

Information Guide - Maritime Property

Managing Domestic Waterfront Leases or Licences

This guide;

- will provide assistance to Lessees to understand their responsibilities and obligations in managing their agreement over Domestic Waterfront Maritime Property, including Domestic Waterfront Property fronting public.
- is applicable to all new Leases or Licences (referred generically as an agreement) issued over Roads and Maritime land for structures and uses associated with a private residence and used for a private, non-commercial purpose.
- 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.

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 agreement with Roads and Maritime.

It is important that you read and fully understand what is included in your agreement. If you have any questions or are unsure about what any of the clauses in your agreement 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 agreement, officers in the Customer and Property Management Section at Roads and Maritime will:

- keep track of your rental and any other required payments in accordance with other agreements;
- Ensure rent reviews are administered effectively and in accordance with any NSW Independent Pricing and Regulatory Tribunal (IPART) recommendation(s);
- Oversee management of the agreement, ensuring the Lessee complies with the provisions of the agreement, including any indemnifications, guarantees, maintenance, WH&S, and environmental obligations;
- Adjust the Administration Fee annually in accordance with the agreement and ensure the Fee is reviewed and updated every four (4) years in accordance with IPART recommendations.

The agreement will detail the amount and manner in which rent is to be paid.

All rent, outgoings and any other agreement costs are to be paid directly by the Lessee.

Rent Reviews

The Rent Formula and Rate of Return for calculating Domestic Waterfront rent is determined by the Independent Pricing & Regulatory Tribunal (IPART). Any change to the Rent Formula and/or rate of Return will be advised by Roads and Maritime to the Lessee at least sixty (60) days prior to the commencement of the new Rent Formula and Rate of return.

Similarly, if the new Precinct Statutory Land Value (PSLV) which is calculated annually in accordance with the agreement results in an increase in the rent payable under the agreement, Roads and Maritime will advise the Lessee at least sixty (60) days prior to any increase in the rent.

Rent Review Disputes

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

Rent Abatements

To the extent permitted by legislation and except to the extent any damage, loss or inability to use the Premises is caused or contributed to by any intentional or wilful or negligent act or omission by Roads and Maritime, its officers, agents or employees, 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 to the Lessee as a result of:

- Damage or Serious Property Damage 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 or licensed 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 agreement.

Sub-leasing

The sub-letting of any part of a leased or licenced Domestic Waterfront Maritime Property is not permitted.

Assignment

As Lessee you can only assign the Lease to a person who is, or is entitled to be the owner of your land (not the Leased land). Proposed lease assignments will require the prior written approval of Roads and Maritime, which will not be unreasonably withheld.

Prior to assigning the Lease, you, as the Lessee, will need to, amongst other things:

- give at least 28 days' notice in writing to Roads and Maritime of your intention to assign the Lease;

- ensure you are not in breach of any of the terms and conditions of the Lease, including payment of rent;
- pay Roads and Maritime for any costs associated with assigning the Lease;
- enter in to a Deed of Consent to Assignment with Roads and Maritime, and confirm that the incoming purchaser will enter into a Deed of Consent to the assignment with Roads and Maritime;
- comply with any Roads and Maritime Guidelines in relation to the assignment.

The Lessee must pay the reasonable 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.

A Licence cannot be assigned. A new Licence with Roads and Maritime will need to be established with the new owner of the adjoining land (where this has been sold).

Repair and Maintenance Obligations

Obligations are included in all agreements 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 agreement. 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 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 and as and when required by the Lessee.

The repair and maintenance of seawalls are the responsibility of the Lessee or the adjoining Land Owner.

Performance of the Lessees' repair and maintenance obligation must be to the standard and extent necessary to ensure compliance with the agreement, the requirements of Roads and Maritime and any other Relevant Authorities.

Keeping Records of Maintenance Completed

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

- Passed onto future property owners.
- Available for inspection and review.
- Provided upon the expiration or earlier termination of a agreement.

The Lessee is required to ensure that all maintenance contractors have valid insurances and comply with all property regulations.

Approval for Work

As Lessee, you must not carry out any works (including repair and maintenance) on the Leased or Licenced Land unless you have, at your own cost;

- notified Roads and Maritime of the proposed work and obtained its written approval to carry out the work;
- complied with the conditions of the Roads and Maritime approval; and
- complied with the requirements of any Law and any Relevant Authority in relation to the proposed works, including obtaining all necessary approvals, consents and permits by any relevant authority.

As a Lessee seeking to undertake development identified as “exempt development” as provided by the *State Environmental Planning Policy – Exempt and Complying Codes*, you need to request land owners consent from Roads and Maritime.

Insurances and Indemnities

The Lessee is responsible for establishing and maintaining insurance against all foreseeable risks relating to the agreement Premises including, but not limited to:

- Public liability insurance of not less than \$10M;
- Workers compensation Insurance; and
- Any other insurance policies required by Law, or that Roads and Maritime reasonably require.

In addition, you are required to indemnify and keep indemnified Roads and Maritime, the Minister, and the State of New South Wales against any loss associated with any event arising from the Leased or Licenced Premises.

Environmental Obligations

The Lessee, at its own expense, must comply with the environmental law applicable to the Leased or Licenced Premises and comply with any environmental notice. In addition, the Lessee is responsible for any pollution or contamination originating from its own premises or the Leased or Licenced premises.

No exceptionally hazardous material can be stored or used in, on or in the vicinity of the Leased or Licenced Premises.

Payment of Operating Costs and Outgoings

The Lessee is responsible for paying any and all operating costs and outgoings associated with the Leased or Licenced Premises in accordance with the provisions included in the agreement.

Lessee's Obligation to Continue to Making Payments

If the Lessee has not performed and observed all its obligations under the agreement, the Lessee must continue to pay rent and all other money payable by the Lessee under the agreement even if the agreement has terminated. This must 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 agreement, whether due to the Lessee's fault or invoicing by Roads and Maritime, the amount should 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 Domestic Waterfront Lease or Licence;

- [Information Guide - Maritime Property— Establishing a Domestic Waterfront Lease or Licence](#)
- [Information Guide - Maritime Property — Domestic Waterfront Lease Concessions and Hardship Relief](#)
- [Information Guide - Maritime Property— Gaining Roads & Maritime Permission to Lodge a DA](#)
- [Information Guide - Maritime Property— End of Lease Activities](#)
- [Information Guide - Maritime Property— Removal of Structures](#)
- [Information Guide — Maritime Property — Purchase of Reclaimed Maritime Land](#)

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.

© State of NSW through Roads and Maritime

www.rms.nsw.gov.au

Version: June 2017

Disclaimer: While every reasonable effort has been made to ensure that this document is correct at the time of publication, the State of New South Wales, its agencies and employees, disclaim any and all liability to any person in respect of anything, or the consequences of anything, done or omitted to be done in reliance upon the whole or any part of this document.