

Maritime Property Guide – Establishing Commercial Marina Leases

IPE Infrastructure Management System

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1 General

1.1 Context and purpose

This guide:

- helps Lessees and prospective Lessees in relation to the management of Commercial marina Leases over maritime property owned by Transport for NSW (TfNSW)
- is applicable to all new agreements (referred to here generically as Leases) issued over TfNSW land for structures and uses associated with a commercial marina
- will generally be applied by TfNSW 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.

TfNSW property staff will assist current and prospective Lessees with their enquiries and provide general information in accordance with the *TfNSW Code of Conduct*.

Note: To avoid unnecessary duplication Lessees and Licensees will be referred to in this guide generically as Lessees and references to TfNSW relate to its relationship as the property owner and Lessor.

2 Maritime Commercial Marina Leases and Agreements

2.1 Overview

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 TfNSW 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 TfNSW land for leasing purposes. TfNSW 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), TfNSW may offer the prospective Lessee an Agreement for Lease (AFL).

Terms and conditions for any TfNSW 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 TfNSW policy, and/or the term of the proposed Lease.

Applicants for a new Lease must provide the following information to TfNSW 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 practising structural engineer eligible for membership with Engineers Australia and 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 land subject to the Lease 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 TfNSW for the purpose of deciding whether to Lease land to the prospective Lessee.

This information will enable to TfNSW satisfy itself that the proposed business endeavours are viable and have a reasonable prospect of success before entering a Lease or AFL.

All offers to Lease TfNSW Maritime Property will generally be completed via an open market process.

TfNSW is not obliged to offer a Lease on terms or conditions consistent with any existing or previous Lease.

2.2 Site assessment

Prior to granting a Lease, TfNSW will generally conduct an assessment to assist TfNSW 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 site will be at the discretion of TfNSW. Where multiple categories of land use are proposed for a single site, these will generally be incorporated into a single Lease document.

2.3 Marketing and tendering

Prior to committing to a new Lease, TfNSW will consider the optimal market strategy required to achieve NSW Government objectives. TfNSW will need to be satisfied that the ongoing business operation is viable and has a reasonable prospect of continued success.

Where a new Commercial Marina Lease is for a site upon which there is no current or recently expired Lease for that activity, TfNSW will generally conduct a competitive process before granting a new Lease.

However, if the adjoining landowner/occupier has exclusive access to the site, TfNSW will generally conduct Lease negotiations directly with that owner/occupier, in line with NSW Independent Commission Against Corruption guidelines on direct dealings.

2.4 Security and bank guarantee

2.4.1 General

TfNSW will require some form of security to ensure the Lessee's compliance with rental and/or maintenance obligations under a Lease. This will be in the form of a bank guarantee or similar, on terms and for an amount acceptable to TfNSW, which will be determined prior to the execution of the Lease.

2.4.2 Guarantee amount

The bank guarantee will generally be for an amount equivalent of up to 12 months' rent for the property, except in exceptional circumstances where additional securities may be required.

The bank guarantee will:

- specify Transport for NSW (ABN 18 804 239 602) 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; or
- 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.

2.4.3 Parent Company or Director Guarantees

In some circumstances, the directors of a Lessee company may be required to provide personal guarantees to protect the interests of TfNSW. Parent company guarantees may also 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 discount rent 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; or
- where other Lease arrangements exist between the Lessee and TfNSW which potentially pose a significant risk to TfNSW resulting from non-performance of the Lessee.

2.4.4 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 5 years to ensure the guarantee reflects the value of the rent for the following 12 months; or
- 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 TfNSW to call upon the bank guarantee or security will survive the expiration or earlier termination of the Lease.

2.4.5 Release of bank guarantee

Where a Lessee whose Lease is due to terminate at expiration or an 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 with the Lease, the balance will be released to the Lessee only after all such obligations have been completed and paid for.

2.4.6 Indemnities and insurance

2.4.6.1 Overview

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

2.4.6.2 Insurances

The Lessee is required to effect and maintain insurance as deemed relevant by TfNSW 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 (except for Workers Compensation Insurance) may be taken out in the joint names of TfNSW and the Lessee's name.

2.4.6.3 Types of Insurances

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

- public liability insurance in the amount advised for any one occurrence or for any other amount TfNSW reasonably requires, containing all provisions that are normally contained in public liability insurance policies, or as reasonably required by TfNSW and expressly referring to and covering all of the Lessee's obligations under the Lease, including the obligation to indemnify TfNSW, for not less than \$20 million, or other amount as reasonably required by TfNSW
- 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 TfNSW), 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 TfNSW reasonably requires.

2.4.6.4 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 TfNSW.
- Policies are to be in the name of the Lessee and note TfNSW as an interested party 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 TfNSW approval.

2.4.7 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 TfNSW.

