

Information Guide - Maritime Property — Establishing Charter Vessel Wharf Leases

About this guide

This guide:

- Provides information to assist potential Lessees in the establishment of a Charter Vessel Wharf lease over Maritime Property
- Is applicable to all new agreements (referred to generically as Leases) issued over Roads and Maritime land for structures and uses associated with a Charter Vessel Wharf
- Will generally be applied by Roads and Maritime unless the delegated personnel determines that circumstances exist which justify a departure from this guide, 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 of Maritime Property. Terms used in this document have the meanings given them in the [Glossary of Terms and Definitions](#).

Maritime Charter Vessel Wharf Leases and Agreements

A fully executed agreement with the Lessee is required before any unaccompanied access to or use of the property by the Lessee is permitted.

Terms and conditions for any Roads and Maritime Lease need to be agreed between the parties and may vary subject to the nature of the Maritime Property, the type of use, current Roads and Maritime Policy, and/or the term of the proposed Lease.

Applicants for a new lease must provide the following information to Roads and Maritime when requested:

- A Business Case setting out the details of the business and operations
- Details of relevant skills and experience in the business or operation proposed to be carried out on the land
- Evidence of capacity to satisfy the financial obligations of the lease (including rent and make-good) as well as information regarding the prospective lessee's compliance with previous leases (if applicable)
- Any other information reasonably required by Roads and Maritime for the purpose of deciding whether or not to lease land to the prospective lessee.

It is the intention that Roads and Maritime will satisfy itself that the proposed business endeavours are viable and have a reasonable prospect of success before entering into a lease or agreement to lease.

Where an existing Charter Vessel Wharf Lease expires, Roads and Maritime may seek to negotiate a renewal with the existing lessee(s), or seek to market the property for a new Lessee.

Roads and Maritime is not obliged to offer a Lease on terms or conditions consistent with any existing or previous lease.

Roads and Maritime may also take one or more of the following into consideration in determining the rent payable;

- The commercial return expected from the lease, having regard to existing market conditions;
- Any agreed initiatives to provide particular public benefits, services or facilities; and
- Relevant legislation.

Site Assessment

Prior to granting a lease, Roads and Maritime will generally conduct a Site Assessment. The Site Assessment will assist Roads and Maritime in evaluating whether to grant a lease, and the most appropriate category(s) of land use to be conducted under a lease.

The determination of land use categories to be offered at any particular site will be at the discretion of Roads and Maritime. Where multiple categories of land Use are proposed for a single site, these will generally be incorporated into a single lease document.

Marketing and Tendering

Prior to committing to a new Lease Roads and maritime will consider the optimal market strategy to achieve the NSW Government objectives and will need to be satisfied that the on-going business operation is viable and has a reasonable prospect of continued success before entering into a renewed Lease.

Security and Bank Guarantee

Roads and Maritime may require some form of security in order to ensure the Lessee's compliance with rental and/or maintenance obligations under a lease. This will usually take the form of a bond, Bank Guarantee or similar, on terms and for an amount acceptable to Roads and Maritime, which will be determined prior to the execution of the Lease.

Guarantee Amount

Where Roads and Maritime requires a Bank Guarantee, this will generally be for an amount equivalent to up to twelve months' rent for the property, except in exceptional circumstances where additional securities may be required.

The Bank Guarantee will:

- State Roads & Maritime Services (ABN 76 236 371 088) as sole favouree
- Be unconditional and irrevocable with no expiry date
- Be issued by an Australian owned Authorised Deposit Taking Institution regulated by the Australian Prudential Regulatory Authority (APRA)
- Be in Australian Dollars.

Exceptional circumstances where an additional Guarantee Amount may be applicable include (but are not limited to):

- Where the structures on the property have unique heritage significance or maintenance obligations such that it is reasonable to expect that additional security is required to ensure that they are adequately maintained
- Where leasing incentives have been provided to the Lessee in the form of a rent free period or any other form of financial assistance
- Where the Lessee has a history of non-compliance with previous Leases
- Where the lease is for the temporary use of land and it is a condition of the lease that substantial structures must be removed at the conclusion of the lease term.

Parent Company or Director Guarantees

In exceptional circumstances, the directors of a Lessee company may be required to provide personal guarantees to protect the interests of Roads and Maritime. In addition parent company guarantees may be required in addition to the financial securities provided by the Lessee company.

Circumstances that may require parent company and/or director personal guarantees may include (but not limited to):

- Where leasing incentives have been provided to the Lessee in the form of a rent free period or any other form of financial assistance
- Where other lease arrangements exist between the Lessee and Roads and Maritime which potentially pose a significant risk to Roads and Maritime resulting from non-performance of the Lessee.

Review and Replacement of Guarantee

At any time during the term of the Lease the Guarantee Amount may be reviewed if:

- The Lessee has breached any of its obligations under the agreement
- Rent is increased in accordance with the Lease
- After five years to ensure the guarantee reflects the value of the rent for the following 12 months
- There is another reasonable basis for review.

