section 55N(3). This section prohibits the Registrar-General from making a determination under section 14A of the *Real Property Act* concerning a water boundary that would increase the area of land to the landward side of the water boundary. This also only applies in the case of accretion.

3. The point of all this is that it is wrong to apply the limitations imposed by section 55N in any context other than accretion.

Thus, where accretion is not involved there is nothing to stop a person from registering a redefinition plan which includes land that the person owns below a cliff face, even though the assertion of ownership may result in a loss of customary access to the foreshore.

Likewise, where accretion is not an issue, there is nothing to prevent a statutory body, such as the NSW Maritime, from approving a mean high-water mark definition, so that the adjoining owner may register a redefinition plan in respect of his or her property.



## Surveyor General's Directions

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### REDEFINITION PLANS

1. It is the statutory duty of the Registrar-General to register redefinition plans that are in registrable form. These are plans of survey that are lodged with the Registrar-General to obtain legal recognition of boundaries which are, or may reasonably be regarded as, the true boundaries of a parcel of land.
2. Conversely, it is the statutory duty of the Registrar-General to refuse to register a redefinition plan which is not in registrable form, for example where it does not comply with section 55N of the *Coastal Protection Act*.
3. The dimensions shown in a redefinition plan differ from those of the original plan, for various reasons:
  - (a) There may have been survey or boundary errors in the original plan.
  - (b) Early surveyors often left a little more land than necessary to satisfy deed dimensions.
  - (c) Where a shortage of land exists, a surveyor may leave sufficient land to satisfy adjoining title dimensions and accept the resultant loss in the client's title, or vice versa.
  - (d) While modern surveying equipment enables measurements to be made with a high degree of accuracy, in the past lesser standards were acceptable and recognised in the earlier *Survey Practice Regulations*.
  - (e) To keep survey costs down for landowners, provision has always been made for the lodgment of plans in the Registrar-General's Office showing "compiled" measurements and "deducted" areas for residue parcels; as a consequence, there may be differences between the stated dimensions and areas of such parcels and what is actually available on the ground.
  - (f) A redefinition plan may be lodged in the case of lost boundaries. A "lost" boundary is one lacking in evidence on the ground. In the case of an artificial boundary, it would be one where none of the original survey marks or monuments is to be found, so that there is no reliable starting point or datum line from which to measure. In the case of a natural boundary, it would be one where the requisite evidence of the natural feature has been obliterated, as for example, where reclamation work has been carried out along the foreshore or where a stream has been replaced by an artificial channel or an underground conduit and the bed of the inlet or stream covered over.
  - (g) Confused boundaries make up another category which requires a redefinition plan. These boundaries are ones that cannot accurately be determined because the evidence of their whereabouts, as indicated by the relevant plans and description, is ambiguous or confused. They may also be boundaries which, from the evidence on the ground



## Surveyor General's Directions

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(usually old occupations), cannot be reconciled with the title dimensions or description.

(h) A redefinition plan may be lodged to define the alteration of boundaries arising from accretion or erosion in circumstances where section 55N of the *Coastal Protection Act* does not apply.

(i) A redefinition plan showing land together with accretion that was slow and gradual and that is irreversible and would not lead to a loss of customary access to the foreshore could be lodged, if it has Ministerial consent or a court approval.

(j) Another kind of redefinition plan is a “primary application plan” for bringing old system title land (based on documentary ownership and/or adverse possession) under the *Real Property Act*.

(k) A further such plan is a “delimitation plan” which accurately defines the boundaries of land that has been converted to Torrens title under Part 4B of the *Real Property Act*.

4. Upon lodgment with the Registrar-General a redefinition plan may be accompanied by:

- (a) a written report by the surveyor, stating the reasons for defining the boundaries in the manner indicated in the plan
- (b) such other evidence as is necessary to support the redefinition
- (c) the consent of the Minister for Lands (or other relevant authority) as an owner of adjoining land; and
- (d) the name and address of any other adjoining owners so that notice may be served on them.

When a redefinition plan is registered a new certificate of title is issued in terms of the new plan.

