

Information Guide - Maritime Property

Establishing Commercial Marina Leases

This guide;

- provides information to assist potential Lessees in the establishment of a Commercial Marina 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 Commercial Marina;
- will generally be applied by Roads and Maritime unless the delegated personnel determine circumstances exist which justify a departure from this guide, including to the extent necessary to comply with its obligations at law.

Roads and Maritime 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 information 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 Commercial Marina 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. No works may be conducted on Roads and Maritime land without planning approval and a suitable Lease or Licence.

In the case of leases which are required to be registered, the Lessee will be required, at its cost, to create a new title via a Development Application for subdivision of Roads and Maritime land for leasing purposes. Roads and Maritime will not grant such a lease until the title is created against which the lease may be registered.

If a formal lease cannot be entered into until certain events have occurred (for example, planning approvals are obtained or Capital Works completed), Roads and Maritime may offer the prospective Lessee an Agreement for Lease (AFL).

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, the capital commitment required of the Lessee, 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, including details of any proposed major capital investments and/or maintenance works particular to the Maritime Property
- A report from a suitably experienced and practicing structural engineer qualified for corporate membership of the Institution of Engineers Australia independent of the Lessee and accepted by the Lessor, acting reasonably, as having the appropriate qualifications for marine structures. The report must review the condition and remaining lifespan of structures and improvements on the leased land and certify whether they are fit for purpose in accordance with all legislation and, given prescribed maintenance, will remain so for the proposed lease term. The report, if accepted by the Lessor, will be annexed to the new lease, its findings and

recommendations are to be reflected in the Lessee's Business Case and they should form the basis of the initial maintenance plan required to be provided to the Lessor by the Lessee prior to the Lease commencement.

- 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, make-good, proposed capital works and maintenance) 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 Commercial Marina 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.

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. Roads and Maritime 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.

Where a new Commercial Marina Lease is for a site upon which there is no current or recently expired lease for that activity, Roads and Maritime will generally conduct a competitive process. However, if the adjoining landowner/occupier has exclusive access to the site, Roads and Maritime will generally conduct lease negotiations directly with that owner/occupier.

Security and Bank Guarantee

Roads and Maritime will require some form of security in order to ensure the Lessee's compliance with rental and/or maintenance obligations under a lease. This will be in 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

The Bank Guarantee will generally be for an amount equivalent of up to six 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. 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 are 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 a long term lease term has been agreed and the Lessee is required to undertake significant capital improvements.
- 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
- The Property(s) fall into a state of disrepair and maintenance obligations are not being met by the Lessee
- 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, 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

Lessees will be required to indemnify Roads and Maritime against any action, liability or loss arising from their occupation of the Land.

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 \$20,000,000, 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 for the contents of the leased property for the full cost of replacement and reinstatement of the contents 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 to be taken out with insurers approved by 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 party 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 must provide that the insurer will not cancel the insurance without first seeking Roads and Maritime approval.

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.

Commercial Marina Lease Agreement Conditions

The Lessee must provide fully executed originals of all documentation required in accordance with the terms and conditions of the Lease prior to the Lease being fully executed.

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 granted.

For Commercial Marina Leases a Construction Licence (Agreement For Lease - AFL) or Licence To Use will generally be used to provide rights to build DA approved works. The grant of a Lease or Licence over the completed work is subject to the satisfaction of preconditions spelt out in the AFL.

The Construction Licence, once executed is binding on both parties and will have a draft pro-forma Lease Agreement or Licence To Use attached. Typically, the Construction Licence will contain (in a schedule or annexure) details of the property design and specification of DA approved works, the works to be done in a development or details of the refurbishment of existing Improvements.

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;
- the Lessee is to notify the Lessor of changes or events which affect the property such as changed development on the adjoining dry land;
- All costs associated with the Lease are to be 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;
- The Lessee may, under certain circumstances, be required to remove structures from the property in accordance with the terms of the Lease;
- Provision by the Lessee of any securities required under the Lease;
- The Lessee must not lodge any caveat over the property; and
- Holdover.

