

Domestic Lease Policy

1. Aims and application

The aims of this policy are to:

- Ensure the domestic leasing of Roads and Maritime Services' (RMS)'s lands is consistent, transparent and impartial;
- Encourage the ongoing development of existing and new domestic waterfront facilities for the storage and use of recreational vessels;
- Provide domestic lessees with stability and security of tenure; and
- Deliver a market referenced commercial return for RMS.

Appendix 1 to this policy provides a number of domestic leasing process flowcharts to assist lessees and RMS's officers.

Types of leases to which this policy applies

This policy applies to leases issued over RMS's land from 1/1/09 for structures and uses associated with a private residence and used for a private, non-commercial purpose. These structures and uses include boatsheds, private landing facilities, mooring pens, private marinas and reclaimed lands.

This policy does not apply to the following:

- Leases covered by the Commercial Lease Policy (RMS, September 2009, as amended from time to time);
- Public wharves used for the temporary berthing of vessels (eg public ferry wharves); or
- Leases administered by other local and state government agencies.

Approvals

This policy does not affect any requirement to obtain any necessary approvals under the Environmental Planning and Assessment Act 1979 or any other legislation. Normally RMS will not enter into a lease or agreement for lease unless it has documentary evidence that all necessary approvals have been secured.

In some instances, RMS may offer an agreement for lease, or similar, which sets out conditions which are to be met prior to the granting of a lease. Examples of such conditions include obtaining planning approval for, and/or the construction of, certain works on the land and construction within a specified time.

All relevant approvals relating to the development or use of the land must be maintained, or renewed if required, by the lessee during the term of the lease.

Legislative context

Relevant legislation under which RMS operates includes (but is not limited to) the:

- Ports and Maritime Administration Act 1995;

- Marine Safety Act 1998;
- Maritime Services Act 1935;
- Management of Waters and Waterside Lands Regulation - NSW;
- Environmental Planning and Assessment Act 1979;
- Protection of the Environment Operations Act 1997;
- Conveyancing Act 1919;
- Real Property Act 1900; and
- Privacy and Personal Information Protection Act 1998.

Application of this policy

While the provisions of this policy will normally be applied to RMS's domestic leases, it should be noted that any final lease offer will be on such terms and conditions as RMS considers appropriate. RMS is not obliged to offer a lease over its land, or to issue a new lease on similar terms as any existing or previous lease.

If RMS is obliged by law to act or omit to do something, RMS may determine to depart from this Policy to the extent necessary to comply with its legal obligations.

This Policy is effective from 1 December 2010 and, to the extent of any inconsistency, replaces any previous policies, procedures, guidance notes and directives in relation to matters covered by this Policy.

Policy review

This policy will be reviewed as required but the next formal review is scheduled for 2014.

2. Agreement for lease

Prior to commencing any works on RMS's land, the lessee must enter into a formal agreement for lease with RMS. This is essentially a licence to erect structures and/or undertake works on RMS's land.

During the construction phase the lessee is required to pay a fee to occupy RMS's land. The occupation fee is based on the approved area of occupation and will accrue from the date on which the formal agreement for lease is signed by the lessee.

Once the works are completed to RMS's satisfaction and the lessee has satisfied all conditions, as set out in the agreement for lease, the final lease document will be issued and executed.

Rent is payable from the date of commencement of the lease, which is the date from which the licence fee is no longer payable.

3. The term of a domestic lease

RMS offers its lessees the options of 20 year unregistered or registered leases and 3 year unregistered leases.

Subject to a Deed of Assignment being entered into by the existing lessee prior to completion of the sale of the adjoining freehold property, leases are normally transferable upon the sale. There are certain exceptions to this which are discussed in section 14 of this policy.

Under the Conveyancing Act 1919, a plan of subdivision is required for registered leases of more than 5 years duration. Depending on the applicable environmental planning instrument, a development application may be required to subdivide RMS's land.

A 20 year unregistered lease does not require a plan of subdivision.

When a plan of subdivision is required the lessee must engage a registered surveyor to prepare a plan for lodgement with the Land and Property Management Authority which defines the site and is suitable for the issue of a new certificate of title in RMS's name.

Deposited plan preparation, lodgement and registration requirements are outlined in RMS's "Practice Statement for the Preparation of Subdivision Plans for Long-term Leases" available at RMS's internet site.

If a lessee does not wish to enter a 20 year lease, RMS offers a 3 year lease which does not require registration or subdivision. Generally a lessee may convert from a 3 year lease to a 20 year lease at a later time if they choose.

Providing lease conditions are met, RMS normally issues new leases rather than holding over existing ones.

