

## Information Guide – Maritime Property – Managing Commercial Marina Leases

### About this guide

This guide:

- Provides assistance to Lessees and prospective Lessees in relation to the management of Commercial Marina Leases over Maritime Property
- Is applicable to all new agreements (referred to here 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 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](#).

### Managing your Lease or Licence

The details of all your rights and responsibilities in relation to your use of the Maritime Property are included in your lease or licence agreement with Roads and Maritime.

It is important that you read and fully understand what is included in your lease or licence. If you have any questions or are unsure about what any of the clauses in your lease mean, you should contact a member of the Customer and Property Management Team at Roads and Maritime.

### Management of rent receipts and reviews

Over the term of the lease or licence, officers in the Customer and Property Management Section at Roads and Maritime will monitor the Lease to ensure:

- Any structures built on Roads and Maritime land are in accordance with relevant approvals
- Lessees make rental and any other required payments in accordance with Lease and other agreements
- Rent reviews are administered effectively and conducted in accordance with the terms and conditions of the Lease
- Any possible disputes arising over the term of the Lease are managed effectively and in accordance with the terms and conditions of the Lease.

The Lease will detail the amount and manner in which rent is to be paid. All rent, outgoings and any other lease costs are to be paid directly by the Lessee.

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### ***Rent Reviews***

Rent Reviews are structured into Leases in line with property market practices to ensure that Roads and Maritime is receiving returns on their properties and that rent payable reverts to market levels at regular intervals. Rent Reviews will be undertaken in accordance with the terms and conditions of the relevant Lease and are usually agreed between the Lessee and Roads and Maritime, or reflect an adjustment in line with CPI (Sydney — All Groups).

There are two broad categories of rent reviews; Periodic Rent Reviews, and Market Rent Reviews, both of which will be undertaken in accordance with the terms and conditions of the relevant Lease.

### ***Rent Review Disputes***

The rent review process will be detailed in the Lease. Any dispute arising from a rent review will be addressed in accordance with the terms and conditions of the relevant Lease.

### ***Rent Abatements***

To the extent permitted by legislation, the Lessee is not entitled to any abatement of rent or outgoings due to damages to the property from force majeure or, if there is any interruption, disruption or loss incurred by the Lessee's business as a result of:

- Damage or Serious Property Damage occurs to the property or part of the property even if the Lessee is denied access to the property
- Works to or in the vicinity of the property being carried out by the Lessee, Lessor, any Relevant Authority or third party
- The NSW Government or any Relevant Authority carrying out its legislative functions, rights and obligations.
- The act or omission of any third party
- The existence of any Contamination or Pollution
- The proximity of the leased property to a working harbour.

Roads and Maritime will use reasonable endeavours to minimise any Loss or inconvenience incurred by the Lessee to the extent that it has been caused by or contributed to by the wrongful or negligent act or omission or a breach of obligations by Roads and Maritime under the Lease.

### ***Sub-leasing***

All Sub-leases of Maritime Property covered by a Commercial Marina Lease will require prior written notification to Roads and Maritime 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 its discretion, Roads and Maritime may require renegotiation of applicable elements of the head lease. However, Lessees will continue to be liable for any breaches of lease conditions caused by Sub-lessees.

### ***Assignment***

Proposed lease assignments will require the prior written approval of Roads and Maritime, which will not be unreasonably withheld. The proposed assignee must provide evidence to the reasonable satisfaction of the matters relevant to the agreement and the proposed Assignment. Prior to any proposed assignment, the outgoing Lessee must rectify any breaches of their obligations under the Lease, including defaults in maintenance, rent payments or any other financial matter, unless the proposed assignee agrees in writing to meet the outgoing Lessee's obligations.

As a condition for Assignment of a Roads and Maritime Commercial Marina Lease over Maritime Property, the Lessee must obtain the following information from the proposed assignee and provide it to Roads and Maritime upon request:

- A business case setting out the details of the business and operations of the proposed assignee, including details of any proposed major capital investments and/or maintenance works
- Where the Lease is subject to Revenue Rent, the Business Case must also include details of costs of developing and running the business or operation and the estimated revenue for the purpose of calculating future rent payable under the Lease
- Details of relevant skills and experience in the business or operation proposed to be carried out by the proposed assignee
- Evidence of the proposed assignee's capacity to satisfy its financial obligations under the Lease including rent, Make Good, proposed Capital Works (if any) and maintenance
- Information regarding the proposed assignee's compliance with previous agreements (if applicable)
- Copy of the contract for sale of business or the contract for the transfer of capital agreed to between the parties to the transfer of the business or operation
- Copy of all Development Consents, permits and/or approvals relating to the business and other activities carried out, or to be carried out on the property or property
- Details of any other associated agreements proposed to be assigned in addition to the main agreement
- Any other information reasonably required by Roads and Maritime for the purpose of determining whether or not to grant its consent to the proposed Assignment.

The Lessee must pay the costs of Roads and Maritime, including legal costs, fees and expenses in connection with a determination of an application for consent to Assignment of a Lease.

Determinations of requests for its consent to the Assignment of a Lease by Roads and Maritime will be issued in writing. Any Lessee that is aggrieved by a decision made in accordance with the request to assign an agreement may write to Roads and Maritime within 28 days of the determination showing cause as to why the decision should be reviewed.