Commercial Marina Lease Rental Framework

A Commercial Marina Lease relates to the use of Roads and Maritime land for the operation of a commercial marina offering short - or long-term recreational and/or commercial vessel berths to the boating community for a fee.

Rent for Commercial Marina leases include a component based on a percentage of Revenue (Revenue Rent) from all or part(s) of the operation of a commercial marina (such as the berthing of vessels and income to the lessee from marine brokerage).

While business operations under a Commercial Marina Lease may include operation of commercial moorings located outside the leased area, the procedures for granting and managing mooring licences are separate and managed by Roads and Maritime Services Maritime Operations Capability Branch.

Rent is not assessed on revenues from commercial mooring licences.

An indicative initial term for a Commercial Marina Lease is 25 years.

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

Revenue Rents

Percentage revenue rent will be charged on the actual gross revenues generated by all activities, excepting those that are subject to a sublease, which are conducted on Roads and Maritime land and which are income producing activities, or are capable of generating an income, including (but not limited to);

- Berthing
- Subleasing (charged on rent received by Roads and Maritime's lessee, not the gross revenue generated by the sub-lessee)
- Accommodation, including administration space and caretaker apartments
- Fuel sales
- Boat repairs, Travel Lift, Tender Service
- Maritime Industrial
- Operations of a Registered Club Lessee

The Rent is payable in advance.

Where revenue generating activities operate across the boundary of Roads and Maritime and adjoining land owned or legally accessed and used by Roads and Maritime Lessees, the proportion of gross revenue attributable to Roads and Maritime land will generally be based on the proportion of that specific business activity which occupies Roads and Maritime land. Revenue rents will generally only be applicable in circumstances where the majority or all of the income-generating activities occur on the site leased from Roads and Maritime.

\$/m² rates are charged for hardstand areas. This method may also be used to assess rent related to other income producing activities such as boat storage, carparking, administration offices, storage and amenities.

An annual rate of \$2,500 per annum plus GST, subject to annual CPI increases (from the effective date of this procedure) is charged for each pair of slipway rails.

Rent is not levied on gross revenue generated by the operation on Roads and Maritime land of commercial moorings under a Roads and Maritime Commercial Mooring Licence or levied on non-income generating, common user facilities such as toilets, pathways and marina structures, such as jetties, gangways and pontoons which only provide access to income generating activities such as berthing.

Audit requirements for leases involving Revenue Rents

It will be a standard Lease condition for leases involving Revenue Rent that lessees provide annual audited accounts and relevant taxation documents, sufficient to determine the actual Gross Revenue from applicable activities carried out on Roads and Maritime land and an annual rent assessment will be made accordingly.

The lease will require the Lessee to provide the information and documentation considered necessary to have the Gross Revenue audited by an independent auditor. If an independent audit reveals that the Revenue has been underestimated by a material amount, appropriate adjustments will be made to past and future rent payable and the Lessee must pay Roads and Maritime's costs in obtaining the independent audit.

In the event where, after consideration of market conditions and gross revenue for similar commercial activities, actual gross revenues provided are not considered market or do not include revenues for all activities on Roads and Maritime property, rent will be assessed on the imputed gross revenues.

If an audit discloses a discrepancy in Actual Gross Revenue, the Lessee must pay to Roads and Maritime;

- Any additional Rent payable by the Lessee having regard to the discrepancy;
- Interest on the additional Rent payable by the Lessee; and

- The costs and expenses of the audit incurred by Roads and Maritime.

Commercial Marina Berths

Percentage Rent for commercial marina berths is based on gross revenue¹ in accordance with the following calculation and Table 1 below.

Percentage Rent Calculation for Commercial Marina Berths

Rent, (\$) = Gross Berthing Revenue x Percentage of Gross Revenue (%)

Where: Percentage of Gross Berthing Revenue (%) = 8% up to \$860,000 gross revenue, increasing linearly at a rate of 0.1% for each additional \$100,000 (or part thereof) of Gross Berthing Revenue, up to \$4,280,000 to a maximum of 11% of Gross Revenue.