4. The lease and its conditions

A person may not occupy RMS's land without its written permission and RMS will normally require the occupier to enter into a lease.

RMS has developed a template domestic lease which must be signed by both the lessor (RMS) and the lessee.

Conditions and requirements of the template lease include, but are not limited to, the following:

- payment of rent in accordance with rental formulae and conditions;
- a requirement that the lessee is to notify RMS of changes or events which affect its land (eg if the residential development on the adjoining dry land changes from a single to multiple occupancy);
- that all costs associated with the lease are borne by the lessee;
- the permitted uses of the premises and requirements relating to the berthing of vessels, maintenance and repairs;
- that the lessee must indemnify and release RMS, the Minister for Ports and Waterways and the State from any loss relating to occupation or use of the premises;
- the lessee must fully insure RMS against all foreseeable risks associated with the occupation and use of the premises;
- that upon the sale of the adjoining land, and following RMS's prior written approval, the lessee may assign the lease to the incoming purchaser of the adjoining land;
- sub-leasing is prohibited, except as provided by clause 13 of this policy;
- that the lessee is obliged to comply with all relevant occupational health and safety laws and all relevant environmental laws;
- that the lessee has responsibilities and obligations in relation to land contamination, pollution and land remediation;
- that RMS may require the lessee to rectify any defaults or breaches of the lease;
- that the lessee has a right to quiet enjoyment of the premises while RMS has certain rights, including the right of entry onto the premises to undertake inspections and the right to recover costs in the event of a breach of the lease;

- the lease incorporates a dispute resolution process;
- that RMS may, under certain circumstances, require the removal of structures from the premises in accordance with the terms of the lease; and
- that the lessee must not lodge any caveat over the premises.

A template domestic lease is available on RMS's internet site.

5. Licence within the lease

Where a lessee does not have exclusive use of the premises, or part of the premises, a licence is incorporated into the lease.

A licence will apply to shared mooring piles, areas subject to public access or common law access requirements and stay chains.

6. Occupation licences

RMS may allow certain occupations of its land to be the subject of an occupation licence rather than a lease. This applies only to minor occupations of an insignificant area of RMS's land and only when the adjoining landowner does not have any other structures over RMS's land.

Examples of minor occupations include those required for stormwater drains/pipes, small anti-scour aprons and small revetment mattresses (which are similar to gabions).

RMS determines, at its discretion, whether occupations are sufficiently minor to warrant being the subject of an occupation licence.

An occupation licence will be issued for \$1 (if demanded) and may incorporate insurance, indemnity and maintenance obligations.

All costs associated with the preparation and execution of an occupation licence are payable by the occupant.

RMS's Domestic Leasing Procedures establish its detailed requirements for occupation licences for minor occupations of RMS's land and are available on RMS's internet site.

A template occupation licence is available on RMS's internet site as a guide.

7. Shared occupancy agreements

In cases where 2 or more lessees are sharing a facility, RMS requires the sharing parties to enter its standard deed of agreement for shared occupancy. The deed of agreement for shared occupancy is additional to the lease over RMS's land.

The standard deed of agreement for shared occupancy encompasses provisions relating to the nature of the tenancy; financial obligations; maintenance, repair and other works; requirements relating to use and possession of land and structures; and provisions for common areas, exclusive areas and fixtures; insurance and indemnity; transfer of interest in the lease and dispute resolution processes.

8. The leased land

Rents are based on the area of RMS's land occupied by the lessor's private structures or reclamations and any approved vessel berthing area, irrespective of whether or not a vessel is permanently berthed in the area.

A key determinant of the lease area is the extent of navigable waters which are alienated from full public use.

RMS allocates an approved berthing area based on the length of the vessel. This is usually taken to be its length overall (LOA) which includes appendages such as bow sprits and outboard motors, rather than hull length.

RMS's Domestic Leasing Procedures establish its detailed requirements for determining the leased land and are available on RMS's internet site.

9. Fees and costs to establish a lease

RMS requires the lessee to pay all stamp duties, plan registration and associated costs, reasonable administrative, survey and legal costs and disbursements associated with the establishment and administration of the lease. A schedule of fees is available on RMS's internet site.

10. Rental calculations

The annual rent is calculated using the following formula:

Rent (\$) = area of RMS's land occupied x relevant precinct rate.

The relevant precinct rate is derived from statutory land value (SLV) data, a discount factor and a rate of return. However a discount factor is not applicable to rental calculations for residential houseboats.

RMS has identified 7 precincts, the boundaries of which have been determined to promote a fair and smooth rental rate by averaging it across a relevant and representative area. A map of the 7 precincts, including the current precinct rates, is available at RMS's internet site.