## **Maintenance Management**

All properties are to be maintained to optimise their useful lifecycles. The cost and/or obligation of on-going maintenance will be structured under the Lease as a Lessee obligation based on Maintenance Plans.

## ***Repair and Maintenance Obligations***

Leases are structured so that Lessees have an obligation to maintain and repair the property during the term of the Lease, including Option periods and ensure that the amenity of the property is preserved. In meeting this obligation Lessees must at all times at their own expense undertake repairs and maintenance for:

- Properties as defined in the Lease
- All Improvements
- Installations for services, plant and equipment.

Obligations are included in all Leases to ensure that properties are at all times kept in good order, repair and condition as well as being safe and physically suitable for the Permitted Use of the property in accordance with the terms of the Lease. The Lessee's repair and maintenance obligations will include, but are not limited to the following items:

- Repairs and maintenance work
- Reconstruction, remediation or replacement of the improvements or any part when required to remain safe and suitable for the Permitted Use
- Undertake any required enhancements and rectification of any Damage to the property or any part
- Undertake maintenance dredging (if applicable) to an approved level to ensure the property is suitable for the Permitted Use or in accordance with a notice issued by Roads and Maritime.

Performance of the Lessees' repair and maintenance obligation must be to the standard and extent necessary to ensure compliance with the Lease, the requirements of Roads and Maritime and any other Relevant Authorities. For properties with multiple Leases with Roads and Maritime, Leases are structured so that all costs of repairs and maintenance are recovered from the Lessees via the rental structures and Outgoing recoveries.

### ***Maintenance Plan***

Lessees are required to prepare a Maintenance Plan within twelve months of commencement date of the Lease. The maintenance plan is to be prepared at the Lessee's own cost and is to be provided to Roads and Maritime for approval, and is to be reviewed by a structural engineer every 3-5 years.

### **Contents of Maintenance Plan**

The Maintenance Plan must include the following:

- Maintenance planning for the property with five year projections based on an asset lifecycle management approach that enables the Lessee to satisfy all repair and maintenance obligations in the Lease
- Preparation of plans in accordance with and complying with the requirements of all relevant Legislation and Roads and Maritime guidelines
- Provision of details of the proposed maintenance works and improvements
- Incorporating the details of processes to support Contractor Property Inductions, Hazardous Materials Register, Safe Work Methods, etc
- Providing cost estimates and implementation programs for the maintenance works and improvements.
- Formatted as detailed in the Lease and acceptable to Roads and Maritime.

### **No Liability for Maintenance Plan**

In approving the Maintenance Plan, Roads and Maritime accepts no responsibility or liability for the Maintenance Plan and makes no warranty or guarantee for its adequacy to enable the Lessee to satisfy its obligations under the Lease. In reviewing the Maintenance Plan, any acceptance or approval of the plan by Roads and Maritime does not constitute a release or waiver of the Lessees obligation under the Lease.

### **Keeping Records of Maintenance Completed**

The Lessee is required to ensure that all documents including the Maintenance Plan and variations, the recommendations made by any Qualified Person, Structural Certificates and compliance reports are:

- Kept and maintained on the property at all times
- Provided for inspection and review

- Provided upon the expiration or earlier termination of a Lease

#### Compliance with the Maintenance Plan

The Lessee is required to comply with the Maintenance Plan and ensure that all maintenance contractors have valid insurances and comply with all property regulations. Roads and Maritime may carry out inspections and review of the property to ascertain whether the Lessee is complying with the Maintenance Plan.

Non-compliance with the Maintenance Plan will entitle Roads and Maritime to certain remedies under the terms and conditions of the Lease.

#### **Payment of Operating Costs or Outgoings**

Where applicable details of the obligations for, the manner of determination and the process in which operating costs or outgoings are calculated will be included in the Lease.

#### **Proportioning of Operating Expenses**

In the instance where only part of a property is leased by a Lessee, the outgoings will be proportioned across all Leases. The outgoings will be proportioned based on the amount of space occupied by the Lessees. The total outgoings for the property will be divided by the total Net Lettable Area as defined by the Property Council of Australia method of measurement to provide an outgoings rate per square metre figure and multiplied by the area the Lessees occupies. The resulting amount payable is the Lessee's proportion of the outgoings.

#### **Payment of Amounts Owing**

In the instance where rent is unpaid or paid late, Roads and Maritime will issue a notification of the late payment or non-payment to allow rectification of the breach of the Lease conditions, or appoint a debt collection agency, with any debt collection fee being payable by the Lessee.

#### **Lessee's Obligation to Continue to Making Payments**

If the Lessee has not performed and observed all its obligations under the Lease, the Lessee must continue to pay rent and all other money payable by the Lessee under the Lease even if the Lease has been terminated. This will continue until the Lessee has performed and observed all of its obligations to the satisfaction of Roads and Maritime.

#### **Overpayment**

If there is an overpayment of an amount under the Lease, whether due to the Lessee's fault or invoicing by Roads and Maritime, the amount will be applied as a credit or refunded to the Lessee's account.

#### **Other relevant Information Guides.**

The following guides provide further information relating to Managing a Commercial Marina Lease;

- [Information Guide — Maritime Property— Establishing Commercial Marina 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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