



# Procedure

## for Assignment of Commercial Leases

**Commercial Lease Policy (NSW Maritime)**

**NSW | MARITIME**  


## **1. PURPOSE**

- 1.1 This document has been developed for the purpose of setting out NSW Maritime's procedures when considering a request for its consent to the assignment of a NSW Maritime Commercial Lease or Licence.

## **2. COMMENCEMENT**

- 2.1 This document commenced on 13 July 2009.

## **3. OTHER RELEVANT POLICIES**

- 3.1 This document is subject to the NSW Maritime *Commercial Lease Policy* the provisions of the relevant Lease or Licence and the laws of New South Wales and the Commonwealth.

## **4. IMPACT ON PREVIOUS PROCEDURES**

- 4.1 This document replaces all previous procedures, directions and guidance notes in relation to the assignment of NSW Maritime Commercial Leases and/or Licences.

## **5. CHIEF EXECUTIVE APPROVAL REQUIRED TO DEPART FROM PROCEDURES**

- 5.1 Any departure from the procedures set out in this document requires the prior written approval of the Chief Executive.

## **6. PROCEDURES FOR THE ASSIGNMENT OF A COMMERCIAL LEASE OR LICENCE**

- 6.1 Where a Lease or Licence provides that the rights and obligations under it may be assigned, the Lessee or Licensee proposing to assign the Lease / Licence must obtain the prior written consent of NSW Maritime and this consent will not be unreasonably withheld.
- 6.2 For the purpose of considering a request for consent to assignment of a Lease or Licence, the proposed Assignee must provide the information and documentation set out in Section 7 of this document.
- 6.3 Prior to any proposed assignment, the outgoing Lessee or Licensee must rectify any breaches of their obligations under the Lease or Licence, including any defaults in maintenance, rent payments or other outgoings, unless the proposed assignee agrees in writing to meet the outgoing Lessee's/Licensee's obligations or NSW Maritime otherwise agrees in writing to waive compliance with the obligation(s). The Assignor and Assignee may also be required to comply with other conditions precedent to obtaining NSW Maritime's consent to the assignment, including (but not limited to) such as execution and registration of the Transfer of Lease at the Land and Property Management Authority, or obtaining consent to the simultaneous assignment of a Lease or Licence over Adjoining Land.

- 6.4 Assignment of a Lease or Licence will generally not involve any variation of its terms or conditions unless the incoming Lessee/Licensee requests such a variation. However, NSW Maritime reserves the right to require some form of security to be provided by the proposed assignee in accordance with Section 3.12 of the *Commercial Lease Policy* (NSW Maritime) where, in the opinion of NSW Maritime, reasonable grounds exist for such a requirement. In these circumstances the proposed Assignee will be required to execute a variation of the Lease/Licence and/or enter into a Deed of Guarantee where there is no provision in the Lease/Licence regarding security.
- 6.5 Concurrent with consideration of the proposed assignment of the Lease or Licence, NSW Maritime will consider the assignment or transfer of any associated commercial mooring licences issued under the *Management of Waters and Waterside Lands Regulation – NSW*.

## **7. INFORMATION REQUIRED FOR THE PURPOSE OF CONSIDERING A REQUEST FOR CONSENT TO ASSIGNMENT OF A COMMERCIAL LEASE OR LICENCE**

- 7.1 The Lessee or Licensee must obtain the following information from the proposed Assignee and provide it to NSW Maritime upon request:
- (a) 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 or Licence is subject to Revenue Rent, the Business Case must also include details of costs of developing and running the business/operation and the estimated revenue for the purpose of calculating future rent payable under the Lease/Licence;
  - (b) details of relevant skills and experience in the business or operation proposed to be carried out by the proposed Assignee;
  - (c) evidence of the proposed Assignee's capacity to satisfy its financial obligations under the Lease/Licence, including rent, make-good, proposed capital works (if any) and maintenance;
  - (d) information regarding the proposed Assignee's compliance with previous Leases / Licenses (if applicable);
  - (e) a 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;

- (f) a 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 Premises;
- (g) details of any Subleases or Licences proposed to be assigned or transferred in addition to the head Lease; and
- (h) any other information reasonably required by NSW Maritime for the purpose of determining whether or not to grant its consent to the proposed assignment.

## **8. COSTS**

- 8.1 The Lessee must pay NSW Maritime's costs, including legal costs, fees and expenses in connection with a determination of an application for NSW Maritime's consent to assignment of a Lease or Licence.

## **9. DETERMINATION AND APPEALS**

- 9.1 Determinations by NSW Maritime of requests for its consent to the assignment of a Commercial Lease or Licence will be issued in writing and signed by the General Manager, Maritime Property Division (or a delegate).
- 9.2 A Lessee/Licensee who is aggrieved by a decision made by NSW Maritime in accordance with this Document that affects their Lease or Licence may write to NSW Maritime within 28 days of the determination showing cause as to why the decision should be reviewed.
- 9.3 Appeals under this section will be determined by the Chief Executive whose decision shall be final.

## **10. GLOSSARY**

- 10.1 In this Document, all terms have the meaning given them in the NSW Maritime *Commercial Lease Policy*.

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