RMS also adopts a rolling average of 3 recent annual SLVs for general rent calculations. This smooths out changes in property values resulting from revaluations of land.

The rent formula, including its components, may be reviewed by RMS in accordance with relevant factors such as current government policy and market conditions.

RMS has a minimum rent (which is subject to CPI movements) for domestic leases. Should the calculated rent be less than the minimum rent, the minimum rent will apply.

Detailed procedures relating to rental calculations are established in RMS's Domestic Leasing Arrangements document.

11. Rental cap provisions

RMS offers an optional cap on annual rent increases. Any annual rent increase is capped at \$2,500 and is available each year until the first year in which an annual rent increase is less than \$2,500.

The cap ceases to apply to any domestic waterfront structure from the first year in which the annual increase is less than \$2,500.

Rent increases in excess of \$2,500 are carried over to the following year's invoice as a debt.

Detailed procedures relating to the new cap are established in RMS's Concessions and Hardship Relief Procedures.

Note: The \$2,500 cap is inclusive of GST, expressed in 2008 dollars and subject to annual CPI movements.

12. Concessions and hardship relief

RMS offers flexible rent payment options, concessions and hardship relief on rental payments for domestic waterfront leases.

Concessions are available to lessees who hold certain concession cards issued by Centrelink or the Department of Veterans' Affairs.

Lessees suffering genuine, temporary, financial hardship may be eligible for hardship relief. Hardship relief options may include extensions of time, payment by instalments or other options acceptable to both parties.

Detailed procedures relating to payment options, concessions card eligibility and hardship relief provisions are established in RMS's Concessions and Hardship Relief Procedures found on RMS's internet site.

13. Commercial use of domestic structures and sub-leasing

The use of domestic waterfront facilities for commercial purposes is prohibited on RMS's land.

However, provided that a sub-lease or commercial arrangement of any kind is not involved, lessees may make their domestic berthing or storage facilities available for reasonable use by others (eg friends or neighbours) for vessel occasional berthing or storage.

This is subject to any restrictions on vessel size and any other conditions within the relevant planning approval or lease.

At RMS's discretion sub-leasing may occur for private marinas, subject to appropriate conditions and only when the sub-lessees are residential occupants of the land adjoining the facility.

14. Domestic leases fronting public land

RMS's current land owner policies require waterfront structures on RMS's land to have a functional relationship with the use of the adjoining land.

However circumstances exist in which a domestic lessee's freehold land does not adjoin RMS's premises. These circumstances may have arisen through, for example, subdivisions or historical anomalies resulting in a public reserve, a road or other freehold land now separating the lessee's freehold from the premises leased from RMS.

As RMS does not unreasonably disadvantage existing lessees in these circumstances it may issue a non-transferable lease to an incoming owner for the remaining term of the existing lease.

In limited circumstances, RMS may issue a new transferable 3 or 20 year unregistered lease to the existing lessee or agree to assign a lease to an incoming owner for the remaining term of the existing lease.

Should a lease which is the subject of these provisions be terminated (under any circumstances) RMS will determine the future of the structures and/or works on the premises. Options include, but are not limited to, removal of the structures by the outgoing lessee if that is in accordance with the existing lease terms, community use of the land through a lease to a local council or community group, use by commercial operator or lease to another party.

Detailed provisions are established in the Domestic Leases Fronting Public Land Procedures available on RMS's internet site.

15. Disposal of reclaimed land

As the owner of reclaimed land, RMS may choose to retain the reclamation; remove it or require its removal; lease it; dispose of it; deny access to it; or use it for any purpose it considers appropriate in the circumstances.

RMS normally prefers to retain ownership of its reclamations and lease them, but recognises that circumstances exist which make disposal more appropriate, For example disposal may be appropriate in the case of very small reclamations for which the lease administration costs exceed the return.

Normally, disposal of RMS's land to the private sector is considered only when such negotiations are initiated by the adjoining landowner and all applications to purchase RMS's land are considered on their merits based on established criteria.

RMS will generally obtain an independent valuation of the land having regard for the highest and best use via a "before and after" current valuation methodology. The valuation will include the value of any land improvements but will not include the value of general improvements such as boatsheds, swimming pools, tennis courts and the like. Upon consideration of this valuation RMS will decide, at its absolute discretion, whether to proceed with the disposal.

All costs (including all RMS's costs) associated with any disposal, or removal of a reclamation and return to its natural state, must be borne by the purchaser/lessee provided this is not contrary to the terms of any current land tenure agreement.

RMS will direct the proceeds of sales of its reclamations to the purchase of suitable, alternative land to facilitate public access to the State's waterways.