If at any time the Bank Guarantee is called upon then the Lessee must provide a replacement Bank Guarantee.

A demand for payment under the Bank Guarantee may be made if the Lessee breaches or fails to perform any of the material obligations under the Lease. In addition, the rights of Roads and Maritime to call upon the Bank Guarantee or security will survive the expiration or earlier termination of the Lease.

Release of Bank Guarantee

Where a Lessee, who's Lease is due to terminate at expiration, or earlier determination, all or part of the Bank Guarantee may only be released once all the Lessee's obligations under the Lease have been met. Where all or part of the Bank Guarantee is called upon in accordance of the Lease, the balance will be released to the Lessee only after all such obligations have been completed and paid for.

Indemnities and Insurance

Lessee's will be required to indemnify Roads and Maritime against any action, liability or loss arising from their use of the Land or structure(s).

Insurances

The Lessee is required to effect and maintain insurance as deemed relevant by Roads and Maritime for the duration of the term of the Lease. Proof of insurance of the leased property, the Lessee's property and third party liabilities is required prior to grant of a Lease, and throughout the term of the Lease, allowing access to the property.

Policies (with the exception of Workers Compensation Insurance) may be taken out in the joint names of Roads and Maritime and the Lessee, or in the name of the Lessee with Roads and Maritime's interest noted.

Types of Insurances

The insurances required will vary dependent on the nature of the Lease but may include the following:

- Public liability, insurance for quantum: advised for any one occurrence or for any other amount Roads and Maritime reasonably requires, containing all provisions that are normally contained in public liability insurance policies, or as reasonably required by Roads and Maritime and expressly referring to and covering all of the Lessee's obligations under the Lease, including the obligation, to indemnify Roads and Maritime, for not less than \$20,000,00, or other amount as reasonably required by Roads and Maritime
- Worker's Compensation Insurance in respect of work related injuries for all the Lessee's employees and agents at any time in, on or in the vicinity of the property
- Insurance for the leased property (if not specified in the Lease as provided by Roads and Maritime), for the full cost of reinstatement of the property (including demolition and remediation) if damaged or destroyed
- Insurance to cover loss of earnings and profit resulting from any interruption to conduct of the Lessee's Business on the leased maritime property
- Insurance to cover any Pollution or Contamination arising from any activity associated with the use of the property
- Any other insurance required by law and as Roads and Maritime reasonably requires.

Insurance Policy Requirements

All insurance policies are required to be effected and maintained in terms of the following requirements:

- Policies are taken out with insurers approved by the APRA of registered insurers (and listed under 'Insurers Authorised to Conduct New or Renewal Insurance Business in Australia') or any other insurer reasonably approved by Roads and Maritime
- Policies are to be in the name of the Lessee and note the interests of Roads and Maritime and any other person who has an insurable interest relevant to the Lease
- Lessees must use all reasonable endeavours to ensure that policies are eligible insurance contracts under the Terrorism Insurance Act 2003 (Cth.) and Regulations under that Act
- Policies provide that the insurer will not cancel the insurance without first giving notice to Roads and Maritime.

Certificates of Currency

Certificates of Currency must be provided to evidence the existence of all insurances required to be effected and maintained throughout the lease term. Access to the property will not be granted until these have been provided. The Lessee must also provide copies of the insurances whenever the policies are renewed or at any time during the lease following a written request from Roads and Maritime.

Charter Vessel Wharf Lease Agreement Conditions

A Heads of Agreement (HOA) or Term Sheet is used to record the agreement of key terms and conditions of a proposed Lease. The HOA or Term Sheet may:

- Be non-binding unless specifically stated that the intention of the parties is that the HOA or Term Sheet is binding
- Include details of other less material clauses which are expected to be agreed after confirmation that the proposed Lease will be entered granted.

If entry to and use of the maritime property by the Lessee prior to the grant of a Lease has been agreed for 'fitting-out' or other reasons, this access and use must be governed by an executed lease or licence to protect the interest of Roads and Maritime.

Conditions and requirements of the Lease will include, but are not limited to:

- Payment of rent in accordance with rental formulae and conditions
- Requirement that the Lessee is to notify the Lessor of changes or events which affect the property such as the "changed development on the adjoining dry land
- All costs associated with the Lease are borne by the Lessee
- Permitted Uses of the property and requirements relating to the berthing of Vessels, maintenance and repairs
- The Lessee must indemnify and release the Lessor from any loss relating to occupation or use of 'the property
- The Lessee must fully insure the property and the Lessor against all foreseeable risks associated With the occupation and use of the property
- Upon prior written approval from the Lessor, the Lessee may assign the Lease
- Sub-leasing is prohibited unless otherwise provided in the Lease or Licence and approved in writing by the Lessor
- The Lessee is obliged to comply with all relevant work, health and safety laws and all relevant environmental laws
- The Lessee has responsibilities and obligations in relation to land contamination, pollution and land remediation
- The Lessee will be required to rectify any Defaults or breaches of the lease;
- The Lessee has the right to quiet enjoyment of the property
- The Lessor has certain rights including the right of entry onto the property to undertake inspections and the right to recover costs in the event of a breach of the Lease
- Dispute resolution processes
- Provision by the Lessee of any securities required under the Lease
- The Lessee must not lodge any caveat over the property
- Holdover.

