

Commercial Marina Rental Procedure

1. Scope

This Procedure is a framework for determining commercial marina rents for occupations on or over Roads and Maritime Services' (RMS) land. The aim of the procedure is to improve consistency, certainty and transparency in commercial marina lease negotiations.

2. Application

This Procedure applies to land owned or administered by RMS, effective from 1 August 2009. It is subject to the laws and regulations of NSW and the Commonwealth, and applicable RMS policies including the Commercial Lease Policy. It otherwise replaces any previous Procedure, guidance note or directive to the extent of any inconsistency.

The content of this Procedure will represent RMS's offer for applicable provisions of new commercial marina leases. The Procedure also applies to existing leases, subject to existing lease conditions. If a rental offer as part of a rent review is made in accordance with this Procedure but declined by the lessee, rent dispute resolution procedures would apply in accordance with relevant lease provisions.

Offers of commercial marina lease conditions that differ from this Procedure will require the written approval of the Chief Executive, RMS. In the case of disputes or disagreements in relation to the application of this Procedure, the Chief Executive's decision will be final.

From the date of adoption of this Procedure, new leases will be offered with co-terminate mooring licences. Existing lessees will be offered co-terminate mooring licences if they adopt the rental framework outlined in this Procedure.

For leases executed under this Procedure after June 2010, where commercial moorings are associated with commercial marina premises, a commercial mooring licence fee is payable but no additional commercial rent.

3. Rental Framework

Commercial marina berths

Rent for commercial marina berths is based on gross revenue¹ in accordance with the formula below, and as illustrated in Attachment A.

Rent, (\$) =	Gross Berthing Revenue x Percentage of Gross Revenue (%)
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Where:

Percentage of Gross Revenue (%) =	Percentage of Gross Revenue equals: 8% up to \$750,000 gross revenue, increasing linearly at a rate of 0.1% for each additional \$100,000 (or part thereof) of Gross Revenue, up to \$3,750,000 to a maximum of 11% of Gross Revenue
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The table below details indicative rentals under the framework for commercial marina berthing combined:

¹ noting: revenue = actual gross revenue, or imputed market rates including service or utility charges if applicable
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Gross Berthing Revenue (\$) ex GST	Percentage of Gross Revenue (%)	Indicative Rent p.a. (rounded \$) ex GST
250,000	8.00%	20,000
500,000	8.00%	40,000
750,000	8.00%	60,000
1,000,000	8.25%	82,500
1,500,000	8.75%	131,250
2,000,000	9.25%	185,000
2,500,000	9.75%	243,750
3,000,000	10.25%	307,500
3,750,000 plus	11.00%	412,500

This framework includes a 10% discount where the lessee makes significant capital improvements on or over RMS land. The test for qualifying for this rental discount is whether the investment leads to a 10% or greater rise in gross revenue (based on the mean of gross revenue for the four years prior to the capital expenditure).

The rental discount on berthing will be applied provided the gross revenue, post investment each financial year, exceeds by more than 10% the gross revenue prior to investment, verified by the lessee's certified financial documentation. For greenfield sites where pre-investment revenue figures are not available, the discount will be applied upon formal completion of construction.

Rent paid prior to investment will be determined on the basis of the average of the 4 years rent, pre-investment. The discount will be applied as a rebate once the 10% rental increase is demonstrated for the first year following the investment. Once the rental has been demonstrated in the first year it will be automatically applied for the remainder of the discount period as reduced rental.

Upon verification, the berthing rental discount will apply for ten years, at 10% for the first five years and at 5% for the second five years. Discounts may apply from the commencement of a new lease, or following the first full financial year after the date of completion of construction. For a staged development where a second round of investment occurs (which lifts gross berthing revenue by more than 10% again) the formula will be reapplied and a new rental discount period will become available in accordance with this Procedure.

4. Other rental categories

Applicable revenue rents for other income-generating activities within a commercial marina lease, aside from berthing will be calculated in accordance with the following table.

Category of Lease	Rental base
Subleasing	20% 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 not sublessee, or market valuation
Accommodation	20% 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 sq.m (in each case, where no sublessee)
Slipway rails	\$2,000 p.a per income-generating pair
Maritime Industrial	5% of gross revenue or market valuation (in each case, where no sublessee)
Hardstand, carparking and administration offices, storage and amenities	\$/M2 at market rates for use other than for Maritime Industrial covered above. ²
Registered Club	2.5% - 5% of gross revenue (except for commercial marina operations which will be treated as per Section 3)
Public Access/Amateur Club	\$400 per year (in 2007) plus annual CPI

² Rent will not be assessed for areas with no income-generating capacity (for example toilets, pathways, carparks) or for hardstand associated with commercial berths and not used for any other income-generating activity. Rent will be assessed for administration space, caretaker apartments, storage space, hardstand used for boat storage, and similar activities per the rates in the above table.

5. Lease duration

The Commercial Lease Policy includes an indicative marina lease term of 25 years. Where a longer lease term is being sought, this may be considered only where a major redevelopment occurs. The decision rule determining the extension based on the relationship between investment and total gross revenue is as follows:

- a) A development is eligible for an extended lease term once capital expenditure³ (capex) on RMS land is greater than or equal to total annual gross revenue (TGR)⁴ averaged over four years, for example:
 - I. Where capex \geq TGR, lease extension is 7.5 years
 - II. Where capex \geq 1.5 TGR, lease extension is 10 years
 - III. Where capex \geq 2.0 TGR, lease extension is 12.5 years
 - IV. Where capex \geq 2.5 TGR or greater, lease extension is 15 years
- b) The maximum duration of a RMS commercial marina lease under this procedure is therefore 40 years.

6. Other matters

To limit bracket creep, rental rates will be increased at five yearly intervals from the date of adoption of this Procedure, in line with the Consumer Price Index (all Groups CPI for Sydney) and be rounded to the nearest \$10,000.

To distinguish between capital or maintenance expenditure RMS requires evidence of the taxation treatment of expenditure and will adopt same. Expensed maintenance expenditure cannot be claimed as capital investment for the purposes of berths rental discounts or extended lease terms.

For the purposes of applying the rental framework all revenue figures are exclusive of GST.

7. Definitions

Terms used in this document have the meanings given them in the *Commercial Lease Policy*.

³ including the value of the unexpired term of a surrendered lease, if applicable. Applicable capital expenditure must be for development on or over NSW Maritime land and is expenditure defined as such in the lessee's audited financial accounts as presented to the Australian Taxation Office.

⁴ Increased lease term assessment relies on total gross revenue from all marina operations, including sublease gross rent revenue (but not sublessee revenue), as distinct from gross revenue from berthing used for rental assessment.

Appendix A Percentage of gross revenue for commercial marina berths