2.5 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 terms sheet is used to record the agreement of key terms and conditions of a proposed Lease. The HOA or terms 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 an Agreement for Lease and Construction Licence (AFL) will generally be used to provide rights to build development approved works. The grant of a Lease over the completed work is subject to the satisfaction of preconditions spelt out in the AFL.

The AFL, once executed is binding on both parties and will have a draft pro-forma Lease Agreement attached. Typically, the AFL will contain (in a schedule or annexure) details of the property design and specification of development 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 TfNSW.

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

- holdover.

2.6 Commercial Marina Lease rental framework

2.6.1 Overview

A Commercial Marina Lease relates to the use of TfNSW 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 TfNSW Maritime Operations 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.

2.6.2 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 TfNSW land and which are income producing activities, or can generate an income, including (but not limited to):

- berthing
- subleasing (charged on rent received by TfNSW'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.

2.6.3 The rent is payable in advance

Where revenue generating activities operate across the boundary of TfNSW and adjoining land owned or legally accessed and used by TfNSW Lessees, the proportion of gross revenue attributable to TfNSW land will generally be based on the proportion of that specific business activity which occupies TfNSW land.

Revenue rents will generally only be applicable in circumstances where the majority or all the income-generating activities occur on the site Leased from TfNSW.

Per square metre 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.

A flat rate of \$3,093 per annum plus GST (FY2024/25) is charged for each pair of slipway rails that generate or are capable of being legally used to generate income. The rate will be reviewed annually by CPI.

Rent is not levied on gross revenue generated by the operation on TfNSW land of commercial moorings under a TfNSW 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.

2.6.4 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 if requested, sufficient to determine the actual gross revenue from applicable activities carried out on TfNSW 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 TfNSW'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 TfNSW 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 TfNSW:

- any additional rent payable by the Lessee having regard to the discrepancy
- interest on the additional rent payable by the Lessee
- the costs and expenses of the audit incurred by TfNSW.

2.6.5 Commercial marina berths

Percentage rent for commercial marina berths is based on gross revenue (see Note 1) 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 (excluding GST) | Percentage of gross revenue (%) | Indicative rent per annum (rounded \$) (excluding 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 |

Note 1: Revenue = actual gross revenue, or imputed market rates, including service or utility charges if applicable.

2.6.6 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 TfNSW Commercial Maritime Property Lease

| Category of revenue generating activities on TfNSW 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 consented to by TfNSW 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). |

| Category of revenue generating activities on TfNSW land | Rental calculation method (exclusive of GST) |
|---|---|
| Boat Repairs, Travel Lift, Tender Service | 5% of gross revenue or market rate per sqm (in each case, where no sublessee). |
| Slipway Rails | \$3,165 per annum plus GST (FY2025/26) 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). |
| Hardstand, Car Parking, Administration Offices, Storage and General Amenities | \$88.62 per square metre per annum plus GST (FY2025/26). |
| Registered Club | 2.5% -5% of gross revenue (except for commercial marina berthing operations which will be treated in accordance with Table 3 of the Sydney Harbour Destination Plan – per Appendix A - if applicable). 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 (\$). |

2.6.7 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 Appendix A.

2.7 Lease duration and capital works

2.7.1 Lease duration

Grant of a longer Commercial Lease over Maritime Property by TfNSW may be considered only where a major redevelopment occurs 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:

1. A development is eligible for an extended Lease term once projected capital expenditure (capex) on TfNSW land is greater than or equal to the mean of the total annual gross revenues (TGR) (see Note 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:
 - a. Where $\text{capex} \geq \text{TGR}$, Lease extension is 7.5 years.
 - b. Where $\text{capex} \geq 1.5 \text{ TGR}$, Lease extension is 10 years.
 - c. Where $\text{capex} \geq 2.0 \text{ TGR}$, Lease extension is 12.5 years.

- d. Where capex \geq 2.5 TGR or greater, Lease extension is 15 years.
2. The maximum remaining duration of a TfNSW Commercial Marina Lease under this procedure will be 40 years.

Note 2: Increased Lease term assessment calculation includes total gross revenue from all income generating activities undertaken on TfNSW land and sublease gross rent paid to the TfNSW head Lease (but not gross revenue generated by the sub-lessee).

To distinguish between capital and maintenance expenditure TfNSW 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 TfNSW land and is expenditure defined as such in the Lessee's audited financial accounts.

The Lessee is required to provide an accountant's certificate (CPA equivalent) of its financial accounts to substantiate revenue and capital expenditure conducted on TfNSW land to verify eligibility for a Lease-term extension.

TfNSW 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 (earnings before interest, taxes, depreciation, and amortisation) 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 TfNSW 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.

2.7.2 Capital works

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

TfNSW may agree to incentives for investment in capital works. These may commence at the start of a Lease (for example, a discounted rent 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 TfNSW commercial site.

