

Maritime Property Guide – Managing Retail Leases

IPE Infrastructure Management System

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1 General

1.1 Context and purpose

This guide:

- will help Lessees and prospective Lessees in relation to the management of retail Leases over Maritime Property owned by Transport for NSW (TfNSW)
- is applicable to all agreements (referred generically as Leases) issued over TfNSW land for structures and uses associated with retail purposes
- 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

1.2 Managing your Lease

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. 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.

1.3 Management of rent receipts and reviews

Over the term of the Lease, TfNSW 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.
- 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.

1.4 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 and are usually agreed between the Lessee and TfNSW or reflect an adjustment in line with CPI (Sydney - All Groups).

There are two broad categories of rent reviews: Periodic Rent Reviews and Market Rent Reviews. Both 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.

1.5 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 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.

1.6 Sub-leasing

All Sub-Leases of Maritime Property covered by a Retail Lease will require prior written notification and approval from 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.

1.7 Assignment

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

TfNSW will manage assignments of Retail Leases in line with requirements of the *Retail Leases Act 1994*.

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 Retail 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, or not 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 an assignment of a Lease.

1.8 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 any option periods, and to 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
- 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.

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.

1.9 Invoicing

Invoices will be issued by the TfNSW managing agent.

All rent, outgoings and any other Lease costs are to be paid directly by the Lessee to the TfNSW managing agent.

1.10 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.

1.11 Proportioning of operating expenses

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

1.12 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.

1.13 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.

1.14 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.

2 Further information

2.1 Disclaimer notes

- 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.

- 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.

3 Document history

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