

Maritime Property Guide – Removal of Structures

IPE Infrastructure Management System

Document number: IP-0046-GD43

Version: 1.0

Document owner: Executive Director Property Group

Published date: June 2025

Next review date: June 2027

Supersedes: N/A

Table of contents

1	General	3
1.1	Context and purpose	3
1.2	Removal of structures	3
1.3	Removal after termination	4
1.4	Failure to remove improvements	4
1.5	Domestic lease arrangements	4
1.6	Removal of unauthorised, dilapidated or dangerous structures	5
1.7	Removal for non-compliance with lease terms	6
1.8	Removal for declining to enter lease	6
1.9	Failure to comply with notice to remove	6
1.10	Removal to meet long-term strategic objective	6
2	Further information	7
2.1	Disclaimer notes	7
3	Document history	7

1 General

1.1 Context and purpose

This guide:

- will provide information to assist Lessees understand their responsibilities and obligations in relation to the removal of structures on Maritime Property owned by Transport for NSW (TfNSW)
- is applicable to all new agreements (referred generically as Leases) granted over TfNSW 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 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 Removal of structures

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

- the Lessee has sought and obtained the necessary planning approval, where required

and:

- TfNSW has issued it with a notice requiring removal of the Improvement
- or:
- TfNSW has given its prior written approval to the removal following a written request made by the Lessee to TfNSW.

Unless otherwise agreed by TfNSW 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, TfNSW 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 1994*, 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.

1.3 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, TfNSW 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.

1.4 Failure to remove improvements

Should the Lessee fail to remove the Improvements, TfNSW 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 the Improvements not so removed
- recover from the Lessee the costs and expenses incurred in acting 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 TfNSW 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 TfNSW pursuant to its exercising its rights under the Lease.

1.5 Domestic lease arrangements

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

TfNSW 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 landowner declines to enter 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 TfNSW.

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.

1.6 Removal of unauthorised, dilapidated or dangerous structures

When TfNSW 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 within which the removal must occur considering 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 TfNSW 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 (DA) for its continued use and if granted, the Lessee must then lodge a DA to that effect. The DA may only seek approval for continued use of the structure and not retrospective approval for its construction.

1.7 Removal for non-compliance with lease terms

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

1.8 Removal for declining to enter lease

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

1.9 Failure to comply with notice to remove

If TfNSW 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, TfNSW may remove the structure (or part), and the owner or Lessee will be liable to reimburse TfNSW the costs incurred in connection with the removal.

In carrying out a removal, TfNSW 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.

1.10 Removal to meet long-term strategic objective

Where TfNSW 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 TfNSW that affects their Domestic Lease, may write to TfNSW showing cause as to why a structure or part of a structure should not be removed.

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