

# **Maritime Property Guide – Managing Domestic Waterfront Leases and Licences**

## **IPE Infrastructure Management System**

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# Table of contents

<b>1</b>	<b>General</b>	<b>3</b>
1.1	Context and purpose	3
1.2	Managing your lease	3
1.2.1	Overview	3
1.2.2	Management of rent receipts and reviews	3
1.2.3	Rent reviews	4
1.2.4	Rent review disputes	4
1.2.5	Rent abatements	4
1.2.6	Subleasing	5
1.2.7	Assignment	5
1.2.8	Repair and maintenance obligations	5
1.2.9	Keeping records of maintenance completed	6
1.2.10	Approval for work	6
1.2.11	Insurances and indemnities	6
1.2.12	Environmental obligations	7
1.2.13	Payment of operating costs and outgoings	7
1.2.14	Lessee's obligation to continue to making payments	7
1.2.15	Overpayment	7
<b>2</b>	<b>Further information</b>	<b>7</b>
2.1	Disclaimer notes	7
<b>3</b>	<b>Document history</b>	<b>8</b>

# 1 General

## 1.1 Context and purpose

This guide:

- will help 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 a Lease) issued over Transport for NSW (TfNSW) land for structures and uses associated with a private residence and used for a private, non-commercial purpose.
- 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.

**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.

## 1.2 Managing your lease

### 1.2.1 Overview

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

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 TfNSW Maritime Property team. The relevant contact details are available in your agreement with TfNSW.

### 1.2.2 Management of rent receipts and reviews

Over the term of the agreement, TfNSW 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 in accordance with IPART recommendations.

The agreement will detail the amount and way rent is to be paid.

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

### **1.2.3 Rent reviews**

Domestic rents are based on a formula and schedule of rates as recommended by the NSW Independent Pricing and Regulatory Tribunal (IPART).

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 TfNSW 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, TfNSW will advise the Lessee at least 60 days prior to any increase in the rent.

### **1.2.4 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 lease.

### **1.2.5 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 TfNSW, 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.

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 agreement.

### **1.2.6 Subleasing**

The subletting of any part of a leased or licensed Domestic Waterfront Maritime Property is not permitted.

### **1.2.7 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 TfNSW, 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 TfNSW 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 TfNSW for any costs associated with assigning the Lease
- enter into a deed of consent to assignment with TfNSW, and confirm that the incoming purchaser will enter into a deed of consent to the assignment with TfNSW
- comply with any TfNSW guidelines in relation to the assignment.

The Lessee must pay the reasonable costs of TfNSW, 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 TfNSW will need to be established with the new owner of the adjoining land (where this has been sold).

### **1.2.8 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 TfNSW and as and when required by the Lessee.

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

Performance of the Lessee's repair and maintenance obligation must be to the standard and extent necessary to ensure compliance with the agreement, the requirements of TfNSW and any other relevant authorities.

### **1.2.9 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 lease.

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

### **1.2.10 Approval for work**

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

- notified TfNSW of the proposed work and obtained its written approval to carry out the work
- complied with the conditions of the TfNSW approval
- 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 Development*, you need to request landowners consent from TfNSW.

### **1.2.11 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 \$20 million

- Workers compensation Insurance
- Any other insurance policies required by Law, or that TfNSW reasonably require.

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

### **1.2.12 Environmental obligations**

The Lessee, at its own expense, must comply with the environmental law applicable to the Leased 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 premises.

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

### **1.2.13 Payment of operating costs and outgoings**

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

### **1.2.14 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 its obligations to the satisfaction of TfNSW.

### **1.2.15 Overpayment**

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

## **2 Further information**

### **2.1 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.

### 3 Document history

Version	Published date	Summary of changes
1.0	June 2025	First version of the document