Frank Ticehurst  
MANAGER LEGISLATION BRANCH  
Legal Services  
Department of Lands



Appendix B –Applications and Fees

  
 Department of Lands  
**Schedule of Fees**  
 for  
**Applications to redefine**  
**Mean High Water Mark, or**  
**Landward boundaries or roads or reservations**

Submissions for approval of new definitions should be sent to:

General Manager  
 Crown Land NSW  
 PO Box 2185  
 DANGAR NSW 2309

Phone: (02) 4960 5000  
 Fax: (02) 4960 5020  
 E-mail: [Kimberly.Mason@lands.nsw.gov.au](mailto:Kimberly.Mason@lands.nsw.gov.au)

The Investigation fee:

<b>Type of approval</b>	<b>Fee</b>
1. Consent to <b>unchanged</b> simple boundaries that do <b>not</b> currently have evidence of prior approval, or	\$??? including GST
2. Consent to <b>changed</b> complex boundaries	\$??? including GST + Additional field cost if required (See below).

If office investigations detect discrepancies, anomalies or unsubstantiated claims, the lodging party will have two alternatives:

1. Provide additional information, or
2. Give a commitment to pay the consultation fee to the District Office of the Department of Lands to investigate and carry out a field inspection.

The fee charged by the District Office will be based on the rate of \$80.00 per hour for a maximum of 10 hours (minimum fee \$200.00).

The discretion of the Minister for the Crown Lands Act 1989 or his delegate will be used to evaluate whether sufficient information has been supplied for each case.



## Surveyor General's Directions



### Appendix C – Department of Lands - Office Locations

#### Department of Lands

Website: [www.lands.nsw.gov.au](http://www.lands.nsw.gov.au)

#### Land & Property Information

Queens Square Building  
1 Prince Albert Road,  
SYDNEY NSW 2000  
Phone: 9228 6798  
Fax: 9221 4405  
E-mail: [planinfo@lands.nsw.gov.au](mailto:planinfo@lands.nsw.gov.au)  
Or  
GPO Box 15  
SYDNEY NSW 2001

#### Crown Land NSW

General Manager  
P O Box 2185  
DANGAR NSW 2309  
Phone: (02) 4960 5000  
Fax: (02) 4960 5020

#### District Offices

**PARRAMATTA:** (Metropolitan Office)  
10 Valentine Avenue  
Parramatta NSW 2150  
(PO Box 3935 Parramatta 2124)  
Contact: Ken Green  
Phone: (02) 9895 6258  
Fax: (02) 9895 6227  
E-mail: [Ken.Green@lands.nsw.gov.au](mailto:Ken.Green@lands.nsw.gov.au)

**GRAFTON:**  
98 Victoria Street  
(Locked Bag 10)  
Grafton NSW 2460  
Contact: Nessbit (Bert) Hurcum  
Phone: (02) 6640 2050  
Fax: (02) 6640 2036  
E-mail: [Bert.Hurcum@lands.nsw.gov.au](mailto:Bert.Hurcum@lands.nsw.gov.au)

**MAITLAND:**  
Cnr Newcastle Rd & Bank St  
(PO Box 6)  
East Maitland NSW 2323  
Contact: Kevin Thompson  
Phone: (02) 4937 9307  
Fax: (02) 4934 2252  
E-mail: [Kevin.Thompson@lands.nsw.gov.au](mailto:Kevin.Thompson@lands.nsw.gov.au)

**TAREE:**  
98 Victoria Street  
(PO Box 440)  
Taree NSW 2430  
Contact: Geoff Songberg  
Phone: (02) 6552 2788 ext 245  
Fax: (02) 6552 2816  
E-mail: [Geoffrey.Songberg@lands.nsw.gov.au](mailto:Geoffrey.Songberg@lands.nsw.gov.au)

**NOWRA**  
5 O'keefe Avenue  
(PO Box 309)  
Nowra NSW 2541  
Contact: Peter Ragen  
Phone: (02) 4428 6909  
Fax: (02) 4428 6988  
E-mail: [Peter.Ragen@lands.nsw.gov.au](mailto:Peter.Ragen@lands.nsw.gov.au)

