

# Information Guide - Maritime Property

## End of Lease Activities

This guide;

- will provide assistance to Lessees and prospective Lessees in relation to the management of end of lease activities for Maritime properties including termination and make-good, and follows from the information guide(s) on managing leases over Maritime Property.
- is applicable to all new agreements (referred generically as Leases) issued over Roads and Maritime land for structures and uses associated with infrastructure purposes.
- will generally be applied by Roads and Maritime unless the delegated personnel determines that circumstances exist which justify a departure from the procedure, including to the extent necessary to comply with its obligations at law.

Roads and Maritime property staff will assist current and prospective Lessees with their enquiries and provide general information in accordance with the Roads and Maritime Customer Charter.

**Note:** To avoid unnecessary duplication Lessees and Licensees will be referred to in this guide generically as Lessees and references to Roads and Maritime relate to its relationship as the property owner and Lessor. Terms used in this document have the meanings given them in the [Glossary of Terms and Definitions](#).

### Lease Termination

The actions related to termination of Leases at expiration, or earlier determination, are important components of the lifecycle management of property. Prior to notifications being issued, Roads and Maritime will review the Lease, the Lessee's performance and adherence to lease obligations, as well as the property's current and possible/probable future uses.

In some instances, notification of early termination may be served on the Lessee where the Lessee, following receipt of written notification of the default(s) from Roads and Maritime, has failed to rectify a breach of the Lease conditions within the time frame specified in the Default Notice.

If termination is not required, then Roads and Maritime may negotiate a lease renewal in accordance with the procedures detailed in the relevant lease 'Establishment' Procedures.

### Activities Prior to Notice

In managing the Lease Termination process all relevant property information, Lease clauses regarding terminations and notifications, and Lessee performance information will be reviewed in detail. This review may include, but is not limited to:

- Review short and long term strategy for the property in relation to other relevant Roads and Maritime policies, portfolio plan and adjoining property uses
- Review current property use and assess the appropriateness of the on-going use of the property by existing Lessee and continuation of the current use
- Review expiry date of Lease and requirements prior to issuing notification of expiry or termination and requiring Vacant Possession of the property
- Review Lessee's obligations under lease and ensure these are fulfilled including payment of rental and outgoings and rectification of any Lessee Defaults
- Inspect the property to determine if Lessee has complied with maintenance obligations.

## **Termination Notice Methodology**

Generally, the Termination Notification process will include the following requirements:

- Consultation with Roads and Maritime legal on validity and procedures for termination
- Co-ordination of the provision of Termination Notification to the Lessee as appropriate with reasoning for termination, such as expiry of lease or persistent breach of obligations under the Lease that have not been rectified despite notification of breach
- Management of appropriate actions related to the Lessee vacating the property including reviewing and agreeing with Lessee on scope for Make Good and Remediation Works (if applicable).

Any Termination Notification will need to be provided in terms of the Lease including being in writing, in the appropriate format and delivered in terms of the requirements of the Lease.

Make Good and Remediation works will be managed in accordance with the terms and conditions of the Lease.

### ***Appeals against Termination Notifications***

A Lessee who has been issued with Termination Notification may seek to have that decision reviewed. Requests for a review must be lodged in accordance with the dispute resolution provisions of the Lease, or where these do not exist, a written request for a review which must show cause as to why the review should be undertaken.

### ***Vacant Possession upon Termination***

Upon the termination of a Lease, it is a general requirement that the Lessee hands over the property in a condition as follows:

- Clean and free from rubbish, including free from contamination and pollution caused or contributed to by the Lessee and the related operations.
- In a good state of repair, order and condition, subject to the effect of fair wear and tear, as the property was at the date when the Lessee first took possession or occupation of the property and detailed in the incoming Inspection Report.
- In a condition indicating that the Lessee has complied with all the maintenance and repair obligations and environmental obligations in accordance with the Lease and relevant Legislation.

The Lessee is also required to hand over all keys and security access devices to the property and any manuals, licences or documentation regarding the possession or control of the property.

## **Make Good and Remediation**

At the expiry or early termination of a Lease and where Vacant Possession is required, a Make Good scope is to be prepared based on the terms of the Lease.

Where Roads and Maritime owns the structures affixed to the property an assessment will be undertaken to determine if the Lessee should remove such structures either upon expiry or earlier termination of the Lease. Roads and Maritime may require this removal at the Lessee's cost and for the Lessee to carry out Make Good works to the property.

If the Lessee is required to obtain an Environmental Site Assessment or conduct remediation works after the expiry of the lease, Roads and Maritime will grant a non-exclusive licence to access the property to complete the works. In return, the Lessee must indemnify Roads and Maritime for any Loss that is paid, suffered or incurred or for which Roads and Maritime may be held liable, as a result of the Lessee accessing the property. Any loss includes rental lost during the period that remediation is occurring beyond the expiration of the term.