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 TfNSW
- the Lessee has obtained and complied with all relevant planning approvals, consents and permits for the works
- 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, TfNSW may:

- cease providing any concessions or incentive contingent upon the works
- seek repayment of the value of applicable concessions or incentives provided
- 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. To certify marine structures, generally an A1 or A2 category of accreditation is required.

2.8 Other matters

2.8.1 Maintenance obligations

Lessees are always required 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 found in the *Maritime Property Guide – Managing Commercial Marina Leases*.

2.8.2 Goodwill and residual value of improvements

No compensation will be payable to a Lessee by TfNSW for the residual value of any improvements, or for business goodwill, at the expiry, termination or assignment of a Lease.

2.8.3 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.

2.8.4 Subleases

TfNSW generally allows for the sublease of Leases over commercial property, subject to certain conditions.

All subleases 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 TfNSW, this may require renegotiation of applicable elements of the head Lease.

Where a sublease is created on land Leased from TfNSW, the head Lessee's rent will increase either by a proportion of the rent payable by the sublessee, or by a fixed amount agreed between TfNSW 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 TfNSW will be liable for any breaches of Lease conditions caused by sublessees and TfNSW will generally only deal with the Head Lessee, and not the Sublessee.

2.8.5 Transfer or assignment of a Lease

TfNSW generally allows for the transfer or assignment of Leases over commercial property following the prior written approval of TfNSW.

The conditions of assignment of a Lease are outlined in the respective Lease document.

Information covering the assignment of a Commercial Marina Lease can be found in the *Maritime Property Guide – Managing Commercial Marina Leases*.

2.8.6 Ownership and removal of improvements

As TfNSW 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 TfNSW.

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 TfNSW.

Further guidance on the procedures for the removal of structures or improvements from TfNSW land can be found in the *Maritime Property Guide – Removal of Structures*.

2.8.7 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. Generally, this determines the Lease may be terminated by either party by giving one month's notice in writing.

This notice period does not apply where TfNSW has commenced action to terminate a Lease following material breaches of essential Lease conditions.

2.8.8 Default

Breaches of essential Lease terms or conditions (such as failure to pay the applicable rent) will entitle TfNSW to certain remedies, including commencing action to terminate the Lease.

2.8.9 Access to premises

TfNSW, its agents or its contractors may access the Premises for the purposes of carrying out an Assessment, allowing prospective Lessees or purchasers to inspect the premises or land; or for any other purpose in the carrying out of TfNSW's statutory responsibilities or ensuring compliance with essential Lease terms.

3 Further information

3.1 Disclaimer notes

- This guide 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 acting in relation to any matters covered by this document.
- 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 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.

4 Document history

| Version | Published date | Summary of changes |
|---------|----------------|--------------------------------|
| 1.0 | July 2025 | First version of the document. |

Appendix A– Sydney Harbour Destination Plan

A.1 Scope

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

A.2 Eligibility

Eligibility for rent assessment under the Sydney Harbour Destination Plan (SHDP) will be determined by TfNSW on receipt of an application from a commercial marina operator on Sydney Harbour who seeks to reduce the rent they pay to TfNSW by providing public access facilities in support of the SHDP.

TfNSW 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, and so on.
- 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 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 TfNSW. 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 its current Lease requirements.

A.3 Rental framework under SHDP

Percentage rent for commercial marina berths under the SHDP is based on gross revenue (see Note 3) in accordance with the calculation and table below.

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

Table 3 – Indicative rentals for commercial marina berthing under SHDP

| 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 |

Note 3: 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 TfNSW 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 TfNSW in writing of its intention to withdraw from the SHDP.

TfNSW 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 appendix. 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 TfNSW will verify the offered public benefits have been provided in full.

A.4 Other rental categories under SHDP

Applicable revenue rents for other income-generating activities undertaken under a TfNSW Commercial Maritime Property Lease are determined in accordance with Table 4.

Table 4 – Calculation of Rents for other income-generating activities conducted under a TfNSW Commercial Maritime Property Lease, aside from berthing

| Category of Revenue Generating Activities on TfNSW 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 TfNSW 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 | 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 | \$3,165 per annum plus GST (FY2025/26) 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). |

| Category of Revenue Generating Activities on TfNSW Land | Rental Calculation Method (exclusive of GST) |
|---|--|
| Hardstand, Car Parking, Administration Offices, Storage and General Amenities | \$88.62 per square metre per annum plus GST (FY2025/26). |

A.5 Tenure and review

The terms of this Appendix 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 Appendix.

If the Lessor disputes that the participant continues to deliver the agreed service/amenity/facility under the appendix, this must be addressed in accordance with the breach of agreement process outlines in this Appendix.

A.6 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 always subject to the marina's rules, codes of conduct, and limited to the hours of operation of the marina.

A.7 Withdrawal and breach of agreement

A participant may withdraw from the SHDP at any time by notifying TfNSW 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 TfNSW 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.