Table 1: Indicative rentals for commercial marina berthing

| Gross Berthing Revenue (ex. GST) | Percentage of Gross Revenue (%) | Indicative Rent p.a. (rounded \$) (ex. GST) |
|-------------------------------------|------------------------------------|--|
| \$290,000 | 8.00% | \$23,200 |
| \$570,000 | 8.00% | \$45,600 |
| \$860,000 | 8.00% | \$68,800 |
| \$1,140,000 | 8.25% | \$94,050 |
| \$1,710,000 | 8.75% | \$149,625 |
| \$2,280,000 | 9.25% | \$210,900 |
| \$2,850,000 | 9.75% | \$277,875 |
| \$3,420,000 | 10.25% | \$350,550 |
| \$4,280,000 | 11.00% | \$470,800 |
| \$4,280,001 plus | 11.00% | N/A |

¹ **Noting:** revenue = actual gross revenue, or imputed market rates including service or utility charges if applicable

Other Rental Categories

The operation of a commercial marina may also include the provision of other income-generating activities which attract a range of rental methodologies.

Table 2: Calculation of Rents for income-generating activities, other than berthing, conducted under a Roads and Maritime Commercial Maritime Property lease.

| Category of Revenue Generating Activities on Roads and Maritime Land | Rental Calculation Method (exclusive of GST) |
|--|--|
| Subleasing | 20% of gross sublessee rent (or imputed rent where sublease rent is below market). Subleases must be notified to Roads and Maritime prior to entering binding agreement and must align with head lease constraints. |
| Retail | 10% of Gross Revenue where no sublessee, or based on a market valuation |
| Accommodation | 20% of market rent (where no sublessee) |
| Fuel | 2% of gross sales (where no sublessee) |
| Boat Repairs, Travel Lift, Tender Service | 5% of gross revenue or market rate per sq.m (in each case, where no sublessee) |
| Slipway Rails | \$2,500 (from effective date of this information guide) per annum for each pair to be reviewed annually to any positive movements in the CPI |
| Maritime Industrial | 5% of gross revenue or market valuation (in each case, where no sublessee) |
| Hardstand, Car parking & Administration Offices, Storage & Amenities | \$70/m2 (from effective date of this information guide) Rates reviewed annually to positive movements in the CPI |
| Registered Club | 2.5% - 5% of gross revenue (except for commercial marina berthing operations which will be treated in accordance with Table 1 of the Sydney Harbour Destination Plan — per Addendum to this Information Guide). The Clubs' audited annual reports need to identify gross berthing revenues as separate line entries. |
| Aquaculture | Rent will be determined by an independent Qualified Valuer. Rates reviewed annually to positive movements in the CPI (Sydney — All Groups) and rounded to the nearest dollar (\$). |

Sydney Harbour Destination Plan (SHDP) reduced commercial marina berth rents

Commercial marina operators may be eligible for a reduced rent in accordance with the SHDP. For information on the eligibility and application of the SHDP refer to the Addendum to this Information Guide.

Lease Duration and Capital Works

Lease duration

Grant of a longer Commercial Lease over Maritime Property by Roads and Maritime may be considered only where a major redevelopment occurs initially or during the term of the lease. The decision rule determining the term extension, based on the relationship between investment and total gross revenue, is as follows:

- a) A development is eligible for an extended lease term once projected capital expenditure (capex) on Roads and Maritime land is greater than or equal to the mean of the total annual gross revenues (TGR)² over four financial years immediately prior to the capex. However, the extension is subject to verification by independent audit of the TGR and the actual capex following completion of works and prior to entry to the lease;
 - I. Where capex \geq TGR, lease extension is 7.5 years
 - II. Where capex \geq 1.5 TGR, lease extension is 10 years
 - III. Where capex \geq 2.0 TGR, lease extension is 12.5 years
 - IV. Where capex \geq 2.5 TGR or greater, lease extension is 15 years
- b) The maximum remaining duration of a Roads and Maritime Commercial Marina Lease under this procedure will be 40 years.

To distinguish between capital and maintenance expenditure Roads and Maritime requires evidence of the taxation treatment of expenditure and will adopt the same. Expensed maintenance expenditure cannot be claimed as capital investment for the purposes of berth rental discounts or extended lease terms.

The projected capital expenditure must be for development on or over Roads and Maritime land and is expenditure defined as such in the Lessee's audited financial accounts.