Charter Vessel Wharf Lease Rental Framework

A Maritime Charter Vessel Lease relates to the use of Roads and Maritime land for activities associated with charter vessel services and would typically include the leasing of one or more berthing pontoons and possible Front-of-House (FOH) and Back-of-House (BOH) facilities and car spaces.

The indicative term for maritime charter vessel wharf lease is 10 years, plus two five year options, giving a total lease term of up to 20 years.

Where a new Maritime Charter Vessel Wharf Lease is to be offered by Roads and Maritime, this will generally be via a competitive process. This does not preclude the option for Roads and Maritime seeking to negotiate a renewal with the existing lessee(s).

Rents for land uses in the Charter Vessel Wharf Lease category will be determined by market valuation. FOH or BOH facilities may be charged at a Rate/m².

For the purposes of applying the rental framework all revenue figures cited in the procedure are exclusive of GST.

Market Valuations

Where a lease is terminated at expiration, or earlier determination, Roads and Maritime may seek a market' valuation of the existing improvements to determine the commencement rental of a new lease.

Where rent is to be based wholly or partly on market valuation that part of the rent may be subject to:

- An annual adjustment to reflect positive movements in CPI (Sydney — All Groups) or fixed term percentage increases
- A regular rent review at a specified period(s) during the lease term, to ensure the lease provisions remain consistent with market rates
- Where relevant an independent Market Rent Valuation to determine an appropriate Market Rent for the lease may be obtained by Roads and Maritime
- To the extent permitted by law, a 'ratchet' clause providing that despite the methodology for the rent review, a reviewed market rent may not be less than the rent payable prior to the review.

If a lessee disputes the market rent determined by Roads and Maritime, the applicable rent dispute resolution provisions of the Lease will apply.

Other Matters

Maintenance obligations

Roads and Maritime will generally maintain the structures in a safe and physically suitable condition for the commercial activities authorised by the Lease, except where damaged by the Lessee. The Lessee will be responsible for the Lessee's fixtures.

Legally binding relationship

No lease or agreement to lease (or variation of an existing lease or agreement to lease) will be legally binding on either party unless it is in writing and is signed by authorised representatives of the parties concerned.

Subleases and Mortgage or Charge of Lease

Roads and Maritime generally allows for the sublease or licence of leases over commercial property and such leases being security for a mortgage or charge following the prior written approval of Roads and Maritime.

All sub-leases and other sub-tenancy arrangements, including catering agreements must be for market rent and must be consistent with the terms of the head lease, including any changes that may apply to that head lease from time to time. At the discretion of Roads and Maritime, this may require renegotiation of applicable elements of the head lease.

Where a sublease is created on land leased from Roads and Maritime, the head lessee's rent will increase either by a proportion of the rent payable by the sub-lessee, or by a fixed amount agreed between Roads and Maritime and the head lessee.

Subleases are not subject to the indicative lease durations outlined in this procedure, but may not be for a term, including any option provisions, that would extend beyond the expiry of the head lease.

Lessees of Roads and Maritime will be liable for any breaches of lease conditions caused by sublessees and Roads and Maritime will generally only deal with the Head Lessee, and not the Sub-Lessee.

Transfer or assignation of a lease

Roads and Maritime generally allows for the transfer or assignment of leases over commercial property following the prior written approval of Roads and Maritime.

Details on the procedures for Transferring or Assigning a Commercial Marina Lease can be found at [Information Guide — Maritime Property— Managing Charter Vessel Wharf Leases](#).

Holding over

If a Lease expires and the lessee remains in occupation of the Premises with the consent of the Lessor, the lease holdover provisions of the Lease, where applicable, will apply and the Lease may be terminated by either party by giving six months' notice in writing.

The notice period under this clause does not apply where Roads and Maritime has commenced action to terminate a lease following material breaches of essential lease conditions.

Default

Persistent breaches of essential lease terms or conditions (such as persistent failure to pay the applicable rent) will entitle Roads and Maritime to certain remedies, including commencing action to terminate the Lease.

Access to Premises

Roads and Maritime, its agents or contractors may access the Premises for the purposes of carrying out a Site Assessment, allowing prospective lessees or purchasers to inspect the Premises or Land; or for any other purpose in the carrying out of Roads and Maritime's statutory responsibilities or ensuring compliance with essential lease terms.

Other relevant Information Guides

The following guides provide further information on matters affecting Charter Vessel Wharf Leases;

- [Information Guide — Maritime Property - Managing Charter Vessel Wharf Leases](#)
- [Information Guide — Maritime Property - End of Lease Activities](#)

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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