

Maritime Property Guide – Managing 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; and
- 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 Managing your Lease

2.1 General

The details of all your rights and responsibilities in relation to your use of the maritime property are included in your Lease agreement with TfNSW.

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 Maritime Property team at TfNSW.

2.2 Management of rent receipts and reviews

2.2.1 Overview

Over the term of the Lease, officers in the TfNSW Maritime Property team will monitor the Lease to ensure:

- any structures built on TfNSW 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; and
- 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 way rent is to be paid.

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

2.2.2 Rent reviews

Rent reviews are structured into Leases in line with property market practices to ensure that TfNSW is receiving sufficient returns on its properties and that rent payable is in line with current market standards.

Rent reviews will be undertaken in accordance with the terms and conditions of the relevant Lease.

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

2.2.3 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 because 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.

TfNSW 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 TfNSW under the Lease.

2.2.4 Subleasing

All subleases of Maritime Property covered by a commercial marina Lease will require prior written notification to TfNSW 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, TfNSW 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.

2.2.5 Assignment

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

Proposed Lease assignments will require the prior written approval of TfNSW, 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 TfNSW commercial marina Lease over maritime property, the lessee must obtain the following information from the proposed assignee and provide it to TfNSW 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 TfNSW for the purpose of determining whether to grant its consent to the proposed assignment.

The lessee must pay the costs of TfNSW, including legal costs, fees and expenses in connection with a determination of an application for consent to assignment of a Lease.

2.3 Maintenance management

2.3.1 General

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.

2.3.2 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 always at their own expense undertake repairs and maintenance for:

- Properties as defined in the Lease
- All Improvements

2.3.3 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 TfNSW.

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 TfNSW and any other relevant authorities. For properties with

multiple Leases with TfNSW, Leases are structured so that all costs of repairs and maintenance are recovered from the lessees via the rental structures and outgoing recoveries.

2.3.4 Maintenance plan

2.3.4.1 Overview

Lessees are required to prepare a maintenance plan within 12 months of commencement date of the Lease. This requirement is further detailed within the terms of the respective Lease.

The maintenance plan is to be prepared at the Lessee's own cost and is to be provided to TfNSW for approval. The plan must be reviewed by a structural engineer every 5 years, depending on the requirements under the Lease.

2.3.4.2 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 TfNSW 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, and so on.
- Providing cost estimates and implementation programs for the maintenance works and improvements.
- Formatted as detailed in the Lease and acceptable to TfNSW.

2.3.4.3 No liability for maintenance plan

In approving the maintenance plan, TfNSW 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 TfNSW does not constitute a release or waiver of the lessee's obligation under the Lease.

2.3.4.4 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.

2.3.4.5 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. TfNSW 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 TfNSW to certain remedies under the terms and conditions of the Lease.

2.3.5 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.

2.3.6 Proportioning of operating expenses

2.3.6.1 Overview

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 lessee occupies. The resulting amount payable is the lessee's proportion of the outgoings.

2.3.6.2 Payment of amounts owing

In the instance where rent is unpaid or paid late, TfNSW 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.

2.3.6.3 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 its obligations to the satisfaction of TfNSW.

2.3.6.4 Overpayment

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

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	June 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 a 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 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 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**) 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 1 – 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: 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 2 below.

Table 2 – 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 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	\$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 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 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.