The Lessee's are required to provide an accountants certificate (CPA equivalent) of their financial accounts to substantiate revenue and capital expenditure conducted on Roads and Maritime land in order to verify eligibility for a lease-term extension.

RMS may request the Lessee to provide a Business Case to show that any Capital Expenditure would reasonably show an improvement of income and/or EBITDA to the Lessee's gross annual turnover figures.

Where, prior to expiration of a current Lease, a Commercial Lessee seeks to expand their area of operation beyond that covered in the existing Lease, a new lease will need to be established. Consideration for the establishment of a new lease will be dependent on compliance with the existing Lease Terms and Conditions and on the Lessee obtaining Development Consent for the proposed improvements and use over the total area of Roads and Maritime land.

The term of the new Lease will be equivalent to the remaining duration of the existing Lease, plus an extension calculated in accordance with the ratio of TGR to capital expenditure up to a maximum remaining total of 40 years.

Capital works

Roads and Maritime encourages investment in new and renewed maritime infrastructure, to ensure the delivery of world-class commercial and recreational boating facilities.

Roads and Maritime may agree to incentives for investment in capital works. These may commence at the start of a lease (for example, a rent-free period while capital works are undertaken).

A proposal for a significant capital works program may also be a consideration in determining prospective lessees during a competitive process to select a lessee for a Roads and Maritime commercial site.

² **Noting:** increased lease term assessment calculation includes total gross revenue from all income generating activities undertaken on Roads and Maritime land, including moorings revenue and sublease gross rent paid to the Roads and Maritime head lease (but not gross revenue generated by the sub-lessee).

It will be a standard lease condition that significant works may only be carried out on the Premises provided:

- Prior written approval has been obtained from Roads and Maritime;
- The Lessee has obtained and complied with all relevant planning approvals, consents and permits for the works; and
- The works are carried out in accordance with any timetable, program or standards agreed in writing between the parties prior to commencement of works.

If a lessee fails to meet these obligations, Roads and Maritime may:

- Cease providing any concessions or incentive contingent upon the works
- Seek repayment of the value of applicable concessions or incentives provided; and/or
- Commence action to terminate the Lease or AFL

Most marine structures on Sydney Harbour will require a Construction Certificate (CC) prior to work commencing. A CC certifies that the detailed construction plans and specifications for the development are consistent with the Development Consent and comply with the Building Code of Australia.

If work requires a CC, a Principal Certifying Authority (PCA) must also be appointed before work commences. The PCA will inspect building works during their construction to allow them to issue an Occupation Certificate.

An accredited certifier can be engaged to issue the CC and/or act as the PCA.

Accredited certifiers are recognised by the Building Professionals Board and carry a certificate of accreditation. In order to certify marine structures, generally an A1 or A2 category of accreditation is required.

Other Matters

Maintenance obligations

Lessees will be required at all times to maintain the structures on the Land in a safe and physically suitable condition for the commercial activities authorised under the Lease.

Details of Maintenance and Repair obligations of lessees are can be found at [Information Guide — Maritime Property— Managing Commercial Marina Leases.](#)

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, or for business goodwill, at the expiry, termination or assignment of a lease.

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 sub-lessees and Roads and Maritime will generally only deal with the Head Lessee, and not the Sub-Lessee.

Transfer or assignment 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 Commercial Marina Leases.](#)

Ownership and removal of improvements

As Roads and Maritime legally owns any structures affixed to its Land, the lessee must not remove any such structures either during the lease term or upon expiry or earlier termination of the lease without the written approval of Roads and Maritime.

Leases may require the removal of some or all structures or improvements, upon the expiration of the term or the earlier termination of the lease and at the lessee's cost. In addition, the lessee may be required to carry out "make-good" and remediation works to restore the land to the reasonable satisfaction of Roads and Maritime.