Detailed provisions are established by the Disposal of Reclamations Procedures available on RMS's internet site.

16. Seawalls

Seawalls are the responsibility of the lessees, who are required to maintain them in good repair and condition.

When RMS is disposing of land where a seawall exists along the waterfrontage and the toe of the seawall is located on RMS's land, RMS may require a positive covenant to be registered on the title of the adjoining land. RMS will prepare the positive covenant at the purchaser's cost and, as a condition of the sale, RMS will require it to be registered on the land title. Where the toe of the seawall is on RMS's land, RMS may require an appropriate easement having regard to the nature of the structures upon its land (eg to enable access to RMS's land to undertake repairs to the seawall).

17. Temporary swimming enclosures

At RMS's discretion, leases for temporary swimming enclosures may be issued on a recurring short term basis to cover only the periods for which the enclosure is in place.

18. Maintenance, repairs, maintenance dredging, alterations and similar works

Lessees are required to maintain the premises in good repair and condition at their expense. This requirement extends to maintenance dredging to ensure an appropriate depth of water to provide access to structures on RMS's land.

Subject to RMS's approval, lessees may make enhancements or capital improvements to the structures on RMS's land.

Detailed requirements are established by the Domestic Lease.

19. Berthing a vessel

The lease will specify whether the permanent berthing of a vessel is permitted on the premises. If permanent berthing is not permitted the lease may permit casual berthing.

The berthing area forms part of the leased land.

The lessee is required to comply with all requirements of the relevant planning approval and the terms of the lease in relation to the berthing of vessels.

Detailed requirements are established by the Deed of Lease and the Domestic Leasing Procedures available on RMS's internet site.

20. Assigning a lease

If a lessee sells their adjoining freehold land the lease may routinely be assigned to the incoming purchaser provided the lessee has the prior written permission of RMS.

The lease terms establish the conditions under which a lease may be assigned and these include the following:

- providing RMS with 28 days notice of the lessee's intention to assign the lease;
- execution of a Deed of Assignment with RMS;
- all outstanding rent or other monies have been paid to RMS by the lessee;
- all obligations of the existing lease have been met by the lessee;
- the lessee bears all costs associated with the assignment, irrespective of whether the assignment proceeds; and
- completion of all necessary forms and other documentation.

If the purchaser does not agree to the assignment of an existing lease or to enter into a new lease, the outgoing lessee remains responsible for all obligations of the lease, including the removal of the structures if required by RMS.

Detailed requirements are established by RMS's Domestic Lease.

21. Removal of structures

While the lease document provides RMS with the option to require the lessee to remove any structure on its land in accordance with the terms of the lease, the following policies currently apply to the removal of structures:

- any instruction to the lessee to remove domestic waterfront structures is subject to the written approval of the Chief Executive;
- subject to the points listed below, RMS's existing use rights are retained for all existing domestic waterfront structures unless they have been specifically relinquished by RMS;
- the circumstances in which RMS may require the removal of domestic structures are as follows:
 - the structure or part of the structure is unauthorised;
 - the structure or part of the structure is dilapidated, totally or partially collapsed, derelict or in such a state of disrepair as to pose a danger to any person or property, provided RMS has made reasonable efforts to notify the lessee and the lessee has failed to rectify the issue;
 - there has been repeated non-compliance with any of the essential terms of the associated lease, provided RMS has made reasonable efforts to notify the lessee and the lessee has failed to rectify the issue;
 - the adjoining land owner declines to enter into a lease of RMS's land upon which the structures are built; or

- removal of the structures is required because they impede or prevent the implementation of a long term strategic objective of the NSW Government for the bay, locality or region and the term of the associated lease has expired or is due to expire.

Detailed procedures relating to the removal of domestic waterfront structures are established by the Domestic Lease and the Procedure for the Removal of Private Waterfront Structures which are available on RMS's internet site.

22. Reviews

An adjoining landowner or lessee who is aggrieved by a decision made by RMS in accordance with this Policy which directly affects their lease or land may request RMS to review that decision.

Any such request must be made in writing within 28 days of the date of RMS's initial decision and should show cause as to why RMS should review its decision.

23. Definitions

In this Policy the following definitions apply:

Adjoining landowner means the owner(s), as indicated on the Certificate of Title, of residential land which directly adjoins RMS's land.

Domestic lease means a lease issued by RMS in relation to the use of its land and any structures on that land in association with a private residence and used for a private non-commercial purpose.

Existing use has the meaning given to it in Division 10 of the Environmental Planning and Assessment Act 1979.