During the Make Good assessment, the level of any contamination at the property needs to be determined to assess whether the Lessee has complied with their environmental obligations under the Lease and maintained the property in the same condition as at the Commencement Date as detailed in the Baseline Condition Report.

If the Lessee has not maintained the property to the standard described in the initial Baseline Condition Report or if the lease is historic and no Baseline Condition Report exists, or is required by the Lease, but significant deterioration of the environmental condition of the property is evident as recorded by the Site Assessment Report, then the required remediation will be undertaken at the Lessee's cost in accordance with the Lease.

The Lessee may be required to:

- Engage an Environmental Consultant to prepare an Environmental Site Assessment
- Implement and carry out all recommendations made in the Environmental Site Assessment
- Provide a certificate from an Environmental Consultant to the effect that the recommendations in that assessment have been satisfactorily carried out
- Provide a certificate from an Environmental Consultant that indicates that any Contamination and Pollution of, on or within the property or any adjoining or neighbouring property, land or waterway has been remediated, restored or removed as recommended in the Environmental Site Assessment.

During any period remediation is occurring after the expiry date of the lease, unless prior agreement has been made with Roads and Maritime, the Lessee will be charged a licence fee based on the passing rent prior to the expiry of the Lease.

### ***Remediation obligations***

The Lessee will not be obligated to remediate any Contamination or Pollution if the Lessee can establish and provide written evidence that such Contamination and Pollution:

- Was not caused, contributed to or exacerbated by the Lessee and its operations after the date of possession or occupation of the property by the Lessee
- Has migrated to the property after the date of possession or occupation of the property by the Lessee, from adjoining or neighbouring land or waterways in the possession of or owned by Roads and Maritime.

As part of the Remediation Management, Roads and Maritime must ensure that before carrying out any Remediation of the property, the Lessee has:

- Consulted in good faith and co-operated with Roads and Maritime in relation to the proposed Remediation so as to minimise as far as reasonably practicable the impact of the proposed Remediation on adjoining land and water; and
- Obtained the prior written consent of Roads and Maritime that should not be unreasonably withheld or delayed.

### ***Goodwill and Residual Value of Improvements***

No compensation will be payable to a Lessee by Roads and Maritime for the residual value of any improvements, property or for business goodwill at the expiry, termination, or earlier determination of a Lease.

### ***Removal of Improvements***

Prior to the expiry or as soon as practicable after earlier termination, Roads and Maritime may give written notice to the Lessee specifying the requirement to remove or partially remove any or all Improvements from the property by the date specified in the notice and complying with any other conditions specified in the notice.

Information relating to the removal of structures from Roads and Maritime land are detailed in [Information Guide — Maritime Property— Removal of Structures.](#)

### **Renewal of Leases**

Where the Lease includes an Option Clause and the Lessee wishes to exercise that clause to renew the lease for a further term from the expiration of the existing term, and has given Roads and Maritime a renewal notice in accordance with the Lease, then Roads and Maritime will renew the Lease unless the Lessee:

- Has not paid all rent due and all other moneys payable, including the Lessee's proportion of outgoings, in accordance with the Lease; or
- Is in breach of any of the Lessee's obligations under the Lease, including any requirement for the Lessee to achieve and maintain initial and on-going development consent for the use of the property.

Where the Lease does not contain an Option clause and the incumbent Lessee wishes to renew the Lease, Roads and Maritime will follow the procedures included in the various Procedures for establishing Leases over Roads and Maritime Property.

## Other relevant Information Guides

The following guides provide further information on matters affecting End of Lease Activities;

- [Information Guide — Maritime Property — Establishing a Domestic Waterfront Lease or Licence](#)
- [Information Guide — Maritime Property— Establishing Infrastructure Leases](#)
- [Information Guide — Maritime Property— Establishing Community Leases](#)
- [Information Guide — Maritime Property — Establishing Registered Club Leases](#)
- [Information Guide — Maritime Property — Establishing Retail Leases](#)
- [Information Guide — Maritime Property — Establishing Industrial Leases](#)
- [Information Guide — Maritime Property— Establishing Commercial Marina Leases](#)
- [Information Guide — Maritime Property - Managing Domestic Leases & Licences](#)
- [Information Guide — Maritime Property - Managing Infrastructure Leases Information](#)
- [Guide — Maritime Property - Managing Community Leases](#)
- [Information Guide — Maritime Property - Managing Registered Club Leases](#)
- [Information Guide — Maritime Property - Managing Retail Leases](#)
- [Information Guide — Maritime Property - Managing Industrial Leases](#)
- [Information Guide — Maritime Property — Managing Commercial Marina Leases](#)
- [Information Guide — Maritime Property— Purchase of Reclaimed Land](#)
- [Information Guide — Maritime Property - Removal of Structures](#)

**Important Note:** This document does not constitute legal advice and provides guidance only. Users are advised to seek professional advice and refer to the relevant legislation as necessary, before taking action in relation to any matters covered by this document.

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