Further guidance on the procedures for the removal of structures or improvements from Roads and Maritime land can be found at [Information Guide — Maritime Property— Removal of Structures.](#)

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, where applicable, will apply and the Lease may be terminated by either party by giving 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

Breaches of essential lease terms or conditions (such as 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 its 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 Commercial Marina leases;

- [Information Guide — Maritime Property - Managing Commercial Marina Leases](#)
- [Information Guide — Maritime Property— Establishing Registered Club Leases](#)
- [Information Guide — Maritime Property - Managing Registered Club Leases](#)
- [Information Guide — Maritime Property— Gaining Roads & Maritime Permission to Lodge DA](#)
- [Information Guide — Maritime Property - End of Lease Activities](#)
- [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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ADDENDUM: - SYDNEY HARBOUR DESTINATION PLAN

Scope

This Addendum only applies to occupations on or over Roads and Maritime land by commercial marinas within Sydney Harbour and its tributaries. The application of this Addendum does not apply to leases awarded through a competitive process where rent is determined in accordance with the outcome of that process.

Eligibility

Eligibility for rent assessment under the SHDP will be determined by a Review Panel on receipt of an application from a commercial marina operator on Sydney Harbour who seeks to reduce the rent they pay to Roads and Maritime by providing public access facilities in support of the SHDP.

The Review Panel will consider each application made on a case-by-case basis. Successful applications will document the costs and requirements to be undertaken by the commercial marina operator in the provision of viable and tangible benefits for the boating public. Each application must define contributions to the creation or enhancement of a boating destination within Sydney Harbour via the expansion and improvement of the number of facilities, amenities and services at the specified commercial marina(s) which would be available to the general boating public.

Each application must identify, describe and detail the particulars of the applicant's entitlement to a reduced rent under the provisions of the SHDP, including;

- The nature and location of the tenured premises, the nature of the lessee's business, the permitted and/or the required use and the proposed improvements in amenities, services, leisure facilities or attractions that will offer tangible benefits for the boating public and create or enhance a boating destination for visitors by land, water, or both. Priority weightings will be assigned to access from water;
- Provision of Destination berths and moorings, access to pump-out facilities for visiting vessels, access to water, internet or communication facilities for visitors, access to public toilets, the provision of water taxi pick-up and drop-off points, access to shore based indoor or outdoor recreational pursuits whether onsite or located within close proximity, for example specialty food or maritime related shopping, bars, cafes and restaurants, conference meeting, educational, sporting or community leisure facilities, parks, art galleries etc;
- Nature and ease of access to the facility including the extent to which access may be restricted or regulated by gates or other methods designed to safeguard visiting members of the boating and general public from operation onsite of activities which may be considered potentially dangerous or hazardous or methods required to maintain security of approved marina tenants.
- The times that the facility will be open to members of the public and any other restrictions or conditions of use by the visiting public and means or methods of managing compliance with such restrictions or conditions.
- The agreed Destination berthing and mooring options, which must have planning consent or approval from the Relevant Consent Authority and be within the leased area and must be shown on a plan of the leased premises in a format approved by Roads and Maritime. Such berths need to be signposted and publicised and continue to be available as outlined in the applicant's proposal and be reserved for the exclusive use of the visiting public.
- Fees charged, if any, for the use of the facility need be tabled in the application. If fees are charged they will be included in gross revenues for rental purposes. Consideration therefore needs to be given by the panel as to whether the imposition of a fee will bestow a benefit on the marina operator, rather than the public.
- Steps taken to publicly promote and advertise to the public the availability of the improvements in services, facilities or attractions.

- Proximity to places of interest to the visiting public.

To be eligible to apply, a marina operator must be complying with all of its current lease requirements.

Rental Framework under SHDP

Percentage Rent for commercial marina berths under the SHDP is based on gross revenue³ in accordance with the calculation and table below.

Percentage of Gross Berthing Revenue (%) = 6% up to \$750,000 gross revenue, stepping to a maximum of 8% at and above \$2,500,000 of Gross Berthing Revenue.