Land improvements have the meaning given to them in the Valuation of Land Act 1916 and therefore include retaining walls, filling or other works associated with the reclamation of land.

Land tenure agreement includes a lease, licence or other legally binding form of agreement to occupy land.

Leased land means an area of RMS's land which is subject to a domestic lease and upon which rent is payable, and incorporates the area occupied by private structures, reclamations and the like as well as any submerged land for the exclusive use of the lessee.

Lessee includes a prospective lessee and an existing lessee.

A *licence* may be associated with a domestic lease to allow the use of RMS's land for a specific structure (such as a stay chain) or for a specific purpose (such as the sharing of structures between 2 or more lessees or to provide areas within the leased land for public access).

Licensed area means the area of RMS's land which is the subject of a licence within the lease.

Premises means the leased land together with the licensed area and includes all fixtures, structures and improvements on such land.

Private landing facility(ies) has the meaning given to it in the Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005 (Deemed State Environmental Planning Policy).

Reclamation means any of RMS's land which was formerly submerged but has been filled or drained for the purposes of reclaiming the land as dry land.

Rent area means that part of the leased land over which rent is payable.

Unauthorised (in relation to the berthing of a vessel, the use of, and/or the erection of any structures on, RMS's land) means that the lessee or their predecessor(s) have not obtained all the relevant legislative approvals.

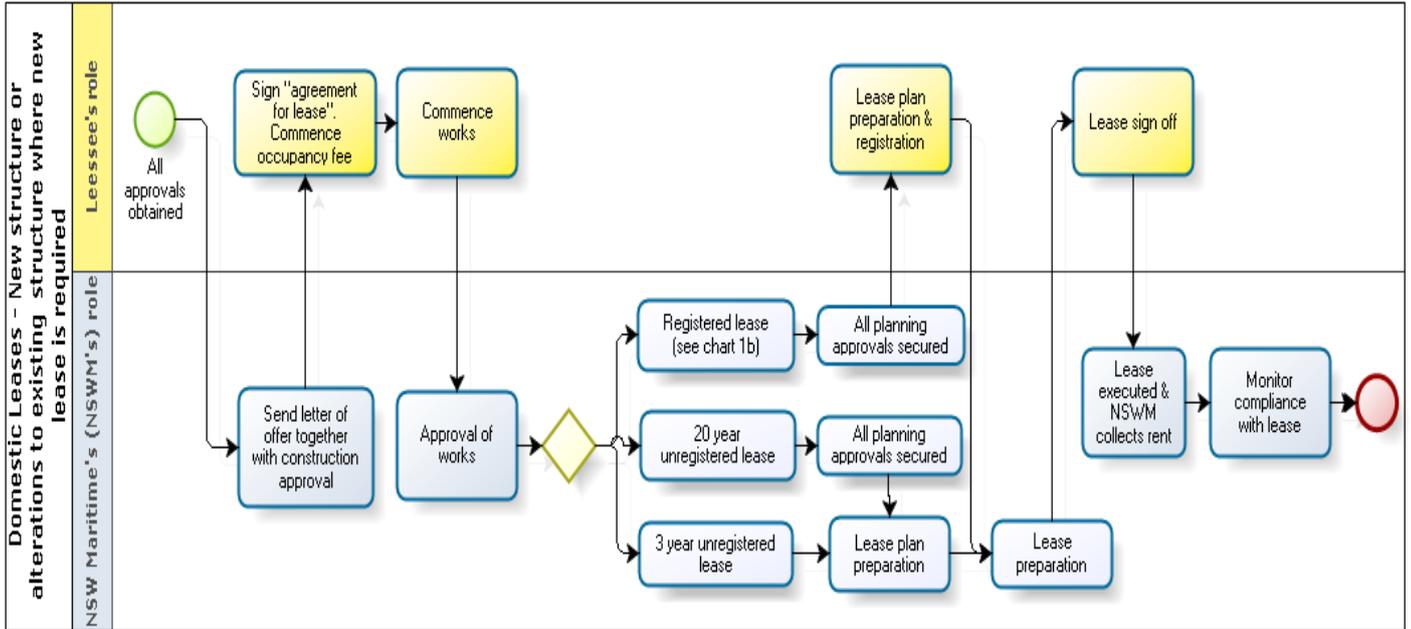
Vessel length means length overall (LOA) including the full length of the hull plus outboard motors, bowsprits and all other appendages.

APPENDIX 1

Domestic leasing process flowcharts

The following flowcharts summarise key aspects of the domestic leasing process:

New structure(s) or alterations to existing structure(s) when a new lease is required:



2 As above - sub-process involved in the case of a registered lease:

