

Information Guide - Maritime Property

Removal of Structures

This guide;

- will provide information to assist Lessees understand their responsibilities and obligations in relation to the removal of structures on Maritime Property.
- is applicable to all new agreements (referred generically as Leases) granted over Roads and Maritime land for structures and uses associated with commercial, infrastructure, community or domestic purposes. These structures and uses include, but are not limited to, boatsheds, private landing facilities, mooring pens, private marinas, commercial marinas, maritime industrial, aquaculture Leases, registered clubs, public wharves, utility infrastructures, unallocated land, public access, amateur clubs and community group Leases, and reclaimed lands.
- 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.

Removal of Structures

The Lessee must not remove any Improvement(s) from the Leased Land unless:

- Roads and Maritime has issued it with a notice requiring removal of the Improvement; or
- Roads and Maritime has given its prior written approval to the removal following a written request made by the Lessee to Roads and Maritime;
- The Lessee has sort and obtained the necessary planning approval, where required.

Unless otherwise agreed by Roads and Maritime in writing, the Lessee must remove all of the Lessee's Property from the Leased Land on or before the expiration or earlier determination of the Lease and make good any Damage incurred to the Leased Land or Improvements as a result of such removal.

Upon expiry or earlier determination of the Lease, Roads and Maritime may give notice in writing to the Lessee of the requirement to remove or partially remove any or all Improvements from the Leased land by the date specified in the notice and the Lessee is required to Make Good any damage incurred as result.

The Lessee must take any necessary steps to ensure compliance including obtaining any approvals, consents, permits required by any relevant Authority at the cost of the Lessee.

For properties leased under the *Retail Leases Act 2003*, unless there is a provision in the Lease requiring the Lessee to refurbish or to refit the property and providing details generally as to the nature, extent and timing of such Works then this requirement to remove Improvements may not be enforceable.

Removal after Termination

The date specified in the notice of termination may be a date before or after the Termination Date of the Lease. If the date is after the Termination Date, Roads and Maritime will grant the Lessee a non-exclusive licence to carry out the removal works as if the licence were a holding-over period under the Lease.

A licence fee at the current rent will be charged for the period from the expiry of the Lease to the time when the improvements have been removed to the Lessor's reasonable satisfaction.

Failure to Remove Improvements

Should the Lessee fail to remove the Improvements, Roads and Maritime will have the right to:

- Remove and disposal of any or all of the improvements not so removed on terms determined by the Lessor
- Retain any or all of the Improvements not so removed
- Recover from the Lessee the costs and expenses incurred in taking action or retaining the improvements.

No compensation will be payable to the Lessee in relation to the removal, disposal or retention of the improvements. The Lessee will indemnify Roads and Maritime against any loss that has been suffered or incurred which has arisen out of or in connection with (directly or indirectly) any action taken by Roads and Maritime pursuant to it exercising its rights under the Lease.

Domestic Lease Arrangements

The standard Domestic Lease provides Roads and Maritime with the option to require the Lessee to remove any structure at termination of the Lease or earlier determination.

Roads and Maritime may require the removal of domestic waterfront structures if:

- The structure or part of the structure is unauthorised.
- The structure or part of the structure is dilapidated, totally or partially collapsed, is derelict or in such a state of disrepair as to pose a danger to any person or to property, provided reasonable efforts have been made to notify the Lessee and the Lessee has failed to rectify the issue.
- Repeated non-compliance with any of the essential terms of the Lease provided reasonable efforts have been made to notify the Lessee and the Lessee has failed to rectify the issue.
- Adjoining land owner declines to enter into a Lease of Maritime land upon which the structures are built.
- Removal of the structures is required because they impede or prevent the implementation of a long term strategic objective of Roads and Maritime.

The Lessee is responsible for the removal of all improvements or structures situated in or on the Leased Land and any costs associated with the removal.

In the event where the Lessee is deceased, the costs associated with the removal of any structures will be covered through the Lessee's estate.

Removal of Unauthorised, Dilapidated or Dangerous Structures

When Roads and Maritime requires the removal of a structure or part of a structure, written notification (the Notice) will be sent to the Lessee:

- Setting out the relevant clause(s) of any Lease breached and the clause(s) by which the Lease can be terminated and removal required.
- Advising the Lessee of its obligation to obtain relevant planning approvals prior to commencement of the removal.
- Setting a time period within which the removal must occur taking into account the time required to obtain planning approval where necessary.
- If applicable, making it a condition of granting Development Consent and/or construction approval to the erection of any new structure that the unauthorised, dilapidated or dangerous structure is removed.

Where Roads and Maritime has determined not to require the removal of an unauthorised structure or part of a structure, the Lessee will be required to seek Permission to Lodge (PTL) a Development Application for its continued use and if granted, the Lessee must then lodge a Development Application (DA) to that effect. The DA may only seek approval for continued use of the structure and not retrospective approval for its construction.

Removal for Non-Compliance with Lease Terms

When Roads and Maritime has determined to require the removal of structure(s) due to repeated non-compliance with the terms and conditions of a Lease, the Notice will be sent, including details as above to the adjoining landowner or Lessee.

Removal for Declining to Enter into Lease

If the adjoining freehold land is sold and the incoming purchaser declines to enter into a Lease, or an existing Lessee declines to renew their Lease, the Notice that Roads and Maritime, in exercising its rights under the Lease and including details as above, will be sent to the adjoining landowner or Lessee.

Failure to Comply with Notice to Remove

If Roads and Maritime has written to the Lessee requiring the removal of a structure or part of a structure and the owner or Lessee has failed to comply with all or part of those requirements, Roads and Maritime may remove the structure (or part), and the owner or Lessee will be liable to reimburse Roads and Maritime the costs incurred in connection with the removal.

In carrying out a removal, Roads and Maritime will:

- Notify the Lessee in writing of its intention to carry out the removal.
- Obtain quotations, in accordance with the Procurement Guidelines, from appropriate contractors to carry out the removal of the structure.
- Notify the Lessee of the quotations received and of the contractor chosen to carry out the removal.
- Obtain any approvals required prior to the commencement of removal works.
- Authorise the contractor to carry out the removal.

Removal to Meet Long-Term Strategic Objective

Where Roads and Maritime has determined that certain structures must be removed to assist in achieving a long-term strategic objective (for example, development of a major maritime precinct), and in circumstances where there is a lease, it must notify the Lessee in writing of the requirement to remove the structure. Where a lease is expired, the cost of removal will be borne by the Lessee.

A Lessee, who is aggrieved by a decision made by Roads and Maritime that affects their Domestic Lease, may write to Roads and Maritime showing cause as to why a structure or part of a structure should not be removed.

Other relevant Information Guides

The following guides provide further information relating to the Removal of Structures;

- [*Information Guide — Maritime Property - Establishing Domestic Leases & Licences*](#)
- [*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 - Establishing Infrastructure Leases*](#)
- [*Information Guide — Maritime Property - Establishing Community Leases*](#)
- [*Information Guide — Maritime Property — Managing Domestic Waterfront Leases & Licences*](#)
- [*Information Guide — Maritime Property— Managing Commercial Marina Leases*](#)
- [*Information Guide — Maritime Property— Managing Industrial Leases*](#)
- [*Information Guide — Maritime Property — Managing Registered Club leases*](#)
- [*Information Guide — Maritime Property — Managing Retail Leases*](#)
- [*Information Guide — Maritime Property— Managing Community Leases*](#)
- [*Information Guide — Maritime Property— Managing Infrastructure 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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