**ORANGE**  
92 Kite Street  
(PO Box 2146)  
Orange NSW 2800  
Contact: DAN KENNEDY  
Phone: 6393 4347  
Fax: 6362 3896  
E-mail: [Dan.Kennedy@lands.nsw.gov.au](mailto:Dan.Kennedy@lands.nsw.gov.au)



## Surveyor General's Directions

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### Appendix D – NSW Maritime (Waterways Authority) Office Location

#### WATERWAY

#### ADDRESS

Website: [www.maritime.nsw.gov.au](http://www.maritime.nsw.gov.au)

Sydney Harbour  
Botany Bay

To: Survey Manager  
Survey & Spatial Information Branch  
NSW Maritime  
Locked Bag 5100  
Camperdown NSW 1450  
Phone: (02) 9563 8836  
Fax: (02) 9563 8800

Newcastle Harbour

As above

Port Kembla

As above



## Surveyor General's Directions

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### Appendix E – Manly Hydraulics Laboratory

#### WATERWAY

#### ADDRESS

Manly Hydraulics Laboratory  
110B King Street  
Manly Vale  
NSW 2093

Attention: Mr Peter Davidson  
Phone: 02 9949 0243  
Fax: 02 9948 6185  
E-mail: [pdavidson@mhl.nsw.gov.au](mailto:pdavidson@mhl.nsw.gov.au)  
Website: [www.mhl.nsw.gov.au](http://www.mhl.nsw.gov.au)



**Department of Lands**  
**CHECK LIST**  
**FOR**  
**WATER BOUNDARY CONSENT, INCLUDING MEAN HIGH WATER**  
**MARK**

Details of the following items should be included in the application as appropriate.

ITEM	PROCEDURE	Y	N	N/A
1	Lot identifier and street address. (Check with Geographical Names Board See <a href="http://www.gnb.nsw.gov.au/lgamap/search">www.gnb.nsw.gov.au/lgamap/search</a> )			
1.1	Topographical map reference and details – for Rural Surveys.			
2	Name of waterway - (Check with Geographical Names Board).			
2.1	Is the water body tidal?			
2.2	Is the correct tidal / non-tidal symbol shown.			
3	<b>Search Information.</b>			
3.1	Copy of original grant/title – to establish extent of title.			
3.2	Copy of the current title			
3.3	Complete historical set of plans including - Full copies of DP's used in the boundary definition and adjoining DP's. (These can be returned if requested)			
3.4	Copies of any unregistered plans and/or other documents which support or assist the definition.			
3.5	<b>Public authority search.</b>			
3.5.1	SCIMS Search (Level data)			
3.5.2	AHD Level of MHW (Manly Hydraulics Laboratory) (Tidal Analysis & Tidal Gradients)			
3.5.3	Local Council (Public Access)			
3.5.4	Other			
4	<b>Report describing the method used to determine the boundary. The report should include, if appropriate :</b>			
4.1	Basis and method of determining the location of the MHW or bank.			
4.2	Details of any differences between the observed location of the present MHW or bank and previous definition/s. Give considered, qualified reasons for the difference (eg. erosion / accretion / error in prior survey, flood or reclamation).			
4.3	Position of all improvements relative to boundary shown on plan.			
4.4	Information and / or statutory declarations from eye witnesses (e.g. long term residents).			
4.5	Professional Advice or evidence (e.g. land / estuary studies, geotechnical evidence, soil/bore hole samples, etc).			
4.6	Description of the land and land use. (e.g. whether natural, developed or affected by man).			



## Surveyor General's Directions



4.7	Provide photographs – current, and historical. Terrestrial and aerial if appropriate with boundary superimposed.			
5	<b>Modified Doctrine of Accretion</b>			
5.1	Is the new MHW definition indefinitely sustainable by natural means?			
5.2	Is Public Access likely to be restricted or denied?			
6	Copy of Fieldnotes (relating to the measurement of the MHW).			
7	Observed a MHW tide to confirm definition?			
8	Fee.			
9	Three (3) signed and dated copies of plan			

Name of Surveyor: \_\_\_\_\_

Date: \_\_\_\_\_

Signed by Surveyor: \_\_\_\_\_



# Surveyor General's Directions



## Flow chart of Procedures within Department of Lands