Table AI: Indicative rentals for commercial marina berthing under Sydney Harbour Destination Plan

| Gross Berthing Revenue (ex. GST) | Percentage of Gross Revenue (%) | Indicative Rent p.a. (rounded \$) (ex. GST) |
|-------------------------------------|------------------------------------|--|
| Up to \$750,000 | 6.00% | \$45,000 |
| \$750,001 to \$1,000,000 | 6.25% | \$62,500 |
| \$1,000,001 to \$1,500,000 | 6.75% | \$101,250 |
| \$1,500,001 to \$2,000,000 | 7.25% | \$145,000 |
| \$2,000,001 to \$2,500,000 | 7.75% | \$193,750 |
| Over \$2,500,000 | 8.00% | N/A |

³ **Noting:** revenue = actual gross revenue, or imputed market rates including service or utility charges if applicable

The provision of public access facilities will often necessitate capital expenditure and appropriate planning approvals for works. Accordingly, successful applicants may receive in-principle approval for reduced rent as part of the Roads and Maritime Permission to Lodge determination prior to obtaining planning approval and undertaking construction under appropriate tenures.

The incentives of discounted rental will not be available until the promised facilities are available to the public and will remain in place for the duration of the Lease, unless the Lessee fails to maintain the public access service/amenity/facility as outlined in the operators successful application, or notifies Roads and Maritime in writing of its intention to withdraw from the SHDP.

Roads and Maritime reserves the right to verify through inspection or audit that the promised public benefits have been provided, and to employ the Breach of Agreement process outlines in this Addendum. This may result in the marina operator being removed as a participant of the SHDP and the reversion to the higher rental rate that would otherwise apply under this procedure. At the end of each annual rent period Roads and Maritime will verify the offered public benefits have been provided in full.

Other rental categories under SHDP

Applicable revenue rents for other income-generating activities undertaken under a Roads and Maritime Commercial Maritime Property Lease are determined in accordance with Table 2 below.

Table A2: Calculation of Rents for other income-generating activities conducted under a Roads and Maritime Commercial Maritime Property lease, aside from berthing.

| Category of Revenue Generating Activities on Roads and Maritime Land | Rental Calculation Method (exclusive of GST) |
|--|--|
| Subleasing | 10% of gross sublessee rent (or imputed rent where sublease rent is below market). Subleases must be notified to RMS prior to entering binding agreement and must align with head lease constraints. |
| Retail | 10% of Gross Revenue, where no sub-lessee, or based on a market valuation. |
| Accommodation | 10% of market rent (where no sublessee). |
| Fuel | 2% of gross sales (where no sublessee). |
| Boat Repairs, Travel Lift, Tender Service | 5% of gross revenue or market rate per sqm (in each case, where no sublessee). |
| Slipway Rails | \$2,500 (from effective date of this procedure) per annum for each pair reviewed annually to positive movements in the CPI. |
| Maritime Industrial | 5% of gross revenue or market valuation (in each case, where no sublessee). |

Tenure and Review

The terms of this Addendum will be available to a qualifying marina's rental arrangements for the balance of the lease term and cannot be reversed as part of any rent review, planning-related matter, dispute with the lessor which is unrelated to the obligations of the lessee under this Addendum.

If the Lessor disputes that the participant continues to deliver the agreed service/amenity/facility under the Addendum, this must be addressed in accordance with the Breach of Agreement process outlines in this Addendum.

Destination Berths and Moorings

Destination berths and moorings are those specifically offered to the boating public by the marina under the SHDP, and identified as such by the marina operator using agreed protocols and signage.

Destination berths and moorings are offered solely to recreational boaters for the purposes of visiting the marina to access its on-site facilities, amenities and services, or nearby amenities/services.

Destination berths and moorings are not to be occupied overnight, and cannot be used for the purposes of passenger pick-up/drop-off.

Access to and usage of Destination berths and moorings is at all times subject to the marina's rules, codes of conduct, and limited to the hours of operation of the marina.

Withdrawal & Breach of Agreement

A participant may withdraw from the SHDP at any time by notifying the lessor in writing of this intention. Withdrawal from the SHDP will not otherwise affect the lease or aspects of the marina's rental arrangements unrelated to the SHDP, nor prejudice the entitlements and/or obligations of the lessee.

Failure by the lessee/participant in the SHDP to maintain the public access service/amenity/facility as outlined in the operator's successful application — as reasonably assessed by Roads and Maritime personnel — will result in a "Notice to Show Cause in 14 days" as to why the lessee/participant should not be removed from the SHDP.